



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Meeting Agenda Public Utilities Board

Monday, August 25, 2025

9:00 AM

Council Work Session Room

REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD

Citizens will be able to participate in the following way:

- eComment – The agenda was posted online at <https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>. Once the agenda is posted, a link to make virtual comments using the eComment module will be made available next to the meeting listing on the Upcoming Events Calendar. Using eComment, Individuals may indicate support or opposition and submit a brief comment about a specific agenda item. eComments may be submitted up until the start of the meeting at which time the ability to make an eComment will be closed. eComments will be sent directly to members of the Public Utilities Board immediately upon submission and recorded by the Secretary into the Minutes of the Meeting.

After determining that a quorum is present, the Public Utilities Board of the City of Denton, Texas will convene in a Regular Meeting on Monday, August 25, 2025 at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

This section of the agenda permits a person to make comments regarding public business on items as listed on the agenda. Each speaker will be allowed a maximum of four (4) minutes. Such person(s) shall have registered under the REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD detailed at the beginning of this agenda. Registration is required prior to the time this agenda item is read into the record.

2. CONSENT AGENDA

Each of the items on the Consent Agenda is recommended by the Staff and approval thereof will be strictly on the basis of the Staff recommendations. Approval of the Consent Agenda authorizes the City Manager or designee to implement each item in accordance with the Staff recommendations. The Public Utilities Board has received background information and has had an opportunity to raise questions regarding these items prior to consideration.

Listed below are bids, purchase orders, contracts, and other items to be approved for payment or other action under the Consent Agenda (Agenda Items A – C). This listing is provided on the Consent Agenda to allow Public Utilities Board Members to discuss or withdraw an item prior to approval of the Consent Agenda. If no items are pulled, the Consent Agenda Items will be approved with one motion. If items are pulled for separate discussion, they may be considered as the first items following approval of the Consent Agenda.

- A. [PUB25-146](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas

home-rule municipal corporation, authorizing the City Manager to execute a contract with Mountain Cascade of Texas, LLC, for the construction and movement of public water/wastewater utilities in support of TxDOT's FM 1515 widening from I-35 Frontage Road to Westcourt Road for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7968-007 - awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$4,987,742.55).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance and Contract](#)

- B. [PUB25-147](#) Consider recommending adoption of an ordinance of the City of Denton, Texas, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Enverus, Inc., for load and renewable forecasting services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date. (RFP 8800 - awarded to Enverus, Inc., in the three (3) year not-to-exceed amount of \$255,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Pricing Evaluation](#)
 [Exhibit 3 - Ordinance and Contract](#)

- C. [PUB25-148](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Enverus, Inc., for Market Fundamentals and Analytics Services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8843 - awarded to Enverus, Inc., in the three (3) year not-to-exceed amount of \$247,500.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Pricing Evaluation](#)
 [Exhibit 3 - Ordinance and Contract](#)

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [PUB25-151](#) Consider approval of the August 11, 2025, minutes.

Attachments: [8.11.25 PUB Minutes](#)

- B. [PUB25-055](#) Consider recommending adoption of an ordinance of the City of Denton, Texas establishing the schedule of rates for electric service for schedule ECA LL effective on October 15, 2025; providing for a repealer; providing for a severability clause; and providing an effective date.

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Rate Ordinance Redline](#)
 [Exhibit 3 - Rate Ordinance](#)
 [Exhibit 4 - Presentation](#)

- C. [PUB25-144](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas

home-rule municipal corporation, authorizing the City Manager to execute a contract and lease agreement with Mayhill Renewables, LLC, to design, fabricate, construct, commission, and operate a Renewable Natural Gas (RNG) Facility to treat landfill and digester gas at the City of Denton Landfill for the Solid Waste and Water Utilities Departments; providing for the expenditure of funds therefor; and providing an effective date (RFP 8465 - awarded to Mayhill Renewables, LLC, for a primary construction phase and twenty (20) year term).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Pricing Evaluation](#)
 [Exhibit 3 - Lease Agreement](#)
 [Exhibit 4 - Presentation](#)
 [Exhibit 5 - Ordinance and Contract](#)

- D. [PUB25-152](#) Management Reports
1. Future Agenda Items
 2. New Business Action Items

Attachments: [1. Future Agenda Items](#)
 [2. New Business Action Items](#)

4. CONCLUDING ITEMS

A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the Public Utilities Board or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

Following the completion of the Regular Meeting, the Public Utilities Board will convene in a Work Session at which the following items will be considered:

WORK SESSION

- A. [PUB25-121](#) Receive a report, hold a discussion, and give staff direction regarding the City of Denton utility billing programs.

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Presentation](#)
 [Exhibit 3 - Ascent Group Study](#)

Following the completion of the Work Session, the Public Utilities Board (PUB) will convene in a Closed Meeting to consider specific items when these items are listed below under the Closed Meeting section of this agenda. The Public Utilities Board (PUB) reserves the right to adjourn into a Closed Meeting on any item on its Open Meeting agenda consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law.

CLOSED MEETING

Any final action, decision, or vote on a matter deliberated in a Closed Meeting will only be taken in an Open Meeting that is held in compliance with Texas Government Code, Chapter 551, except to the extent such final action, decision, or vote is taken in the Closed Meeting in accordance with the provisions of Section 551.086 of the Texas Government Code (The 'Public Power Exception'). The Public Utilities Board reserves the right to adjourn into a Closed Meeting or Executive Session as authorized by Texas Government Code, Section 551.001, et seq. (The Texas Open Meetings Act) on any item on its Open Meeting agenda or to reconvene in a continuation of the Closed Meeting on the Closed Meeting items noted above, in accordance with the Texas Open Meetings Act, including, without limitation Section 551.071-551.086 of the Texas Open Meetings Act.

- A. [PUB25-153](#) Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086.

Receive information from staff regarding the energy cost adjustment schedule of rates for large load commercial customers that include public power utility competitive data; discuss, deliberate, and provide direction to staff regarding same.

CERTIFICATE

I certify that the above notice of meeting was posted on the official website (<https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on August 21, 2025, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

OFFICE OF THE CITY SECRETARY

NOTE: THE CITY OF DENTON'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE ACCOMMODATION, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED, IF REQUESTED AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.



City of Denton

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Legislation Text

File #: PUB25-146, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Mountain Cascade of Texas, LLC, for the construction and movement of public water/wastewater utilities in support of TxDOT's FM 1515 widening from I-35 Frontage Road to Westcourt Road for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7968-007 - awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$4,987,742.55).



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AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Christine Taylor
DATE: August 25, 2025

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Mountain Cascade of Texas, LLC, for the construction and movement of public water/wastewater utilities in support of TxDOT's FM 1515 widening from I-35 Frontage Road to Westcourt Road for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 7968-007 – awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$4,987,742.55).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Texas Department of Transportation (TxDOT) has proposed a widening of FM 1515 from Interstate Highway 35 Frontage Road (I-35) to Westcourt Road with an estimated construction start of late 2025. The FM 1515 Utility Relocation Project will move public utilities in support of TxDOT with the removal and installation of 7,796 linear feet of water and wastewater utilities from I-35 Frontage Road to Westcourt Road. To align with TxDOT FM 1515 widening, the project is scheduled for 300 days to final completion. Since the project is a forced relocation of City of Denton utilities, there will be reimbursements from TxDOT to support this effort.

The FM 1515 Utility Relocation Project has a total estimated cost of \$4,987,742.55. This estimate includes a \$4,750,231.00 total base bid amount and a contingency of \$237,511.55. A five (5) percent contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City's Project Manager and Program Manager.

Project Description	Estimated Project Expenditure
Construction of Water Utilities	\$4,118,737.80
Construction of Wastewater Utilities	631,493.20
5% Contingency Allowance	237,511.55
Total NTE Amount:	\$4,987,742.55

In an effort to meet TxDOT's anticipated roadway construction schedule, a Request for Qualifications for utility relocation construction services was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of professional service firms on June 7, 2022 (Ordinance 22-1145).

Invitation for Bids was sent to the three pre-qualified firms. Two (2) bids meeting specifications were received. The lowest bid was received from Mountain Cascade of Texas, LLC. The primary factor contributing to this discrepancy is the method by which each vendor handles pipe fusion. Mountain Cascade has the capability to fuse HDPE water main pipe in-house, utilizing their own equipment and skilled workforce. This streamlines operations, reduces costs associated with transportation, and eliminates the need to pay third-party contractors for this specialized service. As a result, their bid reflects a lower overall cost.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On June 7, 2022, City Council approved RFQ 7968 for a prequalified list of firms for utility relocation and construction services for various Capital Investment Projects (Ordinance 22-1145).

RECOMMENDATION

Award a contract with Mountain Cascade of Texas, LLC, for the construction and movement of public water/wastewater utilities in support of TxDOT's FM 1515 widening from I-35 Frontage Road to Westcourt Road for the Capital Projects Department, in a not-to-exceed amount of \$4,987,742.55.

PRINCIPAL PLACE OF BUSINESS

Mountain Cascade of Texas, LLC
Alvarado, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with a final completion date within 300 days.

FISCAL INFORMATION

These items/services will be funded from a combination of the following accounts.

TXDOT I-35N WATER LINE RELOCATION	630573517.1365.401000	\$3,400,000
TXDOT I-35N WATER LINE RELOCATION	630511523.1365.401000	\$718,737.80
TXDOT I-35N WW LINE RELOCATION	640529545.1365.401000	\$631,493.20

Requisition #171524 has been entered into the Purchasing software system in the amount of \$4,750,231. The budgeted amount for this item is \$4,987,742.55.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Shawn Messick, 940-349-8390.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH MOUNTAIN CASCADE OF TEXAS, LLC, FOR THE CONSTRUCTION AND MOVEMENT OF PUBLIC WATER/WASTEWATER UTILITIES IN SUPPORT OF TXDOT'S FM 1515 WIDENING FROM I-35 FRONTAGE ROAD TO WESTCOURT ROAD FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (IFB 7968-007 – AWARDED TO MOUNTAIN CASCADE OF TEXAS, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$4,987,742.55).

WHEREAS, on June 7, 2022, the City Council approved a pre-qualified list for utility relocation and construction services for various Capital Improvement Projects (Ordinance 22-1145), and the provider (the "Provider") mentioned in this ordinance is being selected as being the most advantageous to the City considering the relative importance of price and the other evaluation factors; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Mountain Cascade of Texas, LLC, to provide construction services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

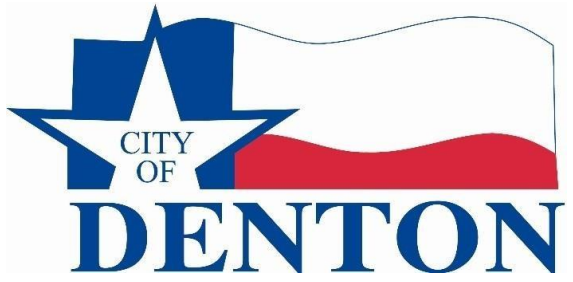
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

IFB	7968-007
File Name	FM 1515 Utilities Relocation
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

SECTION 00 52 43
AGREEMENT – UNIT PRICE BID

THIS AGREEMENT, authorized on _____ is made by and between the City of Denton, a Texas home-rule municipal corporation, acting by and through its duly authorized City Manager, (“City”), and Mountain Cascade of Texas, LLC, authorized to do business in Texas, acting by and through its duly authorized representative, (“Contractor”).

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

Article 2. PROJECT

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

FM 1515 Utilities Relocation
7968-007 / 230011-1

Article 3. CONTRACT PRICE

City agrees to pay Contractor for performance of the Work in accordance with the Contract Documents an amount, in current funds, of Four million seven hundred fifty thousand two hundred thirty-one dollars and 00/100 cents (\$4,750,231.00). At the sole option of the City, five (5) percent contingency in the amount of Two hundred thirty-seven thousand five hundred eleven dollars and fifty-five cents (\$237,511.55) may be used for a total not-to-exceed amount of Four million nine hundred eighty-seven thousand seven hundred forty-two dollars and fifty-five cents (\$4,987,742.55).

Article 4. CONTRACT TIME

4.1 Time is of the essence.

All time limits for Milestones, if any, and Final Acceptance as stated in the Contract Documents are of the essence to this Contract.

4.2 Final Acceptance.

The Work will be completed for Final Acceptance within 300 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

4.3 Liquidated Damages:

- A. Contractor recognizes that *time is of the essence* to achieve Milestones and Final Acceptance of the Work, and City will suffer financial and other losses if the Work is not completed within the times specified in the Contract Documents. The Contractor also recognizes the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work related to the Milestones or Final Acceptance is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that liquidated damages for delay (but not as a penalty):
1. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, for completion and readiness for Final Payment, Contractor shall pay City Six hundred and twenty-five Dollars (\$625.00) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

Article 5. CONTRACT DOCUMENTS

5.1 CONTENTS:

- A. The Contract comprises the entire agreement between City and Contractor concerning the Work and consists of this Agreement and the items set forth below. The Contract Documents consist of all items below other than this Agreement.
1. Attachments to this Agreement:
 - a. Proposal Form
 - 1) Bid Form
 - 2) Unit Price Proposal Form
 - 3) ~~Vendor Compliance to State Law Non-Resident Offeror~~
 - 4) State and Federal documents (*project specific*)
 - b. Current Prevailing Wage Rate Table
 - c. Worker's Compensation Affidavit
 - d. General Conditions.
 - e. Supplementary Conditions.
 2. The following located in File 7968-007 at:
<https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1>
 - a. Specifications described in the Table of Contents of the Project's Contract Documents.
 - b. Drawings.
 - c. Addenda.
 - d. Documentation submitted by Contractor prior to Notice of Award.
 3. The following which shall be issued after the Effective Date and delivered to the City within ten (10) days of the Effective Date and before beginning Work:
 - a. Payment Bond
 - b. Performance Bond
 - c. Maintenance Bond
 - d. Power of Attorney for the Bonds
 - e. Form 1295 – Certificate of Interested Parties (email to purchasing)
 - f. Insurance Certificate

4. Specifications specifically made a part of the Contract Documents by attachment or, if not attached, as incorporated by reference and described in the Table of Contents of the Project's Contract Documents.
5. The following which may be delivered or issued after the Effective Date of the Agreement and, if issued, become an incorporated part of the Contract Documents:
 - a. Notice to Proceed.
 - b. Field Orders.
 - c. Change Orders.
 - d. Letter of Final Acceptance.

Article 6. INDEMNIFICATION

6.1 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

Article 7. MISCELLANEOUS

1 7.1 Capitalized Terms.

2 Unless otherwise provided herein, capitalized terms used in this Agreement which are
3 defined in Article 1 of the General Conditions will have the meanings indicated in the General
4 Conditions.

5 7.2 Assignment of Contract.

6 This Agreement, including all of the Contract Documents may not be assigned by the
7 Contractor without the advance express written consent of the City.

8 7.3 Successors and Assigns.

9 City and Contractor each binds itself, its partners, successors, assigns and legal
10 representatives to the other party hereto, in respect to all covenants, agreements and
11 obligations contained in the Contract Documents.

12 7.4 Severability.

13 Any provision or part of the Contract Documents held to be unconstitutional, void or
14 unenforceable by a court of competent jurisdiction shall be deemed stricken, and all
15 remaining provisions shall continue to be valid and binding upon City and Contractor.

16 7.5 Venue and Waiver of Sovereign Immunity.

17 This Agreement, including all of the Contract Documents is performable in the State of
18 Texas. Venue shall be in the state district courts of Denton County, Texas. The City's
19 sovereign immunity is waived only to the extent set forth and in accordance with the
20 provisions of Subchapter I, Chapter 271 of the Texas Local Government Code or as otherwise
21 specifically waived by law. The City does not waive its sovereign immunity to suit in federal
22 court.

23 7.6 Authority to Sign.

24 Contractor hereby certifies that the person signing the Agreement on its behalf is the duly
25 authorized signatory of the Contractor.

26 7.7 Prohibition on Contracts with Companies Boycotting Israel.

27 Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government
28 Code, the City is prohibited from entering into a contract with a company for goods or
29 services unless the contract contains a written verification from the company that it: (1) does
30 not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms
31 "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section
32 808.001 of the Texas Government Code. By signing this contract, Contractor certifies that
33 Contractor's signature provides written verification to the City that Contractor: (1) does not
34 boycott Israel; and (2) will not boycott Israel during the term of the contract.

35 7.8 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

7.9 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations.

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. **By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.** Failure to meet or maintain the requirements under this provision will be considered a material breach.

7.10 Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. **By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.** Failure to meet or maintain the requirements under this provision will be considered a material breach.

7.11 Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

1 7.12 Immigration Nationality Act.

2 Contractor shall verify the identity and employment eligibility of its employees who perform
3 work under this Agreement, including completing the Employment Eligibility Verification
4 Form (I-9). Upon request by City, Contractor shall provide City with copies of all I-9 forms
5 and supporting eligibility documentation for each employee who performs work under this
6 Agreement. Contractor shall adhere to all Federal and State laws as well as establish
7 appropriate procedures and controls so that no services will be performed by any Contractor
8 employee who is not legally eligible to perform such services. **CONTRACTOR SHALL**
9 **INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES,**
10 **LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY**
11 **CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS,**
12 **AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right
13 to immediately terminate this Agreement for violations of this provision by Contractor.

14 7.13 No Third-Party Beneficiaries.

15 This Agreement gives no rights or benefits to anyone other than the City and the Contractor
16 and there are no third-party beneficiaries.

17 7.14 No Cause of Action Against Engineer.

18 Contractor, its subcontractors and equipment and materials suppliers on the Project or their
19 sureties, shall maintain no direct action against the Engineer, its officers, employees, and
20 subcontractors, for any claim arising out of, in connection with, or resulting from the engineering
21 services performed. Only the City will be the beneficiary of any undertaking by the Engineer.
22 The presence or duties of the Engineer's personnel at a construction site, whether as on-site
23 representatives or otherwise, do not make the Engineer or its personnel in any way
24 responsible to Contractor or any other entity for those duties that belong to the City, and do
25 not relieve Contractor or any other entity of its obligations, duties, and responsibilities,
26 including, but not limited to, all construction methods, means, techniques, sequences, and
27 procedures necessary for performing, coordinating and completing all portions of the Work
28 in accordance with the Contract Documents and any health or safety precautions required by
29 such Work. The Engineer and its personnel have no authority to exercise any control over
30 any construction contractor or other entity or their employees in connection with their work
31 or any health or safety precautions.

32
33 SIGNATURE PAGE TO FOLLOW
34

1 IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective
2 as of the date subscribed by the City’s City Manager or his designee (“Effective Date”).
3
4

CITY OF DENTON

BY: _____

TITLE: _____

DATE: _____

CONTRACTOR
MOUNTAIN CASCADE OF TEXAS, LLC

Signed by:
BY: Andrew McCulloch
0AB88778B9E640D
AUTHORIZED AGENT

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

Andrew McCulloch
NAME

Vice-President
TITLE

817-783-3094
PHONE NUMBER

AMcCulloch@mountaincascade.com
EMAIL ADDRESS

Signed by:
Seth Garcia Seth Garcia
1370AF8B0954FC...
SIGNATURE PRINTED NAME
Director of Capital Projects
TITLE
Capital Projects
DEPARTMENT

ATTEST:
LAUREN THODEN, CITY SECRETARY

51 2025-1322658
52 TEXAS ETHICS COMMISSION
53 1295 CERTIFICATE NUMBER

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn
4B070831B4AA438...

SECTION 00 41 00**BID FORM**

TO: City of Denton
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: *IFB #7968-007 – FM 1515 Utilities Relocation*

1 Enter Into Agreement

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with City in the form included in the Bidding Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2 BIDDER Acknowledgements and Certification

- 2.1 In submitting this Bid, Bidder accepts all of the terms and conditions of the INVITATION TO BIDDERS and INSTRUCTIONS TO BIDDERS, including without limitation those dealing with the disposition of Bid Bond.
- 2.2 Bidder is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.
- 2.3 Bidder certifies that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 2.4 Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
- 2.5 Bidder has not solicited or induced any individual or entity to refrain from bidding.
- 2.6 Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
- a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
 - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of City (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.
 - c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish Bid prices at artificial, non-competitive levels.
 - d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

2.7 The Bidder acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

3 Time of Completion

3.1 The Work will be complete for Final Acceptance within [300] Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.2 Bidder accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable) and Final Acceptance within the times specified in the Agreement.

4 Attached to this Bid

The following documents are attached to and made a part of this Bid:

- a. Section 00 35 13 – Conflict of Interest Affidavit
- b. Section 00 41 00 – This Bid Form
- c. **Section 00 42 43 – Unit Price Proposal Form – Electronic Copy (either included in the Bid, or submitted via Ion Wave)**
- d. Section 00 42 13 – Required Bid Bond, issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions
- e. Section 00 43 36 – Proposed Subcontractors Form
- ~~f. Section 00 43 37 – Vendor Compliance to State Law Non-Resident Bidder~~
- ~~g. Section 00 45 13 – Bidders Minimum Qualification Statement~~
- h. Section 00 45 26 – Contractor Compliance with Workers Compensation Law
- i. Section 00 45 43 – Corporate Resolution of Authorized Signatories
- j. Any additional documents that may be required by Section 00 21 13 – Instructions to Bidders

5 Total Bid Amount

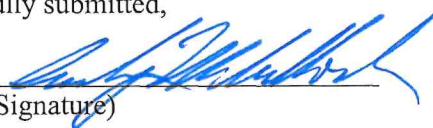
- 5.1 Bidder will complete the Work in accordance with the Contract Documents for the following bid amount. In the space provided below, please enter the total bid amount for this project. Only this figure will be read publicly by the City at the bid opening.
- 5.2 It is understood and agreed by the Bidder in signing this proposal that the total bid amount entered below is subject to verification and/or modification by multiplying the unit bid prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total Bid Amount: \$ 4,750,231.⁰⁰

6 Bid Submittal

This Bid is submitted on April 23, 2025 by the entity named below.

Respectfully submitted,

By: 
(Signature)

Andrew L. McCulloch
(Printed Name)

Title: Vice President

Company: Mountain Cascade of Texas, LLC.

Address: 5340 E US Hwy 67
Alvarado, TX 76009

State of Incorporation: Texas

Email: amcculloch@mountaincascade.com

Phone: 817-783-3094

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	<u>AM</u>
Addenda No. 2:	<u>AM</u>
Addenda No. 3:	
Addenda No. 4:	
Addenda No. 5:	

END OF SECTION

SECTION 00 42 43 - UNIT PRICE BID FORM



City of Denton - Capital Projects From: [Mountain Cascade of Texas, LLC.](#)

901-B Texas Street
Denton, TX 76209
Attn: Purchasing Dept.

5340 E US Hwy 67
Alvarado, TX 76009
Andrew L. McCulloch
817-783-3094
amcculloch@mountaincascade.com

PROJ.: **FM 1515 Utilities Relocation**

IFB: **7968-007**

ENG

PMO: **230011-1**

BIDDERS APPLICATION - UNIT PRICE BID

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	01 57 13	SWPPP	LS	1	\$ 3,000.00	\$ 3,000.00
2	01 58 13	Project Signs	EA	2	\$ 1,000.00	\$ 2,000.00
3	01 70 00	Mobilization	LS	1	\$ 400,000.00	\$ 400,000.00
4	02 41 14	Remove Utility Manhole	EA	4	\$ 2,500.00	\$ 10,000.00
5	02 41 14	Remove Fire Hydrant, Lead Line & Valve	EA	10	\$ 2,200.00	\$ 22,000.00
6	02 41 14	Remove Water Valve	EA	10	\$ 1,500.00	\$ 15,000.00
7	31 10 00	Site Clearing	LS	1	\$ 40,000.00	\$ 40,000.00
8	31 25 14	SWPPP Device Installation	LS	1	\$ 35,000.00	\$ 35,000.00
9	31 25 14	SWPPP Device Removal	LS	1	\$ 3,000.00	\$ 3,000.00
10	32 01 17	Asphalt Pavement Repair for Utility Trench	SY	28	\$ 150.00	\$ 4,200.00
11	32 01 29	Concrete Pavement Repair for Utility Trench	SY	60	\$ 200.00	\$ 12,000.00
12	32 01 29	Concrete Flume Repair	SY	9	\$ 250.00	\$ 2,250.00
13	32 93 00	Seeding Turf Grass	SY	15,907	\$ 3.00	\$ 47,721.00
14	32 93 00	Block Sod	SY	1,767	\$ 11.00	\$ 19,437.00
15	33 05 05	Excavation Protection	LF	7,953	\$ 1.00	\$ 7,953.00
16	33 05 07	Steel Casing by Open Cut (12")	LF	24	\$ 400.00	\$ 9,600.00
17	33 05 07	Steel Casing by Bore (12")	LF	390	\$ 655.00	\$ 255,450.00
18	33 05 07	Steel Casing by Open Cut (18")	LF	173	\$ 420.00	\$ 72,660.00
19	33 05 07	Steel Casing by Bore (18")	LF	83	\$ 760.00	\$ 63,080.00
20	33 05 07	Steel Casing by Open Cut (20")	LF	73	\$ 450.00	\$ 32,850.00
21	33 05 07	Steel Casing by Bore (20")	LF	178	\$ 800.00	\$ 142,400.00
22	33 05 07	Steel Casing by Open Cut (24")	LF	283	\$ 550.00	\$ 155,650.00
23	33 05 07	Steel Casing by Bore (24")	LF	252	\$ 820.00	\$ 206,640.00
24	33 05 15	HDPE Water Main in Casing (8")	LF	414	\$ 100.00	\$ 41,400.00
25	33 05 15	HDPE Water Main in Casing (12")	LF	256	\$ 110.00	\$ 28,160.00
26	33 05 15	HDPE Water Main in Casing (16")	LF	291	\$ 150.00	\$ 43,650.00
27	33 05 15	Sanitary Sewer Gravity Main in Casing (12")	LF	251	\$ 110.00	\$ 27,610.00
28	33 05 15	Sanitary Sewer Gravity Main in Casing (15")	LF	244	\$ 120.00	\$ 29,280.00
29	33 05 61; 33 05 62	Concrete Manhole (5' ID) (0'-6' Deep)	EA	4	\$ 19,000.00	\$ 76,000.00
30	33 05 61; 33 05 62	Extra Concrete Manhole Depth	VF	23	\$ 800.00	\$ 18,400.00
31	33 05 61; 33 05 62	External Drop for Manhole	EA	1	\$ 14,000.00	\$ 14,000.00
32	33 05 64	Double Detector Check Valve Vault	EA	1	\$ 60,000.00	\$ 60,000.00
33	33 05 76	Fiberglass Manhole (5' ID)	EA	2	\$ 40,000.00	\$ 80,000.00
34	33 05 76	Extra Fiberglass Manhole Depth	VF	34	\$ 900.00	\$ 30,600.00
35	33 05 98	Locate Existing Utilities	LS	1	\$ 60,000.00	\$ 60,000.00
36	33 14 11	PVC Water Main (8")	LF	45	\$ 250.00	\$ 11,250.00
37	33 14 11	PVC Water Main (12")	LF	55	\$ 300.00	\$ 16,500.00
38	33 14 14	HDPE Water Main (8")	LF	115	\$ 260.00	\$ 29,900.00
39	33 14 14	HDPE Water Main (12")	LF	83	\$ 310.00	\$ 25,730.00
40	33 14 14	HDPE Water Main (16")	LF	6,825	\$ 260.00	\$ 1,774,500.00
41	33 14 17	Water Service Connection (2")	EA	2	\$ 7,000.00	\$ 14,000.00
42	33 14 20	Gate Valve (8")	EA	3	\$ 8,000.00	\$ 24,000.00
43	33 14 20	Gate Valve (12")	EA	3	\$ 10,000.00	\$ 30,000.00
44	33 14 20	Gate Valve (16")	EA	12	\$ 21,000.00	\$ 252,000.00
45	33 14 25	Connection to Existing Main (8")	EA	6	\$ 23,000.00	\$ 138,000.00
46	33 14 25	Connection to Existing Main (12")	EA	2	\$ 24,000.00	\$ 48,000.00
47	33 14 25	Connection to Existing Main (16")	EA	2	\$ 28,000.00	\$ 56,000.00

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
48	33 14 25	City Performed Tapping Sleeve and Valve Connection (12" x 12")	EA	1	\$ 18,000.00	\$ 18,000.00
49	33 14 40	Fire Hydrant Assembly	EA	8	\$ 16,000.00	\$ 128,000.00
50	33 31 14	Sanitary Sewer Gravity Main (12")	LF	101	\$ 300.00	\$ 30,300.00
51	33 31 14	Sanitary Sewer Gravity Main (15")	LF	176	\$ 310.00	\$ 54,560.00
52	TXDOT 7216	Insertion Valve (8")	EA	2	\$ 1,500.00	\$ 3,000.00
53	34 71 13	Traffic Control Devices	MO	9	\$ 2,500.00	\$ 22,500.00
54	34 71 13	Traffic Control Plan	EA	3	\$ 1,000.00	\$ 3,000.00

TOTAL PROJECT BID AMOUNT: \$ 4,750,231.00

FM 1515 Utilities Relocation

Mountain Cascade of Texas, LLC.

"General Decision Number: TX20250018 01/03/2025

Superseded General Decision Number: TX20240018

State: Texas

Construction Type: Heavy

Counties: Collin, Dallas, Denton, Ellis, Kaufman and Rockwall
Counties in Texas.

Water and Sewer Lines/Utilities (Including Related Tunneling
Where the Tunnel is 48"" or Less in Diameter)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date

0

01/03/2025

PLUM0100-002 11/01/2024

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 39.76	14.04

SUTX1991-004 09/23/1991		

	Rates	Fringes
Laborers:		
Common.....	\$ 7.25 **	
Utility.....	\$ 7.467 **	
Pipelayer.....	\$ 7.828 **	
Power equipment operators:		
Backhoe.....	\$ 10.804 **	
Crane.....	\$ 10.942 **	
Front End Loader.....	\$ 9.163 **	
Tunneling Machine (48" or less).....	\$ 9.163 **	
TRUCK DRIVER.....	\$ 8.528 **	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====
 ** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date

for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

=====

END OF GENERAL DECISION"

"General Decision Number: TX20250025 01/03/2025

Superseded General Decision Number: TX20240025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

Servicer.....\$ 14.58 **

Steel Worker (Reinforcing).....\$ 16.18 **

TRUCK DRIVER

Lowboy-Float.....\$ 16.24 **

Off Road Hauler.....\$ 12.25 **

Single Axle.....\$ 12.31 **

Single or Tandem Axle Dump

Truck.....\$ 12.62 **

Tandem Axle Tractor with

Semi Trailer.....\$ 12.86 **

Transit-Mix.....\$ 14.14 **

WELDER.....\$ 14.84 **

 WELDERS - Receive rate prescribed for craft performing
 operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were

adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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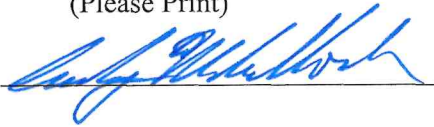
END OF GENERAL DECISION"

SECTION 00 45 26

CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on *FM 1515 Utilities Relocation*. Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

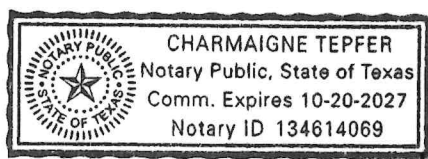
CONTRACTOR:

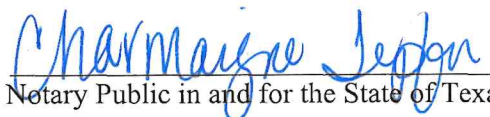
Mountain Cascade of Texas, LLC. By: Andrew L. McCulloch
Company (Please Print)
5340 E US Hwy 67 Signature: 
Address
Alvarado, TX 76009 Title: Vice President
City/State/Zip (Please Print)

THE STATE OF TEXAS §
COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared Andrew L. McCulloch, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of Mountain Cascade of Texas, LLC. for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23rd day of April, 2025.




Notary Public in and for the State of Texas

END OF SECTION

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument titled “Agreement”, “Agreement – CSP”, or “Agreement – Unit Price Bid” executed by the City and Contractor for the Work, setting forth the name of the Project, Contract Price, Contract Time and the items included in the Contract.
 3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
 6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 7. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 9. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

10. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.
12. *Change Order*—A document which is prepared by the Contractor or City, approved by the City, and signed by Contractor and City, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Denton is, a Texas home-rule municipal corporation acting by its City Council through its City Manager or his or her designee.
14. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
15. *City Council*—The duly elected and qualified governing body of the City of Denton.
16. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
17. *Contract*—The entire and integrated set of written instruments between the City and Contractor concerning the Work comprised of the Agreement and all Contract Documents, which written instruments supersede all prior negotiations, representations, or agreements, whether written or oral, concerning the Work.
18. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
19. *Contract Documents*—Those items so designated as “Contract Documents.” in the Agreement at Paragraph 5.1.A. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 12.03 in the case of Unit Price Work). The Contract Price does not include any “Incentive”, if applicable.
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (a) achieve Milestones, if any and (bb) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 12.01 of these General Conditions for definition.
24. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day*—A day, unless otherwise defined, shall mean a Calendar Day.
26. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.

27. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
28. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
29. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
30. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
31. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
32. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
33. *Final Acceptance*—The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
34. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
35. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
36. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
37. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
38. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
39. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.

40. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
41. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
42. *Milestone*—A principal event specified in the Contract Documents relating to the performance of an identified portion of the Work by an intermediate Contract Time prior to Final Acceptance of the Work.
43. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
44. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
45. *PCBs*—Polychlorinated biphenyls.
46. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
47. *Plans*—This term will have the same definition of as “Drawings”.
48. *Project* —The Work to be performed under the Contract.
49. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
50. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
51. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising Contractor’s plan to achieve each Milestone and accomplish the Work within the Contract Time.
52. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
53. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
54. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

55. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
56. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
57. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
58. *Specifications or Technical Specifications* —The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Section 00 00 00) of the Project.
59. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
60. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.
61. *Subsidiary or subsidiary*—*These terms will have the same definition as "Incidental. or incidental"*.
62. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term "Bidder" shall be defined to include the terms "Proposer" or "Offeror" in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
63. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
64. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
65. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
66. *Underground Facilities*—All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid

petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

67. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
68. *Weekend Working Hours*—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.
69. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
70. *Working Day*—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by CityCity. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 1. does not conform to the Contract Documents; or
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to City’s written notice of Final Acceptance.
- D. *Furnish, Install, Perform, Provide*
 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor’s Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

2.02 *Copies of Documents*

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

2.03 *Before Starting Construction*

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.
- B. Preliminary Schedule of Submittals.
- C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Meeting*

- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.

2.05 *Public Meeting*

- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

2.06 *Initial Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.

2.07 *Electronic Submittals and Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, forma and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.

- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

3.04 Requirements of the Contract Documents

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

3.05 Reuse of Documents

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CityCity and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

4.03 *Delays in Contractor's Progress*

- A. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The City shall be liable only to the extent allowed by the provisions of the Contract and as allowed by Subchapter I, Chapter 271 of the Texas Local Government Code.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, that the Contract specifies is to be furnished by the City.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for whom they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Time. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph 4.03. D. The Contractor is responsible for the prompt submission of a request for an adjustment to the Contract Time under this Paragraph to the City. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this Paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with City, as contemplated in Article 8); and

4. Acts of war or terrorism.
- E. Contractor's entitlement to an adjustment of Contract Time or Contract Price is limited as follows:
 1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.
 3. Adjustments of Contract Time or Contract Price are subject to the provisions of Article 11.
- F. Each Contractor request or Change Order seeking an increase in Contract Time or Contract Price must be supplemented by supporting data that sets forth in detail the following:
 1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.08.
 6. Contractor shall also furnish such additional supporting documentation as City may require including, where appropriate, a revised Project Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- G. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from undisclosed Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.03.F and 4.03.G.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which

Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.

1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
 2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

5.02 *Use of Site and Other Areas*

- A. Limitation on Use of Site and Other Areas
1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.
 2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
 4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
 5. **PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.**
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
 - D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.
 - E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 1. Those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
 2. Those drawings known to City of existing physical conditions at or contiguous to the Site, including those drawings known to City depicting existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities.).
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as technical data.

- C. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of their officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any "technical data" is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), notify City in writing about such condition.

- B. *Possible Price and Time Adjustments*
1. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under the Contract; or

- b. The existence of such condition reasonably could have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- C. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions::
- 1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 - 2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data;
 - b. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
- 1. If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.
 - 2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.
 - 3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports known to City relating to Hazardous Environmental Conditions that have been identified at the Site; or
 2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Reliance by Contractor on Technical Data*: Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for a Hazardous Environmental Condition uncovered or revealed at the Site if such Hazardous Environmental Condition was not shown or indicated in Drawings or Specifications or identified if the removal or remediation of such Hazardous Environmental Condition was not identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by the actions of or with any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible and the costs associated with the same.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.17); and (3) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Contractor shall not be required to resume Work in connection with a Hazardous Environmental Condition identified pursuant to Paragraph 5.06.D or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed.
- F. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the Contract Price. City may have such deleted portion of the Work performed by City's own forces or others.
- G. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.CITYG OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.**
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

6.02 *Performance, Payment, and Maintenance Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.

- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City’s termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
 - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “additional insureds” on all liability policies.
 - 2. The Contractor’s general liability insurance shall include a “per project” or “per location” endorsement, that shall be identified in the certificate of insurance provided to the City.
 - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
 - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent

financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.

5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If If City agrees in writing that coverage is underwritten may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR,) in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.

13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The Commercial General Liability policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).
- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any

Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written

notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.

- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:
 - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
 - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
 - 3. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
 - 2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
 - 3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. the City determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to City.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the City or increase in Contract Time; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

7.07 Substitutions

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 - 2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be substantially similar in substance to the item specified; and

- 3) be well-suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or relateds to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

- F. *City Substitution Reimbursement:* Cost savings attributable to acceptance of a substitution shall be paid to City by Contractor by an appropriate Change Order decreasing the Contract Price.
- G. *Effect of City's Determination:* If City approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The City's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.07.D, by timely submittal of a Change Order.

7.08 *Concerning Subcontractors and Suppliers*

- A. Contractor shall perform with its own organization, and with the assistance of workmen under its immediate superintendence, work of a minimum value as outlined in Section 00 43 38 - Proposed Subcontractors Form, unless otherwise approved by the City.
- B. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- C. The City may require the use of specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work , and will provide such requirements in the Supplementary Conditions.
- D. Contractor shall provide to City as part of the Bid, the identity of all proposed Subcontractors and Suppliers. Such proposed Subcontractor or Supplier shall be deemed acceptable to City unless City raises a substantive, reasonable objection prior to execution of the Agreement.
- E. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- F. No acceptance by City of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of City to the completion of the Work in accordance with the Contract Documents, Contract Price and Contract Time.
- G. Contractor shall be solely responsible for scheduling and coordinating the tasks of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- H. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.
- I. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.09 Wage Rates

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.

- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency, relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
 2. U.S. Army Corps of Engineers Permits
 3. Texas Commission on Environmental Quality Permits
 4. Railroad Company Permits
 5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

7.12 Taxes

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to hisits Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts
Sales Tax Division
Capitol Station
Austin, TX 78711; or
 2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

7.13 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected

and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss;

and shall implement, erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.

7.18 Submittals

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
 2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
 3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
 4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
 5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
 6. Contractor shall submit the required number of Samples specified in the Specifications.
 7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
 3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General

Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
 1. Observations by Engineer or City;
 2. Recommendation by Engineer or payment by City of any progress or final payment;
 3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
 4. Use or occupancy of the Work or any part thereof by City;
 5. Any review and acceptance of a Submittal by City;

- 6. Any inspection, test, or acceptance by others; or
 - 7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

7.21 Indemnification

- A. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM , FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THESE CONTRACT DOCUMENTS. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY, OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR COSTS, EXPENSES AND LEGAL FEES INCURRED IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**
- B. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM FROM AND AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF PROPERTY OF THE CITY, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

7.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.22;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

7.23 *Right to Audit*

- A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract during the term of the Contract and for five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be made available, in Denton County, Texas within ten (10) Business Days of City's written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City

unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.

- B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

7.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with

Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.

- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – CITY’S RESPONSIBILITIES**9.01 *Communications to Contractor***

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

9.02 *Furnish Data*

- A. City shall promptly furnish the data required of City under the Contract Documents.

9.03 *Pay When Due*

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

9.04 *Lands and Easements; Reports, Tests, and Drawings*

- A. City’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

9.05 *Change Orders*

- A. City’s responsibilities with respect to Change Orders are set forth in Article 11.

9.06 *Inspections, Tests, and Approvals*

- A. City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

9.07 *Limitations on City’s Responsibilities*

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

9.08 *Undisclosed Hazardous Environmental Condition*

- A. City’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.09 *Compliance with Safety Program*

- A. While at the Site, City’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION**10.01** *City’s Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City’s Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City’s Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

10.02 *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City’s efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City’s visits and observations are subject to all the limitations on City’s responsibility set forth in Paragraph 9.07. Particularly, but without limitation, during or as a result of City’s visits or observations of Contractor’s Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City’s Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City’s written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

10.04 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City’s written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.

ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK**11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
 - 1. A Field Order; or
 - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
 - 3. City's written interpretation or clarification.

11.02 *Execution of Change Orders*

- A. City and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
 - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

11.03 *Field Orders*

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

11.04 *Authorized Changes in the Work – Extra Work*

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

11.05 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract

Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

11.06 *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

11.07 *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
 - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
 - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
 - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
 - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
 - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.

6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
 1. deny the Contract Claim in whole or in part;
 2. approve the Contract Claim; or
 3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.
- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

11.08 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. TheThe value of any Work covered by a Change Order will be determined as follows:
 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit will be determined as follows:
 1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent except for:
 - 1) rental fees for Contractor's own equipment; and
 - 2) bonds and insurance;
- b. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
 - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
- c. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
- d. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT**12.01 Cost of the Work**

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith.
 3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
 - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of CityCity. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - f. The cost of utilities, fuel, and sanitary facilities at the Site.
 - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
 - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

12.02 Allowances

- A. *Specified Allowance*: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.
- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances, have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

12.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
 - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
 - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. there is no corresponding adjustment with respect to any other item of Work.
 - 2. Adjusted unit prices will apply to all units of that item.

- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
 2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
 3. If no unit prices exist, this any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
 4. A significant change in the character of Work occurs when:
 - a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
 - b. a Major Item of work varies by more than 25% from the original Contract quantity.
 5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
 6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

12.04 *Plans Quantity Measurement for Unclassified Excavation or Embankment*

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.

- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Access to Work

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

13.02 Tests and Inspections

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
 - 2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
 - 1. City will coordinate such Testing to the extent possible, with Contractor;

2. Should any Testing under this Section 13.03.D result in a “fail”, “did not pass” or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor’s cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
 3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
 4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover such Work for observation. Such uncovering and the recovering of such Work will be at Contractor’s expense.

13.03 *Defective Work*

- A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.
- B. *City’s Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City’s warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing

of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

13.05 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

13.06 *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

13.07 *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.

13.08 City May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD**14.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
 - 1. Contractor is responsible for providing all information as required to become a vendor of the City.
 - 2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

C. Review of Applications

1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
 - a. the Work has progressed to the point indicated; and
 - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
 - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
 - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and

may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:

- a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
- b. there are discrepancies in quantities contained in previous applications for payment;
- c. the Contract Price has been reduced by Change Orders;
- d. City has been required to correct defective Work in accordance with Paragraph 1313.08, or has accepted defective Work pursuant to Paragraph 13.05;
- e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:
 - a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;

- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
 - l. Other items entitle City to a set-off against the payment amount requested; or
 - m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
- 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
 - 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
 - 3. Partial Utilization by City will not constitute Final Acceptance by City.

14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
 - 1. City will promptly schedule a Final Inspection with Contractor.
 - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

14.06 *Final Payment*

- A. Application for Payment
 - 1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
 - 2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
 - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
 - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
 - 1. After City's acceptance of the Application for Payment and accompanying documentation; and

2. After all Damage Claims have been resolved:

- a. directly by the Contractor; or
- b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

14.09 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
 1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed. During a temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the

equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
 3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of City; or
 5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
 6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
 7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
 8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
 2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
 - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site

or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
 4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
 5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
 6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.

- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
1. stop work under the Contract on the date and to the extent specified in the notice of termination;
 2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
 3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
 4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
 - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
 - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
 5. complete performance of such Work as shall not have been terminated by the notice of termination; and
 6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit a termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead

- and profit on such Work calculated and determined in accordance with the Contract Documents;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
 3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

ARTICLE 16 – RESOLUTION OF DISPUTES

16.01 *Methods and Procedures*

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.
- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

- F. If the Contract Claim is not resolved by mediation, City's action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City's Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient.

17.02 *Computation of Time*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Limitation of Damages*

- A. With respect to any and all claims, disputes subject to final resolution, and other matters at issue, neither City, nor any of its officers, directors, elected or appointed officials, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project. Further, the Contractor may only claim and the City may only be liable for those damages that are set forth in Subchapter I, Chapter 271 of the Texas

Local Government Code and the City shall not be liable for any consequential damages, exemplary damages or damages for unabsorbed home office overhead.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

17.06 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

17.07 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

17.08 *Successors and Assigns*

- A. City and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

17.09 *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

17.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION 00 73 00
SUPPLEMENTARY CONDITIONS
TO
GENERAL CONDITIONS

Supplementary Conditions

These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are modified or supplemented remain in full force and effect as so modified or supplemented. All provisions of the General Conditions which are not so modified or supplemented remain in full force and effect.

Defined Terms

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions, unless specifically noted herein.

Modifications and Supplements

The following are instructions that modify or supplement specific paragraphs in the General Conditions and other Contract Documents.

SC-5.01A

Easement limits shown on the Drawing are approximate and were provided to establish a basis for bidding. Upon receiving the final easements descriptions, Contractor shall compare them to the lines shown on the Contract Drawings.

SC-5.01A.1., "Availability of Lands"

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of [\[March 13, 2025\]](#):

Outstanding Right-Of-Way, and/or Easements to Be Acquired

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION

0.10 Ac Sanitary Sewer Easement - Lot 1R, Block A Victor Technologies Addition Replat	2800 Airport LLC	May 1, 2025

0.28 Ac Sanitary Sewer Easement – Better Tools Property Plat	University of North Texas	May 1, 2025

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

If Contractor considers the final easements provided to differ materially from the representations on the Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work, notify City in writing associated with the differing easement line locations.

SC-5.01A.2, "Availability of Lands"

Utilities or obstructions to be removed, adjusted, and/or relocated

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of *[March 13, 2025]*

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
NONE		

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

SC-5.03A., "Subsurface and Physical Conditions"

The following are reports of explorations and tests of subsurface conditions at the site of the Work:

A *[set of SUE investigation logs sent to the City of Denton by the Texas Department of Transportation]* Report No. N/A, dated 5/8/23, prepared by *[Lina T. Ramey and Associates, Inc. during the month of April, 2023]*, a consultant of the Texas Department of Transportation, providing information on *[subsurface boring logs of underground conduits and facilities within the FM 1515 right-of-way.]*

A *[SUE report named "Level 'A' Test Holes FM 1515"]* Report No. DEN 24113, dated April 2024, prepared by *[Teague Nall and Perkins, Inc.]* a consultant of the City, providing additional information on *[subsurface boring logs of underground conduits and facilities within the FM 1515 right-of-way.]*

The following are drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site of the Work:
["None"]

SC-5.05 A., "Underground Facilities"

The following are additional resources for identification of Underground Facilities which are at or contiguous to the site of the Work, and which are not necessarily shown in the Drawings:
["None"]

SC-5.06A., "Hazardous Environmental Conditions at Site"

The following are reports and drawings of existing hazardous environmental conditions known to the City:
["None"]

SC-6.02, "Performance, Payment, and Maintenance Bonds"

The "Contract Price" for Performance, Payment, and Maintenance Bonds will be the same as indicated in Article 3 as listed in the Agreement.

SC-6.03A., "Certificates of Insurance"

The entities listed below are "additional insureds as their interest may appear" including their respective officers, directors, agents and employees.

- (1) City
- (2) Consultant: *Tetrattech, Inc.*
- (3) Other: None

SC-6.04A., "Contractor's Insurance"

The limits of liability for the insurance required by Paragraph GC-6.04 shall provide the following coverages for not less than the following amounts or greater where required by laws and regulations:

6.04A. Workers' Compensation, under Paragraph GC-6.04A.*Statutory limits**Employer's liability**\$500,000 each accident/occurrence**\$500,000 Disease - each employee**\$500,000 Disease - policy limit***SC-6.04B., "Contractor's Insurance"**

6.04B. Commercial General Liability, under Paragraph GC-6.04B. Contractor's Liability Insurance under Paragraph GC-6.04B., which shall be on a per project basis covering the Contractor with minimum limits of:

*\$1,000,000 each occurrence**\$2,000,000 aggregate limit*

The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

The Commercial General Liability Insurance policies shall provide "X", "C", and "U" coverage's. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

SC 6.04C., "Contractor's Insurance"

6.04C. Automobile Liability, under Paragraph GC-6.04C. Contractor's Liability Insurance under Paragraph GC-6.04C., which shall be in an amount not less than the following amounts:

- (1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

*\$1,000,000 each accident on a combined single limit basis.***SC-6.04D., "Contractor's Insurance"**

The Contractor's construction activities will require its employees, agents, subcontractors, equipment, and material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line of tracks [*"None"*].

The Contractor shall conduct its operations on railroad properties in such a manner as not to interfere with, hinder, or obstruct the railroad company in any manner whatsoever in the use or operation of its/their trains or other property. Such operations on railroad properties may require that Contractor to execute a "Right of Entry Agreement" with the particular railroad company or companies involved, and to this end the Contractor should satisfy itself as to the requirements of each railroad company and be prepared to execute the right-of-entry (if any) required by a railroad company. The requirements specified herein likewise relate to the Contractor's use of private and/or construction access roads crossing said railroad company's properties.

The Contractual Liability coverage required by Paragraph 5.04D of the General Conditions shall provide coverage for not less than the following amounts, issued by companies satisfactory to the City and to the Railroad Company for a term that continues for so long as the Contractor's operations and work cross, occupy, or touch railroad property:

(1) General Aggregate:	<i>N/A</i>
(2) Each Occurrence:	<i>N/A</i>
<u> </u> <i>Required for this Contract</i>	<u> x </u> <i>Not required for this Contract</i>

With respect to the above outlined insurance requirements, the following shall govern:

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.
2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.
3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company's right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.
4. If no grade separation is involved but other work is proposed on a railroad company's right-of-way, all such other work may be covered in a single policy for that railroad, even though the work may be at two or more separate locations.

No work or activities on a railroad company's property to be performed by the Contractor shall be commenced until the Contractor has furnished the City with an original policy or policies of the insurance for each railroad company named, as required above. All such insurance must be approved by the City and each affected Railroad Company prior to the Contractor's beginning work.

The insurance specified above must be carried until all Work to be performed on the railroad right-of-way has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition, insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way. Such insurance must name the railroad company as the insured, together with any tenant or lessee of the railroad company operating over tracks involved in the Project.

SC 6.04E., "Contractor's Insurance"

6.04E. Environmental Impairment/Pollution

Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing, removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including ground water, with a minimum combined bodily injury (including death) and property damage limit of *\$1,000,000* per occurrence to be obtained upon substantial completion and acceptance of facility by the City.

SC-7.08C., "Concerning Subcontractors and Suppliers"

The following subcontractors shall be required to be utilized by the Contractor for specific portions of the Work as indicated below:

Required Subcontractors

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED

None

SC-7.11., "Permits and Utilities"

SC-7.11A., "Contractor obtained permits and licenses"

The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:
"None".

SC-7.11B. "City obtained permits and licenses"

The following are known permits and/or licenses required by the Contract to be acquired by the City:

- 1. TxDOT utility permit to be in and cross the Right-of Way of FM 1515*

SC-7.11C. "Outstanding permits and licenses"

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of *[March 13, 2025]*:

Outstanding Permits and/or Licenses to Be Acquired

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION

TXDOT	Utility Permit U00023607, pending	5/1/2025

SC-7.24B., "Title VI, Civil Rights Act of 1964 as amended"

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, in the selection and retention of

subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the City, or the Texas Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, City shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:
- a. withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
 - b. cancellation, termination or suspension of the Contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as City or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request City to enter into such litigation to protect the interests of City, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Additional Title VI requirements can be found in the Appendix.

SC-8.02., "Coordination"

The individuals or entities listed below have contracts with the City for the performance of other work at the Site:

Vendor	Scope of Work	Coordination Authority
<i>None</i>		

SC-9.01, "Communications to Contractor"

No special communication requirements for this contract.

SC-10.01B., “City’s Project Manager”

The City’s Project Manager for this Contract is *Shawn Messick*, or his/her successor pursuant to **written notification from the City Engineer.**

SC-13.02B., “Tests and Inspections”

“None”

SC-14.01G., “Reduction in Payment”

Add Paragraph 14.01G.3:

3. *City may reduce payments to the Contractor, if the number of Days that have passed after the date listed on the Notice to Proceed exceeds the Contract Time for Substantial Completion.*

SC-16.01C.1, “Methods and Procedures”

“None”

SC – 17.01, “Documents”

Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.

SC – 19.01 “‘BUY AMERICA’ Requirements”

Notice to Contractors and Suppliers

The project requires certification from the contractor’s suppliers that all manufacturing processes for steel and iron materials or for the application of coatings (epoxy, galvanizing, painting or any other coating that protects or enhances the value of the steel or iron metal) to these materials occurred in the United States of America. For the purposes of the certifications, manufacturing processes are defined as all processes required to change the raw ore or scrap metal into the finished in-place steel or iron product. The successful contractor will be required to complete the Texas Department of Transportation Material Statement Certification Form 1818 for each appropriate shop drawing submittal. TxDOT Form 1818 is included in the Appendix of this project manual.

END OF SECTION

Revision Log		
DATE	NAME	SUMMARY OF CHANGE

1
2**SECTION 00 35 13**
CONFLICT OF INTEREST AFFIDAVIT**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.

Mountain Cascade of Texas, LLC.

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 7th 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?

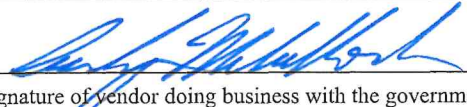
☐

Yes

☒

No

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

4 ☒ **I have no Conflict of Interest to disclose.****5** 

Signature of vendor doing business with the governmental entity

04/23/2025

Date

3

END OF SECTION

Certificate Of Completion

Envelope Id: 365FF66D-AE07-46DF-B662-2A70D7555F15
 Subject: Please DocuSign: City Council Contract 7968-007 FM 1515 Utilites Relocation
 Source Envelope:
 Document Pages: 104
 Certificate Pages: 6
 AutoNav: Enabled
 Envelopeld Stamping: Enabled
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:
 Cori Power
 901B Texas Street
 Denton, TX 76209
 cori.power@cityofdenton.com
 IP Address: 198.49.140.104

Record Tracking

Status: Original
 6/10/2025 3:49:03 PM
 Holder: Cori Power
 cori.power@cityofdenton.com

Location: DocuSign

Signer Events

Cori Power
 cori.power@cityofdenton.com
 Purchasing Supervisor
 City of Denton
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Lori Hewell
 lori.hewell@cityofdenton.com
 Purchasing Manager
 City of Denton
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Marcella Lunn
 marcella.lunn@cityofdenton.com
 Senior Deputy City Attorney
 City of Denton
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Andrew McCulloch
 AMcCulloch@mountaincascade.com
 Vice-President
 Harber Co.Inc. dba Mountain Cascade of Nevada
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Accepted: 6/11/2025 3:41:11 PM
 ID: adf446cc-44c4-4ab4-82cb-759778ea4fc5

Signature

Completed

Using IP Address: 198.49.140.104

Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

DocuSigned by:

 4B070831B4AA438...

Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Signed by:

 0AB8B77B6BE940A...

Signature Adoption: Pre-selected Style
 Using IP Address: 32.132.177.214

Timestamp

Sent: 6/10/2025 4:05:20 PM
 Viewed: 6/10/2025 4:05:37 PM
 Signed: 6/10/2025 4:05:46 PM

Sent: 6/10/2025 4:05:49 PM
 Viewed: 6/10/2025 4:27:08 PM
 Signed: 6/10/2025 4:27:47 PM

Sent: 6/10/2025 4:27:50 PM
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 Signed: 6/11/2025 3:39:13 PM

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 Viewed: 6/11/2025 3:41:11 PM
 Signed: 6/11/2025 3:44:52 PM

Signer Events	Signature	Timestamp
Seth Garcia Seth.Garcia@cityofdenton.com Director of Capital Projects Security Level: Email, Account Authentication (None)	Signed by:  A13701F6BC954FC... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 6/11/2025 3:44:55 PM Viewed: 6/11/2025 3:46:06 PM Signed: 6/11/2025 3:48:26 PM

Electronic Record and Signature Disclosure:
Accepted: 6/11/2025 3:46:06 PM
ID: 73211727-e8ec-4a7f-a037-7b37c58328f1

Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10

Sent: 6/11/2025 3:48:29 PM
Viewed: 6/17/2025 2:46:23 PM
Signed: 6/17/2025 2:46:39 PM

Electronic Record and Signature Disclosure:
Not Offered via Docusign

Cheyenne Defee

cheyenne.defee@cityofdenton.com

Procurement Administration Supervisor

City of Denton

Security Level: Email, Account Authentication (None)

Sent: 6/17/2025 2:46:43 PM

Electronic Record and Signature Disclosure:
Not Offered via Docusign

Sara Hensley

sara.hensley@cityofdenton.com

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via Docusign

Lauren Thoden

lauren.thoden@cityofdenton.com

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via Docusign

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
Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 6/10/2025 4:05:49 PM

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 6/17/2025 2:46:42 PM Viewed: 6/17/2025 3:24:41 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Shawn Messick Shawn.Messick@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Accepted: 6/6/2025 11:39:10 AM ID: 2a34c5be-c530-4c99-936e-fe85b701d3ec		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/10/2025 4:05:20 PM
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.

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: 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 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 purchasing@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 purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, US 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:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** 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.

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.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB25-147, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, Texas, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Enverus, Inc., for load and renewable forecasting services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date. (RFP 8800 - awarded to Enverus, Inc., in the three (3) year not-to-exceed amount of \$255,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Christine Taylor
DATE: August 25, 2025

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, Texas, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Enverus, Inc., for load and renewable forecasting services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date. (RFP 8800 – awarded to Enverus, Inc., in the three (3) year not-to-exceed amount of \$255,000.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Not Applicable.

INFORMATION/BACKGROUND

Denton Municipal Electric (DME) is highly dependent on forecasting services to manage electric demand. Load forecasting services are required for DME to manage short-term and long-term load consumption. DME's growing renewable generation portfolio adds considerable dependency on accurate wind and solar forecasting to manage contracted renewable assets. DME is seeking approval for forecasting services, which include load forecasting, wind forecasting, and solar forecasting.

The major functions of the forecasting solution(s) are as follows:

1. Load Forecasting
 - a. Short Term (1 Day)
 - b. Mid Term (15 Day)
 - c. Long Term (1-5 years)
2. Wind Forecasting
 - a. Intra-Day Forecast
 - b. Short Term Forecast (2-7 Days)
3. Solar Forecasting
 - a. Intra-Day Forecast
 - b. Short Term Forecast (2-7 Days)

Project Description	Estimated 3-Year Expenditure
Three (3) Year Renewable Forecasting	\$231,817.50
Contingency (10%)	23,182.50
Total	\$255,000.00

If approved, staff will utilize this solution to support effective energy portfolio management operations, increase efficiencies, increase data collection, increase staff performance, and provide management with reporting data.

Requests for Proposals were sent to 541 prospective suppliers of these items, including three (3) Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Seven (7) proposals were received and evaluated based upon published criteria, including delivery, compliance with specifications, probable performance, and price. Based upon this evaluation, Enverus, Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	208 - Computer Software for Microcomputers (Preprogrammed)
Notifications sent for Solicitation sent in IonWave:	541
Number of Suppliers that viewed Solicitation in IonWave:	43
HUB-Historically Underutilized Business Invitations sent out:	72
SBE-Small Business Enterprise Invitations sent out:	194
Responses from Solicitation:	7

RECOMMENDATION

Award a contract with Enverus, Inc., for load and renewable forecasting services for Denton Municipal Electric, in a three (3) year not-to-exceed amount of \$255,000.

PRINCIPAL PLACE(S) OF BUSINESS

Enverus, Inc.
Austin, TX

ESTIMATED SCHEDULE OF PROJECT

This is a three (3) year contract.

FISCAL INFORMATION

These services will be funded from Denton Municipal Electric Power Supply, Energy Management Division budget account 600003.7804.5750A. Requisition #171241 has been entered into the Purchasing software system in the amount of \$75,000. The budgeted amount for this item is \$255,000.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Pricing Evaluation
Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Shane Wallin, 940-349-7521.

Legal point of contact: Marcella Lunn at 940-349-8333.

Exhibit 2

RFP 8800 - Pricing Evaluation for Load & Renewable Forecasting Services

LOAD FORECASTING SERVICE							
Respondents Business Name:		Enverus, Inc.	Meteologica S.A.	Amperon Holdings, Inc.	Yes Energy LLC	Innowatts, Inc.	United Electric Systems Inc
Principal Place of Business (City and State):		Austin, TX	Madrid, Spain	Houston, TX	Boulder, CO	Houston, TX	Allentown, PA
Three (3) Contract Total:		\$132,467.14	\$71,250.00	\$144,000.00	\$126,000.00	\$118,534.00	\$256,500.00
Item #	Scoring Criteria						
1	Delivery/Project Schedule - 5%	4.75	4.00	4.50	3.00	2.50	3.00
2	Compliance with Specifications - 30%	30.00	12.00	24.00	18.00	13.50	16.50
3	Probable Performance - 25%	25.00	12.50	18.75	17.50	7.50	11.25
4	Price, Total Cost of Ownership - 40%	21.51	40.00	19.79	22.62	24.04	11.11
Total Score:		81.26	68.50	67.04	61.12	47.54	41.86

WIND OUTPUT RENEWABLE FORECASTING SERVICE							
Respondents Business Name:		Enverus, Inc.	Amperon Holdings, Inc.	Innowatts, Inc.	Meteologica S.A.	Vaisala Inc.	United Electric Systems Inc
Principal Place of Business (City and State):		Austin, TX	Houston, TX	Houston, TX	Madrid, Spain	Louisville, CO	Allentown, PA
Three (3) Contract Total:		\$49,675.18	\$36,000.00	\$22,310.00	\$39,000.00	\$54,000.00	\$104,500.00
Item #	Scoring Criteria						
1	Delivery/Project Schedule - 5%	4.75	4.25	3.00	3.50	4.25	3.00
2	Compliance with Specifications - 30%	28.50	21.00	9.00	19.50	19.50	19.50
3	Probable Performance - 25%	23.75	17.50	8.75	15.00	18.75	12.50
4	Price, Total Cost of Ownership - 40%	17.96	24.79	40.00	22.37	16.53	8.54
Total Score:		74.96	67.54	60.75	60.37	59.03	43.54

SOLAR OURPUT RENEWABLE FORECASTING SERVICE							
Respondents Business Name:		Enverus, Inc.	Innowatts, Inc.	Amperon Holdings, Inc.	Vaisala Inc.	Meteologica S.A.	United Electric Systems Inc
Principal Place of Business (City and State):		Austin, TX	Houston, TX	Houston, TX	Louisville, CO	Madrid, Spain	Allentown, PA
Three (3) Contract Total:		\$49,675.18	\$23,310.00	\$54,000.00	\$54,000.00	\$59,850.00	\$123,500.00
Item #	Scoring Criteria						
1	Delivery/Project Schedule - 5%	4.50	2.75	4.25	4.25	4.00	3.25
2	Compliance with Specifications - 30%	30.00	10.50	21.00	21.00	24.00	21.00
3	Probable Performance - 25%	23.75	8.75	18.75	18.75	17.50	12.50
4	Price, Total Cost of Ownership - 40%	17.96	40.00	17.27	17.27	15.58	7.55
Total Score:		76.21	62.00	61.27	61.27	61.08	44.3

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ENVERUS, INC., FOR LOAD AND RENEWABLE FORECASTING SERVICES FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE. (RFP 8800 – AWARDED TO ENVERUS, INC., IN THE THREE (3) YEAR NOT-TO-EXCEED AMOUNT OF \$255,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for load and renewable forecasting services for Denton Municipal Electric; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8800	Enverus, Inc.	\$255,000.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the

proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

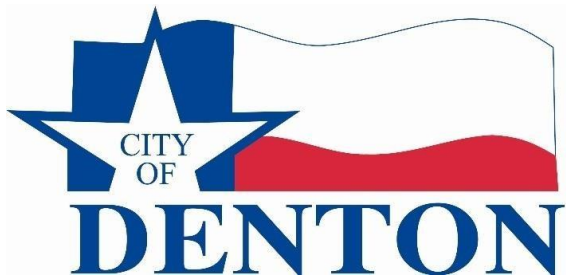
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

RFP	8800
File Name	Load & Renewable Forecasting Services
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND ENVERUS, INC.
(Contract #8800)**

THIS CONTRACT (“Contract”) is made and entered into this date _____, by and between ENVERUS, INC. a Texas corporation, whose address 2901 Via Fortuna #100, Austin, Texas 78746, hereinafter referred to as “Contractor,” and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as “City”, to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or their duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City’s RFP# 8800 Load & Renewable Forecasting Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions **(Exhibit “A”)**;
- (b) City of Denton’s RFP 8800 (the “Solicitation”) **(Exhibit “B” on file at the office of the Purchasing Agent)**;
- (c) City of Denton Standard Terms and Conditions **(Exhibit “C”)**;
- (d) Certificate of Interested Parties Electronic Filing **(Exhibit “D”)**;
- (e) Insurance Requirements **(Exhibit “E”)**;
- (f) Contractor’s Proposal (“Contractor’s Offer”) **(Exhibit “F”)**;
- (g) Contractor’s Order Form and Main Subscription Agreement (Exhibit “G”)
- (h) Form CIQ – Conflict of Interest Questionnaire **(Exhibit “H”)**

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

Prohibition on Contracts with Companies Boycotting Israel

Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this Contract, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contractor acknowledges that in accordance with Chapter 2276 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this Contract, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of this Contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 of the Texas Government Code restricts City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this Contract, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this Contract and will not become ineligible to receive payments under this Contract by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City may terminate this Contract immediately without any further liability if the City determines, in its sole judgment, that this Contract meets the requirements under Chapter 2275 of the Texas Government Code, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly

controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this Contract in the year and day first above written.

CONTRACTOR

Signed by: 
BY: _____
AUTHORIZED SIGNATURE

Printed Name: Shawn Shillington

Title: General Counsel

5124230208
PHONE NUMBER

shawn.shillington@enverus.com
EMAIL ADDRESS

2025-1345791
TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY
CITY MANAGER

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

BY: _____
4B070831B4AA438...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

Signed by: 
Antonio Puente, Jr.
E3760044C2BF4B5...
SIGNATURE PRINTED NAME

DME General Manager
TITLE

Electric
DEPARTMENT

Exhibit A

Special Terms and Conditions

1. Total Contract Amount

The contract total for RFP# 8800 Load & Renewable Forecasting Services shall not exceed \$255,000. Pricing shall be per Exhibit F attached.

2. The Quantities

The quantities indicated on Exhibit F are estimates based upon the best available information. Individual purchase orders will be issued on an as needed basis.

3. Contract Terms

The contract term will be three (3) years, effective from date of award or notice to proceed as determined by the City Purchasing Department. At the sole option of the City, the Contract may be further extended as needed, not to exceed a total of six (6) months.

4. Price Escalation and De-escalation

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. Contractor should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Contractor must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued.

Pre-price increase prices must be honored on orders dated up to the official date of the City approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City reserves the right to accept, reject, or negotiate the proposed price changes.

Exhibit B
City of Denton's RFP 8800 File
On File at the Office of the Purchasing Agent

Exhibit C
City of Denton
Standard Purchase Terms and Conditions

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and Enverus, Inc. herein after referred to as Contractor. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Contractor. No Terms and Conditions contained in the Contractor's proposal response, invoice, or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the Contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, and 21 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, and 22 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

1. CONTRACTOR'S OBLIGATIONS. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable federal, State, and local laws, rules, and regulations.

2. EFFECTIVE DATE/TERM. Unless otherwise specified in the Solicitation or Exhibit A, this Contract shall be effective as of the date this Contract is signed by the City and shall continue in effect until all obligations are performed in accordance with the Contract.

3. CONTRACTOR TO PACKAGE DELIVERABLES: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Solicitation or Contractor's Offer, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address, purchase order or purchase release number, and the price agreement number, if applicable, (c) container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. SHIPMENT UNDER RESERVATION PROHIBITED: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. TITLE & RISK OF LOSS: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

6. DELIVERY TERMS AND TRANSPORTATION CHARGES: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Solicitation or Contractor's Offer. Unless otherwise stated in the Contractor's Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the purchase order.

7. RIGHT OF INSPECTION AND REJECTION: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. NO REPLACEMENT OF DEFECTIVE TENDER: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract to perform but not afterward. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

9. PLACE AND CONDITION OF WORK: This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The Contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

10. WORKFORCE This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way.

Contract 8800

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not (1) while engaged in, participating, or responding to a solicitation; or (2) while in the course and scope of delivering goods or services under a City contract; or (3) on the City's property.

i. use or possess a firearm, including a concealed handgun that is licensed under State law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs, or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

IMMIGRATION: THE CONTRACTOR REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE REQUIREMENTS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 AND 1990 REGARDING EMPLOYMENT VERIFICATION AND RETENTION OF VERIFICATION FORMS FOR ANY INDIVIDUALS HIRED ON OR AFTER NOVEMBER 6, 1986, WHO WILL PERFORM ANY LABOR OR SERVICES UNDER THE CONTRACT AND THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 ("IIRIRA") ENACTED ON SEPTEMBER 30, 1996, AND SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY ACTION ARISING RELATED THERETO.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules, and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

Environmental Protection: The Contractor shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

12. INVOICES:

A. The Contractor shall submit separate invoices on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

B. Proper Invoices must include a unique invoice number, invoice date, the purchase order number, and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if Contract 8800

applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable – accounts payable@cityofdenton.com. Approved invoices will be paid within thirty (30) calendar days of the invoice being received in Accounts Payable.

B. If payment is not timely made, (per Paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, including, but not limited to, those in Paragraph D , below, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches such shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due to the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials, or equipment;
- iv. damage to the property of the City or the City's agents, employees, or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, all required attachments, and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given to any awarded firm who is in arrears to the City for delinquent taxes of any kind or otherwise indebted to the City that the City shall be entitled to counterclaim and/or offset against any such debt, claim, demand, or account owed to the City through payment withholding until the debt is paid in full, and no assignment of such debt, claim, demand, or account after the said taxes or debt are due shall affect the right of the City to offset the said taxes or debt against same.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or Contract 8800

electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer. G. The Contractor acknowledges and agrees that the awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City will not incur a debt or obligation to pay Contractor any amounts the City does not have the current funds available to pay. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty or liability to the City, nor removal fees, cancellation fees, or the like charged to the City.

14. TRAVEL EXPENSES: All travel, lodging, and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the Contract Documents. During the term of this Contract, the Contractor shall bill and the City shall reimburse Contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the Contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. FINAL PAYMENT AND CLOSE-OUT:

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the fifteenth (15th) calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Contractor's Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

A. The Contractor agrees that the City shall, until the expiration of five (5) years after final payment under this Contract unless required to be retained for longer under applicable law, have Contract 8800

electronic access to and the right to examine all books, records, and computations pertaining to this Contract. If necessary, the City shall have the right to audit and make copies of the books, records, and computations pertaining to the Contract. The Contractor shall retain such books, records, documents, and other evidence pertaining to the Contract period and five (5) years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents, and other evidence shall be available, within ten (10) business days of written request. All books and records will be made available within a fifty (50) mile radius of the City if the Contractor is not able to provide electronic access. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor, material supplier, or other payee agrees that the City shall, until the expiration of five (5) years after final payment under the subcontract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, documents, and other evidence of the Subcontractor, material supplier, or other payee involving transactions relating to the subcontract. If necessary, the City maintains the right to photocopy any physical books, documents, papers, and records of the subconsultant involving transactions relating to the subcontract. All books and records will be made available within a fifty (50) mile radius of the City. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

C. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents", and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. SUBCONTRACTORS:

A. If the Contractor-identified subcontractors ("Subcontractor") in a DBE/MBE/WBE agreed-to plan (the "Plan"), the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract Documents, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

V. REQUIRE THAT THE SUBCONTRACTOR INDEMNIFY AND HOLD THE CITY HARMLESS TO THE SAME EXTENT AS THE CONTRACTOR IS REQUIRED TO INDEMNIFY THE CITY.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

A. The Contractor warrants the prices quoted in the Contractor's Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Contractor's Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In the event Contractor breaches this warranty, in addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase, or in the alternative, the City may cancel this Contract without liability to Contractor for breach.

20. WARRANTY – TITLE: THE CONTRACTOR WARRANTS THAT IT HAS GOOD AND INDEFEASIBLE TITLE TO ALL DELIVERABLES FURNISHED UNDER THE CONTRACT, AND THAT THE DELIVERABLES ARE FREE AND CLEAR OF ALL LIENS, CLAIMS, SECURITY INTERESTS, AND ENCUMBRANCES. THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL ADVERSE TITLE CLAIMS TO THE DELIVERABLES.

21. WARRANTY – DELIVERABLES: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship, or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Contract Documents, to any samples furnished by the Contractor, to the terms, covenants, and conditions of the Contract, and to all applicable State, federal, or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned. In addition,

Contractor warrants that the goods sold to City shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA). In the event the product does not conform to OSHA standards, City may return the product for correction or replacement at the Contractor's expense. In the event Contractor fails to make the appropriate correction within a reasonable time, correction made by City will be at Contractor's expense.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract or required by the Solicitation, the warranty period shall be at least one (1) year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

F. Contractor shall not limit, exclude, or disclaim any implied warranties, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

22. WARRANTY – SERVICES: The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable federal, State, and local laws, rules or regulations.

A. The Contractor may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one (1) year from the date of acceptance of the work. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights

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under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses, and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. RIGHT TO ASSURANCE: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified (being a minimum of 5 days) after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. STOP WORK NOTICE: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

26. DEFAULT:

A. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely, and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

B. In the event the City terminates the awarded contract for default or any other reason, the Contractor shall not be relieved of liability to the City for damages sustained by the City by reason of any default of the contract by the Contractor or otherwise, and the City may withhold any payments to the Contractor for the purpose of an offset until such time as the amount of damages due the City from the Contractor can be determined.

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy

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available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and/or any offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

28. TERMINATION WITHOUT CAUSE: The City shall have the right to terminate the Contract, in whole or in part, without cause and/or for convenience any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, within thirty (30) days from termination any unpaid fees for the full contract term. The City reserves all rights, causes of action, and remedies available under law or in equity with respect to any dispute under this Contract and a termination under this provision does not waive such rights, causes of action, and remedies.

29. FRAUD: Fraudulent statements by the Contractor in any offer, Contract Document, or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. DELAYS:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in Paragraph 51. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. TIME OF COMPLETION AND LIQUIDATED DAMAGES: Contractor agrees and acknowledges that completing the services and/or delivering the goods described in this Contract in a timely manner is very important to the City. Contractor agrees to perform all obligations within the timeframes required. As it is impracticable and extremely difficult to fix the actual damages, if any, that may proximately result from a failure by Contractor to provide the goods or

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perform the service, should Contractor fail to timely perform its obligations, Contractor agrees to pay to City, or have withheld and offset from monies due it, the amount stated in the Contract Documents divided by 3 (3-year contract term) and then divided by 365 (total number of days in a year) as liquidated damages for each calendar day of delay or nonperformance. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. Execution of the Contract shall constitute agreement by the City and Contractor that said amount is the minimum value of the costs and actual damage caused by the Contractor's failure to timely perform. Adjustments to the contract times can only be made as provided in the Contract Documents and any conditions or specifications referenced therein.

32. INDEMNITY:

A. Definitions:

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments, and liability of every character, type, or description, including all reasonable costs and expenses of litigation, mediation, or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and Subcontractors; the officers, agents, and employees of such Subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's Subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

33. LIMITATION OF LIABILITY: This Contract does not, and shall not be interpreted to, contain an artificial limitation of liability (e.g. liability limited to contract price or liability capped at an amount actually paid in previous 3 months, etc.) or an artificial statute of limitations (e.g. any lawsuit must be commenced within one year of the event).

34. INSURANCE: The Contractor shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City outlined in the Insurance Exhibit attached hereto, if applicable. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City. The City reserves the right to add insurance during the contract term.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the Solicitation and the Insurance Exhibit.

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35. CLAIMS: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

36. NOTICES: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the attention of its Chief Legal Officer, at Enverus, Inc., 2901 Via Fortuna #100, Austin, Texas 78746, and emailed to shawn.shillington@enverus.com, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

37. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

38. INDEMNIFICATION AGAINST INFRINGEMENTS: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. Moreover, Contractor does not know of any valid basis for any such claims. **THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM: (I) ANY CLAIM THAT THE CITY'S EXERCISE ANYWHERE IN THE WORLD OF THE RIGHTS ASSOCIATED WITH THE CITY'S' OWNERSHIP, AND IF APPLICABLE, LICENSE RIGHTS, AND ITS USE OF THE DELIVERABLES INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) THE CONTRACTOR'S BREACH OF ANY OF CONTRACTOR'S REPRESENTATIONS OR WARRANTIES STATED IN THIS CONTRACT. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE**

RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF. FURTHER, CONTRACTOR AGREES THAT THE CITY'S SPECIFICATIONS REGARDING THE DELIVERABLES SHALL IN NO WAY DIMINISH CONTRACTOR'S WARRANTIES OR OBLIGATIONS UNDER THIS PARAGRAPH AND THE CITY MAKES NO WARRANTY THAT THE PRODUCTION, DEVELOPMENT, OR DELIVERY OF SUCH DELIVERABLES WILL NOT IMPACT SUCH WARRANTIES OF CONTRACTOR. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

39. CONFIDENTIALITY: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

39. PUBLICATIONS: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. ADVERTISING: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, State, or local government.

41. NO CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. GRATUITIES: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or

any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: The Contractor agrees to comply with the conflict of interest provisions of the City Code of Ordinances and/or State law. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance codified at Chapter 2, Article XI and in the City Charter Section 14.04, as amended. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire. The Contractor agrees to maintain current, updated disclosure of information on file with the Procurement Department throughout the term of this Contract.

44. NO SUBCONTRACTING BID AFTER AWARD: Following the award of the Contract, no subcontracting except that specifically identified in the response to the Solicitation will be permitted without the express prior written consent of the City.

45. NO GIFT OF PUBLIC PROPERTY: The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Contractor.

46. INDEPENDENT CONTRACTOR: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City, or their designee under this Contract. The Contractor is expressly free to advertise and perform services for other parties while performing services for the City.

47. ASSIGNMENT-DELEGATION: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

The Contractor shall notify the City's Purchasing Manager, in writing, of a company name, Contract 8800

ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

48. WAIVER: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

49. MODIFICATIONS: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document submitted to the City by Contractor shall have any force or effect to change the terms, covenants, and conditions of the Contract.

50. INTERPRETATION: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

51. DISPUTE RESOLUTION:

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute, however any decision requiring approval of the City Council of the City will be required to be submitted to the City Council and the senior level person shall have authority to recommend approval of any resolution. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written

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agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

C. The parties shall not be required to submit to binding arbitration.

52. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

53. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

54. HOLIDAYS: The following holidays are observed by the City:

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding the City Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the Denton City Manager or their authorized designee.

55. SURVIVABILITY OF OBLIGATIONS: All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract for fifteen (15) years.

56. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Contractor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City.

57. EQUAL OPPORTUNITY Contractor agrees that during the performance of its contract it will:

A. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.

B. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request. The Contractor shall be advised of any complaints filed with the City alleging that Contractor is not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this Contract for which purchase orders or authorities to deliver have not been included, however, the Contractor is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this Contract for which a purchase order has been issued or authority to deliver granted.

C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

58. BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)

The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in Paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs

Contract 8800

associated with the manufacture of the end product.

iii. “Domestic end product” means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. “End product” means those articles, materials, and supplies to be acquired under the Contract for public use.

v. “Foreign end product” means an end product other than a domestic end product.

vi. “United States” means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Contractor shall submit documentation with their offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled “Buy American Act Certificate”.

59. RIGHT TO INFORMATION: The City reserves the right to use any and all information presented in any response to this Contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

60. LICENSE FEES OR TAXES: Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the Contractor.

61. PREVAILING WAGE RATES: The Contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website www.wdol.gov for Denton County, Texas (WD-2509).

62. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS: The Contractor shall comply with all State, federal, and local laws and requirements. The Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; and (iii) Chapter 552 of the Texas Government Code, which outlines policy for public information. The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

63. FEDERAL, STATE, AND LOCAL REQUIREMENTS: Contractor shall demonstrate on-site compliance with the provisions of federal law dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance

Contract 8800

coverage and standard Workers' Compensation insurance coverage. Contractor shall ensure compliance with all federal and State tax laws and withholding requirements. The City shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

64. ATTORNEY'S FEES; LEGAL COSTS: Contractor and City agree that the City will not be required to pay Contractor's attorney's fees or legal costs under any circumstances, unless expressly required by law.

65. DRUG FREE WORKPLACE: The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

66. CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City Procurement Manager in writing of any such damage within one (1) calendar day.

67. FORCE MAJEURE: The City, any Customer, and the Contractor shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City. In the event of an occurrence under this Section, the Contractor will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Contractor continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Contractor shall immediately notify the City Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

68. NON-WAIVER OF RIGHTS: Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

69. NO WAIVER OF SOVEREIGN IMMUNITY: The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of any immunities from Contract 8800

suit or from liability that the City may have by operation of law.

70. RECORDS RETENTION: The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Contractor shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract. In the event the value of this Contract is One Million (\$1,000,000) Dollars or greater: (i) all contracting information related to this contract will be preserved for the duration of the Contract; (ii) the Contractor shall provide any contracting information in its possession promptly upon request by the City; and (iii) at the expiration of this Contract, the Contractor will either provide all contracting information in its possession to the City or preserve same as required by the record retention requirements of the State of Texas.

71. PROCUREMENT LAWS: The City will not agree to any terms or conditions that cause the City to violate any federal, State, or local procurement laws, including its own Charter or Procurement Policy and any such laws included in boilerplate terms, online terms or other terms provided by the Contractor are considered null and void.

72. AUTHORITY: Contractor represents and warrants to the other that (a) it has company authority to execute and perform this Contract; (b) executing this Contract does not constitute a material conflict with, breach, or default under any applicable law, its respective organizational documents, or any documents, agreements, contracts or instruments which are binding upon it; and (c) this Contract creates valid, legal, and binding obligation enforceable against it, subject to applicable insolvency and bankruptcy laws. Contractor recognizes and agrees that a violation of this provision constitutes a material breach under this Contract.

Exhibit D
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the Contract is awarded, in accordance with Government Code 2252.908.

The Contractor shall:

1. Log onto the State Ethics Commission Website at :
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line.
(EX: Contract 8800 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

Exhibit E

INSURANCE REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor 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 Contractor, the 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 contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, 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. 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:

- ***Each policy shall be issued to a company domiciled in the United States and in the M. Respective contract shall be A+ or better.***
- ***Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officers, agents, employees and volunteers, the contractor shall procure and maintain such excesses and related investments, contract administration and defense expenses.***
- ***Insurance policies shall be endorsed to provide the following:***
 - ***Policy is additionally insured the City of Denton, its officers, agents,***

EO employees and volunteers.

- Commercial insurance is not to be other insurance available to the additional insured and respect to claims covered under the policy and this insurance policy is separate from the insured persons' claim is to be or sums of the inclusion of the insured persons' claim to increase the insurer's in the contract.
 - Provide a cover of Surrogate in the City of Denon, is, policies, open, EO employees, and volunteers.
- **Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.**
 - Should the required insurance be provided under a contract of the, Contractor shall not be covered continuously throughout the term of the contract and, should the, or a period of three years and the contract expiration, such occurrences arising during the contract shall give rise to the contract of the contract shall be covered.
 - Should the required insurance be provided under a contract of the includes a general liability policy to provide for claims investigation or defense costs to be included in the general liability policy to the Contractor shall either during the occurrence of the or other persons and Contractors protective insurance.
 - Should the required insurance arise during the contract term, requests for claims arising from such loss shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the loss date. If insurance is not reinstated, City of, shall be, and in the loss period effective on the date of the loss.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

1. **CYBER/TECHNOLOGY NETWORK LIABILITY AND RISK INSURANCE**

Cyber/Technology Network Liability and Risk Insurance, inclusive of Information Security and Privacy (first and third party coverage) to provide coverage for any damage caused by a network risk, cyber act or breaches of

data and privacy right, the rendering of, or the failure to properly perform professional services for, but not limited to, computer programming, management information systems, negligent system design, disclosure of confidential information, and copyright infringement with minimum limits with minimum limits of \$2,000,000.00 per claim.

SUBCONTRACTING LIABILITY

(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 engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. 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.

Exhibit F

		Enverus, Inc	
		Total Price	\$231,817.50
Line #	Description	Unit	
SECTION 1 -LOAD FORECASTING SERVICE			
1	LOAD FORECASTING SERVICE -Total Contract Price (3 Year cost)		\$75,000.00
SECTION 2- WIND OUTPUT RENEWABLE FORECASTING SER'			
2	WIND OUTPUT RENEWABLE FORECASTING SERVICE -Total Contract Price (3 Year cost)		\$77,250.00
SECTION 3 - SOLAR OUTPUT RENEWABLE FORECASTING SERVICE			
3	SOLAR OUTPUT RENEWABLE FORECASTING SERVICE -Total Contract Price (3 Year cost)		\$79,567.50
4	SECTION 4 (ALTERNATE) -PACKAGE PRICING FOR MULTIPLE OR ADDITIONAL SERVICES - Indicate package options in description. Supplier must also offer separate pricing above in order to be considered.		\$231,817.50



ORDER FORM

Enverus is a global company with offices in the United States, Canada, Europe, and Asia. It provides products and services through Enverus, Inc., a corporation registered in Texas and headquartered in Austin, and through related entities operating in certain other jurisdictions. References to “we”, “our”, “us”, or “Enverus” are to the Enverus entity or entities providing products or services to **City of Denton, TX** (“Subscriber”). Subscriber and its Users hereby agree to this Order Form, the Main Subscription Agreement, and any other attachments hereto. Subscriber: (a) has read and understands the entire Agreement; (b) is authorized and intends to form a legally binding contract with Enverus; (c) will only use Enverus Products or Enverus Data for Internal Use and will not use Enverus Products or Enverus Data to produce or develop any commercial product or software; (d) may employ Artificial Intelligence (“AI”) tools such as large language models, neural networks, and similar technology, to enhance its utilization of the Enverus Products or analyze/interpret Enverus Data for Internal Use, so long as such use is confined to a Subscriber-controlled internal instance with stringent controls preventing external access; (e) will not upload Enverus Data or Product output to any third-party platform or software (including AI tools) that allows such data to be accessible by, or utilizes such data for the benefit of, third-parties, including the prohibition of using such data for the training or enrichment of any third-party platforms or software; (f) agrees that the Agreement, whether printed or electronic, constitutes a “writing” under any applicable law; (g) understands that the Agreement includes **WARRANTY DISCLAIMERS, INDEMNIFICATION FOR NEGLIGENCE, LIMITATION OF LIABILITY, AND WAIVER OF JURY TRIAL**, and (h) will cause all Users to abide by the Agreement.

PRICING INFORMATION IS CONFIDENTIAL TO ENVERUS AND MAY NOT BE DISCLOSED

Enverus may adjust the start date and end date, without increasing the total price or changing the term length, based on the date Enverus receives this executed Order Form and activates Enverus Products. If Subscriber acquires another Enverus customer or its affiliate (whether by merger, stock purchase, asset purchase, or otherwise), Subscriber’s fees may be increased to account for the combined entity. If resetting the start date, Enverus shall credit Subscriber for paid and unused subscription fees.

CONTACT INFORMATION

SUBSCRIBER BILLING NAME	BILLING ADDRESS	BILLING CONTACT NAME	BILLING EMAIL ADDRESS
City of Denton, TX	215 E McKinney St Denton Texas 76201-4299 United States	Shane Wallin	Shane.Wallin@cityofdenton.com and ap@cityofdenton.com

SALESPERSON	EMAIL	BILLING TERM	PAYMENT TERM
Colin Groves	colin.groves@enverus.com	Annual	Net 30

TERM

Recurring Products and Services

Year 1				
START DATE	END DATE	PRODUCT NAME	QTY	PERMITTED NUMBER OF AUTHORIZED USERS
9/9/2025	9/8/2026	Enverus P&R - CRCL Renewable Generation Forecasts - 1 ISO	1.00	9

9/9/2025	9/8/2026	Enverus P&R - CRCL Renewable Generation Forecasts - ERCOT	1.00	9
9/9/2025	9/8/2026	Enverus Foundations - Power & Renewables	1.00	9
9/9/2025	9/8/2026	Enverus P&R - ISO Net Demand Forecasts	1.00	9
9/9/2025	9/8/2026	Enverus P&R - ISO Net Demand Forecasts - ERCOT	1.00	9
9/9/2025	9/8/2026	Enverus Foundations - Power & Renewables	1.00	9
9/9/2025	9/8/2026	Enverus P&R - Fused Demand Forecasts	2.00	9
Year 1 TOTAL:				USD 75,000.00

Year 2				
START DATE	END DATE	PRODUCT NAME	QTY	PERMITTED NUMBER OF AUTHORIZED USERS
9/9/2026	9/8/2027	Enverus P&R - CRCL Renewable Generation Forecasts - 1 ISO	1.00	9
9/9/2026	9/8/2027	Enverus P&R - CRCL Renewable Generation Forecasts - ERCOT	1.00	9
9/9/2026	9/8/2027	Enverus Foundations - Power & Renewables	1.00	9
9/9/2026	9/8/2027	Enverus P&R - ISO Net Demand Forecasts	1.00	9
9/9/2026	9/8/2027	Enverus P&R - ISO Net Demand Forecasts - ERCOT	1.00	9
9/9/2026	9/8/2027	Enverus Foundations - Power & Renewables	1.00	9
9/9/2026	9/8/2027	Enverus P&R - Fused Demand Forecasts	2.00	9
Year 2 TOTAL:				USD 77,250.00

Year 3				
START DATE	END DATE	PRODUCT NAME	QTY	PERMITTED NUMBER OF AUTHORIZED USERS
9/9/2027	9/8/2028	Enverus P&R - CRCL Renewable Generation Forecasts - 1 ISO	1.00	9
9/9/2027	9/8/2028	Enverus P&R - CRCL Renewable Generation Forecasts - ERCOT	1.00	9
9/9/2027	9/8/2028	Enverus Foundations - Power & Renewables	1.00	9
9/9/2027	9/8/2028	Enverus P&R - ISO Net Demand Forecasts	1.00	9
9/9/2027	9/8/2028	Enverus P&R - ISO Net Demand Forecasts - ERCOT	1.00	9
9/9/2027	9/8/2028	Enverus Foundations - Power & Renewables	1.00	9
9/9/2027	9/8/2028	Enverus P&R - Fused Demand Forecasts	2.00	9
Year 3 TOTAL:				USD 79,567.50

	City of Denton, TX		Enverus Signed by:  4FD490BA12704DD...
Signature:	_____	Signature:	_____
Name (Print):	_____	Name (Print):	Shawn M. Shillington
Title:	_____	Title:	General Counsel
Date:	_____	Date:	8/5/2025

Subscriber Billing and Notice Information

Name:	Accounts Payable Shane Wallin
Address:	_____
Phone:	940-349-7521
Email:	accounts payable@cityofdenton.com. shane.wallin@cityofdenton.com

Enverus Notice Information

Name:	Shawn M. Shillington
Address:	2901 Via Fortuna Building 6, Suite 100, Austin, TX, 78746
Phone:	(512) 477-9200
Email:	shawn.shillington@enverus.com

MAIN SUBSCRIPTION AGREEMENT

1. Product Access. During the Term and subject to Subscriber's compliance with this Agreement, Enverus grants Subscriber a limited, non-exclusive, non-transferable, non-sublicensable, revocable license for Users to use Enverus Products solely for Internal Use. Products shall not be shared with affiliates or any third parties unless otherwise agreed to by Enverus in writing. Additional Users or Products may be added pursuant to an email submitted or confirmed by Subscriber. The Products are subject to usage limits specified in the Order Form and Documentation. If Subscriber exceeds usage limits, Subscriber will execute an Order Form for additional quantities of the applicable Products promptly upon Enverus' request and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below. Enverus may suspend or terminate access to all Enverus Products if Subscriber or any User is suspected of violating this Agreement.

2. Internal Use.

- a. As used herein, "Internal Use" means ordinary use for internal business purposes solely for the benefit of Subscriber (not including affiliates unless specified on the applicable Order Form). Upon request from Enverus, Subscriber shall demonstrate and discuss the scope of such use with Enverus.
- b. If Subscriber uses Enverus Products or Enverus Data to create projects, designs, reports, or other documents that are accessible by any third party, then:
 - i. Any included Enverus Data shall be limited to individual data points in text (not a database).
 - ii. Any included images or tables based on Enverus Data must be static image files (e.g., pdf or jpeg, not xls or csv) that do not display specific data points and from which it is not possible to reverse engineer, extract, or manipulate such data.
 - iii. Any such projects, designs, reports, or other documents may be provided to third parties only on an ad-hoc, asynchronous basis (not as part of a regular distribution, software product, or webpage and not updated in real-time or in accordance with a regular schedule) in a manner that is not capable of use substantially as a substitute for the Enverus Data or Products.
 - iv. Subscriber shall attribute Enverus by prominently including "Source: Enverus" and shall provide Enverus a copy upon request.
- c. "Internal Use" does not include the following and Subscriber shall not and shall not permit or authorize any third party to:
 - i. Extend any warranties on behalf of Enverus or imply that Enverus is responsible for reliability, accuracy, completeness, or currency of any information.
 - ii. Provide any third party with packages or summaries of Enverus Data or any material marked "Confidential" or "Not for distribution."
 - iii. Use Enverus Products, Enverus Data, or any Enverus API other than for the Internal Use or sell, lease, license, sublicense, rent, loan, share, pledge, or otherwise transfer, with or without consideration, all or any part of Enverus Products or Enverus Data or permit third parties or Subscriber personnel that are not Users to benefit from them, including a timesharing, rental, outsourcing, service bureau, networking, hosted service, or other arrangement.
 - iv. Use Enverus Products, Enverus Data, or any Enverus API (1) to produce a commercial product or develop software in any form; (2) to build, develop, or provide any third parties or Subscriber personnel that are not Users with any software, code, scripts, models, interpretations, training data, apps, platforms, exchanges, websites, widgets, plugins or other tools; or (3) modify, copy, or create derivative works, packages, or summaries of any Products, Enverus Data, or Enverus API or any part, feature, function or user interface thereof.

v. Reverse engineer, decompile, decrypt, or disassemble Products, or attempt to de-aggregate or de-anonymize any data or information that has been aggregated or anonymized, remove proprietary notices or labels, use any robot, spider, or other automated method (other than an Enverus API) to access, download, or reproduce Enverus Data, or use Products in a way that causes a denial of service for other users or interferes with or unduly burdens performance.

vi. Disclose or permit any third party to use confidential information of Enverus, including (i) Enverus Data, (ii) Documentation or technical information related to Enverus Products, and (iii) the provisions of this Agreement (including pricing).

d. Subscriber is authorized to employ Artificial Intelligence (“AI”) tools such as large language models, neural networks, and similar technology, to enhance its utilization of the Enverus Products or analyze/interpret Enverus Data for Internal Use. This usage shall comply with Subscriber’s obligations under this Agreement, including maintaining the confidentiality of the Enverus Products and Enverus Data. Subscriber expressly agrees that:

i. *AI Platform Uploads.* Subscriber may upload Enverus Data or Product output to third-party or external AI platforms (e.g., Microsoft Copilot). However, Subscriber represents and warrants that such uploads are only to Subscriber-controlled internal instances and that such platforms do not utilize the uploaded Enverus Data or Enverus Product output for AI enrichment or training purposes or make such data otherwise available or accessible to any third parties.

ii. *Prohibition on Commercial Product Development.* Subscriber shall not use any AI in conjunction with Enverus Data or Enverus Product output to create or develop any products or services intended for commercial sale. This includes, but is not limited to, software, derivative datasets, or consulting deliverables.

3. Subscriber Responsibilities. Subscriber is responsible for all activities of its Users, obtaining and maintaining any Subscriber equipment and any ancillary services needed to connect to, access, or use Enverus Products. Subscriber shall: (a) be responsible for Users’ compliance with this Agreement; (b) be responsible for the accuracy, quality and legality of Subscriber Data, the means by which Subscriber acquired Subscriber Data, Subscriber’s use of Subscriber Data with Enverus Products, and the interoperation of any Non Enverus Applications with which Subscriber uses Products; (c) use commercially reasonable efforts to prevent unauthorized access to or use of Products, and notify Enverus promptly of any such unauthorized access or use; (d) use Products only in accordance with this Agreement and applicable laws and government regulations

4. Fees and Payment.

a. *Fees.* Subscriber will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Products purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

b. *Invoicing and Payment.* Fees will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, fees are due net 30 days from receipt of the invoice. Subscriber is responsible for providing complete and accurate billing and contact information to Enverus and notifying Enverus of any changes to such information.

c. *Overdue Charges.* If any invoiced amount is not received by Enverus by the due date, then without limiting Enverus’ rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

d. *Suspension of Product Access.* If any charge owing by Subscriber is 30 days or more overdue, Enverus may, without limiting its other rights and remedies, suspend access to all Enverus Products until such amounts are paid in full, provided Enverus has given Subscriber at least 10 days’ prior notice that its account is overdue in accordance with the “Notices” section below.

e. *Taxes.* Enverus fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, accessible by any jurisdiction whatsoever (collectively, “Taxes”). For clarity, Enverus is solely responsible for taxes assessable against it based on its income, property, and employees.

- f. *Accounts under \$10,000 per year.* All subscribers under \$10,000 per year must have a valid ACH on file for billing purposes. Alternative payment methods (e.g., check by mail) are acceptable and will be invoiced at Subscriber's request, but if payment is not received on time, the payment method on file will be charged. Payment methods will be securely stored and automatically billed upon renewal, unless timely cancellation notice is received. Failure to maintain a valid credit card or ACH payment method on file may result in suspension or termination of the Enverus subscription.

5. Term and Termination.

- a. *Term of Agreement Intentionally Omitted.*
- b. *Termination.* Intentionally Omitted.
- c. *Refund or Payment upon Termination.*
- i. *By Subscriber.* If this Agreement is terminated by Subscriber for material breach in accordance with the "Termination" section above, Enverus shall pay to Subscriber, within thirty (30) days, a pro rata refund for any prepaid fees covering the remainder of the term of the Order Form after the effective date of termination. If this Agreement is terminated by Subscriber for convenience in accordance with the "Termination" section above, Subscriber shall pay to Enverus, within thirty (30) days, any unpaid fees for the full Term, including any Renewal Term in accordance with Section 5b. Any fees that otherwise would have become due later in the Term shall accelerate and immediately become due and payable. In no event will termination relieve Subscriber of its obligation to pay any fees payable to Enverus.
- ii. *By Enverus.* If this Agreement is terminated by Enverus for material breach in accordance with the "Termination" section above, Subscriber will pay any unpaid fees for the full Term, including any Renewal Term in accordance with Section 5b. Any fees that otherwise would have become due later in the Term shall accelerate and immediately become due and payable. If this Agreement is terminated by Enverus for convenience in accordance with the "Termination" section above, Enverus shall issue a pro rata refund to Subscriber for any prepaid fees covering the period after the effective date of termination.
- d. *Results of Termination.* Upon termination or expiration of the Agreement (i) all rights, licenses, and access to Enverus Products terminate; (ii) Subscriber shall promptly destroy all copies (including copies in email) of all Enverus Data in Subscriber's possession or control; (iii) Subscriber shall cause each User to certify that it has completed these procedures and provide such certifications to Enverus; and (iv) Enverus may pursue any remedies available at law or in equity. Subscriber may retain Enverus Data to the extent necessary to comply with applicable law or archival policies, subject to continued application of this Agreement. If Subscriber's Product access changes, this provision shall apply to Products to which Subscriber no longer has access. If Subscriber makes any material misrepresentations to Enverus or materially violates Section 2 of this Agreement or this Section 5e, then until such violations are cured and all provisions of this Section 5e have been complied with, Subscriber shall pay Enverus an amount per day equal to three times Subscriber's most recent annual fees divided by 365, as liquidated damages and not as a penalty, which Subscriber agrees is reasonable given the difficulty in determining actual damages.

6. Representations, Warranties, Exclusive Remedies, and Disclaimers.

- a. *Representations.* Each Party represents that it has validly entered into this Agreement and has the legal power to do so.
- b. *Enverus Warranties.* Enverus warrants that:
 - i. The Products will perform materially in accordance with the applicable Documentation.
 - ii. Enverus will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Subscriber Data. Those safeguards will include measures designed to prevent unauthorized access to or disclosure of Subscriber Data (other than by Subscriber's Users).

iii. For any breach of an above warranty, Subscriber's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections above.

c. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ENVERUS DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, ORAL, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING BY VIRTUE OF CUSTOM OF TRADE OR COURSE OF DEALING, TO THE MAXIMUM EXTENT PERMITTED BY LAW. ENVERUS DOES NOT REPRESENT OR WARRANT THAT THE PRODUCTS WILL MEET REQUIREMENTS OR THAT THEY ARE SUITABLE FOR NEEDS OR THAT THE DATA OR RESULTS ARE CORRECT, ACCURATE, TIMELY, COMPLETE, SUITABLE, OR RELIABLE. PROPRIETARY DATA IS COMPILED FROM SOURCES BEYOND ENVERUS' CONTROL AND ERRORS, GAPS, AND INACCURACIES MAY EXIST. THE PRODUCTS AND PROPRIETARY DATA ARE PROVIDED ON AN "AS IS WITH ALL FAULTS" BASIS WITHOUT WARRANTIES OF ANY KIND. SUBSCRIBER ASSUMES ALL RISK OF ERRORS AND OMISSIONS IN THE PRODUCTS AND PROPRIETARY DATA. THE PRODUCTS ARE A SUPPLEMENT TO, NOT A SUBSTITUTE FOR, THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF PROFESSIONALS. SUBSCRIBER ACCEPTS ALL RISKS IN ITS USE OF THE PRODUCTS INCLUDING BUT NOT LIMITED TO ANY INVESTMENT, ACQUISITION, DEVELOPMENT, PRODUCTION OR FINANCIAL DECISIONS. NO INFORMATION OBTAINED THROUGH USE OF THE PRODUCTS SHALL CONSTITUTE INVESTMENT ADVICE, TRADING RECOMMENDATIONS, OR TRADING INFORMATION. THESE DISCLAIMERS SHALL APPLY REGARDLESS OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME OF THE ABOVE MAY NOT APPLY IN JURISDICTIONS THAT DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES.

7. Indemnification.

a. *Enverus Indemnity.* Subject to Section 7c, Enverus shall defend, indemnify, and hold harmless Subscriber against any action to the extent based on a claim that the unmodified Products infringe a patent, copyright, or trademark ("IP Claim"). If adjudged to infringe, Enverus shall, at its option (i) procure for Subscriber the right to continue using Enverus Products, (ii) modify or replace Enverus Products so that they do not infringe, or (iii) terminate the Agreement and refund the part of the pre-paid fee applicable to period after termination. Enverus shall have no liability for claims based on: (1) use of other than current, unaltered Products, (2) use of Products in combination with non-Enverus products, software, services, or data, (3) third-party software or data, or (4) failure to use Enverus Products in accordance with the Documentation, this Agreement, or for their intended purpose. **THE FOREGOING STATES THE ENTIRE LIABILITY OF ENVERUS AND THE EXCLUSIVE REMEDY OF SUBSCRIBER WITH RESPECT TO CLAIMS OF INFRINGEMENT OF ANY KIND.**

b. *Subscriber Indemnity.* Intentionally Omitted.

c. *Conditions.* The City shall: (i) promptly notify Enverus in writing of any claim (failure to provide such prompt notice shall only affect the rights to the extent that such failure has a prejudicial effect on the defenses or other rights available to Enverus), (ii) allow Enverus to have sole control of the defense and all related settlement negotiations (the City may retain independent counsel at its own expense), and (iii) provide Enverus with the information, authority and assistance necessary to perform Enverus' obligations under this Section.

8. Limitation of Liability. Intentionally Omitted.

9. Data Processing.

a. *Personal Data.* Our privacy policy describes our practices regarding our collection and use of personal information in the course of our business, including the course of providing Enverus Products to the Subscriber. In particular, our privacy policy describes the types of personal information we collect; how we collect, use, and share personal information; our legal basis for

using personal information; how long we keep personal information; how we protect personal information; the countries to which we may transfer personal information, and the rights of individuals regarding their personal information. Our privacy policy is accessible on our website at <https://www.enverus.com/privacy-policy/>. It is updated from time to time, so we encourage you to review it regularly. The Subscriber represents and warrants to Enverus that any personal information which the Subscriber provides to us is collected, used, and shared by the Subscriber in accordance with applicable data protection laws. In no event shall Enverus retain, use, sell or disclose any personal information or data that we have received from Subscriber for any purpose other than for the specific purpose of providing Enverus Products specified in this Agreement, except as may be required by law.

To the extent Personal Data from the European Economic Area (EEA), the United Kingdom or Switzerland are processed by Enverus, the Standard Contractual Clauses of the General Data Protection Regulation (GDPR), as further set forth in an applicable data processing addendum, and/or, if applicable, Enverus' commitments under the Data Privacy Framework shall apply. For the purposes of the Standard Contractual Clauses, Subscriber is the controller and data exporter. Subscriber's acceptance of this Agreement shall be treated as its execution of the Standard Contractual Clauses and Appendices. Upon request by Subscriber made within 30 days after the effective date of termination or expiration of this Agreement, Enverus will make Subscriber Data available to Subscriber for export or download. After such 30-day period, Enverus will have no obligation to maintain or provide any Subscriber Data.

b. *Anonymized Data.* Anonymized Data refers to information or data that has been collected and aggregated from multiple sources or individual data points derived from Product usage into anonymized form. This process is done to protect the privacy and confidentiality of the original source while providing valuable insights and trends into our Products, and is used for statistical analysis, reporting, research, and development purposes. Subscriber acknowledges and agrees that Enverus may collect, store, and use such information for any lawful business purpose. Enverus may disclose such Anonymized Data to third parties without restriction. Anonymized Data shall not include any sensitive or personal information. This Section 9 does not give Enverus the right to identify Subscriber as the source of the Anonymized Data.

c. *Subscriber Data.* Enverus will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Subscriber Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification, or disclosure of Subscriber Data by Enverus personnel except (a) to provide Enverus Products and prevent or address service or technical problems, (b) as compelled by law in accordance with the "Confidentiality: Compelled Disclosure" section below, or (c) as expressly permitted in writing by Subscriber. Subscriber warrants that the Subscriber Data will not infringe the Intellectual Property rights or other legal rights of any person or third party, and will not breach the provisions of any law, statute, or regulation, in any jurisdiction. If a data processing addendum ("DPA" available at www.enverus.com/wpcontent/uploads/2022/10/Enverus-Standard-DPA-Oct-2022-v2.docx.pdf) is agreed to by Subscriber and Enverus, then the DPA shall be incorporated herein. Subscriber shall not upload, transmit, or store any Subscriber Data that could be reasonably considered Personally Identifiable Information (PII) within Enverus Products without obtaining prior written consent from Enverus. Enverus shall not be liable for any damages, losses, or claims arising from Subscriber's violation of this provision.

10. Ownership / Feedback / Reference. The Products, Enverus Data, Anonymized Data, and all derivatives thereof and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights associated therewith are the valuable, exclusive property of Enverus protected by contract and intellectual property laws. This Agreement does not transfer or assign any ownership rights to Subscriber or anyone else, nor shall Subscriber challenge Enverus' ownership of such property. Enverus reserves the right to alter Enverus Products, implement user priorities, implement rules for use, discontinue certain functional aspects of Enverus Products, or add, withdraw, or alter any Enverus Data. Any ideas, feedback, suggestions, corrections, alterations, improvements, additional data points, requests, questions, comments, results of any test or evaluation and the like provided by Subscriber to Enverus ("Feedback"), including any enhancement, improvements, or new features to same, will be the property of Enverus. Subscriber hereby assigns and agrees to assign to Enverus all right, title and interest worldwide in the Feedback and the related intellectual property rights. Enverus may publicly identify Subscriber as a customer, including on its website, government filings, and in marketing materials.

11. Unauthorized Use. Enverus may utilize security keys and other enforcement mechanisms in Enverus Products. Subscriber shall not attempt to defeat or circumvent any encryption, security, or enforcement mechanisms. Subscriber will prevent unauthorized

use of Enverus Products and immediately notify Enverus of any unauthorized use. Subscriber will require each User to keep its user ID and password for Enverus Products confidential and not share user IDs with other companies or individuals. If Subscriber or any User suspects that any of its passwords have been disclosed or made known to any other person or if any User ceases to be an employee or contractor of Subscriber, Subscriber will immediately notify Enverus at support@enverus.com. Enverus shall have the right to suspend, cap, limit, or disable file transfers, downloads, and exports as part of Product design, to protect Enverus Data, or to facilitate operations.

- 12. Additional Security Measures.** Subscriber may need to enable additional security measures, such as two-factor authentication, in order to access particular features of some Enverus Products. If Subscriber subsequently removes those security features, Subscriber or Users may not be able to continue to access particular features of the applicable Enverus Products.

13. Confidentiality.

a. *Definition of Confidential Information.* “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), that is clearly marked as confidential. Confidential Information of Subscriber includes Subscriber Data; Confidential Information of Enverus includes Enverus Products, Enverus Data, pricing, business and marketing plans, technology and technical information, product plans and designs, and business processes. However, Confidential Information does not include Anonymized Data or any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach

b. of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

c. *Protection of Confidential Information.* The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel, and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's, or accountant's compliance with this "Confidentiality" section.

c. *Compelled Disclosure.* The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information. Enverus acknowledges that the City of Denton must strictly comply with the Public Information Act, Chapter 552, *Texas Government Code* in responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. Any portions of such material claimed by Enverus to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, chapter 552, and *Texas Government Code*.

14. Force Majeure. Enverus shall not be liable for any loss or liability related to a Force Majeure event. Such events include electrical outages, fires, floods, extraordinary weather conditions, earthquakes, acts of God, pandemics, equipment failures, DoS/DDoS or similar attacks, connection problems, weather, strikes, walkouts, riots, armed conflicts, terrorism, labor dispute, action of government, communications or power failure, equipment or software malfunctions, wild beasts, acts of war, or any causes outside the reasonable control of Enverus. Enverus shall have no responsibility to provide access to Enverus Products during such delays or interruption regardless of the cause and shall not be deemed to be in breach of this Agreement as a result thereof. Enverus shall promptly notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

15. Third Party Content. The Products may contain data obtained from data providers or other third parties, content posted by customers, and links to third-party websites or resources ("Third-Party Content"). Enverus is not responsible for external sites or resources and has no control over, does not endorse, and does not make any representations or warranties with respect to Third-Party Content. Enverus is not responsible or liable for any damage related to use of or reliance on any Third-Party Content. Subscriber shall evaluate, and bear all risks associated with, the use of any Third-Party Content, including any reliance on the accuracy, completeness, or usefulness. Subscriber's correspondence or business dealings with, or participation in promotions of, providers of Third-Party Content, including payment and delivery of related products or services, and any other terms, conditions, warranties, or representations associated with such dealings, are solely between Subscriber and such providers. Enverus respects intellectual property rights and asks Subscriber to do the same and reserves the right, in its sole discretion, to terminate access for any User who is the subject of infringement notifications.

16. Assignment. Subscriber shall not transfer or assign, whether by operation of law, merger, change of ownership, change of control or otherwise, this Agreement or any of the rights conferred or obligations imposed by this Agreement, without Enverus' written permission, which may be withheld in Enverus' sole discretion. No transfer or assignment shall discharge any obligations under this Agreement. Attempted assignment in violation of this provision shall be void and of no effect. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the Parties' and their respective permitted successors, transferees, and assigns. If Subscriber acquires or is acquired by another Enverus customer or its affiliate (regardless of the form of the transaction),

Subscriber's fee may be increased to account for the combined entity. Enverus shall provide prompt written notice of assignment to Subscriber.

- 17. Relationship of the Parties.** This Agreement shall not create or establish an agency, partnership, or joint venture between the Parties and the Parties jointly and severally disclaim any such relationship. The Parties are acting solely as independent contractors and neither Party owes any fiduciary, special, implied, or other duty to the other Party.
- 18. Waiver of Trial by Jury.** IN ANY JUDICIAL PROCEEDINGS, THE PARTIES KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.
- 19. Enverus Contracting Entity, Notices, Governing Law, and Venue.** The Enverus entity entering into this Agreement, the address to which Subscriber should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depending on where the Subscriber is domiciled, shall be as follows:

If Subscriber is domiciled in:	The Enverus entity entering into this Agreement is:	Notices should be addressed to:	Governing Law:	Courts with exclusive jurisdiction are:
The United States of America or any nation besides Canada or Spain	Enverus, Inc., a Texas Corporation	2901 Via Fortuna Building 6, Suite 100 Austin, TX, 78746	Texas and controlling United States Federal Law	Denton, Denton County, Texas, U.S.A.
Canada	Enverus Canada, Inc., an Alberta Corporation	2901 Via Fortuna Building 6, Suite 100 Austin, TX, 78746	Alberta and controlling Canadian Federal Law	Calgary, Alberta, Canada
Spain	Enverus, Inc., a Texas Corporation	2901 Via Fortuna Building 6, Suite 100 Austin, TX, 78746	Community of Madrid and controlling Spanish Federal Law	Madrid, Community of Madrid, Spain

Enverus may also seek injunctive or equitable relief in any court. The UN Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA) are specifically excluded. Subscriber agrees that any breach of Enverus' intellectual property rights, including confidential or proprietary information and restrictions on use, will cause Enverus irreparable damage for which recovery of money damages would be inadequate, and Enverus shall therefore be entitled to obtain injunctive relief to protect such rights. Subscriber hereby waives the requirement of a bond in the event Enverus seeks injunctive relief. In addition to any other relief, at law or in equity, Enverus shall be entitled to recover from Subscriber all attorneys' fees and any costs of any litigation.

- 20. Export Controls.** The Products are subject to U.S. Export Administration Regulations. Diversion or use contrary to U.S. or other applicable law and regulation is prohibited. Subscriber agrees not to export, import, or transmit Products, Enverus Data or any other software or technical data to any country or end user or for any use in (1) any countries subject to U.S. trade embargoes (and all other nations that may from time to time be included on such a list); or (2) any persons or entities on the U.S. "Denied Persons List," "Specially Designated Nationals List," and "Entities List;" or (3) other locations or persons prohibited by law. Subscriber

represents that neither the U.S. Bureau of Industry and Security nor any other governmental agency has issued sanctions against Subscriber or denied Subscriber's export privileges.

21. Anti-Corruption. Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other Party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

22. Notices. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (d) the day of sending by email. Notices to Enverus will be addressed to the attention of its Chief Legal Officer, at Enverus, Inc., 2901 Via Fortuna #100, Austin, Texas 78746, and emailed to shawn.shillington@enverus.com. Notices to Subscriber will be addressed to the relevant contact designated by Subscriber on the applicable Order Form.

23. Audit. Intentionally Omitted.

24. Amendments.

a. This Agreement may only be amended by the signed written agreement of both parties, unless otherwise expressly permitted within the Agreement.

b. Enverus may add or delete Products or Enverus Data and change its technical specifications. Unless precluded by malfunction, emergency or regulatory requirement, Enverus will use commercially reasonable efforts to provide Subscriber with: (i) advance notice of any such changes; or (ii) ninety (90) Days' advance notice for material changes. If there is an amendment under this section that results in a deletion of a Product or Enverus Data Subscriber is subscribed to; Subscriber will receive an equitable adjustment in any applicable fees, provided that Enverus has been given 30 days to cure such deletion.

25. Definitions.

a. "Anonymized Data" means information or data that has been collected and aggregated from multiple sources or individual datapoints derived from Subscriber's Product usage into anonymized form. Any identifying details related to any specific individual or entity shall be removed.

b. "Agreement" means this Main Subscription Agreement and any Order Forms, exhibits, schedules, and addenda attached hereto or later entered into in the future that reference this Main Subscription Agreement, which shall all collectively be considered one agreement.

c. "Documentation" means Enverus' online user guides, documentation, and help and training materials, as updated from time to time, provided by Enverus or accessible via Enverus.com or login to the applicable Product.

d. "Enverus Data" means all files or data that Subscriber obtains from Enverus or by using Enverus Products, including all databases, elements, records, documents, indexes, analyses, models, maps, tables, charts, PDFs, APIs, Anonymized Data, and all structured, augmented, or other value-added data derived from Subscriber Data or other data points, regardless of the source of the underlying information.

e. "Enverus Products" means the products and services ordered by Subscriber under an Order Form and made available by Enverus.

f. "Order Form" means an ordering document specifying Enverus Products to be provided to Subscriber by Enverus.

g. "Party" and collectively "Parties" means Enverus and Subscriber.

h. "Subscriber" means the entity or individual with access to Enverus Products or named in an Order Form or invoice for Enverus Products.

i. "Subscriber Data" means all files or data that Enverus obtains from Subscriber, including as the result of Users using Enverus Products, but does not include Enverus Data.

j. "Term" means the total length of all subscription periods specified in an Order Form (e.g., if an Order Form includes subscriptions over a period of three years, then the Term is three years) plus any renewal periods.

k. "User" means an individual employee, contractor, or representative of Subscriber who is assigned a user ID and password to access Enverus Products. Each User must have a unique email address at a domain name controlled by Subscriber.

Exhibit H

CONFLICT OF INTEREST QUESTIONNAIRE**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.

Enverus, Inc.

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 7th 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.

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?

☐

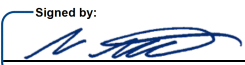
Yes

☐

No

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

4 ☒ **I have no Conflict of Interest to disclose.**

5 Signed by: 

Signature of vendor doing business with the governmental entity

4/16/2025

Date

Certificate Of Completion

Envelope Id: AA297ED8-385D-4D1B-97D4-72C3DD5932D9

Status: Sent

Subject: Please DocuSign: City Council Contract 8800 Load & Renewable Forecasting Services

Source Envelope:

Document Pages: 45

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US & Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

Holder: Christa Christian

Location: DocuSign

8/5/2025 11:40:39 AM

Christa.Christian@cityofdenton.com

Signer Events

Signature

Timestamp

Christa Christian

Completed

Sent: 8/5/2025 11:41:03 AM

christa.christian@cityofdenton.com

Viewed: 8/5/2025 11:41:16 AM

Purchasing Supervisor

Signed: 8/5/2025 11:41:21 AM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell



Sent: 8/5/2025 11:41:25 AM

lori.hewell@cityofdenton.com

Viewed: 8/5/2025 3:33:50 PM

Purchasing Manager

Signed: 8/5/2025 3:35:14 PM

City of Denton

Signature Adoption: Pre-selected Style

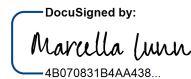
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Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 8/5/2025 3:35:18 PM

marcella.lunn@cityofdenton.com

Viewed: 8/5/2025 3:55:36 PM

Senior Deputy City Attorney

Signed: 8/5/2025 3:56:38 PM

City of Denton

Signature Adoption: Pre-selected Style

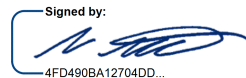
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Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Shawn Shillington



Sent: 8/5/2025 3:56:42 PM

shawn.shillington@enverus.com

Viewed: 8/5/2025 4:11:13 PM

General Counsel

Signed: 8/5/2025 4:11:31 PM

Enverus, Inc.

Signature Adoption: Uploaded Signature Image

Security Level: Email, Account Authentication (None)

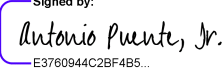
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Electronic Record and Signature Disclosure:

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ID: f3c41cf8-002c-4295-9ed5-31690018fc8e

Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None)	Signed by:  E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 8/5/2025 4:11:35 PM Viewed: 8/5/2025 4:28:23 PM Signed: 8/5/2025 4:28:41 PM

Electronic Record and Signature Disclosure:
 Accepted: 8/5/2025 4:28:23 PM
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Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	Sent: 8/5/2025 4:28:46 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Lauren Thoden
 lauren.thoden@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

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
Carbon Copy Events	Status	Timestamp

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 8/5/2025 11:41:24 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 8/5/2025 4:28:45 PM Viewed: 8/7/2025 11:16:25 AM

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Not Offered via DocuSign City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign Shane Wallin shane.wallin@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/5/2025 11:41:03 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.

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: 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 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 purchasing@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 purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, US 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:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** 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.

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.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB25-148, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Enverus, Inc., for Market Fundamentals and Analytics Services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8843 - awarded to Enverus, Inc., in the three (3) year not-to-exceed amount of \$247,500.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Christine Taylor
DATE: August 25, 2025

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Enverus, Inc., for Market Fundamentals and Analytics Services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8843 – awarded to Enverus, Inc., in the three (3) year not-to-exceed amount of \$247,500.00).

INFORMATION/BACKGROUND

Denton Municipal Electric (DME) is seeking a proven, commercially available, utility and wholesale market participant grade energy market data and analytics service that provides data and analytics to support real-time and short-term commercial decision-making and understanding of fundamental information impacting energy and associated product markets, specifically in the Electric Reliability Council of Texas (ERCOT) market. These services give DME staff greater capability to visualize and analyze generation patterns, congestion, outages, energy pricing, and other fundamentals in the ERCOT market.

Enverus' solution meets all the technical specifications outlined in this RFP, including:

1. Real-Time & Day-Ahead ERCOT Market Data & Congestion Monitoring
 - a. Interactive Real-Time & Day-Ahead ERCOT market data
 - b. Congestion data & analytics
2. Predictive Analytics & Forecasting of Real-Time & Day-Ahead ERCOT Market Data
 - a. Forecasted Real-Time & Day-Ahead pricing data
 - b. Forecasted congestion data & analytics
3. Visualization of Real-Time & Day-Ahead ERCOT Market Data & Analytics
 - a. Interactive dashboards & maps showing constraints, generation, outages, nodal prices, etc.
 - b. Customizable displays & visualization of historical data & analysis
4. Reporting of Real-Time & Day-Ahead & Forecasted ERCOT Market Data & Analytics
 - a. Power market reports detailing potential weather impacts, load, forecasted congestion, pricing, etc.
 - b. Ability to access all data via API, FTP, or other automated methods

Project Description	Estimated Three (3) Year Expenditure
Market Fundamentals & Analytics Year 1	\$75,000
Market Fundamentals & Analytics Year 2	75,000
Market Fundamentals & Analytics Year 3	75,000
Contingency (10%)	22,500
Total	\$247,500

If approved, staff will utilize this solution to support effective energy portfolio management operations, increase efficiencies, increase data collection, increase staff performance, and provide management with reporting data.

Requests for Proposals were sent to 916 prospective suppliers of these items, including 17 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Two (2) proposals were received and evaluated based upon published criteria, including delivery, compliance with specifications, probable performance, and price. Based upon this evaluation, Enverus, Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	208, 209, & 920
Notifications sent for Solicitation sent in IonWave:	916
Number of Suppliers that viewed Solicitation in IonWave:	37
HUB-Historically Underutilized Business Invitations sent out:	128
SBE-Small Business Enterprise Invitations sent out:	342
Responses from Solicitation:	2

RECOMMENDATION

Award a contract with Enverus, Inc., for Market Fundamentals and Analytics Services for Denton Municipal Electric, in a three (3) year not-to-exceed amount of \$247,500.

PRINCIPAL PLACE(S) OF BUSINESS

Enverus, Inc.
Austin, TX

ESTIMATED SCHEDULE OF PROJECT

This is a three (3) year contract.

FISCAL INFORMATION

These services will be funded from the Denton Municipal Electric Power Supply, Energy Management division budget account 600003.7804. Requisition #171294 has been entered into the Purchasing software system in the amount of \$75,000. The budgeted amount for this item is \$247,500.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Pricing Evaluation
Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Shane Wallin, 940-349-7521.

Legal point of contact: Marcella Lunn at 940-349-8333.

Exhibit 2
8843 - Pricing Evaluation for Market Fundamentals & Analytics Services

		Respondents Business Name:	Enverus, Inc.	Yes Energy LLC
		Principal Place of Business (City and State):	Austin, TX	Boulder, CO
Line #	Description		Bid	Bid
1	Data & Analytics Total 3-YR Cost will be for best value options/offer to meet the technical specifications in the scope of work.		\$225,000.00	\$480,000.00

Evaluation			
Item #	Scoring Criteria	Enverus, Inc.	Yes Energy LLC
1	Real-Time & Day-Ahead ERCOT Market Data & Congestion Monitoring - 20%	16.00	16.00
2	Predictive Analytics & Forecasting of Real-Time & Day-Ahead ERCOT Market Data - 10%	10.00	6.00
3	Visualization of Real-Time & Day Ahead ERCOT Market Data & Analytics - 15%	14.25	12.00
4	Reporting of Real-Time & Day Ahead & Forecasted ERCOT Market Data & Analytics - 5%	4.50	2.75
5	Delivery/Project Schedule - 5%	4.50	4.50
6	Probable Performance - 15%	13.50	9.75
7	Price, Total Cost of Ownership - 30%	30.00	14.06
Total Score:		92.75	65.06

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ENVERUS, INC., FOR MARKET FUNDAMENTALS AND ANALYTICS SERVICES FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8843 – AWARDED TO ENVERUS, INC., IN THE THREE (3) YEAR NOT-TO-EXCEED AMOUNT OF \$247,500.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for Market Fundamentals and Analytics Services for Denton Municipal Electric; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8843	Enverus, Inc.	\$247,500.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the

proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

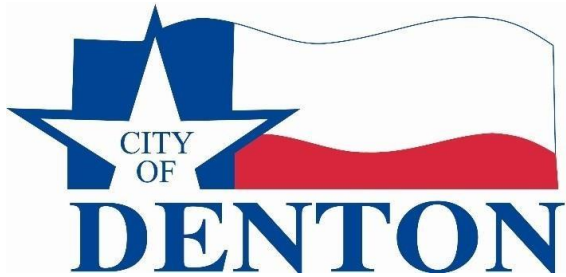
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

RFP	8843
File Name	Market Fundamentals & Analytics Services
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND ENVERUS, INC.
(Contract #8843)**

THIS CONTRACT (“Contract”) is made and entered into this date _____, by and between ENVERUS, INC. a Texas corporation, whose address 2901 Via Fortuna #100, Austin, Texas 78746, hereinafter referred to as “Contractor,” and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as “City”, to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or their duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City’s RFP# 8843 Market Fundamentals & Analytics Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions **(Exhibit “A”);**
- (b) City of Denton’s RFP 8843 (the “Solicitation”) **(Exhibit “B” on file at the office of the Purchasing Agent);**
- (c) City of Denton Standard Terms and Conditions **(Exhibit “C”);**
- (d) Certificate of Interested Parties Electronic Filing **(Exhibit “D”);**
- (e) Insurance Requirements **(Exhibit “E”);**
- (f) Contractor’s Proposal (“Contractor’s Offer”) **(Exhibit “F”);**
- (g) Contractor’s Order Form and Main Subscription Agreement (Exhibit “G”)
- (h) Form CIQ – Conflict of Interest Questionnaire **(Exhibit “H”)**

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

Prohibition on Contracts with Companies Boycotting Israel

Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this Contract, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contractor acknowledges that in accordance with Chapter 2276 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the Contract.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this Contract, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of this Contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 of the Texas Government Code restricts City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this Contract, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this Contract and will not become ineligible to receive payments under this Contract by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

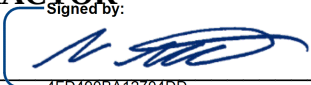
The City may terminate this Contract immediately without any further liability if the City determines, in its sole judgment, that this Contract meets the requirements under Chapter 2275 of the Texas Government Code, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly

controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this Contract in the year and day first above written.

CONTRACTOR

Signed by:
BY: 
4FD4905A12704DD
AUTHORIZED SIGNATURE

Printed Name: Shawn Shillington

Title: General Counsel

512-423-0208

PHONE NUMBER

shawn.shillington@enverus.com

EMAIL ADDRESS

2025- 1345791
TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY
CITY MANAGER

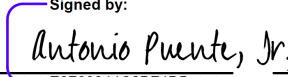
ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
BY: 
4B070631B4AA438...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

Signed by:

E3760944C2BE4B5...
SIGNATURE

Antonio Puente, Jr.
PRINTED NAME

DME General Manager
TITLE

Electric
DEPARTMENT

Exhibit A

Special Terms and Conditions

1. Total Contract Amount

The contract total for RFP# 8843 Market Fundamentals & Analytics Services, shall not exceed \$247,500. Pricing shall be per Exhibit F attached.

2. The Quantities

The quantities indicated on Exhibit F are estimates based upon the best available information. Individual purchase orders will be issued on an as needed basis.

3. Contract Terms

The contract term will be three (3) years, effective from date of award or notice to proceed as determined by the City Purchasing Department. At the sole option of the City, the Contract may be further extended as needed, not to exceed a total of six (6) months.

4. Price Escalation and De-escalation

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. Contractor should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Contractor must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued.

Pre-price increase prices must be honored on orders dated up to the official date of the City approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City reserves the right to accept, reject, or negotiate the proposed price changes.

Exhibit B
City of Denton's RFP 8843 File
On File at the Office of the Purchasing Agent

Exhibit C
City of Denton
Standard Purchase Terms and Conditions

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and Enverus, Inc. herein after referred to as Contractor. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Contractor. No Terms and Conditions contained in the Contractor's proposal response, invoice, or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the Contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, and 21 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, and 22 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

1. CONTRACTOR'S OBLIGATIONS. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable federal, State, and local laws, rules, and regulations.

2. EFFECTIVE DATE/TERM. Unless otherwise specified in the Solicitation or Exhibit A, this Contract shall be effective as of the date this Contract is signed by the City and shall continue in effect until all obligations are performed in accordance with the Contract.

3. CONTRACTOR TO PACKAGE DELIVERABLES: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Solicitation or Contractor's Offer, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address, purchase order or purchase release number, and the price agreement number, if applicable, (c) container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. SHIPMENT UNDER RESERVATION PROHIBITED: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. TITLE & RISK OF LOSS: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

6. DELIVERY TERMS AND TRANSPORTATION CHARGES: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Solicitation or Contractor's Offer. Unless otherwise stated in the Contractor's Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the purchase order.

7. RIGHT OF INSPECTION AND REJECTION: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. NO REPLACEMENT OF DEFECTIVE TENDER: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract to perform but not afterward. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

9. PLACE AND CONDITION OF WORK: This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The Contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

10. WORKFORCE This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way.

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A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not (1) while engaged in, participating, or responding to a solicitation; or (2) while in the course and scope of delivering goods or services under a City contract; or (3) on the City's property.

i. use or possess a firearm, including a concealed handgun that is licensed under State law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs, or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

IMMIGRATION: THE CONTRACTOR REPRESENTS AND WARRANTS THAT IT SHALL COMPLY WITH THE REQUIREMENTS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 AND 1990 REGARDING EMPLOYMENT VERIFICATION AND RETENTION OF VERIFICATION FORMS FOR ANY INDIVIDUALS HIRED ON OR AFTER NOVEMBER 6, 1986, WHO WILL PERFORM ANY LABOR OR SERVICES UNDER THE CONTRACT AND THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996 ("IIRIRA") ENACTED ON SEPTEMBER 30, 1996, AND SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY ACTION ARISING RELATED THERETO.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: This paragraph only applies to the purchase of services to be primarily performed at the City's premises or on City property/right-of-way. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules, and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

Environmental Protection: The Contractor shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

12. INVOICES:

A. The Contractor shall submit separate invoices on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

B. Proper Invoices must include a unique invoice number, invoice date, the purchase order number, and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if

applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable – accountspayable@cityofdenton.com. Approved invoices will be paid within thirty (30) calendar days of the invoice being received in Accounts Payable.

B. If payment is not timely made, (per Paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, including, but not limited to, those in Paragraph D , below, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches such shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due to the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials, or equipment;
- iv. damage to the property of the City or the City's agents, employees, or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, all required attachments, and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given to any awarded firm who is in arrears to the City for delinquent taxes of any kind or otherwise indebted to the City that the City shall be entitled to counterclaim and/or offset against any such debt, claim, demand, or account owed to the City through payment withholding until the debt is paid in full, and no assignment of such debt, claim, demand, or account after the said taxes or debt are due shall affect the right of the City to offset the said taxes or debt against same.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or Contract 8843

electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer. G. The Contractor acknowledges and agrees that the awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City will not incur a debt or obligation to pay Contractor any amounts the City does not have the current funds available to pay. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty or liability to the City, nor removal fees, cancellation fees, or the like charged to the City.

14. TRAVEL EXPENSES: All travel, lodging, and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the Contract Documents. During the term of this Contract, the Contractor shall bill and the City shall reimburse Contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the Contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. FINAL PAYMENT AND CLOSE-OUT:

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the fifteenth (15th) calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Contractor's Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

A. The Contractor agrees that the City shall, until the expiration of five (5) years after final payment under this Contract unless required to be retained for longer under applicable law, have

electronic access to and the right to examine all books, records, and computations pertaining to this Contract. If necessary, the City shall have the right to audit and make copies of the books, records, and computations pertaining to the Contract. The Contractor shall retain such books, records, documents, and other evidence pertaining to the Contract period and five (5) years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents, and other evidence shall be available, within ten (10) business days of written request. All books and records will be made available within a fifty (50) mile radius of the City if the Contractor is not able to provide electronic access. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor, material supplier, or other payee agrees that the City shall, until the expiration of five (5) years after final payment under the subcontract unless required to be retained for longer under applicable law, have electronic access to and the right to examine all books, records, documents, and other evidence of the Subcontractor, material supplier, or other payee involving transactions relating to the subcontract. If necessary, the City maintains the right to photocopy any physical books, documents, papers, and records of the subconsultant involving transactions relating to the subcontract. All books and records will be made available within a fifty (50) mile radius of the City. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

C. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents", and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. SUBCONTRACTORS:

A. If the Contractor-identified subcontractors ("Subcontractor") in a DBE/MBE/WBE agreed-to plan (the "Plan"), the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract Documents, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

V. REQUIRE THAT THE SUBCONTRACTOR INDEMNIFY AND HOLD THE CITY HARMLESS TO THE SAME EXTENT AS THE CONTRACTOR IS REQUIRED TO INDEMNIFY THE CITY.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

A. The Contractor warrants the prices quoted in the Contractor's Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Contractor's Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In the event Contractor breaches this warranty, in addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase, or in the alternative, the City may cancel this Contract without liability to Contractor for breach.

20. WARRANTY – TITLE: THE CONTRACTOR WARRANTS THAT IT HAS GOOD AND INDEFEASIBLE TITLE TO ALL DELIVERABLES FURNISHED UNDER THE CONTRACT, AND THAT THE DELIVERABLES ARE FREE AND CLEAR OF ALL LIENS, CLAIMS, SECURITY INTERESTS, AND ENCUMBRANCES. THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL ADVERSE TITLE CLAIMS TO THE DELIVERABLES.

21. WARRANTY – DELIVERABLES: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship, or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Contract Documents, to any samples furnished by the Contractor, to the terms, covenants, and conditions of the Contract, and to all applicable State, federal, or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned. In addition,

Contractor warrants that the goods sold to City shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA). In the event the product does not conform to OSHA standards, City may return the product for correction or replacement at the Contractor's expense. In the event Contractor fails to make the appropriate correction within a reasonable time, correction made by City will be at Contractor's expense.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract or required by the Solicitation, the warranty period shall be at least one (1) year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

F. Contractor shall not limit, exclude, or disclaim any implied warranties, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

22. WARRANTY – SERVICES: The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable federal, State, and local laws, rules or regulations.

A. The Contractor may not limit, exclude, or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect, or alternatively, at the City's option, render this Contract voidable.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one (1) year from the date of acceptance of the work. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights

under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses, and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. RIGHT TO ASSURANCE: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified (being a minimum of 5 days) after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. STOP WORK NOTICE: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

26. DEFAULT:

A. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely, and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

B. In the event the City terminates the awarded contract for default or any other reason, the Contractor shall not be relieved of liability to the City for damages sustained by the City by reason of any default of the contract by the Contractor or otherwise, and the City may withhold any payments to the Contractor for the purpose of an offset until such time as the amount of damages due the City from the Contractor can be determined.

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy

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available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and/or any offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

28. TERMINATION WITHOUT CAUSE: The City shall have the right to terminate the Contract, in whole or in part, without cause and/or for convenience any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, within thirty (30) days from termination any unpaid fees for the full contract term. The City reserves all rights, causes of action, and remedies available under law or in equity with respect to any dispute under this Contract and a termination under this provision does not waive such rights, causes of action, and remedies.

29. FRAUD: Fraudulent statements by the Contractor in any offer, Contract Document, or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. DELAYS:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in Paragraph 51. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. TIME OF COMPLETION AND LIQUIDATED DAMAGES: Contractor agrees and acknowledges that completing the services and/or delivering the goods described in this Contract in a timely manner is very important to the City. Contractor agrees to perform all obligations within the timeframes required. As it is impracticable and extremely difficult to fix the actual damages, if any, that may proximately result from a failure by Contractor to provide the goods or

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perform the service, should Contractor fail to timely perform its obligations, Contractor agrees to pay to City, or have withheld and offset from monies due it, the amount stated in the Contract Documents divided by 3 (3-year contract term) and then divided by 365 (total number of days in a year) as liquidated damages for each calendar day of delay or nonperformance. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. Execution of the Contract shall constitute agreement by the City and Contractor that said amount is the minimum value of the costs and actual damage caused by the Contractor's failure to timely perform. Adjustments to the contract times can only be made as provided in the Contract Documents and any conditions or specifications referenced therein.

32. INDEMNITY:

A. Definitions:

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments, and liability of every character, type, or description, including all reasonable costs and expenses of litigation, mediation, or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and Subcontractors; the officers, agents, and employees of such Subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's Subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

33. LIMITATION OF LIABILITY: This Contract does not, and shall not be interpreted to, contain an artificial limitation of liability (e.g. liability limited to contract price or liability capped at an amount actually paid in previous 3 months, etc.) or an artificial statute of limitations (e.g. any lawsuit must be commenced within one year of the event).

34. INSURANCE: The Contractor shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City outlined in the Insurance Exhibit attached hereto, if applicable. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City. The City reserves the right to add insurance during the contract term.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the Solicitation and the Insurance Exhibit.

35. CLAIMS: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

36. NOTICES: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the attention of its Chief Legal Officer, at Enverus, Inc., 2901 Via Fortuna #100, Austin, Texas 78746, and emailed to shawn.shillington@enverus.com, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

37. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code. The requirements of Subchapter J, Chapter 552 of the Texas Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

38. INDEMNIFICATION AGAINST INFRINGEMENTS: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. Moreover, Contractor does not know of any valid basis for any such claims. **THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM: (I) ANY CLAIM THAT THE CITY'S EXERCISE ANYWHERE IN THE WORLD OF THE RIGHTS ASSOCIATED WITH THE CITY'S' OWNERSHIP, AND IF APPLICABLE, LICENSE RIGHTS, AND ITS USE OF THE DELIVERABLES INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) THE CONTRACTOR'S BREACH OF ANY OF CONTRACTOR'S REPRESENTATIONS OR WARRANTIES STATED IN THIS CONTRACT. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE**

RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF. FURTHER, CONTRACTOR AGREES THAT THE CITY'S SPECIFICATIONS REGARDING THE DELIVERABLES SHALL IN NO WAY DIMINISH CONTRACTOR'S WARRANTIES OR OBLIGATIONS UNDER THIS PARAGRAPH AND THE CITY MAKES NO WARRANTY THAT THE PRODUCTION, DEVELOPMENT, OR DELIVERY OF SUCH DELIVERABLES WILL NOT IMPACT SUCH WARRANTIES OF CONTRACTOR. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONTRACT.

39. CONFIDENTIALITY: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

39. PUBLICATIONS: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. ADVERTISING: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, State, or local government.

41. NO CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. GRATUITIES: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or

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any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: The Contractor agrees to comply with the conflict of interest provisions of the City Code of Ordinances and/or State law. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance codified at Chapter 2, Article XI and in the City Charter Section 14.04, as amended. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire. The Contractor agrees to maintain current, updated disclosure of information on file with the Procurement Department throughout the term of this Contract.

44. NO SUBCONTRACTING BID AFTER AWARD: Following the award of the Contract, no subcontracting except that specifically identified in the response to the Solicitation will be permitted without the express prior written consent of the City.

45. NO GIFT OF PUBLIC PROPERTY: The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected Contractor.

46. INDEPENDENT CONTRACTOR: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City, or their designee under this Contract. The Contractor is expressly free to advertise and perform services for other parties while performing services for the City.

47. ASSIGNMENT-DELEGATION: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

The Contractor shall notify the City's Purchasing Manager, in writing, of a company name, Contract 8843

ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

48. WAIVER: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy.

49. MODIFICATIONS: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document submitted to the City by Contractor shall have any force or effect to change the terms, covenants, and conditions of the Contract.

50. INTERPRETATION: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

51. DISPUTE RESOLUTION:

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute, however any decision requiring approval of the City Council of the City will be required to be submitted to the City Council and the senior level person shall have authority to recommend approval of any resolution. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written

agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

C. The parties shall not be required to submit to binding arbitration.

52. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

53. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

54. HOLIDAYS: The following holidays are observed by the City:

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veteran's Day
Thanksgiving Day
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding the City Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the Denton City Manager or their authorized designee.

55. SURVIVABILITY OF OBLIGATIONS: All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract for fifteen (15) years.

56. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Contractor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City.

57. EQUAL OPPORTUNITY Contractor agrees that during the performance of its contract it will:

A. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.

B. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request. The Contractor shall be advised of any complaints filed with the City alleging that Contractor is not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this Contract for which purchase orders or authorities to deliver have not been included, however, the Contractor is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this Contract for which a purchase order has been issued or authority to deliver granted.

C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

58. BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)

The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in Paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs

associated with the manufacture of the end product.

iii. “Domestic end product” means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. “End product” means those articles, materials, and supplies to be acquired under the Contract for public use.

v. “Foreign end product” means an end product other than a domestic end product.

vi. “United States” means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Contractor shall submit documentation with their offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled “Buy American Act Certificate”.

59. RIGHT TO INFORMATION: The City reserves the right to use any and all information presented in any response to this Contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

60. LICENSE FEES OR TAXES: Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the Contractor.

61. PREVAILING WAGE RATES: The Contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website www.wdol.gov for Denton County, Texas (WD-2509).

62. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS: The Contractor shall comply with all State, federal, and local laws and requirements. The Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants; and (iii) Chapter 552 of the Texas Government Code, which outlines policy for public information. The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

63. FEDERAL, STATE, AND LOCAL REQUIREMENTS: Contractor shall demonstrate on-site compliance with the provisions of federal law dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance

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coverage and standard Workers' Compensation insurance coverage. Contractor shall ensure compliance with all federal and State tax laws and withholding requirements. The City shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

64. ATTORNEY'S FEES; LEGAL COSTS: Contractor and City agree that the City will not be required to pay Contractor's attorney's fees or legal costs under any circumstances, unless expressly required by law.

65. DRUG FREE WORKPLACE: The Contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

66. CONTRACTOR LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Contractor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City Procurement Manager in writing of any such damage within one (1) calendar day.

67. FORCE MAJEURE: The City, any Customer, and the Contractor shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City. In the event of an occurrence under this Section, the Contractor will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Contractor continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Contractor shall immediately notify the City Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

68. NON-WAIVER OF RIGHTS: Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

69. NO WAIVER OF SOVEREIGN IMMUNITY: The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of any immunities from Contract 8843

suit or from liability that the City may have by operation of law.

70. RECORDS RETENTION: The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Contractor shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract. In the event the value of this Contract is One Million (\$1,000,000) Dollars or greater: (i) all contracting information related to this contract will be preserved for the duration of the Contract; (ii) the Contractor shall provide any contracting information in its possession promptly upon request by the City; and (iii) at the expiration of this Contract, the Contractor will either provide all contracting information in its possession to the City or preserve same as required by the record retention requirements of the State of Texas.

71. PROCUREMENT LAWS: The City will not agree to any terms or conditions that cause the City to violate any federal, State, or local procurement laws, including its own Charter or Procurement Policy and any such laws included in boilerplate terms, online terms or other terms provided by the Contractor are considered null and void.

72. AUTHORITY: Contractor represents and warrants to the other that (a) it has company authority to execute and perform this Contract; (b) executing this Contract does not constitute a material conflict with, breach, or default under any applicable law, its respective organizational documents, or any documents, agreements, contracts or instruments which are binding upon it; and (c) this Contract creates valid, legal, and binding obligation enforceable against it, subject to applicable insolvency and bankruptcy laws. Contractor recognizes and agrees that a violation of this provision constitutes a material breach under this Contract.

Exhibit D
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the Contract is awarded, in accordance with Government Code 2252.908.

The Contractor shall:

1. Log onto the State Ethics Commission Website at :
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line.
(EX: Contract 8800 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

Exhibit E

INSURANCE REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor 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 Contractor, the 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 contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, 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. 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:

- 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- or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees, and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:

- Name as Additional Insured the City of Denton, its Officials, Agents, Employees, and volunteers.
 - 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.
 - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***
 - Should any of the required insurance be provided under a claims made form, 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 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.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE

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 \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE

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

Bodily Injury by Accident: \$100,000.00 Each Accident

Bodily Injury by Disease: \$100,000.00 Each Employee

Bodily Injury by Disease: \$500,000.00 Policy Limit

NOTES:

- a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.
- b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. PROFESSIONAL LIABILITY INSURANCE

If CONTRACTOR is a licensed or certified person who renders professional services, then **Professional Liability Insurance** to provide coverage against any claim which the CONTRACTOR becomes legally obligated to pay as damages arising out of the performance of professional services caused by any negligent error, omission or act with minimum limits of \$1,000,000.00 per claim, \$2,000,000.00 annual aggregate.

SUBCONTRACTING LIABILITY

(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 engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. 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.

EXHIBIT F - PRICE PROPOSAL

		Enverus, Inc
		Austin, TX
Line #	Description	3 Year Contract
1	Data & Analytics Total Cost will be for best value options/offer to meet the technical specifications in the scope of work.	\$225,000.00



ORDER FORM

Enverus is a global company with offices in the United States, Canada, Europe, and Asia. It provides products and services through Enverus, Inc., a corporation registered in Texas and headquartered in Austin, and through related entities operating in certain other jurisdictions. References to “we”, “our”, “us”, or “Enverus” are to the Enverus entity or entities providing products or services to City of Denton, TX (“Subscriber”). Subscriber and its Users hereby agree to this Order Form, the Main Subscription Agreement, and any other attachments hereto. Subscriber: (a) has read and understands the entire Agreement; (b) is authorized and intends to form a legally binding contract with Enverus; (c) will only use Enverus Products or Enverus Data for Internal Use and will not use Enverus Products or Enverus Data to produce or develop any commercial product or software; (d) may employ Artificial Intelligence (“AI”) tools such as large language models, neural networks, and similar technology, to enhance its utilization of the Enverus Products or analyze/interpret Enverus Data for Internal Use, so long as such use is confined to a Subscriber-controlled internal instance with stringent controls preventing external access; (e) will not upload Enverus Data or Product output to any third-party platform or software (including AI tools) that allows such data to be accessible by, or utilizes such data for the benefit of, third-parties, including the prohibition of using such data for the training or enrichment of any third-party platforms or software; (f) agrees that the Agreement, whether printed or electronic, constitutes a “writing” under any applicable law; (g) understands that the Agreement includes **WARRANTY DISCLAIMERS, INDEMNIFICATION FOR NEGLIGENCE, LIMITATION OF LIABILITY, AND WAIVER OF JURY TRIAL**, and (h) will cause all Users to abide by the Agreement.

PRICING INFORMATION IS CONFIDENTIAL TO ENVERUS AND MAY NOT BE DISCLOSED

Enverus may adjust the start date and end date, without increasing the total price or changing the term length, based on the date Enverus receives this executed Order Form and activates Enverus Products. If Subscriber acquires another Enverus customer or its affiliate (whether by merger, stock purchase, asset purchase, or otherwise), Subscriber’s fees may be increased to account for the combined entity. If resetting the start date, Enverus shall credit Subscriber for paid and unused subscription fees.

CONTACT INFORMATION

SUBSCRIBER BILLING NAME	BILLING ADDRESS	BILLING CONTACT NAME	BILLING EMAIL ADDRESS
City of Denton, TX	215 E McKinney St Denton Texas 76201 United States	Shane Wallin	shane.wallin@cityofdenton.com and ap@cityofdenton.com

SALESPERSON	EMAIL	BILLING TERM	PAYMENT TERM
Colin Groves	colin.groves@enverus.com	Annual	Net 30

TERM

Recurring Products and Services

Year 1

START DATE	END DATE	PRODUCT NAME	QTY	PERMITTED NUMBER OF AUTHORIZED USERS
9/29/2025	9/28/2026	Enverus P&R - MUSE	1.00	9
9/29/2025	9/28/2026	Enverus P&R - MUSE - ERCOT	1.00	9
9/29/2025	9/28/2026	Enverus P&R - Short-Term Forecast	1.00	9
9/29/2025	9/28/2026	Enverus P&R - Short-Term Forecast - ERCOT	1.00	9
9/29/2025	9/28/2026	Enverus P&R - Flash Publications - Analyst Access	1.00	9

START DATE	END DATE	PRODUCT NAME	QTY	PERMITTED NUMBER OF AUTHORIZED USERS
9/29/2025	9/28/2026	Enverus P&R - Flash Publications - Analyst Access - ERCOT	1.00	9
Year 1 TOTAL:				USD 75,000.00

Year 2

START DATE	END DATE	PRODUCT NAME	QTY	PERMITTED NUMBER OF AUTHORIZED USERS
9/29/2026	9/28/2027	Enverus P&R - MUSE	1.00	9
9/29/2026	9/28/2027	Enverus P&R - MUSE - ERCOT	1.00	9
9/29/2026	9/28/2027	Enverus P&R - Short-Term Forecast	1.00	9
9/29/2026	9/28/2027	Enverus P&R - Short-Term Forecast - ERCOT	1.00	9
9/29/2026	9/28/2027	Enverus P&R - Flash Publications - Analyst Access	1.00	9
9/29/2026	9/28/2027	Enverus P&R - Flash Publications - Analyst Access - ERCOT	1.00	9
Year 2 TOTAL:				USD 75,000.00

Year 3

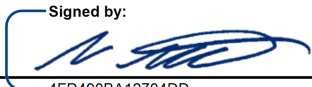
START DATE	END DATE	PRODUCT NAME	QTY	PERMITTED NUMBER OF AUTHORIZED USERS
9/29/2027	9/28/2028	Enverus P&R - MUSE	1.00	9
9/29/2027	9/28/2028	Enverus P&R - MUSE - ERCOT	1.00	9
9/29/2027	9/28/2028	Enverus P&R - Short-Term Forecast	1.00	9
9/29/2027	9/28/2028	Enverus P&R - Short-Term Forecast - ERCOT	1.00	9
9/29/2027	9/28/2028	Enverus P&R - Flash Publications - Analyst Access	1.00	9
9/29/2027	9/28/2028	Enverus P&R - Flash Publications - Analyst Access - ERCOT	1.00	9
Year 3 TOTAL:				USD 75,000.00

AUTHORIZED SIGNATURES

City of Denton, TX

Enverus

Signature: _____
Name (Print): _____
Title: _____
Date: _____

Signature: 
Name (Print): Shawn M. Shillington
Title: General Counsel
Date: 8/5/2025

Subscriber Billing and Notice Information

Enverus Notice Information

Name: Accounts Payable Shane Wallin
Address: _____
Phone: _____
Email: accountspayable@cityofdenton.com

shane.wallin@cityofdenton.com

Name: Shawn M. Shillington
Address: 2901 Via Fortuna Building 6, Suite 100, Austin, TX, 78746
Phone: (512) 477-9200
Email: shawn.shillington@enverus.com

MAIN SUBSCRIPTION AGREEMENT

1. Product Access. During the Term and subject to Subscriber's compliance with this Agreement, Enverus grants Subscriber a limited, non-exclusive, non-transferable, non-sublicensable, revocable license for Users to use Enverus Products solely for Internal Use. Products shall not be shared with affiliates or any third parties unless otherwise agreed to by Enverus in writing. Additional Users or Products may be added pursuant to an email submitted or confirmed by Subscriber. The Products are subject to usage limits specified in the Order Form and Documentation. If Subscriber exceeds usage limits, Subscriber will execute an Order Form for additional quantities of the applicable Products promptly upon Enverus' request and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below. Enverus may suspend or terminate access to all Enverus Products if Subscriber or any User is suspected of violating this Agreement.

2. Internal Use.

- a. As used herein, "Internal Use" means ordinary use for internal business purposes solely for the benefit of Subscriber (not including affiliates unless specified on the applicable Order Form). Upon request from Enverus, Subscriber shall demonstrate and discuss the scope of such use with Enverus.
- b. If Subscriber uses Enverus Products or Enverus Data to create projects, designs, reports, or other documents that are accessible by any third party, then:
 - i. Any included Enverus Data shall be limited to individual data points in text (not a database).
 - ii. Any included images or tables based on Enverus Data must be static image files (e.g., pdf or jpeg, not xls or csv) that do not display specific data points and from which it is not possible to reverse engineer, extract, or manipulate such data.
 - iii. Any such projects, designs, reports, or other documents may be provided to third parties only on an ad-hoc, asynchronous basis (not as part of a regular distribution, software product, or webpage and not updated in real-time or in accordance with a regular schedule) in a manner that is not capable of use substantially as a substitute for the Enverus Data or Products.
 - iv. Subscriber shall attribute Enverus by prominently including "Source: Enverus" and shall provide Enverus a copy upon request.
- c. "Internal Use" does not include the following and Subscriber shall not and shall not permit or authorize any third party to:
 - i. Extend any warranties on behalf of Enverus or imply that Enverus is responsible for reliability, accuracy, completeness, or currency of any information.
 - ii. Provide any third party with packages or summaries of Enverus Data or any material marked "Confidential" or "Not for distribution."
 - iii. Use Enverus Products, Enverus Data, or any Enverus API other than for the Internal Use or sell, lease, license, sublicense, rent, loan, share, pledge, or otherwise transfer, with or without consideration, all or any part of Enverus Products or Enverus Data or permit third parties or Subscriber personnel that are not Users to benefit from them, including a timesharing, rental, outsourcing, service bureau, networking, hosted service, or other arrangement.
 - iv. Use Enverus Products, Enverus Data, or any Enverus API (1) to produce a commercial product or develop software in any form; (2) to build, develop, or provide any third parties or Subscriber personnel that are not Users with any software, code, scripts, models, interpretations, training data, apps, platforms, exchanges, websites, widgets, plugins or other tools; or (3) modify, copy, or create derivative works, packages, or summaries of any Products, Enverus Data, or Enverus API or any part, feature, function or user interface thereof.

- v. Reverse engineer, decompile, decrypt, or disassemble Products, or attempt to de-aggregate or de-anonymize any data or information that has been aggregated or anonymized, remove proprietary notices or labels, use any robot, spider, or other automated method (other than an Enverus API) to access, download, or reproduce Enverus Data, or use Products in a way that causes a denial of service for other users or interferes with or unduly burdens performance.
- vi. Disclose or permit any third party to use confidential information of Enverus, including (i) Enverus Data, (ii) Documentation or technical information related to Enverus Products, and (iii) the provisions of this Agreement (including pricing).
- d. Subscriber is authorized to employ Artificial Intelligence (“AI”) tools such as large language models, neural networks, and similar technology, to enhance its utilization of the Enverus Products or analyze/interpret Enverus Data for Internal Use. This usage shall comply with Subscriber’s obligations under this Agreement, including maintaining the confidentiality of the Enverus Products and Enverus Data. Subscriber expressly agrees that:
 - i. *AI Platform Uploads.* Subscriber may upload Enverus Data or Product output to third-party or external AI platforms (e.g., Microsoft Copilot). However, Subscriber represents and warrants that such uploads are only to Subscriber-controlled internal instances and that such platforms do not utilize the uploaded Enverus Data or Enverus Product output for AI enrichment or training purposes or make such data otherwise available or accessible to any third parties.
 - ii. *Prohibition on Commercial Product Development.* Subscriber shall not use any AI in conjunction with Enverus Data or Enverus Product output to create or develop any products or services intended for commercial sale. This includes, but is not limited to, software, derivative datasets, or consulting deliverables.

3. Subscriber Responsibilities. Subscriber is responsible for all activities of its Users, obtaining and maintaining any Subscriber equipment and any ancillary services needed to connect to, access, or use Enverus Products. Subscriber shall: (a) be responsible for Users’ compliance with this Agreement; (b) be responsible for the accuracy, quality and legality of Subscriber Data, the means by which Subscriber acquired Subscriber Data, Subscriber’s use of Subscriber Data with Enverus Products, and the interoperation of any Non Enverus Applications with which Subscriber uses Products; (c) use commercially reasonable efforts to prevent unauthorized access to or use of Products, and notify Enverus promptly of any such unauthorized access or use; (d) use Products only in accordance with this Agreement and applicable laws and government regulations

4. Fees and Payment.

- a. *Fees.* Subscriber will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Products purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.
- b. *Invoicing and Payment.* Fees will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, fees are due net 30 days from receipt of the invoice. Subscriber is responsible for providing complete and accurate billing and contact information to Enverus and notifying Enverus of any changes to such information.
- c. *Overdue Charges.* If any invoiced amount is not received by Enverus by the due date, then without limiting Enverus’ rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.
- d. *Suspension of Product Access.* If any charge owing by Subscriber is 30 days or more overdue, Enverus may, without limiting its other rights and remedies, suspend access to all Enverus Products until such amounts are paid in full, provided Enverus has given Subscriber at least 10 days’ prior notice that its account is overdue in accordance with the “Notices” section below.
- e. *Taxes.* Enverus fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, accessible by any jurisdiction whatsoever (collectively, “Taxes”). For clarity, Enverus is solely responsible for taxes assessable against it based on its income, property, and employees.

- f. *Accounts under \$10,000 per year.* All subscribers under \$10,000 per year must have a valid ACH on file for billing purposes. Alternative payment methods (e.g., check by mail) are acceptable and will be invoiced at Subscriber's request, but if payment is not received on time, the payment method on file will be charged. Payment methods will be securely stored and automatically billed upon renewal, unless timely cancellation notice is received. Failure to maintain a valid credit card or ACH payment method on file may result in suspension or termination of the Enverus subscription.

5. Term and Termination.

- a. *Term of Agreement Intentionally Omitted.*
- b. *Termination.* Intentionally Omitted.
- c. *Refund or Payment upon Termination.*
- i. *By Subscriber.* If this Agreement is terminated by Subscriber for material breach in accordance with the "Termination" section above, Enverus shall pay to Subscriber, within thirty (30) days, a pro rata refund for any prepaid fees covering the remainder of the term of the Order Form after the effective date of termination. If this Agreement is terminated by Subscriber for convenience in accordance with the "Termination" section above, Subscriber shall pay to Enverus, within thirty (30) days, any unpaid fees for the full Term, including any Renewal Term in accordance with Section 5b. Any fees that otherwise would have become due later in the Term shall accelerate and immediately become due and payable. In no event will termination relieve Subscriber of its obligation to pay any fees payable to Enverus.
- ii. *By Enverus.* If this Agreement is terminated by Enverus for material breach in accordance with the "Termination" section above, Subscriber will pay any unpaid fees for the full Term, including any Renewal Term in accordance with Section 5b. Any fees that otherwise would have become due later in the Term shall accelerate and immediately become due and payable. If this Agreement is terminated by Enverus for convenience in accordance with the "Termination" section above, Enverus shall issue a pro rata refund to Subscriber for any prepaid fees covering the period after the effective date of termination.
- d. *Results of Termination.* Upon termination or expiration of the Agreement (i) all rights, licenses, and access to Enverus Products terminate; (ii) Subscriber shall promptly destroy all copies (including copies in email) of all Enverus Data in Subscriber's possession or control; (iii) Subscriber shall cause each User to certify that it has completed these procedures and provide such certifications to Enverus; and (iv) Enverus may pursue any remedies available at law or in equity. Subscriber may retain Enverus Data to the extent necessary to comply with applicable law or archival policies, subject to continued application of this Agreement. If Subscriber's Product access changes, this provision shall apply to Products to which Subscriber no longer has access. If Subscriber makes any material misrepresentations to Enverus or materially violates Section 2 of this Agreement or this Section 5e, then until such violations are cured and all provisions of this Section 5e have been complied with, Subscriber shall pay Enverus an amount per day equal to three times Subscriber's most recent annual fees divided by 365, as liquidated damages and not as a penalty, which Subscriber agrees is reasonable given the difficulty in determining actual damages.

6. Representations, Warranties, Exclusive Remedies, and Disclaimers.

- a. *Representations.* Each Party represents that it has validly entered into this Agreement and has the legal power to do so.
- b. *Enverus Warranties.* Enverus warrants that:
 - i. The Products will perform materially in accordance with the applicable Documentation.
 - ii. Enverus will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Subscriber Data. Those safeguards will include measures designed to prevent unauthorized access to or disclosure of Subscriber Data (other than by Subscriber's Users).

iii. For any breach of an above warranty, Subscriber's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections above.

c. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ENVERUS DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, ORAL, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING BY VIRTUE OF CUSTOM OF TRADE OR COURSE OF DEALING, TO THE MAXIMUM EXTENT PERMITTED BY LAW. ENVERUS DOES NOT REPRESENT OR WARRANT THAT THE PRODUCTS WILL MEET REQUIREMENTS OR THAT THEY ARE SUITABLE FOR NEEDS OR THAT THE DATA OR RESULTS ARE CORRECT, ACCURATE, TIMELY, COMPLETE, SUITABLE, OR RELIABLE. PROPRIETARY DATA IS COMPILED FROM SOURCES BEYOND ENVERUS' CONTROL AND ERRORS, GAPS, AND INACCURACIES MAY EXIST. THE PRODUCTS AND PROPRIETARY DATA ARE PROVIDED ON AN "AS IS WITH ALL FAULTS" BASIS WITHOUT WARRANTIES OF ANY KIND. SUBSCRIBER ASSUMES ALL RISK OF ERRORS AND OMISSIONS IN THE PRODUCTS AND PROPRIETARY DATA. THE PRODUCTS ARE A SUPPLEMENT TO, NOT A SUBSTITUTE FOR, THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF PROFESSIONALS. SUBSCRIBER ACCEPTS ALL RISKS IN ITS USE OF THE PRODUCTS INCLUDING BUT NOT LIMITED TO ANY INVESTMENT, ACQUISITION, DEVELOPMENT, PRODUCTION OR FINANCIAL DECISIONS. NO INFORMATION OBTAINED THROUGH USE OF THE PRODUCTS SHALL CONSTITUTE INVESTMENT ADVICE, TRADING RECOMMENDATIONS, OR TRADING INFORMATION. THESE DISCLAIMERS SHALL APPLY REGARDLESS OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME OF THE ABOVE MAY NOT APPLY IN JURISDICTIONS THAT DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES.

7. Indemnification.

a. *Enverus Indemnity.* Subject to Section 7c, Enverus shall defend, indemnify, and hold harmless Subscriber against any action to the extent based on a claim that the unmodified Products infringe a patent, copyright, or trademark ("IP Claim"). If adjudged to infringe, Enverus shall, at its option (i) procure for Subscriber the right to continue using Enverus Products, (ii) modify or replace Enverus Products so that they do not infringe, or (iii) terminate the Agreement and refund the part of the pre-paid fee applicable to period after termination. Enverus shall have no liability for claims based on: (1) use of other than current, unaltered Products, (2) use of Products in combination with non-Enverus products, software, services, or data, (3) third-party software or data, or (4) failure to use Enverus Products in accordance with the Documentation, this Agreement, or for their intended purpose. **THE FOREGOING STATES THE ENTIRE LIABILITY OF ENVERUS AND THE EXCLUSIVE REMEDY OF SUBSCRIBER WITH RESPECT TO CLAIMS OF INFRINGEMENT OF ANY KIND.**

b. *Subscriber Indemnity.* Intentionally Omitted.

c. *Conditions.* The City shall: (i) promptly notify Enverus in writing of any claim (failure to provide such prompt notice shall only affect the rights to the extent that such failure has a prejudicial effect on the defenses or other rights available to Enverus), (ii) allow Enverus to have sole control of the defense and all related settlement negotiations (the City may retain independent counsel at its own expense), and (iii) provide Enverus with the information, authority and assistance necessary to perform Enverus' obligations under this Section.

8. Limitation of Liability. Intentionally Omitted.

9. Data Processing.

a. *Personal Data.* Our privacy policy describes our practices regarding our collection and use of personal information in the course of our business, including the course of providing Enverus Products to the Subscriber. In particular, our privacy policy describes the types of personal information we collect; how we collect, use, and share personal information; our legal basis for

using personal information; how long we keep personal information; how we protect personal information; the countries to which we may transfer personal information, and the rights of individuals regarding their personal information. Our privacy policy is accessible on our website at <https://www.enverus.com/privacy-policy/>. It is updated from time to time, so we encourage you to review it regularly. The Subscriber represents and warrants to Enverus that any personal information which the Subscriber provides to us is collected, used, and shared by the Subscriber in accordance with applicable data protection laws. In no event shall Enverus retain, use, sell or disclose any personal information or data that we have received from Subscriber for any purpose other than for the specific purpose of providing Enverus Products specified in this Agreement, except as may be required by law.

To the extent Personal Data from the European Economic Area (EEA), the United Kingdom or Switzerland are processed by Enverus, the Standard Contractual Clauses of the General Data Protection Regulation (GDPR), as further set forth in an applicable data processing addendum, and/or, if applicable, Enverus' commitments under the Data Privacy Framework shall apply. For the purposes of the Standard Contractual Clauses, Subscriber is the controller and data exporter. Subscriber's acceptance of this Agreement shall be treated as its execution of the Standard Contractual Clauses and Appendices. Upon request by Subscriber made within 30 days after the effective date of termination or expiration of this Agreement, Enverus will make Subscriber Data available to Subscriber for export or download. After such 30-day period, Enverus will have no obligation to maintain or provide any Subscriber Data.

b. *Anonymized Data.* Anonymized Data refers to information or data that has been collected and aggregated from multiple sources or individual data points derived from Product usage into anonymized form. This process is done to protect the privacy and confidentiality of the original source while providing valuable insights and trends into our Products, and is used for statistical analysis, reporting, research, and development purposes. Subscriber acknowledges and agrees that Enverus may collect, store, and use such information for any lawful business purpose. Enverus may disclose such Anonymized Data to third parties without restriction. Anonymized Data shall not include any sensitive or personal information. This Section 9 does not give Enverus the right to identify Subscriber as the source of the Anonymized Data.

c. *Subscriber Data.* Enverus will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Subscriber Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification, or disclosure of Subscriber Data by Enverus personnel except (a) to provide Enverus Products and prevent or address service or technical problems, (b) as compelled by law in accordance with the "Confidentiality: Compelled Disclosure" section below, or (c) as expressly permitted in writing by Subscriber. Subscriber warrants that the Subscriber Data will not infringe the Intellectual Property rights or other legal rights of any person or third party, and will not breach the provisions of any law, statute, or regulation, in any jurisdiction. If a data processing addendum ("DPA" available at www.enverus.com/wpcontent/uploads/2022/10/Enverus-Standard-DPA-Oct-2022-v2.docx.pdf) is agreed to by Subscriber and Enverus, then the DPA shall be incorporated herein. Subscriber shall not upload, transmit, or store any Subscriber Data that could be reasonably considered Personally Identifiable Information (PII) within Enverus Products without obtaining prior written consent from Enverus. Enverus shall not be liable for any damages, losses, or claims arising from Subscriber's violation of this provision.

10. Ownership / Feedback / Reference. The Products, Enverus Data, Anonymized Data, and all derivatives thereof and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights associated therewith are the valuable, exclusive property of Enverus protected by contract and intellectual property laws. This Agreement does not transfer or assign any ownership rights to Subscriber or anyone else, nor shall Subscriber challenge Enverus' ownership of such property. Enverus reserves the right to alter Enverus Products, implement user priorities, implement rules for use, discontinue certain functional aspects of Enverus Products, or add, withdraw, or alter any Enverus Data. Any ideas, feedback, suggestions, corrections, alterations, improvements, additional data points, requests, questions, comments, results of any test or evaluation and the like provided by Subscriber to Enverus ("Feedback"), including any enhancement, improvements, or new features to same, will be the property of Enverus. Subscriber hereby assigns and agrees to assign to Enverus all right, title and interest worldwide in the Feedback and the related intellectual property rights. Enverus may publicly identify Subscriber as a customer, including on its website, government filings, and in marketing materials.

11. Unauthorized Use. Enverus may utilize security keys and other enforcement mechanisms in Enverus Products. Subscriber shall not attempt to defeat or circumvent any encryption, security, or enforcement mechanisms. Subscriber will prevent unauthorized

use of Enverus Products and immediately notify Enverus of any unauthorized use. Subscriber will require each User to keep its user ID and password for Enverus Products confidential and not share user IDs with other companies or individuals. If Subscriber or any User suspects that any of its passwords have been disclosed or made known to any other person or if any User ceases to be an employee or contractor of Subscriber, Subscriber will immediately notify Enverus at support@enverus.com. Enverus shall have the right to suspend, cap, limit, or disable file transfers, downloads, and exports as part of Product design, to protect Enverus Data, or to facilitate operations.

12. Additional Security Measures. Subscriber may need to enable additional security measures, such as two-factor authentication, in order to access particular features of some Enverus Products. If Subscriber subsequently removes those security features, Subscriber or Users may not be able to continue to access particular features of the applicable Enverus Products.

13. Confidentiality.

a. *Definition of Confidential Information.* “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), that is clearly marked as confidential. Confidential Information of Subscriber includes Subscriber Data; Confidential Information of Enverus includes Enverus Products, Enverus Data, pricing, business and marketing plans, technology and technical information, product plans and designs, and business processes. However, Confidential Information does not include Anonymized Data or any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach

b. of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

c. *Protection of Confidential Information.* The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel, and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's, or accountant's compliance with this "Confidentiality" section.

c. *Compelled Disclosure.* The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information. Enverus acknowledges that the City of Denton must strictly comply with the Public Information Act, Chapter 552, *Texas Government Code* in responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. Any portions of such material claimed by Enverus to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, chapter 552, and *Texas Government Code*.

14. Force Majeure. Enverus shall not be liable for any loss or liability related to a Force Majeure event. Such events include electrical outages, fires, floods, extraordinary weather conditions, earthquakes, acts of God, pandemics, equipment failures, DoS/DDoS or similar attacks, connection problems, weather, strikes, walkouts, riots, armed conflicts, terrorism, labor dispute, action of government, communications or power failure, equipment or software malfunctions, wild beasts, acts of war, or any causes outside the reasonable control of Enverus. Enverus shall have no responsibility to provide access to Enverus Products during such delays or interruption regardless of the cause and shall not be deemed to be in breach of this Agreement as a result thereof. Enverus shall promptly notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

15. Third Party Content. The Products may contain data obtained from data providers or other third parties, content posted by customers, and links to third-party websites or resources ("Third-Party Content"). Enverus is not responsible for external sites or resources and has no control over, does not endorse, and does not make any representations or warranties with respect to Third-Party Content. Enverus is not responsible or liable for any damage related to use of or reliance on any Third-Party Content. Subscriber shall evaluate, and bear all risks associated with, the use of any Third-Party Content, including any reliance on the accuracy, completeness, or usefulness. Subscriber's correspondence or business dealings with, or participation in promotions of, providers of Third-Party Content, including payment and delivery of related products or services, and any other terms, conditions, warranties, or representations associated with such dealings, are solely between Subscriber and such providers. Enverus respects intellectual property rights and asks Subscriber to do the same and reserves the right, in its sole discretion, to terminate access for any User who is the subject of infringement notifications.

16. Assignment. Subscriber shall not transfer or assign, whether by operation of law, merger, change of ownership, change of control or otherwise, this Agreement or any of the rights conferred or obligations imposed by this Agreement, without Enverus' written permission, which may be withheld in Enverus' sole discretion. No transfer or assignment shall discharge any obligations under this Agreement. Attempted assignment in violation of this provision shall be void and of no effect. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the Parties' and their respective permitted successors, transferees, and assigns. If Subscriber acquires or is acquired by another Enverus customer or its affiliate (regardless of the form of the transaction),

Subscriber's fee may be increased to account for the combined entity. Enverus shall provide prompt written notice of assignment to Subscriber.

- 17. Relationship of the Parties.** This Agreement shall not create or establish an agency, partnership, or joint venture between the Parties and the Parties jointly and severally disclaim any such relationship. The Parties are acting solely as independent contractors and neither Party owes any fiduciary, special, implied, or other duty to the other Party.
- 18. Waiver of Trial by Jury.** IN ANY JUDICIAL PROCEEDINGS, THE PARTIES KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.
- 19. Enverus Contracting Entity, Notices, Governing Law, and Venue.** The Enverus entity entering into this Agreement, the address to which Subscriber should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depending on where the Subscriber is domiciled, shall be as follows:

If Subscriber is domiciled in:	The Enverus entity entering into this Agreement is:	Notices should be addressed to:	Governing Law:	Courts with exclusive jurisdiction are:
The United States of America or any nation besides Canada or Spain	Enverus, Inc., a Texas Corporation	2901 Via Fortuna Building 6, Suite 100 Austin, TX, 78746	Texas and controlling United States Federal Law	Denton, Denton County, Texas, U.S.A.
Canada	Enverus Canada, Inc., an Alberta Corporation	2901 Via Fortuna Building 6, Suite 100 Austin, TX, 78746	Alberta and controlling Canadian Federal Law	Calgary, Alberta, Canada
Spain	Enverus, Inc., a Texas Corporation	2901 Via Fortuna Building 6, Suite 100 Austin, TX, 78746	Community of Madrid and controlling Spanish Federal Law	Madrid, Community of Madrid, Spain

Enverus may also seek injunctive or equitable relief in any court. The UN Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA) are specifically excluded. Subscriber agrees that any breach of Enverus' intellectual property rights, including confidential or proprietary information and restrictions on use, will cause Enverus irreparable damage for which recovery of money damages would be inadequate, and Enverus shall therefore be entitled to obtain injunctive relief to protect such rights. Subscriber hereby waives the requirement of a bond in the event Enverus seeks injunctive relief. In addition to any other relief, at law or in equity, Enverus shall be entitled to recover from Subscriber all attorneys' fees and any costs of any litigation.

- 20. Export Controls.** The Products are subject to U.S. Export Administration Regulations. Diversion or use contrary to U.S. or other applicable law and regulation is prohibited. Subscriber agrees not to export, import, or transmit Products, Enverus Data or any other software or technical data to any country or end user or for any use in (1) any countries subject to U.S. trade embargoes (and all other nations that may from time to time be included on such a list); or (2) any persons or entities on the U.S. "Denied Persons List," "Specially Designated Nationals List," and "Entities List;" or (3) other locations or persons prohibited by law. Subscriber

represents that neither the U.S. Bureau of Industry and Security nor any other governmental agency has issued sanctions against Subscriber or denied Subscriber's export privileges.

21. Anti-Corruption. Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other Party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

22. Notices. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (d) the day of sending by email. Notices to Enverus will be addressed to the attention of its Chief Legal Officer, at Enverus, Inc., 2901 Via Fortuna #100, Austin, Texas 78746, and emailed to shawn.shillington@enverus.com. Notices to Subscriber will be addressed to the relevant contact designated by Subscriber on the applicable Order Form.

23. Audit. Intentionally Omitted.

24. Amendments.

a. This Agreement may only be amended by the signed written agreement of both parties, unless otherwise expressly permitted within the Agreement.

b. Enverus may add or delete Products or Enverus Data and change its technical specifications. Unless precluded by malfunction, emergency or regulatory requirement, Enverus will use commercially reasonable efforts to provide Subscriber with: (i) advance notice of any such changes; or (ii) ninety (90) Days' advance notice for material changes. If there is an amendment under this section that results in a deletion of a Product or Enverus Data Subscriber is subscribed to; Subscriber will receive an equitable adjustment in any applicable fees, provided that Enverus has been given 30 days to cure such deletion.

25. Definitions.

a. "Anonymized Data" means information or data that has been collected and aggregated from multiple sources or individual datapoints derived from Subscriber's Product usage into anonymized form. Any identifying details related to any specific individual or entity shall be removed.

b. "Agreement" means this Main Subscription Agreement and any Order Forms, exhibits, schedules, and addenda attached hereto or later entered into in the future that reference this Main Subscription Agreement, which shall all collectively be considered one agreement.

c. "Documentation" means Enverus' online user guides, documentation, and help and training materials, as updated from time to time, provided by Enverus or accessible via Enverus.com or login to the applicable Product.

d. "Enverus Data" means all files or data that Subscriber obtains from Enverus or by using Enverus Products, including all databases, elements, records, documents, indexes, analyses, models, maps, tables, charts, PDFs, APIs, Anonymized Data, and all structured, augmented, or other value-added data derived from Subscriber Data or other data points, regardless of the source of the underlying information.

e. "Enverus Products" means the products and services ordered by Subscriber under an Order Form and made available by Enverus.

f. "Order Form" means an ordering document specifying Enverus Products to be provided to Subscriber by Enverus.

g. "Party" and collectively "Parties" means Enverus and Subscriber.

h. "Subscriber" means the entity or individual with access to Enverus Products or named in an Order Form or invoice for Enverus Products.

i. "Subscriber Data" means all files or data that Enverus obtains from Subscriber, including as the result of Users using Enverus Products, but does not include Enverus Data.

j. "Term" means the total length of all subscription periods specified in an Order Form (e.g., if an Order Form includes subscriptions over a period of three years, then the Term is three years) plus any renewal periods.

k. "User" means an individual employee, contractor, or representative of Subscriber who is assigned a user ID and password to access Enverus Products. Each User must have a unique email address at a domain name controlled by Subscriber.

Exhibit H - Form

CIQ

CONFLICT OF INTEREST QUESTIONNAIRE**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.**Enverus, Inc.****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 7th 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.

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.

4 ☒ **I have no Conflict of Interest to disclose.****5**

Signed by:



4FD490BA12704DD0

Signature of vendor doing business with the governmental entity

June 9, 2025

Date

Certificate Of Completion

Envelope Id: 994DE7C4-0374-4684-A9A1-A7BBB736C6F6

Status: Sent

Subject: Please DocuSign: City Council Contract 8843 Market Fundamentals & Analytics Services

Source Envelope:

Document Pages: 46

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US & Canada)

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

Holder: Christa Christian

Location: DocuSign

8/5/2025 11:38:47 AM

Christa.Christian@cityofdenton.com

Signer Events

Signature

Timestamp

Christa Christian

Completed

Sent: 8/5/2025 11:39:32 AM

christa.christian@cityofdenton.com

Viewed: 8/5/2025 11:39:46 AM

Purchasing Supervisor

Signed: 8/5/2025 11:39:50 AM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell



Sent: 8/5/2025 11:39:54 AM

lori.hewell@cityofdenton.com

Viewed: 8/5/2025 3:32:16 PM

Purchasing Manager

Signed: 8/5/2025 3:33:21 PM

City of Denton

Signature Adoption: Pre-selected Style

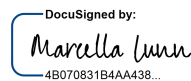
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Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 8/5/2025 3:33:26 PM

marcella.lunn@cityofdenton.com

Viewed: 8/5/2025 3:49:10 PM

Senior Deputy City Attorney

Signed: 8/5/2025 3:53:42 PM

City of Denton

Signature Adoption: Pre-selected Style

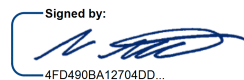
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Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Shawn Shillington



Sent: 8/5/2025 3:53:46 PM

shawn.shillington@enverus.com

Viewed: 8/5/2025 3:58:23 PM

General Counsel

Signed: 8/5/2025 3:58:53 PM

Enverus, Inc.

Signature Adoption: Uploaded Signature Image

Security Level: Email, Account Authentication (None)

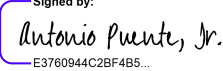
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Electronic Record and Signature Disclosure:

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ID: 137aa0ef-961b-4dc7-b06d-e17fe9c756ac

Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None)	Signed by:  E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 8/5/2025 3:58:57 PM Viewed: 8/5/2025 4:00:14 PM Signed: 8/5/2025 4:01:10 PM

Electronic Record and Signature Disclosure:
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Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	Sent: 8/5/2025 4:01:16 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Lauren Thoden
 lauren.thoden@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

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
Carbon Copy Events	Status	Timestamp

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 8/5/2025 11:39:53 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	COPIED	Sent: 8/5/2025 4:01:14 PM Viewed: 8/7/2025 11:18:11 AM

Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/5/2025 11:39:32 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.

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: 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 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 purchasing@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 purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, US 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:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** 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.

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.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB25-151, **Version:** 1

AGENDA CAPTION

Consider approval of the August 11, 2025, minutes.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
August 11, 2025

After determining that a quorum was present of the Public Utilities Board of the City of Denton, convened in a Regular Meeting on Monday, August 11, 2025, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Lee Riback, and Aaron Newquist

Also present: General Manager Stephen Gay and Deputy City Attorney Marcella Lunn

Absent: Thomas Plock

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

There were no presentations from the public.

2. CONSENT AGENDA

The Consent Agenda consisted of Items 2 A-D.

Board Member Rayner moved to recommend adoption of agenda items 2 A-D. Motion seconded by Board Member Riback; motion carried.

YES (6): Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Lee Riback, and Aaron Newquist

NO (0):

- A. PUB25-125** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and Burns & McDonnell Engineering Company, Inc., amending the contract approved by City Council on October 18, 2022, in the not-to-exceed amount of \$1,522,350.00; said first amendment to serve as the System Integrator for the advanced distribution management system to Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-005 - providing for an additional first amendment expenditure amount not-to-exceed \$640,224.00, with the total contract amount not-to-exceed \$2,162,574.00).
- B. PUB25-126** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Anixter Inc., for the purchase of tubular steel and standard steel substation structures for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8645 - awarded to Anixter Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year total not-to-exceed amount of \$4,607,540.00).

C. PUB25-127 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a second amendment to a professional services agreement between the City of Denton and Kimley-Horn and Associates, Inc., amending the contract approved by City Council on May 17, 2022, in the not-to-exceed amount of \$751,100.00; amended by Amendment 1 approved by City Council; said second amendment to extend the scope of work, including rerouting the sanitary sewer line, add sewer lines/easements, and an additional full plan set and services for a new lift station for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-010 - providing for an additional second amendment expenditure amount not-to-exceed \$160,000.00, with the total contract amount not-to-exceed \$1,135,400.00).

D. PUB25-128 Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of first amendment between the City of Denton and USIC Locating Services, LLC, amending the contract approved by City Council on July 20, 2021, in the not-to-exceed amount of \$4,500,000.00; said first amendment to continue locating and marking all existing and future installed utility lines for Denton Municipal Electric, Technology Services, Water, and Wastewater Departments; providing for the expenditure of funds therefor; and providing an effective date (RFP 7672 - providing for an additional first amendment expenditure amount not-to-exceed \$1,125,000.00, with the total contract amount not-to-exceed \$5,625,000.00).

3. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB25-137 Consider approval of the July 28, 2025, minutes.

Board Member Parker moved to recommend adoption of agenda items 3 A. Motion seconded by Board Member Rayner; motion carried.

YES (6): Chair Billy Cheek, Devin Taylor, Robert Rayner, Susan Parker, Lee Riback, and Aaron Newquist

NO (0):

B. PUB25-142 Management Reports

1. Future Agenda Items
2. New Business Action Items

4. CONCLUDING ITEMS

With no further business, the meeting was adjourned at 9:01 AM.

BILLY CHEEK
CHAIR
CITY OF DENTON, TEXAS

MONICA SALCEDO
ADMINISTRATIVE ASSISTANT
CITY OF DENTON, TEXAS

Minutes approved on: 8/25/2025



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB25-055, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, Texas establishing the schedule of rates for electric service for schedule ECA LL effective on October 15, 2025; providing for a repealer; providing for a severability clause; and providing an effective date.



City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Denton Municipal Electric

DCM: Cassey Ogden

DATE: August 25, 2025

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, Texas establishing the schedule of rates for electric service for schedule ECA LL effective on October 15, 2025; providing for a repealer; providing for a severability clause; and providing an effective date.

BACKGROUND

Consistent with Ordinance 25-675, approved by City Council on June 17, 2025, DME has assessed the adequacy of the current Energy Cost Adjustment (ECA) rate of \$.0462/kWh. Through that analysis, staff determined that the current Energy Cost Adjustment (ECA) rate of \$.0462/kWh remains adequate to maintain the system ECA account balance within the target range of +/- \$20 million over the next 12 months. In addition, to accommodate the unique power purchase requirements of Large Load customers-defined as those with a single metering point load of 20 MW or greater- the ECA LL rate will increase from \$.0515/kWh to \$.0577/kWh, effective October 15, 2025 (See page 36 in FY26 Electric Rate Ordinance). The ECA LL account balance buffer will continue to be maintained between \$0 and \$20 million.

The current Transmission Cost Recovery Factor (TCRF) will be sufficient through the next quarter.

RECOMMENDATION

DME General Manager and Finance recommends adoption and approval of the Ordinance maintaining the current ECA and TCRF rates. Staff recommends approval of a modification to the ECA LL rate schedule for Large Load customers. The ECA LL rate will increase from \$.0515/kWh to \$.0577/kWh, effective October 15, 2025.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Rate Ordinance Redline
- Exhibit 3: Rate Ordinance
- Exhibit 4: Presentation

Respectfully submitted:

Antonio Puente, Jr.
DME General Manager

Prepared By:

Melissa Cuevas
Customer Programs and Communication Manager

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ESTABLISHING THE SCHEDULE OF RATES FOR ELECTRIC SERVICE EFFECTIVE ON OCTOBER 15, 2025; PROVIDING FOR A REPEALER; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The Schedule of Rates for electrical services as provided for in Chapter 26 of the City of Denton Code of Ordinances, is as follows:

ELECTRIC RATE SCHEDULES

	PAGE
RES Residential Service	2
GS General Service Small	4
GM General Service Medium	6
GL General Service Large	8
TG General Service Time Of Use	10
GOS Local Government Service Small	12
GOM Local Government Service Medium	14
GOL Local Government Service Large	16
T1 Temporary Service	18
AF Athletic Field	20
LS Street Lighting	22
LT Traffic Lighting	23
UFL Unmetered School Zone/Crossing Flashers	24
USC Unmetered Security Camera	25
UWF Unmetered Wi-Fi Devices	26
LO Other Lighting	27
DD Security Lighting	28
DSL Non-Standard Street Lighting	30
EGR Economic Growth Rider	32
GIP GreenSense Incentive Program	34
ECA Energy Cost Adjustment	35
ECA LL Energy Cost Adjustment for Large Loads	36
TCRF Transmission Cost Recovery Factor	37
DGR Distributed Generation From Renewable Sources Rider	39
SFR Special Facilities Rider	41
PAF Pole Attachment Fee	42
BIF Banner Install Fee	44
WNA Wireless Node Attachments	45
EVCR Electric Vehicle Charging Rate	47
WTS Wholesale Transmission Service	48

RESIDENTIAL ELECTRIC SERVICE
(Effective 10/01/25)

APPLICATION

Applicable to any Customer for all electric service used for residential purposes in an individual private dwelling or an individually metered apartment, supplied at one point of delivery and measured through one meter. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1) Facility Charge	Per Bill
Single-Phase Service (R2)	\$ 8.80
Three-Phase Service (R2)	\$17.59
Prepaid Service (P2)	\$16.26

plus;

(2) Usage Charge	Per kWh
Winter (Billing months of November through April):	
Tier 1: First 600 kWh	\$0.0694
Tier 2: Additional kWh	\$0.0462
Summer (Billing months of May through October):	
Tier 1: All kWh	\$0.0694

plus;

(3) Energy Cost Adjustment Charge	See Schedule ECA

plus;

(4) Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge as a minimum, regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

Winter (Billing months of November through April):

$$\text{Usage Charge} = \begin{array}{l} \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{array}$$

Summer (Billing months of May through October):

$$\text{Usage Charge} = \text{All kWh} \times \text{Tier 1 Rate per kWh}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GS

GENERAL SERVICE SMALL (Effective 10/01/25)

APPLICATION

Applicable to any commercial customer having a maximum demand of less than 21 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand is equal to or exceeds 21 kW in two consecutive months, account will be adjusted to bill under General Service Medium (GM) and the Customer must remain on the GSM rate for a minimum of twelve (12) billing periods. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1) Facility Charge		Per Bill
	Single-Phase	\$16.85
	Three-Phase	\$22.50
plus;		
(2) Usage Charge		Per kWh
	Tier 1: First 2,500 kWh	\$0.0865
	Tier 2: Additional kWh	\$0.0453
plus;		
(3) Energy Cost Adjustment Charge		See Schedule ECA
plus;		
(4) Transmission Cost Recovery Factor		See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge as a minimum, regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned} \text{Usage Charge} = & \quad \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \quad \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GM

GENERAL SERVICE MEDIUM

(Effective 10/01/25)

APPLICATION

Applicable to any commercial customer having a maximum demand that meets or exceeds 21 kW but less than 240 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand is equal to or exceeds 240 kW in two consecutive months, account will be adjusted to bill under General Service Large (GSL), and the Customer must remain on the GSL rate for a minimum of twelve (12) billing periods.

Applicable to GSM Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(GM2)**

Applicable to GSM Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(GM3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

plus;	(1)	Facility Charge	Per Bill
		Single-Phase	\$16.85
		Three-Phase	\$22.50
plus;	(2)	Demand Charge	Per kW
		All kW	\$4.85
plus;	(3)	Usage Charge	Per kWh
	GM	Tier 1: First 6,000 kWh	\$0.0531
		Tier 2: Additional kWh	\$0.0438
	GM2	Tier 1: First 6,000 kWh	\$0.0521
		Tier 2: Additional kWh	\$0.0428
	GM3	Tier 1: First 6,000 kWh	\$0.0500
		Tier 2: Additional kWh	\$0.0408

- plus;
- | | | |
|-----|--|--------------------------|
| (4) | Energy Cost Adjustment Charge | See Schedule ECA |
| (5) | Transmission Cost Recovery Factor | See Schedule TCRF |

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) the actual monthly kW demand as measured during the fifteen (15) minute period of maximum use each month; or (2) 21 kW; or (3) seventy percent (70%) of the maximum monthly actual demand for any month during the previous billing months of May through October in the twelve (12) months ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned} \text{Usage Charge} = & \quad \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \quad \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GL

GENERAL SERVICE LARGE

(Effective 10/01/25)

APPLICATION

Applicable to any commercial customer having a minimum demand of 240 kW for all electric service supplied at one point of delivery and measured through one meter. Customers who elect to discontinue service under this Rate are ineligible for service under this Rate for twelve (12) months.

Applicable to GSL Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(GL2)**

Applicable to GSL Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(GL3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1) Facility Charge		Per Bill
	Three-Phase	\$70.10
plus;		
(2) Demand Charge		Per kVA
	All kVA	\$10.96
plus;		
(3) Usage Charge		Per kWh
GL	Tier 1: First 200,000 kWh	\$0.0249
	Tier 2: Additional kWh	\$0.0142
GL2	Tier 1: First 200,000 kWh	\$0.0239
	Tier 2: Additional kWh	\$0.0132
GL3	Tier 1: First 200,000 kWh	\$0.0218
	Tier 2: Additional kWh	\$0.0112
plus;		

- plus;
- | | | |
|-----|--|--------------------------|
| (4) | Energy Cost Adjustment Charge | See Schedule ECA |
| (5) | Transmission Cost Recovery Factor | See Schedule TCRF |

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) the actual monthly kVA demand as measured during the fifteen (15) minute period of maximum use each month; or (2) 250 kVA; or (3) seventy percent (70%) of the maximum monthly kVA actual demand for any month during the previous billing months of May through October in the twelve (12) month period ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned}\text{Usage Charge} = & \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable}\end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE TG

GENERAL SERVICE TIME OF USE (Effective 10/01/25)

APPLICATION

Applicable to any Customer having a minimum demand of 240 kW for all electric service supplied at one point of delivery and measured through one meter. Customers electing this Rate must remain on this Rate for a minimum of twelve (12) continuous billing months. If the Customer is new or does not have a history of on-peak use for June through September, and elects to accept service on the TGS Rate, the Customer's demand shall be billed at the GSL Demand Rate until the Customer establishes a separate on-peak and off-peak demand during an on-peak month.

Applicable to TGS Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(TG2)**

Applicable to TGS Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(TG3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1) Facility Charge		Per Bill
	Three-Phase	\$81.75
plus;		
(2) Demand Charge		Per kVA
	On-Peak	\$13.97
	Off-Peak	\$ 2.76
plus;		
(3) Usage Charge		Per kWh
TG	All kWh	\$0.0083
TG2	All kWh	\$0.0073
TG3	All kWh	\$0.0053
plus;		
(5)	Energy Cost Adjustment Charge	See Schedule ECA

plus;

(6) Transmission Cost Recovery Factor

See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the On-Peak and Off-Peak Demand Charges, regardless of actual energy usage.

DEFINITION OF TIME OF USE HOURS

The City's on-peak hours, for the purpose of this rate schedule, are designated as being from 2:00 P.M. to 7:00 P.M. each Monday through Friday, for the months of June through September excluding Independence Day and Labor Day. The City's on-peak hours may be changed from time to time.

The City's off-peak hours, for the purpose of this rate schedule, shall be all hours not designated as on-peak hours.

DETERMINATION OF DEMAND

On-Peak Demand Charge for the billing period shall be the greater of: (1) the kVA actual demand supplied during the fifteen (15) minute period of maximum use each month during on-peak hours as recorded by the City's demand meter; or (2) 250 kVA; or (3) one hundred percent (100%) of the actual maximum on-peak demand similarly determined during the billing months of June through September in the twelve (12) months immediately preceding the current month. The On-Peak Demand Charge will be applied to each billing period.

Off-Peak Demand Charge for the billing period shall be the greater of: (1) the kVA actual demand supplied during the fifteen (15) minute period of maximum use each month during on-peak hours as recorded by the City's demand meter; or (2) 250 kVA. The Off-Peak Demand Charge will be applied to each billing period.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \text{All kWh} \times \text{Rate per kWh}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GOS

LOCAL GOVERNMENT SERVICE SMALL

(Effective 10/01/25)

APPLICATION

Applicable to any local City, County or School District customer having a maximum demand of less than 21 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand equals or exceeds 21 kW in two consecutive months, account will be adjusted to bill under Local Government Service Medium (GOM), and the Customer must remain on the GOM Rate for a minimum of twelve (12) billing periods. This Rate is not applicable to resale service in any event, or to temporary, standby or supplementary service.

NET MONTHLY RATE

Facility Charge		Per Bill
	Single-Phase	\$16.85
	Three-Phase	\$22.50
plus;		
(2)	Usage Charge	Per kWh
	Tier 1: First 2,500 kWh	\$0.0865
	Tier 2: Additional kWh	\$0.0453
plus;		
(3)	Energy Cost Adjustment Charge	See Schedule ECA
plus;		
(4)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge as a minimum, regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \text{All kWh} \times \text{Rate per kWh}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GOM

LOCAL GOVERNMENT SERVICE MEDIUM

(Effective 10/01/25)

APPLICATION

Applicable to any local City, County, or School District customer having a maximum demand that meets or exceeds 21 kW but less than 240 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand is equal to or exceeds 240 kW in two consecutive months, account will be adjusted to bill under Local Government Service Large (GOL), and the customer must remain on the GOL rate for a minimum of twelve (12) billing periods. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

NET MONTHLY RATE

plus;	(1)	Facility Charge	Per Bill
		Single-Phase	\$16.85
		Three-Phase	\$22.50
plus;	(2)	Demand Charge	Per kW
		All kW	\$4.85
plus;	(3)	Usage Charge	Per kWh
		Tier 1: First 6,000 kWh	\$0.0531
		Tier 2: Additional kWh	\$0.0438
plus;	(4)	Energy Cost Adjustment Charge	See Schedule ECA
	(5)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) The actual kW demand supplied during the fifteen (15) minute period of maximum use each month; or (2) fifty percent (50%) of the maximum monthly actual demand for any month during the previous billing months of May through October in the twelve (12) months ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \begin{array}{l} \text{kWh in Tier 1 kWh} \times \text{Rate per kWh} \\ \text{kWh in Tier 2 kWh} \times \text{Rate per kWh, if applicable} \end{array}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

The due date for the payment of the bill for utility services shall not be less than ten (10) business days after issuance.

SCHEDULE GOL

LOCAL GOVERNMENT SERVICE LARGE

(Effective 10/01/25)

APPLICATION

Applicable to any local City, County, or School District customer having a minimum demand of 240 kW for all electric service supplied at one point of delivery and measured through one meter. Customers who elect to discontinue service under this Rate are ineligible for service under this Rate for twelve (12) months.

Applicable to GOL Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(GO2)**

Applicable to GOL Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(GO3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1)	Facility Charge	Per Bill
	Three-Phase	\$70.10
plus;		
(2)	Demand Charge	Per kVA
	All kVA	\$10.96
plus;		
(3)	Usage Charge	Per kWh
GOL	Tier 1: First 200,000 kWh	\$0.0249
	Tier 2: Additional kWh	\$0.0142
GO2	Tier 1: First 200,000 kWh	\$0.0239
	Tier 2: Additional kWh	\$0.0132
GO3	Tier 1: First 200,000 kWh	\$0.0218
	Tier 2: Additional kWh	\$0.0112
plus;		

- plus;
- | | | |
|-----|--|--------------------------|
| (4) | Energy Cost Adjustment Charge | See Schedule ECA |
| (5) | Transmission Cost Recovery Factor | See Schedule TCRF |

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) the actual monthly kVA demand as measured during the fifteen (15) minute period of maximum use each month; or (2) fifty percent (50%) of the maximum monthly kVA actual demand for any month during the previous billing months of May through October in the twelve (12) month period ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned}\text{Usage Charge} = & \quad \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable}\end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE T1

TEMPORARY SERVICE (Effective 10/01/25)

APPLICATION

Applicable to short term or temporary electric service where a Customer has received a permit. This Rate is not applicable after the certificate of occupancy or building final inspection has been issued.

NET MONTHLY RATE

(1)	Facility Charge	Per Bill
	Single-Phase	\$16.86
	Three-Phase	\$22.52
plus;		
(2)	Usage Charge	Per kWh
	All kWh	\$0.0867
plus;		
(3)	Energy Cost Adjustment Charge	See Schedule ECA
plus;		
(4)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \text{All kWh} \times \text{Rate per kWh}$$

ADDITIONAL TEMPORARY SERVICE CHARGES

Labor	Regular time or overtime labor hourly rates in effect at the time the work is performed for all personnel performing the work. Labor charges shall be based on a one (1) hour minimum with all additional time above the minimum to be measured to the nearest one-quarter hour.
Transportation	To be billed by hours or miles, as applicable, according to the estimated cost of operating the required equipment.
Material	Material that cannot be salvaged shall be billed at the City's Warehouse cost plus twenty five percent (25%), plus applicable sales tax. At the time a temporary service is removed or converted, any loss of the installed material due to negligence or willful action by the Customer will be billed separately to the Customer at replacement cost plus twenty five percent (25%), plus applicable sales tax.
Administrative Fee	Ten percent (10%) of the total labor, transportation, and material costs.

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE AF

ATHLETIC FIELD (Effective 10/01/25)

APPLICATION

Applicable to all electric service metered at one point for use to light specified areas for athletic events. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service except in conjunction with applicable rider.

NET MONTHLY RATE

plus;	(1)	Facility Charge	Per Bill
		Single-Phase	\$23.09
		Three-Phase	\$34.62
plus:	(2)	Demand Charge	Per kW
		On-Peak	\$6.15
		Off-Peak	\$1.46
plus;	(3)	Usage Charge	Per kWh
		On-Peak	\$0.0992
		Off-Peak	\$0.0496
plus;	(4)	Energy Cost Adjustment Charge	See Schedule ECA
	(5)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge, regardless of actual energy usage.

DEFINITION OF ON-PEAK AND OFF-PEAK HOURS

The City's on-peak hours, for the purpose of this rate schedule, are designated as being from 2:00 P.M. to 7:00 P.M., for the months of June through September. The City's on-peak hours may be changed from time to time.

The City's off-peak hours, for the purpose of this rate schedule, shall be all hours not designated as on-peak hours.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the actual kW demand supplied during the fifteen (15) minute period of maximum use during the current billing period as determined by the City's demand meter.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned} \text{Usage Charge} = & \quad \text{On-Peak kWh} \times \text{Rate per kWh} \\ & \quad \text{Off Peak kWh} \times \text{Rate per kWh} \end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE LS

STREET LIGHTING

(Effective 10/01/25)

APPLICATION

Applicable to all street lighting owned and maintained by the City.

NET MONTHLY RATE

(1)	Facility Charge	Per Bill
	<u>Luminaire Style Type</u>	
	100 W Sodium Cobra (LSA)	\$6.17
	250 W Sodium Cobra (LSB)	\$8.75
	400 W Sodium Cobra (LSC)	\$11.02
	100 W LED Cobra (LSD)	\$6.17
	250 W LED Cobra (LSE)	\$8.75
	400 W LED Cobra (LSF)	\$11.02
	85 W LED Post (LSG)	\$11.02

plus;

(2)	Energy Cost Adjustment Charge	See Schedule ECA

ENERGY COST ADJUSTMENT CHARGE

Current ECA multiplied by respective kWh based on the following Bulb Wattage Factors:

<u>Luminaire Type</u>	<u>Bulb Wattage Factor</u>
100 W Sodium(LSA)	48 kWh
250 W Sodium (LSB)	105 kWh
400 W Sodium (LSC)	159 kWh
100 W LED (LSD)	25 kWh
250 W LED (LSE)	96 kWh
400 W LED (LSF)	148 kWh
85 W LED (LSG)	23 kWh

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

TRAFFIC LIGHTING
(Effective 10/01/25)

APPLICATION

Applicable to State and Local Government agencies that operate and maintain their own traffic signals.

METERED TRAFFIC LIGHTING NET MONTHLY RATE (LT)

plus;	(1)	Usage Charge	\$0.0674 per kWh
	(2)	Energy Cost Adjustment Charge	See Schedule ECA
	(3)	Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Metered Traffic Lighting Usage Charge shall be based on actual kWh consumption during the billing period. Usage Charge = All kWh x Rate per kWh

UNMETERED TRAFFIC LIGHTING NET ANNUAL RATE (ULT)

plus;	(1)	Usage Charge	\$0.0674 per kWh
	(2)	Energy Cost Adjustment Charge	See Schedule ECA
	(3)	Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Unmetered Traffic Lighting Usage Charge shall be based on historical recorded annual kWh consumption. Usage Charge = All kWh x Rate per kWh

Annual Usage = 904 kWh per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE UFL

UNMETERED SCHOOL ZONE/CROSSING FLASHERS

(Effective 10/01/25)

APPLICATION

Applicable to local government agencies that operate and maintain their own unmetered school zone/crossing flashers.

NET ANNUAL RATE

plus;	(1) Usage Charge	\$0.0674per kWh
plus;	(2) Energy Cost Adjustment Charge	See Schedule ECA
	(3) Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Usage Charge shall be based on historical recorded annual kWh consumption. The total billed usage divided by number of school zone/crossing flashers will determine the average kWh usage. This average consumption will be billed for each school zone/crossing flasher once every twelve (12) months at the end of the fiscal year. Any accounts that are added during the year will be billed on prorated consumption.

Usage Charge = All kWh $\times$ Rate per kWh

Annual Usage = 48 kWh per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE USC

UNMETERED SECURITY CAMERA (Effective 10/01/25)

APPLICATION

Applicable to Local Government agencies that operate and maintain their own unmetered security cameras.

NET ANNUAL RATE

plus;	(1) Facility Charge	\$18.09 per bill
plus;	(2) Usage Charge	\$0.0674 per kWh
plus;	(3) Energy Cost Adjustment Charge	See Schedule ECA
	(1) Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Usage Charge shall be based on technical information of installed equipment. This calculated consumption will be billed for each camera once every twelve (12) months at the end of the fiscal year. Any accounts that are added during the year will be billed on prorated consumption.

Usage Charge = annual kWh per camera × kWh Rate

Annual Usage = 300 kWh per camera per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE UWF

UNMETERED WI-FI DEVICES

(Effective 10/01/25)

APPLICATION

Applicable to local government agencies that operate and maintain their own unmetered Wi-Fi devices.

NET ANNUAL RATE

plus;	(1)	Facility Charge	\$18.09 per bill
plus;	(2)	Usage Charge	\$0.0674 per kWh
plus;	(3)	Energy Cost Adjustment Charge	See Schedule ECA
	(4)	Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Usage Charge shall be based on technical information of installed equipment. This calculated consumption will be billed for each device once every twelve (12) months at the end of the fiscal year. Any accounts that are added during the year will be billed on prorated consumption.

Usage Charge = annual kWh per device × kWh Rate

Annual Usage = 300 kWh per device per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE LO

OTHER LIGHTING (Effective 10/01/25)

APPLICATION

Applicable to Texas Department of Transportation unmetered and metered safety lighting systems and continuous lighting systems as those terms are defined in Texas Administrative Code, Title 43, Part 1, Chapter 25, Subchapter A, Rule §25.11.

METERED LIGHTING NET MONTHLY RATE (LOB)

(1)	Usage Charge	\$0.0674 per kWh
plus;		
(2)	Energy Cost Adjustment Charge	See Schedule ECA

METERED LIGHTING USAGE CHARGE (LOB)

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

Usage Charge = All kWh × Rate per kWh

UNMETERED LIGHTING NET MONTHLY RATE (LOA)

(1)	Usage Charge	\$0.0674 per kWh
plus;		
(2)	Energy Cost Adjustment Charge	See Schedule ECA

UNMETERED LIGHTING USAGE CHARGE (LOA)

Billing for the Usage Charge shall be based on estimated kWh consumption during the billing period.

Usage Charge = (kWh Rate x Bulb Wattage/1000) x (Hours of Operation per Billing Period)

Hours of Operation per Billing Period = 333 hours

Bulb Wattage is the rated wattage of the luminaire bulb

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE DD

SECURITY LIGHTING

(Effective 10/01/25)

APPLICATION

Applicable to all outdoor area lighting when such lighting facilities are operated as an extension of the City's distribution system.

NET MONTHLY RATE

(1)	Facility Charge	Per Bill

	<u>Luminaire Type</u>	

	100 W Sodium Vapor (DSA)	\$ 9.75

	250 W Sodium Vapor (DSB)	\$12.90

	400 W Sodium Vapor (DSC)	\$15.55

	250 W Metal Halide (DHA)	\$15.17

	400 W Metal Halide (DHB)	\$18.09

	100 W Equivalent LED (DSD)	\$ 9.75

	250 W Equivalent LED (DSE)	\$12.90

	400 W Equivalent LED (DSF)	\$15.55

plus;

(2)	Energy Cost Adjustment Charge	See Schedule ECA

ENERGY COST ADJUSTMENT CHARGE

Current ECA multiplied by respective kWh based on the following Bulb Wattage Factors:

<u>Luminaire Type</u>	<u>Bulb Wattage Factor</u>

100 W Sodium Vapor (DSA)	48 kWh

250 W Sodium Vapor (DSB)	105 kWh

400 W Sodium Vapor (DSC)	159 kWh

250 W Metal Halide (DHA)	105 kWh

400 W Metal Halide (DHB)	159 kWh

100 W Equivalent LED (DSD)	25 kWh

250 W Equivalent LED (DSE)	96 kWh

400 W Equivalent LED (DSF)	148 kWh

TYPE OF SERVICE

The City shall furnish, install, maintain and deliver electric service to automatically controlled lighting fixtures conforming to the City's standards and subject to its published rules and regulations.

Where necessary for proper illumination or where existing poles are inadequate, the City will install or cause to be installed, one (1) wood pole with the necessary lighting hardware and overhead conductor for each installed light, at a distance not to exceed eighty (80') feet from existing lines, at no charge to the Customer. Additional contractual arrangements between the City and the Customer are subject to the Special Facilities Rider.

TERM OF CONTRACT

A two (2) year contract shall be agreed to and signed by each Customer desiring security lighting service authorizing fixed monthly charges, which may be reviewed annually, and to be applied to the Customer's monthly municipal utilities bill. In the event that a Customer requests the removal of the unit or discontinuance of the service prior to completion of two (2) years, the remainder of the contract period shall become due and payable. After the end of the initial two (2) year contract, service shall continue on a month-to-month basis and may be canceled by either party upon thirty (30) days' notice.

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE DSL

NON-STANDARD STREET LIGHTING

(Effective 10/01/25)

APPLICATION

Applicable to street lighting owned and maintained by the Customer. Availability of this service is contingent on the existence of an executed Special Facilities Rider between the legally responsible party and the City under which the legally responsible party accepts all responsibilities, both legal and financial, related to operation and maintenance of the subject lights, including but not limited to payment of all applicable energy charges.

NET MONTHLY RATE

plus;	(1) Facility Charge	\$ 9.32 per bill
	(2) Usage Charge	\$0.0674per kWh
plus;		
	(3) Energy Cost Adjustment Charge	See Schedule ECA

USAGE CHARGE

Current usage charge and ECA rates are multiplied by respective kWh based on the following Bulb Wattage Factors:

<u>Luminaire Type</u>	<u>Bulb Wattage Factor</u>
100 W Sodium Vapor (DLSA)	48 kWh
250 W Sodium Vapor (DLSB)	105 kWh
400 W Sodium Vapor (DLSC)	159 kWh
250 W Metal Halide (DLHA)	105 kWh
400 W Metal Halide (DLHB)	159 kWh

ADDITIONAL SERVICE CHARGES

If the City is required to maintain the privately owned lights to ensure public safety, the owner of the lights may be subject to additional service charges. The additional service charges shall be the actual cost of performing any work required to perform the necessary maintenance including but not limited to:

Labor Regular time or overtime labor hourly rates in effect at the time the work is

performed for all personnel performing the work. Labor charges shall be based on a one (1) hour minimum with all additional time above the minimum to be measured to the nearest one-quarter hour.

Transportation	To be billed by hours or miles, as applicable, according to the estimated cost of operating the required equipment.
Material	Any material needed to repair and/or maintain facilities will be billed at City Warehouse cost plus twenty five percent (25%).
Administrative Fee	Ten percent (10%) of the total labor, transportation, and material costs.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE EGR

ECONOMIC GROWTH RIDER

(Effective 10/01/25)

PURPOSE

The purpose of this Rider is to facilitate local economic growth and expand the ad valorem tax base of the City.

AVAILABILITY

This Rider is available to the Customers who:

- (1) Receive service from Rate Schedules GSL or TGS; and
- (2) Pay City ad valorem tax; and
- (3) Receive no electric service discounts other than those specifically defined in the GSL or TGS Rate Schedules.

APPLICATION

This Rider is available to electric service supplied at any one location. It is for firm electric service applicable to new and existing customers as described below, over a five (5) year period. This Rider is available to the following classes of customers:

- (1) New Customers whose electric service represents demand not previously served by the City at any location in the City's service area in the last twelve (12) months, where such metered demand will be in excess of 1,000 kVA and customer load factor must be greater than the City's electric system load factor, as estimated and mutually agreed upon by the General Manager of the City's electric utility and the Customer.
- (2) Existing Customers served under Rate Schedules GSL or TGS who increase their prior existing metered demand by 1,000 kVA and customer load factor must be greater than the City's electric system load factor. This increase shall be verified by sub-metering (at the Customer's expense) the additional load. If sub-metering is not possible, at the discretion of the General Manager of the City's electric utility, the increase may be verified by comparing a three-month rolling average of the new level of demand to the prior demand averaged for corresponding months. During periods in which this verification method cannot be applied, the General Manager and the Customer may develop a mutually agreed-upon formula to estimate the base and additional demand levels.

In light of additional costs associated with the Economic Growth Rider and to mitigate potential risk to ratepayers, any participant in the Economic Growth Rider must be, at the time this Rider is applied for and continuing while such Rider is in effect, a Customer in good standing of all City utilities, including solid waste services. Unless legal review procedures have been invoked in good faith regarding the obligation, a Customer in good standing for the purpose of this Rider is defined as a Customer not owing any unpaid utility or solid waste debt obligation that is over forty-five (45) days past due to the City during the previous twelve (12) months.

NET MONTHLY RATE

The Customer shall be charged under the appropriate applicable rate schedules with the exception that the monthly billing demand (for the GSL Rate) or system demand and on-peak demand (for the TGS Rate) will be adjusted in accordance with the following table:

<u>Time Period</u>	<u>Reduction to Billing Demand</u>
First Year	50%
Second Year	40%
Third Year	30%
Fourth Year	20%
Fifth Year	10%

CONTRACT PERIOD

The term of the contract will be for five (5) years.

SCHEDULE GIP

GREENSENSE INCENTIVE PROGRAM (Effective 10/01/25)

PROGRAM SUMMARY

The objective of the GreenSense Incentive Program (“Program”) is to reduce energy demand and consumption by promoting energy conservation, thereby reducing the utility bills of City Customers, reducing the peak load of the City’s electric system, reducing emissions in the state, and promoting energy conservation. The Program offers incentives that may be distributed in the form of credits on the electric service bills or cash incentives to City retail customers.

Any participant in the GreenSense Incentive Program must be, at the time this program is applied for and continuing while such program is in effect, a Customer in good standing of all City utilities, including solid waste services. Unless legal review procedures have been invoked in good faith regarding the obligation, a Customer in good standing for the purpose of this Program is defined as a Customer not owing any unpaid utility or solid waste debt obligation that is over forty-five (45) days past due to the City during the previous twelve (12) months.

Program applicants will be able to qualify for multiple incentives simultaneously, unless specified in the individual guidelines. A separate application may be necessary for each incentive. The Program will be in effect each fiscal year beginning on October 1, until the allotted funding is depleted or until cancellation of the program by the City. At the time the funds are depleted, no additional applications for participation will be accepted until the next fiscal year.

Qualifying applicants must receive electric service from the City. The program guidelines and payment provisions are subject to change by the City without prior notice. The City may, at any time, discontinue the Program without prior notice. The current program guidelines may be found in the GreenSense Incentive Program Manual located at www.cityofdenton.com.

ENERGY COST ADJUSTMENT
(Effective 10/01/25)

NET MONTHLY RATE

(1)	Energy Cost Adjustment Charge	\$0.0462 per kWh

The ECA Balancing Account shall be calculated using the following formula:

$$\text{ECA Balancing Account} = (\text{Beginning ECA Account Balance}) - (\text{Projected Net Energy Cost})$$

Projected Net Energy Cost = For the next fiscal quarter, the electric utility's projected cost of electric load purchases from ERCOT plus all projected electric utility power/energy related costs for that same period including, but not limited to, power production (excluding the Denton Energy Center debt); purchased power; applicable transmission services, losses and congestion; other ERCOT charges; renewable energy credits; and financial and/or physical power/energy trades (including natural gas); less all projected revenue to be received by the electric utility for power/energy related sales and/or trades; plus applicable Franchise Fees and required ROI.

$$\text{ECA} = [(\text{Projected Net Energy Cost}) + (\text{ECA Balancing Account})] / (\text{Projected kWh sales})$$

The Energy Cost Adjustment Charge shall be based on actual kWh consumption during the billing period. Energy Cost Adjustment Charge = kWh $\times$ ECA Rate

The General Manager of the City's electric utility or their designee shall calculate the ECA Balancing Account monthly. In the event that the ECA Balancing Account calculated during the last month of each fiscal quarter (December, March, June, and September) is projected to be over or under collected by \$20,000,000 or more at the end of the next 4 quarters, the General Manager or their designee may recommend to the PUB and City Council a revision to the ECA to maintain the City's electric utility in a financially sound position. Any change to the ECA will be placed on the City Council's consent agenda.

SCHEDULE ECA LL

ENERGY COST ADJUSTMENT FOR LARGE LOADS

(Effective 10/01/15/25)

The Energy Cost Adjustment (ECA) for Large Loads (LL) Rate shall be set to recover the net cost of energy delivered to Large Load Customers and to maintain the City's electric utility in a financially sound position. This rate applies to all Large Load customers regardless of their actual monthly usage. Large Load Customers are defined as customers whose planned or actual single point of delivery meets or exceeds 20MW.

NET MONTHLY RATE

(1)	Energy Cost Adjustment for Large Load Charge	~~\$0.0515~~<u>0.0577</u> per
	kWh	

ENERGY COST ADJUSTMENT BALANCING ACCOUNT CALCULATION

The ECA Balancing Account shall be calculated using the following formula:

$$\text{ECA Balancing Account} = (\text{Beginning ECA LL Account Balance}) - (\text{Projected Net Energy Cost for Large Load})$$

Where:

Projected Net Energy Cost = For the next fiscal quarter, the electric utility's projected cost of electric load purchases from ERCOT to feed Large Loads plus all projected Large Load related electric utility power/energy related costs for that same period including, but not limited to, purchased power; applicable transmission services, losses and congestion; other ERCOT charges; renewable energy credits; and financial and/or physical power/energy trades (including natural gas); less all projected revenue to be received by the electric utility for Large Load related power/energy related sales and/or trades; plus applicable Franchise Fees and required ROI.

ENERGY COST ADJUSTMENT CALCULATION

ECA LL = [(Projected Large Load Net Energy Cost) + (ECA LL Balancing Account)] / (Projected Large Load kWh sales)

ENERGY COST ADJUSTMENT CHARGE

The Energy Cost Adjustment Large Load Charge shall be based on actual kWh consumption during the billing period. Energy Cost Adjustment Charge for Large Load = kWh × ECA LL Rate

The General Manager of the City's electric utility or their designee shall calculate the ECA LL Balancing Account monthly. In the event that the ECA LL Balancing Account calculated during the last month of each fiscal quarter (December, March, June, and September) is projected to be below \$0 to \$20,000,000 or more at the end of the next 4 quarters, the General Manager or their designee may recommend to the PUB and City Council a revision to the ECA LL to maintain the City's electric utility in a financially sound position. Any change to the ECA LL will be placed on the City Council's consent

agenda.

SCHEDULE TCRF

TRANSMISSION COST RECOVERY FACTOR

(Effective 10/01/25)

The Transmission Cost Recovery Factor (TCRF) Rate shall be set to recover the costs of transmission service paid by DME to other transmission owners within the boundaries of the Electric Reliability Council of Texas (“ERCOT”) region. The TCRF Rate shall be reviewed on a quarterly basis and adjusted as defined below. The TCRF Rate charges are pass-through charges to customers in order to maintain the City’s electric utility in a financially sound position.

<u>NET MONTHLY RATE</u>	<u>\$0.0176 Per kWh</u>

Residential
General Service Small
Local Government Service Small
Temporary Service
Athletic Field
Traffic Lighting
Unmetered Traffic Lighting
Unmetered School Zone/Crossing
Unmetered Security Camera
Unmetered Wi-Fi Devices

<u>NET MONTHLY RATE</u>	<u>\$5.02 Per kW</u>

General Service Medium
Local Government Service Medium

<u>NET MONTHLY RATE</u>	<u>\$6.95 Per kVA</u>

General Service Large
Local Government Service Large
General Service Time Of Use

TRANSMISSION COST RECOVERY FACTOR BALANCING ACCOUNT CALCULATION

The TCRF shall be calculated using the following formula:

TCRF Annual Billing = (Actual monthly net TCOS billing amounts charged by ERCOT transmission service providers to the City) + (Projected increases or decreases pursuant to PUCT-approved TCOS billing amount charges to ERCOT utilities) + (applicable Franchise Fees and required ROI)

During the last month of each fiscal year quarter (December, March, June, and September), the General Manager of the City’s electric utility or their designee shall calculate the TCRF Balancing Account. The TCRF charge will be developed by the City for each applicable customer billing schedule herein, based on projected kWh sales for billing schedules without a demand component and on monthly peak kW or kVA for billing schedules with a demand component. The cumulative forecasted TCRF revenues from all rate classes shall fully recover the TCRF Annual Billing. The General Manager or their designee may recommend to the PUB and City Council a revision to the

TCRF to maintain the City's electric utility in a financially sound position. Any change to the TCRF will be placed on the City Council's consent agenda.

TCRF rate class allocation amount = [(TCRF annual billing) x (Projected rate class kWh usage)] / (Total projected usage for all rate classes).

SCHEDULE DGR

DISTRIBUTED GENERATION FROM RENEWABLE SOURCES RIDER

(Effective 10/01/25)

APPLICATION

This Rider is available to retail Customers receiving electric service under a City electric rate schedule who owns and operates an on-site generating system powered by a renewable resource capable of producing power, and which is interconnected with the City's electric system. Systems greater than 20 kW may be required to enter into a Purchase Power Agreement (PPA) applicable to their specific situation in lieu of this rate schedule. Renewable energy technology is any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly or indirectly from the sun or wind. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

This Rider applies to a Customer-owned generating system that primarily offsets all or part of the Customer's electric service provided by the City. If the Customer-owned generating system is sized such that it produces energy in excess of a Customer's electric consumption, special arrangements and a contract may be necessary. The current interconnection guidelines may be found in the Distributed Generation Manual located at www.cityofdenton.com.

In light of additional costs associated with the Distributed Generation From Renewable Sources Rider and to mitigate potential risk to ratepayers, any participant in the Distributed Generation From Renewable Sources Rider must be, at the time this Rider is applied for and continuing while such Rider is in effect, a Customer in good standing of all City utilities, including solid waste services. Unless legal review procedures have been invoked in good faith regarding the obligation, a Customer in good standing for the purpose of this Rider is defined as a Customer not owing any unpaid utility or solid waste debt obligation that is over forty-five (45) days past due to the City during the previous twelve (12) months.

CONDITIONS OF SERVICE

All charges, character of service, and terms and conditions of the electric rate schedule under which the Customer receives service shall apply except as expressly altered by this Rider. This Rider is subject to change at any time.

The Customer shall comply with the City's current technical requirements for distributed generation interconnection. The Customer shall obtain approval from the City prior to the installation of the on-site generating system. The Customer shall submit to the City a completed interconnection application form and signed Agreement for Interconnection and Parallel Operation of Distributed Generation before the system installation. The minimum term of an agreement under this Rider is one year, extended automatically unless terminated by either party with sixty (60) days advance written notice.

The Customer is responsible for the costs of interconnecting with the City's electric system, including transformers, service lines, or other equipment determined necessary by the City for safe installation and operation of the Customer's equipment with the City's electric system. The

Customer is responsible for any costs associated with required inspections and permits.

METERING

Metering under this Rider shall be performed by a single meter capable of registering the flow of electricity in two directions (delivered by the City's electric system to the Customer and delivered to the City's electric system by the Customer's system) to determine the Customer's generation delivered to the City.

The Value of Solar (VOS) Rate

Applicable to any customer receiving City electric service that owns an on-site distributed generation (DG) system powered by solar which is interconnected with the City's electric system and does not otherwise have a purchase power agreement with the City.

MONTHLY RATE

(1) Value of Solar Rate

\$0.0500 per kWh

VALUE OF SOLAR CALCULATION

VOS Credit = (all kWh delivered from customer DG to DME) * (VOS Rate)

The Value of Solar credit will be applied monthly based on all kWh delivered from Customer to City's electric system during the billing period regardless of customer usage during that month.

Beginning in the billing period after a Customer receives approval from the City, to interconnect the Customer's on-site generating system; all energy generated by the Customer's system and delivered to the City's electric system will be considered renewable energy. The Customer shall be billed for all energy delivered by the City to the Customer under the approved rates.

Any Billing Period Credit shall be applied to the utility charges due from the Customer to the City for the billing period.

INDEMNIFICATION

The Customer operating the renewable distributed generation system indemnifies the City and holds the City harmless for all damages and injuries to the City, the Customer, or others arising out of Customer's use, ownership or operation of Customer's distributed generation facilities in parallel with the City's system. Customer is solely responsible for providing adequate protection for operating in parallel with the City's system in such a manner that faults or other disturbances on the City's system do not cause damage to the Customer's distributed generation equipment.

SCHEDULE SFR

SPECIAL FACILITIES RIDER

(Effective 10/01/25)

- (1) All service shall be offered from available facilities. If a Customer's service characteristics require facilities and devices not normally and readily available at the location where the Customer requests service, the total cost incurred by the City for all facilities installed, buried, relocated and/or removed shall be the responsibility of the Customer and subject to a contract entered between the City and the Customer. This contract shall be signed by both parties prior to the City providing service to the Customer.
- (2) Any contract under this rider is subject to the following approvals:
 - (a) If the total value of the contract is less than \$100,000, the contract may be approved by the City Manager, or their designee. If a contract under this subsection is not approved by the City Manager, or their designee, then it must be recommended for approval by the Public Utilities Board and approved by the City Council.
 - (b) If the total value of the contract is equal to or greater than \$100,000, the contract must be recommended for approval by the Public Utilities Board and approved by the City Council.

SCHEDULE PAF

POLE ATTACHMENT FEE

(Effective 10/01/25)

APPLICATION

This Rate is available to a licensee ("Licensee" or "licensee") who desires to access designated poles or conduits owned by the City for the purpose of installing and maintaining their facilities and associated equipment to provide services to the public. An agreement between such entity and the City or its contractor shall be executed on a separate form, but will reference, the following rate schedule:

$$\text{Space Factor} = \frac{\text{Rate} = \text{Space Factor} \times \text{Cost}}{[(\text{Space Occupied}) + (2/3 \times (\text{Unusable Space} \div \text{No. of Attaching Entities}))]} \\ (\text{Pole Height})$$

Cost:

in Service Areas where the number of Attaching Entities is 5 = 0.66 x (Net Cost of Bare Pole) x Carrying Charge Rate

in Service Areas where the number of Attaching Entities is 4 = 0.56 x (Net Cost of Bare Pole) x Carrying Charge Rate

in Service Areas where the number of Attaching Entities is 3 = 0.44 x (Net Cost of Bare Pole) x Carrying Charge Rate

in Service Areas where the number of Attaching Entities is 2 = 0.31 x (Net Cost of Bare Pole) x Carrying Charge Rate

NET ANNUAL RATE

(1) Annual Pole Attachment ("APA") Distribution

\$/attachment/year	2 Attachers	3 Attachers	4 Attachers	5 Attachers
	\$19.86	\$19.78	\$19.83	\$19.59

plus;

(2) APA Transmission

\$/attachment/year	2 Attachers	3 Attachers	4 Attachers	5 Attachers
	\$410.93	\$403.94	\$399.99	\$390.72

Note: Annual Rates (2) and (3) listed above are not available on all poles nor in all areas across the City.

MISCELLANEOUS

(1)	Unauthorized Attachment Penalty	\$1,000 per attachment per pole
(2)	Undefined Work or Expense	Rate pursuant to Schedule SFR

APPLICATION AND MAKE READY COSTS

Licensees will be required to pay for any work done or contracted by the City, including but not limited to any application fees, analysis, make ready work and any installed, used or maintained facilities in violation of the Agreement that the licensee has not corrected. The City or its Contractor will invoice licensee, and licensee must pay, for identified expenses as needed before any work will begin and shall include all reasonable fully loaded material (including any applicable overhead), labor, engineering, transportation and administrative costs. These fees will be as set forth in the contract agreement with the third-party contractor who provides such services, if applicable.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE BIF

BANNER INSTALL FEE

(Effective 10/01/25)

APPLICATION

Applicable to any person who has completed an application and received approval from the City to have a banner installed on facilities owned by the City for the purpose of marketing and publicizing community events shall be assessed a fee based on the following schedule:

NET ANNUAL RATE

Over the Street Banner Install	\$100.00 per banner
Pole One Time Banner Install	\$15.00 per banner
Pole Seasonal Banner Install	\$27.00 per banner

TERMS AND CONDITIONS OF SERVICE

Persons requesting the City install an Over the Street Banner must provide the City with a banner that is no more than three (3) feet tall by thirty-five (35) feet in length with six (6) feet of rope. All Over the Street Banners must be made out of mesh only (fish net type material). A sample of the banner material is recommended for approval. The City's Building Inspections Department requires an application and permit fee of sixty (60) dollars for installation of an Over the Street Banner which needs to be completed prior to contacting the City's electric utility.

Persons requesting the City install a Pole Banner must provide the City's electric utility with a banner that is no more than thirty (30) inches tall by eighty (80) inches in length with openings of two (2) inches. Pole Banners are required to be made of weather beater or vinyl material only. The appropriate application for each type of banner must be completed prior to installation and returned to a representative of the City's Electric Operations and Maintenance Division along with applicable fees listed above, a digital image of the banner, and location requests. The City's electric utility will determine install locations depending on availability. Any banners that promote sponsors or advertisement are strictly prohibited.

PAYMENT

Payment is required to the City at the time the banners are given for installation. Permit fees, when applicable, are due to Building Inspections in order to reserve specific dates.

SCHEDULE WNA

WIRELESS NODE ATTACHMENTS (Effective 10/01/25)

APPLICATION

This Rate is available to a licensee who desires to install and maintain their wireless nodes and associated equipment to provide services to the public. An agreement between such entity and the City shall be executed separate from, but will reference, the following rate schedule:

NET ANNUAL RATE

	(1)	Facility Charge	\$18.09 per node
plus;	(2)	Usage Charge	\$0.0674 per kWh
plus;	(3)	Energy Cost Adjustment Charge	See Schedule ECA
plus;	(4)	Transmission Cost Recovery Factor	See Schedule TCRF

METERED USAGE CHARGE

Billing for the Metered Usage Charge shall be based on actual kWh consumption for each device once every twelve (12) months at the end of the fiscal year.

$$\text{Usage Charge} = \text{All kWh per device} \times \text{Rate per kWh}$$

UNMETERED USAGE CHARGE

Billing for the Unmetered Usage Charge shall be based on 1) kWh consumption from similarly installed metered equipment; or 2) technical information of installed equipment provided by licensee, if similar equipment is not already metered. This calculated consumption will be billed for each device once every twelve (12) months at the end of the fiscal year.

$$\text{Usage Charge} = \text{Annual kWh per device} \times \text{Rate per kWh}$$

$$\text{Annual Usage} = 2,000 \text{ kWh per device per account (or calculated consumption based on technical information provided by licensee)}$$

MISCELLANEOUS

(1)	Unauthorized Attachment Penalty	\$1,000 per attachment
(2)	Undefined Work or Expense	Rate pursuant to Schedule SFR

MAKE READY COSTS

Licensees will be required to pay for any work done or contracted by the City, including but not limited to make ready work and any installed, used or maintained facilities in violation of the Agreement that the licensee has not corrected. The City will invoice licensee, and licensee must pay, for identified expenses as needed before any work will begin and shall include all reasonable fully loaded material (including any applicable overhead), labor, engineering, transportation and administrative costs.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE EVCR

ELECTRIC VEHICLE CHARGING RATE (Effective 10/01/25)

APPLICATION

Applicable to vehicles that utilize charging services from City of Denton owned and operated Level 2 EV chargers.

NET ANNUAL RATE

(1)	Usage Charge	\$0.0406 per minute

USAGE CHARGE

Billing for the Usage Charge shall be based on actual charging time incurred. The billing service will be provided by a third-party vendor

Usage Charge = EV Charging duration × Rate per Minute

SCHEDULE WTS

WHOLESALE TRANSMISSION SERVICE

(Effective 10/01/25)

AVAILABILITY

To Eligible Transmission Service Customers for Wholesale Transmission Service through the Denton Municipal Electric Utility transmission system, at all points where transmission facilities of adequate capacity and suitable voltage are available to provide service, in accordance with Public Utility Commission of Texas (PUC or Commission) 16 Texas Administrative Code (TAC) §§ 25.191-.203.

APPLICABILITY

Applicable only to wholesale transactions involving the wholesale purchase of electric power and energy. This tariff for Wholesale Transmission Service is applicable to Transmission Service using any transmission facilities owned by the Denton Municipal Electric Utility in accordance with 16 TAC §§ 25.191-.203.

TYPE OF SERVICE

Three phase, 60 hertz alternating current, delivered onto, or received from Denton Municipal Electric Utility's transmission system at 60,000 volts or greater and on transmission facilities that have been prepared and made available for this service.

TRANSMISSION SERVICE REQUIREMENTS

As a condition to obtaining Wholesale Transmission Service, the Transmission Service Customer shall execute an Interconnection Agreement with each Transmission Provider, in accordance with 16 TAC § 25.198, and the Transmission Service Customer shall meet all Electric Reliability Council of Texas (ERCOT) requirements as specified in the ERCOT Protocols and Operating Guides.

CONDITIONS PRECEDENT FOR RECEIVING SERVICE

Subject to the terms and conditions hereof and of 16 TAC § 25.198, the Denton Municipal Electric Utility will provide wholesale Transmission Service to any Eligible Transmission Service Customer, provided that:

(A) the eligible Transmission Service Customer has completed an Application for Transmission Service, as provided under 16 TAC § 25.198;

(B) the eligible Transmission Service Customer and Denton Municipal Electric Utility, or a third party, have completed installation of all equipment specified under the Interconnection Agreement, consistent with NERC and ERCOT guidelines as set forth in 16 TAC § 25.198;

the eligible Transmission Service Customer has executed an Interconnection Agreement for service under this tariff or, if necessary, requested in writing that Denton Municipal Electric Utility file a proposed unexecuted agreement with the Commission;

(D) the eligible Transmission Service Customer has arranged for Ancillary Services necessary for the transaction;

(E) each wholesale load for which Transmission Service is requested maintains a power factor of 95% or greater at each point of interconnection;

(F) the Transmission Service Customer has constructed, maintains and operates the facilities on its side of each point of interconnection that are necessary to reliably interconnect and deliver power from a resource to Denton Municipal Electric Utility's transmission system and from Denton Municipal Electric Utility's transmission system to the Transmission Service Customer's loads;

(G) to the extent the Transmission Service requires the addition of facilities or upgrades to the transmission system, such facilities have been placed in service.

APPLICATION PROCEDURES

The Denton Municipal Electric Utility and the Transmission Service Customer shall comply with the application procedures for Transmission Services set forth in 16 TAC § 25.198, which shall govern such procedures.

CONSTRUCTION OF NEW FACILITIES

Construction of new facilities needed to accommodate a request for Planned Transmission Service shall be in accordance with the procedures set forth in 16 TAC § 25.198. Upon receipt of a request for Transmission Service, the Denton Municipal Electric Utility shall, if necessary, perform a System Security Study in accordance with 16 TAC § 25.198. Based on the results of the System Security Study, the Denton Municipal Electric Utility also may perform a Facilities Study, in accordance with 16 TAC § 25.198. An executed Facilities Study agreement with the Transmission Service Customer is required prior to the Denton Municipal Electric Utility performing a Facilities Study. In the event that existing facilities are inadequate to support the requested Transmission Service, Denton Municipal Electric Utility may require the Transmission Service Customer to provide a contribution in aid of construction attributable to directly assigned facilities.

LOAD SHEDDING AND CURTAILMENT

Transmission Service hereunder shall be subject to, and the Denton Municipal Electric Utility and the Transmission Service Customer will comply with, the load shedding and curtailment procedures established under 16 TAC § 25.200. Any interruption shall be based on operational factors and shall not accord a higher priority to the Denton Municipal Electric Utility's retail and wholesale customers than to its customers taking Transmission Service. Service to all customers shall be restored as quickly as possible.

PRICING FOR TRANSMISSION SERVICE WITHIN ERCOT

Charges for Transmission Service hereunder shall be in accordance with Texas Utilities Code § 35.004(d). For Transmission Service a Transmission Service Customer shall incur both an access charge, as set forth below, and loss compensation charges.

Annual Postage Stamp Charge (access charge) \$0.333063 per kW of coincident peak demand determined in accordance with 16 TAC §25.192.

Monthly Postage Stamp Charge (access charge) \$0.027755 per kW of coincident peak demand determined in accordance with 16 TAC §25.192.

Charges for each calendar year shall be adjusted pursuant to the schedule in the PUC's Order approving the transmission charges for that year.

PRICING FOR TRANSMISSION SERVICE FOR EXPORTS FROM ERCOT

Charges for Transmission Service for exports from ERCOT shall be in accordance with Texas Utilities Code § 35.004(d) and 16 TAC § 25.192. Transmission Service Customers exporting power from ERCOT will be assessed transmission service charges based on the amount of power actually exported and the duration of the transaction. Charges for Transmission Service for exports from ERCOT shall be determined in accordance with 16 TAC § 25.192(e) and shall be calculated using the charges set forth below:

<u>Service Type</u>	<u>Access Rate</u>
<u>Hourly Rate</u>	<u>per kW of</u>
	<u>peak demand</u>
	\$0.000038

LOSSES

Losses shall be calculated by the Independent System Operator (ISO) in accordance with the method approved by the 16 TAC § 25.192.

RESALE OF TRANSMISSION RIGHTS

With advance written notice to the Denton Municipal Electric Utility and subject to a reasonable credit review, a Transmission Service Customer may resell any and all Transmission Service rights contracted for by the Transmission Service Customer to other wholesale market participants pursuant to 16 TAC § 25.191. The Transmission Service Customer shall inform the Denton Municipal Electric Utility and obtain ISO approval for any resale of Transmission Service rights.

RELIABILITY GUIDELINES

To maintain reliability of the ERCOT transmission grid, Denton Municipal Electric Utility shall operate its transmission system in accordance with ERCOT Protocols, ERCOT Operating

Guides, NERC guidelines, and any other guidelines of the ISO that may apply to Denton Municipal Electric Utility's transmission system.

The Denton Municipal Electric Utility reserves the right, consistent with good utility practice and on a non-discriminatory basis, to interrupt Transmission Service without liability on the Denton Municipal Electric Utility's part for the purpose of making necessary adjustments to, changes in, or repairs to its lines, substations and other facilities, or where the continuance of Transmission Service would endanger persons or property. In the event of any adverse condition or disturbance on Denton Municipal Electric Utility's system or any other system directly or indirectly interconnected with Denton Municipal Electric Utility's system, Denton Municipal Electric Utility, consistent with Good Utility Practice, also may interrupt Transmission Service on a non-discriminatory basis in order to limit the extent or damage of the adverse condition or disturbance, to prevent damage to generating or transmission facilities, or to expedite restoration of service. The Denton Municipal Electric Utility will give the Transmission Service Customer as much advance notice as is practicable in the event of such interruption and shall restore service with due diligence.

The Transmission Service Customer's failure to respond to established emergency load shedding and curtailment procedures to relieve emergencies on Denton Municipal Electric Utility's transmission system may result in the Transmission Service Customer being deemed by Denton Municipal Electric Utility to be in default and may result in the termination of Transmission Service.

PAYMENT

Any charges due to Denton Municipal Electric Utility under this rate schedule shall be billed in accordance with 16 TAC § 25.202. Customers shall make payment to Denton Municipal Electric Utility in a manner consistent with the procedures and deadlines set forth in 16 TAC § 25.202. Any late payments by customers or customer defaults shall be handled in accordance with 16 TAC § 25.202.

CONTRACT TERM

Planned Transmission Service is available for annual service, monthly service in multiples of one-month, weekly service, and daily service. Unplanned Transmission Service is available for periods of not less than one hour or more than 30 days.

AGREEMENT

An agreement for Transmission Service containing terms and provisions consistent with 16 TAC §§ 25.191-.203 is required prior to commencement of such service. Such agreement will require approval of the City Council of Denton.

DEFINITIONS

Capitalized terms shall have the meanings set forth in 16 TAC §§ 25.5 and 25.191 .203.

AMENDMENTS TO RULES

In the event 16 TAC §§ 25.191-.203 are amended or if a new rule is adopted governing the subject matter of this tariff, this tariff shall, nevertheless, remain effective until the new tariff(s) filed pursuant to any such amendment(s) or such new rules are approved, unless the amendment(s) or new rules or an agreement of the parties provide otherwise.

PUBLIC UTILITIES COMMISSION OF TEXAS TARIFF

This Schedule WTS is subject to change. The most up to date WTS tariff rate is filed with the Public Utilities Commission of Texas

SECTION 2. The City Manager is hereby authorized to expend funds to authorize credits to Customers on their electric service bills and further to authorize cash incentives in accordance with the form and type set forth in Schedule GIP, as the installation of energy efficient upgrades is in the best interest of the City, as such will reduce energy demand and consumption, reduce the peak load of the City's electric system, reduce emissions in the state, and promote energy conservation, which are all public purposes of the City.

SECTION 3. All ordinances or parts of ordinances in force when the provisions of this ordinance became effective which are inconsistent, or in conflict with the terms or provisions contained in this ordinance are hereby repealed to the extent of any such conflict.

SECTION 4. If any section, subsection, paragraph, sentence, clause, phrase or word in this ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas, hereby declares it would have enacted such remaining portions despite any such invalidity.

SECTION 5. The rates herein adopted shall become effective, charged, and applied to all electric services rendered by the City, and all energy usage by Customers of the City effective with the first billing issued on and after October 1⁵, 2025; and a copy of said rates shall be maintained on file in the Office of the City Secretary of the City of Denton, Texas.

SECTION 6. This ordinance shall be effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____, seconded by _____, and was passed and approved by the following vote [____ - ____]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee,				
At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

GERARD HUDSPETH, MAYOR

ATTEST:

~~LAUREN THODEN~~INGRID REX, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

ORDINANCE NO. 2025-_____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ESTABLISHING THE SCHEDULE OF RATES FOR ELECTRIC SERVICE FOR SCHEDULE ECA LL EFFECTIVE ON OCTOBER 15, 2025; PROVIDING FOR A REPEALER; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The Schedule of Rates for electrical services as provided for in Chapter 26 of the City of Denton Code of Ordinances, is as follows:

ELECTRIC RATE SCHEDULES

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RES Residential Service	2
GS General Service Small	4
GM General Service Medium	6
GL General Service Large	8
TG General Service Time Of Use	10
GOS Local Government Service Small	12
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T1 Temporary Service	18
AF Athletic Field	20
LS Street Lighting	22
LT Traffic Lighting	23
UFL Unmetered School Zone/Crossing Flashers	24
USC Unmetered Security Camera	25
UWF Unmetered Wi-Fi Devices	26
LO Other Lighting	27
DD Security Lighting	28
DSL Non-Standard Street Lighting	30
EGR Economic Growth Rider	32
GIP GreenSense Incentive Program	34
ECA Energy Cost Adjustment	35
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TCRF Transmission Cost Recovery Factor	37
DGR Distributed Generation From Renewable Sources Rider	39
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PAF Pole Attachment Fee	42
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RESIDENTIAL ELECTRIC SERVICE
(Effective 10/01/25)

APPLICATION

Applicable to any Customer for all electric service used for residential purposes in an individual private dwelling or an individually metered apartment, supplied at one point of delivery and measured through one meter. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1) Facility Charge	Per Bill
Single-Phase Service (R2)	\$ 8.80
Three-Phase Service (R2)	\$17.59
Prepaid Service (P2)	\$16.26

plus;

(2) Usage Charge	Per kWh
Winter (Billing months of November through April):	
Tier 1: First 600 kWh	\$0.0694
Tier 2: Additional kWh	\$0.0462
Summer (Billing months of May through October):	
Tier 1: All kWh	\$0.0694

plus;

(3) Energy Cost Adjustment Charge	See Schedule ECA

plus;

(4) Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge as a minimum, regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

Winter (Billing months of November through April):

$$\text{Usage Charge} = \begin{array}{l} \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{array}$$

Summer (Billing months of May through October):

$$\text{Usage Charge} = \text{All kWh} \times \text{Tier 1 Rate per kWh}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GS

GENERAL SERVICE SMALL (Effective 10/01/25)

APPLICATION

Applicable to any commercial customer having a maximum demand of less than 21 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand is equal to or exceeds 21 kW in two consecutive months, account will be adjusted to bill under General Service Medium (GM) and the Customer must remain on the GSM rate for a minimum of twelve (12) billing periods. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1) Facility Charge		Per Bill
	Single-Phase	\$16.85
	Three-Phase	\$22.50
plus;		
(2) Usage Charge		Per kWh
	Tier 1: First 2,500 kWh	\$0.0865
	Tier 2: Additional kWh	\$0.0453
plus;		
(3) Energy Cost Adjustment Charge		See Schedule ECA
plus;		
(4) Transmission Cost Recovery Factor		See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge as a minimum, regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \begin{array}{l} \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{array}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GM

GENERAL SERVICE MEDIUM

(Effective 10/01/25)

APPLICATION

Applicable to any commercial customer having a maximum demand that meets or exceeds 21 kW but less than 240 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand is equal to or exceeds 240 kW in two consecutive months, account will be adjusted to bill under General Service Large (GSL), and the Customer must remain on the GSL rate for a minimum of twelve (12) billing periods.

Applicable to GSM Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(GM2)**

Applicable to GSM Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(GM3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

plus;	(1)	Facility Charge	Per Bill
		Single-Phase	\$16.85
		Three-Phase	\$22.50
plus;	(2)	Demand Charge	Per kW
		All kW	\$4.85
	(3)	Usage Charge	Per kWh
plus;	GM	Tier 1: First 6,000 kWh	\$0.0531
		Tier 2: Additional kWh	\$0.0438
	GM2	Tier 1: First 6,000 kWh	\$0.0521
		Tier 2: Additional kWh	\$0.0428
	GM3	Tier 1: First 6,000 kWh	\$0.0500
		Tier 2: Additional kWh	\$0.0408

- plus;
- | | | |
|-----|--|--------------------------|
| (4) | Energy Cost Adjustment Charge | See Schedule ECA |
| (5) | Transmission Cost Recovery Factor | See Schedule TCRF |

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) the actual monthly kW demand as measured during the fifteen (15) minute period of maximum use each month; or (2) 21 kW; or (3) seventy percent (70%) of the maximum monthly actual demand for any month during the previous billing months of May through October in the twelve (12) months ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned}\text{Usage Charge} = & \quad \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable}\end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GL

GENERAL SERVICE LARGE

(Effective 10/01/25)

APPLICATION

Applicable to any commercial customer having a minimum demand of 240 kW for all electric service supplied at one point of delivery and measured through one meter. Customers who elect to discontinue service under this Rate are ineligible for service under this Rate for twelve (12) months.

Applicable to GSL Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(GL2)**

Applicable to GSL Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(GL3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1)	Facility Charge	Per Bill
	Three-Phase	\$70.10
plus;		
(2)	Demand Charge	Per kVA
	All kVA	\$10.96
plus;		
(3)	Usage Charge	Per kWh
GL	Tier 1: First 200,000 kWh	\$0.0249
	Tier 2: Additional kWh	\$0.0142
GL2	Tier 1: First 200,000 kWh	\$0.0239
	Tier 2: Additional kWh	\$0.0132
GL3	Tier 1: First 200,000 kWh	\$0.0218
	Tier 2: Additional kWh	\$0.0112
plus;		

- plus;
- | | | |
|-----|--|--------------------------|
| (4) | Energy Cost Adjustment Charge | See Schedule ECA |
| (5) | Transmission Cost Recovery Factor | See Schedule TCRF |

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) the actual monthly kVA demand as measured during the fifteen (15) minute period of maximum use each month; or (2) 250 kVA; or (3) seventy percent (70%) of the maximum monthly kVA actual demand for any month during the previous billing months of May through October in the twelve (12) month period ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned} \text{Usage Charge} = & \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE TG

GENERAL SERVICE TIME OF USE (Effective 10/01/25)

APPLICATION

Applicable to any Customer having a minimum demand of 240 kW for all electric service supplied at one point of delivery and measured through one meter. Customers electing this Rate must remain on this Rate for a minimum of twelve (12) continuous billing months. If the Customer is new or does not have a history of on-peak use for June through September, and elects to accept service on the TGS Rate, the Customer's demand shall be billed at the GSL Demand Rate until the Customer establishes a separate on-peak and off-peak demand during an on-peak month.

Applicable to TGS Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(TG2)**

Applicable to TGS Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(TG3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1) Facility Charge		Per Bill
	Three-Phase	\$81.75
plus;		
(2) Demand Charge		Per kVA
	On-Peak	\$13.97
	Off-Peak	\$ 2.76
plus;		
(3) Usage Charge		Per kWh
TG	All kWh	\$0.0083
TG2	All kWh	\$0.0073
TG3	All kWh	\$0.0053
plus;		
(5)	Energy Cost Adjustment Charge	See Schedule ECA

plus;

(6) Transmission Cost Recovery Factor

See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the On-Peak and Off-Peak Demand Charges, regardless of actual energy usage.

DEFINITION OF TIME OF USE HOURS

The City's on-peak hours, for the purpose of this rate schedule, are designated as being from 2:00 P.M. to 7:00 P.M. each Monday through Friday, for the months of June through September excluding Independence Day and Labor Day. The City's on-peak hours may be changed from time to time.

The City's off-peak hours, for the purpose of this rate schedule, shall be all hours not designated as on-peak hours.

DETERMINATION OF DEMAND

On-Peak Demand Charge for the billing period shall be the greater of: (1) the kVA actual demand supplied during the fifteen (15) minute period of maximum use each month during on-peak hours as recorded by the City's demand meter; or (2) 250 kVA; or (3) one hundred percent (100%) of the actual maximum on-peak demand similarly determined during the billing months of June through September in the twelve (12) months immediately preceding the current month. The On-Peak Demand Charge will be applied to each billing period.

Off-Peak Demand Charge for the billing period shall be the greater of: (1) the kVA actual demand supplied during the fifteen (15) minute period of maximum use each month during on-peak hours as recorded by the City's demand meter; or (2) 250 kVA. The Off-Peak Demand Charge will be applied to each billing period.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \text{All kWh} \times \text{Rate per kWh}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GOS

LOCAL GOVERNMENT SERVICE SMALL

(Effective 10/01/25)

APPLICATION

Applicable to any local City, County or School District customer having a maximum demand of less than 21 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand equals or exceeds 21 kW in two consecutive months, account will be adjusted to bill under Local Government Service Medium (GOM), and the Customer must remain on the GOM Rate for a minimum of twelve (12) billing periods. This Rate is not applicable to resale service in any event, or to temporary, standby or supplementary service.

NET MONTHLY RATE

Facility Charge		Per Bill
	Single-Phase	\$16.85
	Three-Phase	\$22.50
plus;		
(2)	Usage Charge	Per kWh
	Tier 1: First 2,500 kWh	\$0.0865
	Tier 2: Additional kWh	\$0.0453
plus;		
(3)	Energy Cost Adjustment Charge	See Schedule ECA
plus;		
(4)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge as a minimum, regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \text{All kWh} \times \text{Rate per kWh}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GOM

LOCAL GOVERNMENT SERVICE MEDIUM

(Effective 10/01/25)

APPLICATION

Applicable to any local City, County, or School District customer having a maximum demand that meets or exceeds 21 kW but less than 240 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand is equal to or exceeds 240 kW in two consecutive months, account will be adjusted to bill under Local Government Service Large (GOL), and the customer must remain on the GOL rate for a minimum of twelve (12) billing periods. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

NET MONTHLY RATE

plus;	(1)	Facility Charge	Per Bill
		Single-Phase	\$16.85
		Three-Phase	\$22.50
plus;	(2)	Demand Charge	Per kW
		All kW	\$4.85
plus;	(3)	Usage Charge	Per kWh
		Tier 1: First 6,000 kWh	\$0.0531
		Tier 2: Additional kWh	\$0.0438
plus;	(4)	Energy Cost Adjustment Charge	See Schedule ECA
	(5)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) The actual kW demand supplied during the fifteen (15) minute period of maximum use each month; or (2) fifty percent (50%) of the maximum monthly actual demand for any month during the previous billing months of May through October in the twelve (12) months ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \begin{array}{l} \text{kWh in Tier 1 kWh} \times \text{Rate per kWh} \\ \text{kWh in Tier 2 kWh} \times \text{Rate per kWh, if applicable} \end{array}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

The due date for the payment of the bill for utility services shall not be less than ten (10) business days after issuance.

SCHEDULE GOL

LOCAL GOVERNMENT SERVICE LARGE

(Effective 10/01/25)

APPLICATION

Applicable to any local City, County, or School District customer having a minimum demand of 240 kW for all electric service supplied at one point of delivery and measured through one meter. Customers who elect to discontinue service under this Rate are ineligible for service under this Rate for twelve (12) months.

Applicable to GOL Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(GO2)**

Applicable to GOL Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(GO3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1)	Facility Charge	Per Bill
	Three-Phase	\$70.10
plus;		
(2)	Demand Charge	Per kVA
	All kVA	\$10.96
plus;		
(3)	Usage Charge	Per kWh
GOL	Tier 1: First 200,000 kWh	\$0.0249
	Tier 2: Additional kWh	\$0.0142
GO2	Tier 1: First 200,000 kWh	\$0.0239
	Tier 2: Additional kWh	\$0.0132
GO3	Tier 1: First 200,000 kWh	\$0.0218
	Tier 2: Additional kWh	\$0.0112
plus;		

- plus;
- | | | |
|-----|--|--------------------------|
| (4) | Energy Cost Adjustment Charge | See Schedule ECA |
| (5) | Transmission Cost Recovery Factor | See Schedule TCRF |

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) the actual monthly kVA demand as measured during the fifteen (15) minute period of maximum use each month; or (2) fifty percent (50%) of the maximum monthly kVA actual demand for any month during the previous billing months of May through October in the twelve (12) month period ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned} \text{Usage Charge} = & \quad \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \quad \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE T1

TEMPORARY SERVICE (Effective 10/01/25)

APPLICATION

Applicable to short term or temporary electric service where a Customer has received a permit. This Rate is not applicable after the certificate of occupancy or building final inspection has been issued.

NET MONTHLY RATE

(1)	Facility Charge	Per Bill
	Single-Phase	\$16.86
	Three-Phase	\$22.52
plus;		
(2)	Usage Charge	Per kWh
	All kWh	\$0.0867
plus;		
(3)	Energy Cost Adjustment Charge	See Schedule ECA
plus;		
(4)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \text{All kWh} \times \text{Rate per kWh}$$

ADDITIONAL TEMPORARY SERVICE CHARGES

Labor	Regular time or overtime labor hourly rates in effect at the time the work is performed for all personnel performing the work. Labor charges shall be based on a one (1) hour minimum with all additional time above the minimum to be measured to the nearest one-quarter hour.
Transportation	To be billed by hours or miles, as applicable, according to the estimated cost of operating the required equipment.
Material	Material that cannot be salvaged shall be billed at the City's Warehouse cost plus twenty five percent (25%), plus applicable sales tax. At the time a temporary service is removed or converted, any loss of the installed material due to negligence or willful action by the Customer will be billed separately to the Customer at replacement cost plus twenty five percent (25%), plus applicable sales tax.
Administrative Fee	Ten percent (10%) of the total labor, transportation, and material costs.

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE AF

ATHLETIC FIELD (Effective 10/01/25)

APPLICATION

Applicable to all electric service metered at one point for use to light specified areas for athletic events. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service except in conjunction with applicable rider.

NET MONTHLY RATE

plus;	(1)	Facility Charge	Per Bill
		Single-Phase	\$23.09
		Three-Phase	\$34.62
plus:	(2)	Demand Charge	Per kW
		On-Peak	\$6.15
		Off-Peak	\$1.46
plus;	(3)	Usage Charge	Per kWh
		On-Peak	\$0.0992
		Off-Peak	\$0.0496
plus;	(4)	Energy Cost Adjustment Charge	See Schedule ECA
	(5)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge, regardless of actual energy usage.

DEFINITION OF ON-PEAK AND OFF-PEAK HOURS

The City's on-peak hours, for the purpose of this rate schedule, are designated as being from 2:00 P.M. to 7:00 P.M., for the months of June through September. The City's on-peak hours may be changed from time to time.

The City's off-peak hours, for the purpose of this rate schedule, shall be all hours not designated as on-peak hours.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the actual kW demand supplied during the fifteen (15) minute period of maximum use during the current billing period as determined by the City's demand meter.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned} \text{Usage Charge} = & \quad \text{On-Peak kWh} \times \text{Rate per kWh} \\ & \quad \text{Off Peak kWh} \times \text{Rate per kWh} \end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE LS

STREET LIGHTING

(Effective 10/01/25)

APPLICATION

Applicable to all street lighting owned and maintained by the City.

NET MONTHLY RATE

(1)	Facility Charge	Per Bill
	<u>Luminaire Style Type</u>	
	100 W Sodium Cobra (LSA)	\$6.17
	250 W Sodium Cobra (LSB)	\$8.75
	400 W Sodium Cobra (LSC)	\$11.02
	100 W LED Cobra (LSD)	\$6.17
	250 W LED Cobra (LSE)	\$8.75
	400 W LED Cobra (LSF)	\$11.02
	85 W LED Post (LSG)	\$11.02

plus;

(2)	Energy Cost Adjustment Charge	See Schedule ECA

ENERGY COST ADJUSTMENT CHARGE

Current ECA multiplied by respective kWh based on the following Bulb Wattage Factors:

<u>Luminaire Type</u>	<u>Bulb Wattage Factor</u>
100 W Sodium(LSA)	48 kWh
250 W Sodium (LSB)	105 kWh
400 W Sodium (LSC)	159 kWh
100 W LED (LSD)	25 kWh
250 W LED (LSE)	96 kWh
400 W LED (LSF)	148 kWh
85 W LED (LSG)	23 kWh

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

TRAFFIC LIGHTING
(Effective 10/01/25)

APPLICATION

Applicable to State and Local Government agencies that operate and maintain their own traffic signals.

METERED TRAFFIC LIGHTING NET MONTHLY RATE (LT)

plus;	(1)	Usage Charge	\$0.0674 per kWh
	(2)	Energy Cost Adjustment Charge	See Schedule ECA
	(3)	Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Metered Traffic Lighting Usage Charge shall be based on actual kWh consumption during the billing period. Usage Charge = All kWh x Rate per kWh

UNMETERED TRAFFIC LIGHTING NET ANNUAL RATE (ULT)

plus;	(1)	Usage Charge	\$0.0674 per kWh
	(2)	Energy Cost Adjustment Charge	See Schedule ECA
	(3)	Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Unmetered Traffic Lighting Usage Charge shall be based on historical recorded annual kWh consumption. Usage Charge = All kWh x Rate per kWh

Annual Usage = 904 kWh per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE UFL

UNMETERED SCHOOL ZONE/CROSSING FLASHERS

(Effective 10/01/25)

APPLICATION

Applicable to local government agencies that operate and maintain their own unmetered school zone/crossing flashers.

NET ANNUAL RATE

plus;	(1) Usage Charge	\$0.0674per kWh
plus;	(2) Energy Cost Adjustment Charge	See Schedule ECA
	(3) Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Usage Charge shall be based on historical recorded annual kWh consumption. The total billed usage divided by number of school zone/crossing flashers will determine the average kWh usage. This average consumption will be billed for each school zone/crossing flasher once every twelve (12) months at the end of the fiscal year. Any accounts that are added during the year will be billed on prorated consumption.

Usage Charge = All kWh × Rate per kWh

Annual Usage = 48 kWh per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE USC

UNMETERED SECURITY CAMERA (Effective 10/01/25)

APPLICATION

Applicable to Local Government agencies that operate and maintain their own unmetered security cameras.

NET ANNUAL RATE

plus;	(1) Facility Charge	\$18.09 per bill
plus;	(2) Usage Charge	\$0.0674 per kWh
plus;	(3) Energy Cost Adjustment Charge	See Schedule ECA
	(1) Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Usage Charge shall be based on technical information of installed equipment. This calculated consumption will be billed for each camera once every twelve (12) months at the end of the fiscal year. Any accounts that are added during the year will be billed on prorated consumption.

Usage Charge = annual kWh per camera × kWh Rate

Annual Usage = 300 kWh per camera per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE UWF

UNMETERED WI-FI DEVICES

(Effective 10/01/25)

APPLICATION

Applicable to local government agencies that operate and maintain their own unmetered Wi-Fi devices.

NET ANNUAL RATE

plus;	(1)	Facility Charge	\$18.09 per bill
plus;	(2)	Usage Charge	\$0.0674 per kWh
plus;	(3)	Energy Cost Adjustment Charge	See Schedule ECA
	(4)	Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Usage Charge shall be based on technical information of installed equipment. This calculated consumption will be billed for each device once every twelve (12) months at the end of the fiscal year. Any accounts that are added during the year will be billed on prorated consumption.

Usage Charge = annual kWh per device × kWh Rate

Annual Usage = 300 kWh per device per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE LO

OTHER LIGHTING (Effective 10/01/25)

APPLICATION

Applicable to Texas Department of Transportation unmetered and metered safety lighting systems and continuous lighting systems as those terms are defined in Texas Administrative Code, Title 43, Part 1, Chapter 25, Subchapter A, Rule §25.11.

METERED LIGHTING NET MONTHLY RATE (LOB)

plus;	(1)	Usage Charge	\$0.0674 per kWh
	(2)	Energy Cost Adjustment Charge	See Schedule ECA

METERED LIGHTING USAGE CHARGE (LOB)

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.
Usage Charge = All kWh × Rate per kWh

UNMETERED LIGHTING NET MONTHLY RATE (LOA)

plus;	(1)	Usage Charge	\$0.0674 per kWh
	(2)	Energy Cost Adjustment Charge	See Schedule ECA

UNMETERED LIGHTING USAGE CHARGE (LOA)

Billing for the Usage Charge shall be based on estimated kWh consumption during the billing period.
Usage Charge = (kWh Rate x Bulb Wattage/1000) x (Hours of Operation per Billing Period)

Hours of Operation per Billing Period = 333 hours

Bulb Wattage is the rated wattage of the luminaire bulb

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE DD

SECURITY LIGHTING

(Effective 10/01/25)

APPLICATION

Applicable to all outdoor area lighting when such lighting facilities are operated as an extension of the City's distribution system.

NET MONTHLY RATE

(1)	Facility Charge	Per Bill

	<u>Luminaire Type</u>	

	100 W Sodium Vapor (DSA)	\$ 9.75

	250 W Sodium Vapor (DSB)	\$12.90

	400 W Sodium Vapor (DSC)	\$15.55

	250 W Metal Halide (DHA)	\$15.17

	400 W Metal Halide (DHB)	\$18.09

	100 W Equivalent LED (DSD)	\$ 9.75

	250 W Equivalent LED (DSE)	\$12.90

	400 W Equivalent LED (DSF)	\$15.55

plus;

(2)	Energy Cost Adjustment Charge	See Schedule ECA

ENERGY COST ADJUSTMENT CHARGE

Current ECA multiplied by respective kWh based on the following Bulb Wattage Factors:

<u>Luminaire Type</u>	<u>Bulb Wattage Factor</u>

100 W Sodium Vapor (DSA)	48 kWh

250 W Sodium Vapor (DSB)	105 kWh

400 W Sodium Vapor (DSC)	159 kWh

250 W Metal Halide (DHA)	105 kWh

400 W Metal Halide (DHB)	159 kWh

100 W Equivalent LED (DSD)	25 kWh

250 W Equivalent LED (DSE)	96 kWh

400 W Equivalent LED (DSF)	148 kWh

TYPE OF SERVICE

The City shall furnish, install, maintain and deliver electric service to automatically controlled lighting fixtures conforming to the City's standards and subject to its published rules and regulations.

Where necessary for proper illumination or where existing poles are inadequate, the City will install or cause to be installed, one (1) wood pole with the necessary lighting hardware and overhead conductor for each installed light, at a distance not to exceed eighty (80') feet from existing lines, at no charge to the Customer. Additional contractual arrangements between the City and the Customer are subject to the Special Facilities Rider.

TERM OF CONTRACT

A two (2) year contract shall be agreed to and signed by each Customer desiring security lighting service authorizing fixed monthly charges, which may be reviewed annually, and to be applied to the Customer's monthly municipal utilities bill. In the event that a Customer requests the removal of the unit or discontinuance of the service prior to completion of two (2) years, the remainder of the contract period shall become due and payable. After the end of the initial two (2) year contract, service shall continue on a month-to-month basis and may be canceled by either party upon thirty (30) days' notice.

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE DSL

NON-STANDARD STREET LIGHTING

(Effective 10/01/25)

APPLICATION

Applicable to street lighting owned and maintained by the Customer. Availability of this service is contingent on the existence of an executed Special Facilities Rider between the legally responsible party and the City under which the legally responsible party accepts all responsibilities, both legal and financial, related to operation and maintenance of the subject lights, including but not limited to payment of all applicable energy charges.

NET MONTHLY RATE

plus;	(1) Facility Charge	\$ 9.32 per bill
	(2) Usage Charge	\$0.0674per kWh
plus;		
	(3) Energy Cost Adjustment Charge	See Schedule ECA

USAGE CHARGE

Current usage charge and ECA rates are multiplied by respective kWh based on the following Bulb Wattage Factors:

<u>Luminaire Type</u>	<u>Bulb Wattage Factor</u>
100 W Sodium Vapor (DLSA)	48 kWh
250 W Sodium Vapor (DLSB)	105 kWh
400 W Sodium Vapor (DLSC)	159 kWh
250 W Metal Halide (DLHA)	105 kWh
400 W Metal Halide (DLHB)	159 kWh

ADDITIONAL SERVICE CHARGES

If the City is required to maintain the privately owned lights to ensure public safety, the owner of the lights may be subject to additional service charges. The additional service charges shall be the actual cost of performing any work required to perform the necessary maintenance including but not limited to:

Labor	Regular time or overtime labor hourly rates in effect at the time the work is

performed for all personnel performing the work. Labor charges shall be based on a one (1) hour minimum with all additional time above the minimum to be measured to the nearest one-quarter hour.

Transportation	To be billed by hours or miles, as applicable, according to the estimated cost of operating the required equipment.
Material	Any material needed to repair and/or maintain facilities will be billed at City Warehouse cost plus twenty five percent (25%).
Administrative Fee	Ten percent (10%) of the total labor, transportation, and material costs.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE EGR

ECONOMIC GROWTH RIDER

(Effective 10/01/25)

PURPOSE

The purpose of this Rider is to facilitate local economic growth and expand the ad valorem tax base of the City.

AVAILABILITY

This Rider is available to the Customers who:

- (1) Receive service from Rate Schedules GSL or TGS; and
- (2) Pay City ad valorem tax; and
- (3) Receive no electric service discounts other than those specifically defined in the GSL or TGS Rate Schedules.

APPLICATION

This Rider is available to electric service supplied at any one location. It is for firm electric service applicable to new and existing customers as described below, over a five (5) year period. This Rider is available to the following classes of customers:

- (1) New Customers whose electric service represents demand not previously served by the City at any location in the City's service area in the last twelve (12) months, where such metered demand will be in excess of 1,000 kVA and customer load factor must be greater than the City's electric system load factor, as estimated and mutually agreed upon by the General Manager of the City's electric utility and the Customer.
- (2) Existing Customers served under Rate Schedules GSL or TGS who increase their prior existing metered demand by 1,000 kVA and customer load factor must be greater than the City's electric system load factor. This increase shall be verified by sub-metering (at the Customer's expense) the additional load. If sub-metering is not possible, at the discretion of the General Manager of the City's electric utility, the increase may be verified by comparing a three-month rolling average of the new level of demand to the prior demand averaged for corresponding months. During periods in which this verification method cannot be applied, the General Manager and the Customer may develop a mutually agreed-upon formula to estimate the base and additional demand levels.

In light of additional costs associated with the Economic Growth Rider and to mitigate potential risk to ratepayers, any participant in the Economic Growth Rider must be, at the time this Rider is applied for and continuing while such Rider is in effect, a Customer in good standing of all City utilities, including solid waste services. Unless legal review procedures have been invoked in good faith regarding the obligation, a Customer in good standing for the purpose of this Rider is defined as a Customer not owing any unpaid utility or solid waste debt obligation that is over forty-five (45) days past due to the City during the previous twelve (12) months.

NET MONTHLY RATE

The Customer shall be charged under the appropriate applicable rate schedules with the exception that the monthly billing demand (for the GSL Rate) or system demand and on-peak demand (for the TGS Rate) will be adjusted in accordance with the following table:

<u>Time Period</u>	<u>Reduction to Billing Demand</u>
First Year	50%
Second Year	40%
Third Year	30%
Fourth Year	20%
Fifth Year	10%

CONTRACT PERIOD

The term of the contract will be for five (5) years.

SCHEDULE GIP

GREENSENSE INCENTIVE PROGRAM

(Effective 10/01/25)

PROGRAM SUMMARY

The objective of the GreenSense Incentive Program (“Program”) is to reduce energy demand and consumption by promoting energy conservation, thereby reducing the utility bills of City Customers, reducing the peak load of the City’s electric system, reducing emissions in the state, and promoting energy conservation. The Program offers incentives that may be distributed in the form of credits on the electric service bills or cash incentives to City retail customers.

Any participant in the GreenSense Incentive Program must be, at the time this program is applied for and continuing while such program is in effect, a Customer in good standing of all City utilities, including solid waste services. Unless legal review procedures have been invoked in good faith regarding the obligation, a Customer in good standing for the purpose of this Program is defined as a Customer not owing any unpaid utility or solid waste debt obligation that is over forty-five (45) days past due to the City during the previous twelve (12) months.

Program applicants will be able to qualify for multiple incentives simultaneously, unless specified in the individual guidelines. A separate application may be necessary for each incentive. The Program will be in effect each fiscal year beginning on October 1, until the allotted funding is depleted or until cancellation of the program by the City. At the time the funds are depleted, no additional applications for participation will be accepted until the next fiscal year.

Qualifying applicants must receive electric service from the City. The program guidelines and payment provisions are subject to change by the City without prior notice. The City may, at any time, discontinue the Program without prior notice. The current program guidelines may be found in the GreenSense Incentive Program Manual located at www.cityofdenton.com.

SCHEDULE ECA

ENERGY COST ADJUSTMENT

(Effective 10/01/25)

The Energy Cost Adjustment (ECA) Rate shall be set to recover the net cost of energy delivered to Customers that are not Large Load Customers and to maintain the City's electric utility in a financially sound position.

NET MONTHLY RATE

(1) **Energy Cost Adjustment Charge** **\$0.0462 per kWh**

ENERGY COST ADJUSTMENT BALANCING ACCOUNT CALCULATION

The ECA Balancing Account shall be calculated using the following formula:

$$\text{ECA Balancing Account} = (\text{Beginning ECA Account Balance}) - (\text{Projected Net Energy Cost})$$

Where:

Projected Net Energy Cost = For the next fiscal quarter, the electric utility's projected cost of electric load purchases from ERCOT plus all projected electric utility power/energy related costs for that same period including, but not limited to, power production (excluding the Denton Energy Center debt); purchased power; applicable transmission services, losses and congestion; other ERCOT charges; renewable energy credits; and financial and/or physical power/energy trades (including natural gas); less all projected revenue to be received by the electric utility for power/energy related sales and/or trades; plus applicable Franchise Fees and required ROI.

ENERGY COST ADJUSTMENT CALCULATION

$$\text{ECA} = [(\text{Projected Net Energy Cost}) + (\text{ECA Balancing Account})] / (\text{Projected kWh sales})$$

ENERGY COST ADJUSTMENT CHARGE

The Energy Cost Adjustment Charge shall be based on actual kWh consumption during the billing period. Energy Cost Adjustment Charge = kWh × ECA Rate

The General Manager of the City's electric utility or their designee shall calculate the ECA Balancing Account monthly. In the event that the ECA Balancing Account calculated during the last month of each fiscal quarter (December, March, June, and September) is projected to be over or under collected by \$20,000,000 or more at the end of the next 4 quarters, the General Manager or their designee may recommend to the PUB and City Council a revision to the ECA to maintain the City's electric utility in a financially sound position. Any change to the ECA will be placed on the City Council's consent agenda.

SCHEDULE ECA LL

ENERGY COST ADJUSTMENT FOR LARGE LOADS

(Effective 10/15/25)

The Energy Cost Adjustment (ECA) for Large Loads (LL) Rate shall be set to recover the net cost of energy delivered to Large Load Customers and to maintain the City's electric utility in a financially sound position. This rate applies to all Large Load customers regardless of their actual monthly usage. Large Load Customers are defined as customers whose planned or actual single point of delivery meets or exceeds 20MW.

NET MONTHLY RATE

(1) **Energy Cost Adjustment for Large Load Charge** **\$0.0577 per kWh**

ENERGY COST ADJUSTMENT BALANCING ACCOUNT CALCULATION

The ECA Balancing Account shall be calculated using the following formula:

ECA Balancing Account = (Beginning ECA LL Account Balance) – (Projected Net Energy Cost for Large Load)

Where:

Projected Net Energy Cost = For the next fiscal quarter, the electric utility's projected cost of electric load purchases from ERCOT to feed Large Loads plus all projected Large Load related electric utility power/energy related costs for that same period including, but not limited to, purchased power; applicable transmission services, losses and congestion; other ERCOT charges; renewable energy credits; and financial and/or physical power/energy trades (including natural gas); less all projected revenue to be received by the electric utility for Large Load related power/energy related sales and/or trades; plus applicable Franchise Fees and required ROI.

ENERGY COST ADJUSTMENT CALCULATION

ECA LL = [(Projected Large Load Net Energy Cost) + (ECA LL Balancing Account)] / (Projected Large Load kWh sales)

ENERGY COST ADJUSTMENT CHARGE

The Energy Cost Adjustment Large Load Charge shall be based on actual kWh consumption during the billing period. Energy Cost Adjustment Charge for Large Load = kWh × ECA LL Rate

The General Manager of the City's electric utility or their designee shall calculate the ECA LL Balancing Account monthly. In the event that the ECA LL Balancing Account calculated during the last month of each fiscal quarter (December, March, June, and September) is projected to be below \$0 to \$20,000,000 or more at the end of the next 4 quarters, the General Manager or their designee may recommend to the PUB and City Council a revision to the ECA LL to maintain the City's electric utility in a financially sound position. Any change to the ECA LL will be placed on the City Council's consent agenda.

SCHEDULE TCRF

TRANSMISSION COST RECOVERY FACTOR

(Effective 10/01/25)

The Transmission Cost Recovery Factor (TCRF) Rate shall be set to recover the costs of transmission service paid by DME to other transmission owners within the boundaries of the Electric Reliability Council of Texas (“ERCOT”) region. The TCRF Rate shall be reviewed on a quarterly basis and adjusted as defined below. The TCRF Rate charges are pass-through charges to customers in order to maintain the City’s electric utility in a financially sound position.

<u>NET MONTHLY RATE</u>	<u>\$0.0176 Per kWh</u>

Residential
General Service Small
Local Government Service Small
Temporary Service
Athletic Field
Traffic Lighting
Unmetered Traffic Lighting
Unmetered School Zone/Crossing
Unmetered Security Camera
Unmetered Wi-Fi Devices

<u>NET MONTHLY RATE</u>	<u>\$5.02 Per kW</u>

General Service Medium
Local Government Service Medium

<u>NET MONTHLY RATE</u>	<u>\$6.95 Per kVA</u>

General Service Large
Local Government Service Large
General Service Time Of Use

TRANSMISSION COST RECOVERY FACTOR BALANCING ACCOUNT CALCULATION

The TCRF shall be calculated using the following formula:

TCRF Annual Billing = (Actual monthly net TCOS billing amounts charged by ERCOT transmission service providers to the City) + (Projected increases or decreases pursuant to PUCT-approved TCOS billing amount charges to ERCOT utilities) + (applicable Franchise Fees and required ROI)

During the last month of each fiscal year quarter (December, March, June, and September), the General Manager of the City’s electric utility or their designee shall calculate the TCRF Balancing Account. The TCRF charge will be developed by the City for each applicable customer billing schedule herein, based on projected kWh sales for billing schedules without a demand component and on monthly peak kW or kVA for billing schedules with a demand component. The cumulative forecasted TCRF revenues from all rate classes shall fully recover the TCRF Annual Billing. The General Manager or their designee may recommend to the PUB and City Council a revision to the

TCRF to maintain the City's electric utility in a financially sound position. Any change to the TCRF will be placed on the City Council's consent agenda.

TCRF rate class allocation amount = [(TCRF annual billing) x (Projected rate class kWh usage)] / (Total projected usage for all rate classes).

SCHEDULE DGR

DISTRIBUTED GENERATION FROM RENEWABLE SOURCES RIDER

(Effective 10/01/25)

APPLICATION

This Rider is available to retail Customers receiving electric service under a City electric rate schedule who owns and operates an on-site generating system powered by a renewable resource capable of producing power, and which is interconnected with the City's electric system. Systems greater than 20 kW may be required to enter into a Purchase Power Agreement (PPA) applicable to their specific situation in lieu of this rate schedule. Renewable energy technology is any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly or indirectly from the sun or wind. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

This Rider applies to a Customer-owned generating system that primarily offsets all or part of the Customer's electric service provided by the City. If the Customer-owned generating system is sized such that it produces energy in excess of a Customer's electric consumption, special arrangements and a contract may be necessary. The current interconnection guidelines may be found in the Distributed Generation Manual located at www.cityofdenton.com.

In light of additional costs associated with the Distributed Generation From Renewable Sources Rider and to mitigate potential risk to ratepayers, any participant in the Distributed Generation From Renewable Sources Rider must be, at the time this Rider is applied for and continuing while such Rider is in effect, a Customer in good standing of all City utilities, including solid waste services. Unless legal review procedures have been invoked in good faith regarding the obligation, a Customer in good standing for the purpose of this Rider is defined as a Customer not owing any unpaid utility or solid waste debt obligation that is over forty-five (45) days past due to the City during the previous twelve (12) months.

CONDITIONS OF SERVICE

All charges, character of service, and terms and conditions of the electric rate schedule under which the Customer receives service shall apply except as expressly altered by this Rider. This Rider is subject to change at any time.

The Customer shall comply with the City's current technical requirements for distributed generation interconnection. The Customer shall obtain approval from the City prior to the installation of the on-site generating system. The Customer shall submit to the City a completed interconnection application form and signed Agreement for Interconnection and Parallel Operation of Distributed Generation before the system installation. The minimum term of an agreement under this Rider is one year, extended automatically unless terminated by either party with sixty (60) days advance written notice.

The Customer is responsible for the costs of interconnecting with the City's electric system, including transformers, service lines, or other equipment determined necessary by the City for safe installation and operation of the Customer's equipment with the City's electric system. The

Customer is responsible for any costs associated with required inspections and permits.

METERING

Metering under this Rider shall be performed by a single meter capable of registering the flow of electricity in two directions (delivered by the City's electric system to the Customer and delivered to the City's electric system by the Customer's system) to determine the Customer's generation delivered to the City.

The Value of Solar (VOS) Rate

Applicable to any customer receiving City electric service that owns an on-site distributed generation (DG) system powered by solar which is interconnected with the City's electric system and does not otherwise have a purchase power agreement with the City.

MONTHLY RATE

(1) Value of Solar Rate

\$0.0500 per kWh

VALUE OF SOLAR CALCULATION

VOS Credit = (all kWh delivered from customer DG to DME) * (VOS Rate)

The Value of Solar credit will be applied monthly based on all kWh delivered from Customer to City's electric system during the billing period regardless of customer usage during that month.

Beginning in the billing period after a Customer receives approval from the City, to interconnect the Customer's on-site generating system; all energy generated by the Customer's system and delivered to the City's electric system will be considered renewable energy. The Customer shall be billed for all energy delivered by the City to the Customer under the approved rates.

Any Billing Period Credit shall be applied to the utility charges due from the Customer to the City for the billing period.

INDEMNIFICATION

The Customer operating the renewable distributed generation system indemnifies the City and holds the City harmless for all damages and injuries to the City, the Customer, or others arising out of Customer's use, ownership or operation of Customer's distributed generation facilities in parallel with the City's system. Customer is solely responsible for providing adequate protection for operating in parallel with the City's system in such a manner that faults or other disturbances on the City's system do not cause damage to the Customer's distributed generation equipment.

SCHEDULE SFR

SPECIAL FACILITIES RIDER

(Effective 10/01/25)

- (1) All service shall be offered from available facilities. If a Customer's service characteristics require facilities and devices not normally and readily available at the location where the Customer requests service, the total cost incurred by the City for all facilities installed, buried, relocated and/or removed shall be the responsibility of the Customer and subject to a contract entered between the City and the Customer. This contract shall be signed by both parties prior to the City providing service to the Customer.
- (2) Any contract under this rider is subject to the following approvals:
 - (a) If the total value of the contract is less than \$100,000, the contract may be approved by the City Manager, or their designee. If a contract under this subsection is not approved by the City Manager, or their designee, then it must be recommended for approval by the Public Utilities Board and approved by the City Council.
 - (b) If the total value of the contract is equal to or greater than \$100,000, the contract must be recommended for approval by the Public Utilities Board and approved by the City Council.

SCHEDULE PAF

POLE ATTACHMENT FEE

(Effective 10/01/25)

APPLICATION

This Rate is available to a licensee ("Licensee" or "licensee") who desires to access designated poles or conduits owned by the City for the purpose of installing and maintaining their facilities and associated equipment to provide services to the public. An agreement between such entity and the City or its contractor shall be executed on a separate form, but will reference, the following rate schedule:

$$\text{Space Factor} = \frac{\text{Rate} = \text{Space Factor} \times \text{Cost}}{[(\text{Space Occupied}) + (2/3 \times (\text{Unusable Space} \div \text{No. of Attaching Entities}))]} \\ (\text{Pole Height})$$

Cost:

in Service Areas where the number of Attaching Entities is 5 = 0.66 x (Net Cost of Bare Pole) x Carrying Charge Rate

in Service Areas where the number of Attaching Entities is 4 = 0.56 x (Net Cost of Bare Pole) x Carrying Charge Rate

in Service Areas where the number of Attaching Entities is 3 = 0.44 x (Net Cost of Bare Pole) x Carrying Charge Rate

in Service Areas where the number of Attaching Entities is 2 = 0.31 x (Net Cost of Bare Pole) x Carrying Charge Rate

NET ANNUAL RATE

(1) Annual Pole Attachment ("APA") Distribution

\$/attachment/year	2 Attachers	3 Attachers	4 Attachers	5 Attachers
	\$19.86	\$19.78	\$19.83	\$19.59

plus;

(2) APA Transmission

\$/attachment/year	2 Attachers	3 Attachers	4 Attachers	5 Attachers
	\$410.93	\$403.94	\$399.99	\$390.72

Note: Annual Rates (2) and (3) listed above are not available on all poles nor in all areas across the City.

MISCELLANEOUS

(1)	Unauthorized Attachment Penalty	\$1,000 per attachment per pole
(2)	Undefined Work or Expense	Rate pursuant to Schedule SFR

APPLICATION AND MAKE READY COSTS

Licensees will be required to pay for any work done or contracted by the City, including but not limited to any application fees, analysis, make ready work and any installed, used or maintained facilities in violation of the Agreement that the licensee has not corrected. The City or its Contractor will invoice licensee, and licensee must pay, for identified expenses as needed before any work will begin and shall include all reasonable fully loaded material (including any applicable overhead), labor, engineering, transportation and administrative costs. These fees will be as set forth in the contract agreement with the third-party contractor who provides such services, if applicable.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE BIF

BANNER INSTALL FEE

(Effective 10/01/25)

APPLICATION

Applicable to any person who has completed an application and received approval from the City to have a banner installed on facilities owned by the City for the purpose of marketing and publicizing community events shall be assessed a fee based on the following schedule:

NET ANNUAL RATE

Over the Street Banner Install	\$100.00 per banner
Pole One Time Banner Install	\$15.00 per banner
Pole Seasonal Banner Install	\$27.00 per banner

TERMS AND CONDITIONS OF SERVICE

Persons requesting the City install an Over the Street Banner must provide the City with a banner that is no more than three (3) feet tall by thirty-five (35) feet in length with six (6) feet of rope. All Over the Street Banners must be made out of mesh only (fish net type material). A sample of the banner material is recommended for approval. The City's Building Inspections Department requires an application and permit fee of sixty (60) dollars for installation of an Over the Street Banner which needs to be completed prior to contacting the City's electric utility.

Persons requesting the City install a Pole Banner must provide the City's electric utility with a banner that is no more than thirty (30) inches tall by eighty (80) inches in length with openings of two (2) inches. Pole Banners are required to be made of weather beater or vinyl material only. The appropriate application for each type of banner must be completed prior to installation and returned to a representative of the City's Electric Operations and Maintenance Division along with applicable fees listed above, a digital image of the banner, and location requests. The City's electric utility will determine install locations depending on availability. Any banners that promote sponsors or advertisement are strictly prohibited.

PAYMENT

Payment is required to the City at the time the banners are given for installation. Permit fees, when applicable, are due to Building Inspections in order to reserve specific dates.

SCHEDULE WNA

WIRELESS NODE ATTACHMENTS

(Effective 10/01/25)

APPLICATION

This Rate is available to a licensee who desires to install and maintain their wireless nodes and associated equipment to provide services to the public. An agreement between such entity and the City shall be executed separate from, but will reference, the following rate schedule:

NET ANNUAL RATE

	(1)	Facility Charge	\$18.09 per node
plus;	(2)	Usage Charge	\$0.0674 per kWh
plus;	(3)	Energy Cost Adjustment Charge	See Schedule ECA
plus;	(4)	Transmission Cost Recovery Factor	See Schedule TCRF

METERED USAGE CHARGE

Billing for the Metered Usage Charge shall be based on actual kWh consumption for each device once every twelve (12) months at the end of the fiscal year.

$$\text{Usage Charge} = \text{All kWh per device} \times \text{Rate per kWh}$$

UNMETERED USAGE CHARGE

Billing for the Unmetered Usage Charge shall be based on 1) kWh consumption from similarly installed metered equipment; or 2) technical information of installed equipment provided by licensee, if similar equipment is not already metered. This calculated consumption will be billed for each device once every twelve (12) months at the end of the fiscal year.

$$\text{Usage Charge} = \text{Annual kWh per device} \times \text{Rate per kWh}$$

$$\text{Annual Usage} = 2,000 \text{ kWh per device per account (or calculated consumption based on technical information provided by licensee)}$$

MISCELLANEOUS

(1)	Unauthorized Attachment Penalty	\$1,000 per attachment
(2)	Undefined Work or Expense	Rate pursuant to Schedule SFR

MAKE READY COSTS

Licensees will be required to pay for any work done or contracted by the City, including but not limited to make ready work and any installed, used or maintained facilities in violation of the Agreement that the licensee has not corrected. The City will invoice licensee, and licensee must pay, for identified expenses as needed before any work will begin and shall include all reasonable fully loaded material (including any applicable overhead), labor, engineering, transportation and administrative costs.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE EVCR

ELECTRIC VEHICLE CHARGING RATE (Effective 10/01/25)

APPLICATION

Applicable to vehicles that utilize charging services from City of Denton owned and operated Level 2 EV chargers.

NET ANNUAL RATE

(1)	Usage Charge	\$0.0406 per minute

USAGE CHARGE

Billing for the Usage Charge shall be based on actual charging time incurred. The billing service will be provided by a third-party vendor

Usage Charge = EV Charging duration × Rate per Minute

SCHEDULE WTS

WHOLESALE TRANSMISSION SERVICE

(Effective 10/01/25)

AVAILABILITY

To Eligible Transmission Service Customers for Wholesale Transmission Service through the Denton Municipal Electric Utility transmission system, at all points where transmission facilities of adequate capacity and suitable voltage are available to provide service, in accordance with Public Utility Commission of Texas (PUC or Commission) 16 Texas Administrative Code (TAC) §§ 25.191-.203.

APPLICABILITY

Applicable only to wholesale transactions involving the wholesale purchase of electric power and energy. This tariff for Wholesale Transmission Service is applicable to Transmission Service using any transmission facilities owned by the Denton Municipal Electric Utility in accordance with 16 TAC §§ 25.191-.203.

TYPE OF SERVICE

Three phase, 60 hertz alternating current, delivered onto, or received from Denton Municipal Electric Utility's transmission system at 60,000 volts or greater and on transmission facilities that have been prepared and made available for this service.

TRANSMISSION SERVICE REQUIREMENTS

As a condition to obtaining Wholesale Transmission Service, the Transmission Service Customer shall execute an Interconnection Agreement with each Transmission Provider, in accordance with 16 TAC § 25.198, and the Transmission Service Customer shall meet all Electric Reliability Council of Texas (ERCOT) requirements as specified in the ERCOT Protocols and Operating Guides.

CONDITIONS PRECEDENT FOR RECEIVING SERVICE

Subject to the terms and conditions hereof and of 16 TAC § 25.198, the Denton Municipal Electric Utility will provide wholesale Transmission Service to any Eligible Transmission Service Customer, provided that:

(A) the eligible Transmission Service Customer has completed an Application for Transmission Service, as provided under 16 TAC § 25.198;

(B) the eligible Transmission Service Customer and Denton Municipal Electric Utility, or a third party, have completed installation of all equipment specified under the Interconnection Agreement, consistent with NERC and ERCOT guidelines as set forth in 16 TAC § 25.198;

the eligible Transmission Service Customer has executed an Interconnection Agreement for service under this tariff or, if necessary, requested in writing that Denton Municipal Electric Utility file a proposed unexecuted agreement with the Commission;

(D) the eligible Transmission Service Customer has arranged for Ancillary Services necessary for the transaction;

(E) each wholesale load for which Transmission Service is requested maintains a power factor of 95% or greater at each point of interconnection;

(F) the Transmission Service Customer has constructed, maintains and operates the facilities on its side of each point of interconnection that are necessary to reliably interconnect and deliver power from a resource to Denton Municipal Electric Utility's transmission system and from Denton Municipal Electric Utility's transmission system to the Transmission Service Customer's loads;

(G) to the extent the Transmission Service requires the addition of facilities or upgrades to the transmission system, such facilities have been placed in service.

APPLICATION PROCEDURES

The Denton Municipal Electric Utility and the Transmission Service Customer shall comply with the application procedures for Transmission Services set forth in 16 TAC § 25.198, which shall govern such procedures.

CONSTRUCTION OF NEW FACILITIES

Construction of new facilities needed to accommodate a request for Planned Transmission Service shall be in accordance with the procedures set forth in 16 TAC § 25.198. Upon receipt of a request for Transmission Service, the Denton Municipal Electric Utility shall, if necessary, perform a System Security Study in accordance with 16 TAC § 25.198. Based on the results of the System Security Study, the Denton Municipal Electric Utility also may perform a Facilities Study, in accordance with 16 TAC § 25.198. An executed Facilities Study agreement with the Transmission Service Customer is required prior to the Denton Municipal Electric Utility performing a Facilities Study. In the event that existing facilities are inadequate to support the requested Transmission Service, Denton Municipal Electric Utility may require the Transmission Service Customer to provide a contribution in aid of construction attributable to directly assigned facilities.

LOAD SHEDDING AND CURTAILMENT

Transmission Service hereunder shall be subject to, and the Denton Municipal Electric Utility and the Transmission Service Customer will comply with, the load shedding and curtailment procedures established under 16 TAC § 25.200. Any interruption shall be based on operational factors and shall not accord a higher priority to the Denton Municipal Electric Utility's retail and wholesale customers than to its customers taking Transmission Service. Service to all customers shall be restored as quickly as possible.

PRICING FOR TRANSMISSION SERVICE WITHIN ERCOT

Charges for Transmission Service hereunder shall be in accordance with Texas Utilities Code § 35.004(d). For Transmission Service a Transmission Service Customer shall incur both an access charge, as set forth below, and loss compensation charges.

Annual Postage Stamp Charge (access charge) \$0.333063 per kW of coincident peak demand determined in accordance with 16 TAC §25.192.

Monthly Postage Stamp Charge (access charge) \$0.027755 per kW of coincident peak demand determined in accordance with 16 TAC §25.192.

Charges for each calendar year shall be adjusted pursuant to the schedule in the PUC's Order approving the transmission charges for that year.

PRICING FOR TRANSMISSION SERVICE FOR EXPORTS FROM ERCOT

Charges for Transmission Service for exports from ERCOT shall be in accordance with Texas Utilities Code § 35.004(d) and 16 TAC § 25.192. Transmission Service Customers exporting power from ERCOT will be assessed transmission service charges based on the amount of power actually exported and the duration of the transaction. Charges for Transmission Service for exports from ERCOT shall be determined in accordance with 16 TAC § 25.192(e) and shall be calculated using the charges set forth below:

<u>Service Type</u>	<u>Access Rate</u>
<u>Hourly Rate</u>	<u>per kW of</u>
	<u>peak demand</u>
	\$0.000038

LOSSES

Losses shall be calculated by the Independent System Operator (ISO) in accordance with the method approved by the 16 TAC § 25.192.

RESALE OF TRANSMISSION RIGHTS

With advance written notice to the Denton Municipal Electric Utility and subject to a reasonable credit review, a Transmission Service Customer may resell any and all Transmission Service rights contracted for by the Transmission Service Customer to other wholesale market participants pursuant to 16 TAC § 25.191. The Transmission Service Customer shall inform the Denton Municipal Electric Utility and obtain ISO approval for any resale of Transmission Service rights.

RELIABILITY GUIDELINES

To maintain reliability of the ERCOT transmission grid, Denton Municipal Electric Utility shall operate its transmission system in accordance with ERCOT Protocols, ERCOT Operating

Guides, NERC guidelines, and any other guidelines of the ISO that may apply to Denton Municipal Electric Utility's transmission system.

The Denton Municipal Electric Utility reserves the right, consistent with good utility practice and on a non-discriminatory basis, to interrupt Transmission Service without liability on the Denton Municipal Electric Utility's part for the purpose of making necessary adjustments to, changes in, or repairs to its lines, substations and other facilities, or where the continuance of Transmission Service would endanger persons or property. In the event of any adverse condition or disturbance on Denton Municipal Electric Utility's system or any other system directly or indirectly interconnected with Denton Municipal Electric Utility's system, Denton Municipal Electric Utility, consistent with Good Utility Practice, also may interrupt Transmission Service on a non-discriminatory basis in order to limit the extent or damage of the adverse condition or disturbance, to prevent damage to generating or transmission facilities, or to expedite restoration of service. The Denton Municipal Electric Utility will give the Transmission Service Customer as much advance notice as is practicable in the event of such interruption and shall restore service with due diligence.

The Transmission Service Customer's failure to respond to established emergency load shedding and curtailment procedures to relieve emergencies on Denton Municipal Electric Utility's transmission system may result in the Transmission Service Customer being deemed by Denton Municipal Electric Utility to be in default and may result in the termination of Transmission Service.

PAYMENT

Any charges due to Denton Municipal Electric Utility under this rate schedule shall be billed in accordance with 16 TAC § 25.202. Customers shall make payment to Denton Municipal Electric Utility in a manner consistent with the procedures and deadlines set forth in 16 TAC § 25.202. Any late payments by customers or customer defaults shall be handled in accordance with 16 TAC § 25.202.

CONTRACT TERM

Planned Transmission Service is available for annual service, monthly service in multiples of one-month, weekly service, and daily service. Unplanned Transmission Service is available for periods of not less than one hour or more than 30 days.

AGREEMENT

An agreement for Transmission Service containing terms and provisions consistent with 16 TAC §§ 25.191-.203 is required prior to commencement of such service. Such agreement will require approval of the City Council of Denton.

DEFINITIONS

Capitalized terms shall have the meanings set forth in 16 TAC §§ 25.5 and 25.191 .203.

AMENDMENTS TO RULES

In the event 16 TAC §§ 25.191-.203 are amended or if a new rule is adopted governing the subject matter of this tariff, this tariff shall, nevertheless, remain effective until the new tariff(s) filed pursuant to any such amendment(s) or such new rules are approved, unless the amendment(s) or new rules or an agreement of the parties provide otherwise.

PUBLIC UTILITIES COMMISSION OF TEXAS TARIFF

This Schedule WTS is subject to change. The most up to date WTS tariff rate is filed with the Public Utilities Commission of Texas

SECTION 2. The City Manager is hereby authorized to expend funds to authorize credits to Customers on their electric service bills and further to authorize cash incentives in accordance with the form and type set forth in Schedule GIP, as the installation of energy efficient upgrades is in the best interest of the City, as such will reduce energy demand and consumption, reduce the peak load of the City's electric system, reduce emissions in the state, and promote energy conservation, which are all public purposes of the City.

SECTION 3. All ordinances or parts of ordinances in force when the provisions of this ordinance became effective which are inconsistent, or in conflict with the terms or provisions contained in this ordinance are hereby repealed to the extent of any such conflict.

SECTION 4. If any section, subsection, paragraph, sentence, clause, phrase or word in this ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas, hereby declares it would have enacted such remaining portions despite any such invalidity.

SECTION 5. The rates herein adopted shall become effective, charged, and applied to all electric services rendered by the City, and all energy usage by Customers of the City effective with the first billing issued on and after October 15, 2025; and a copy of said rates shall be maintained on file in the Office of the City Secretary of the City of Denton, Texas.

SECTION 6. This ordinance shall be effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____, seconded by _____, and was passed and approved by the following vote [____ - ____]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Quarterly Energy Cost Adjustment (ECA) and Transmission Cost Recovery Factor (TCRF)

Melissa Cuevas

Denton Municipal Electric

Current Rates

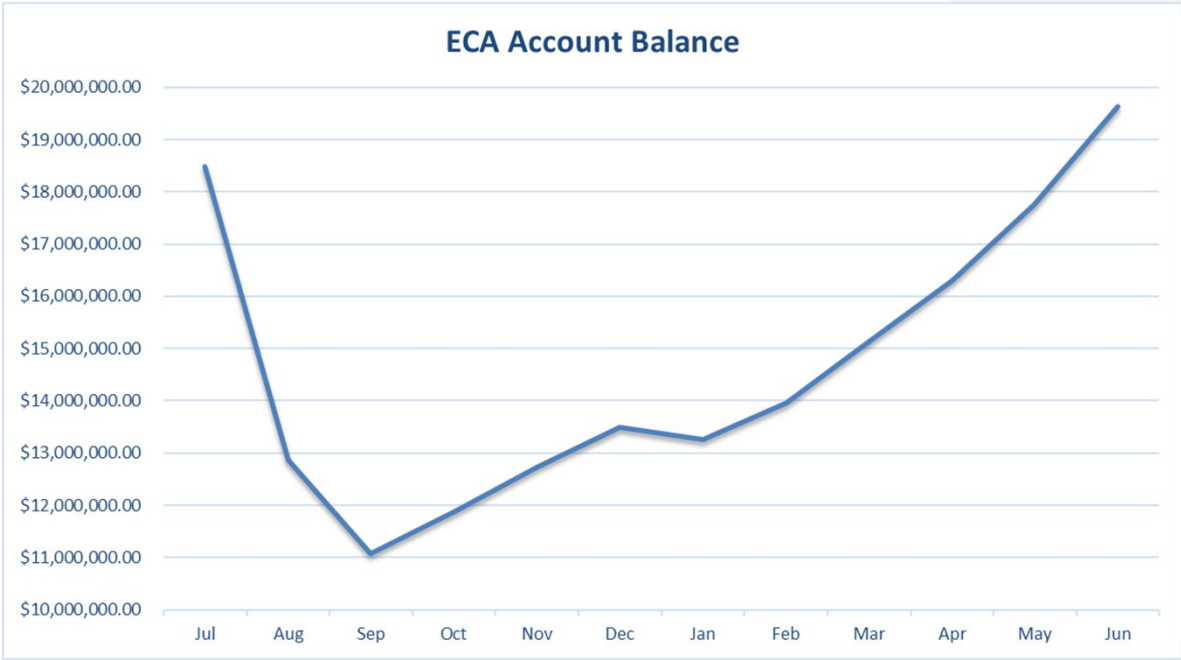
- Native Load Energy Cost Adjustment (No Changes Recommended)
 - \$0.0462/kWh
 - Provides a buffer +/- \$20,000,000 ECA Balance
- Large Load Energy Cost Adjustment
 - \$0.0515/kWh
 - Provides a buffer \$20,000,000 ECA Balance
- Transmission Cost Recovery Factor (No Changes Recommended)
 - \$0.0176/kWh
 - \$5.02/kW
 - \$6.95/kVA

Large Load ECA Adjustments

- Increase Large Load ECA rate on 10/15/2025 from \$0.0515/kWh to \$0.0577/kWh

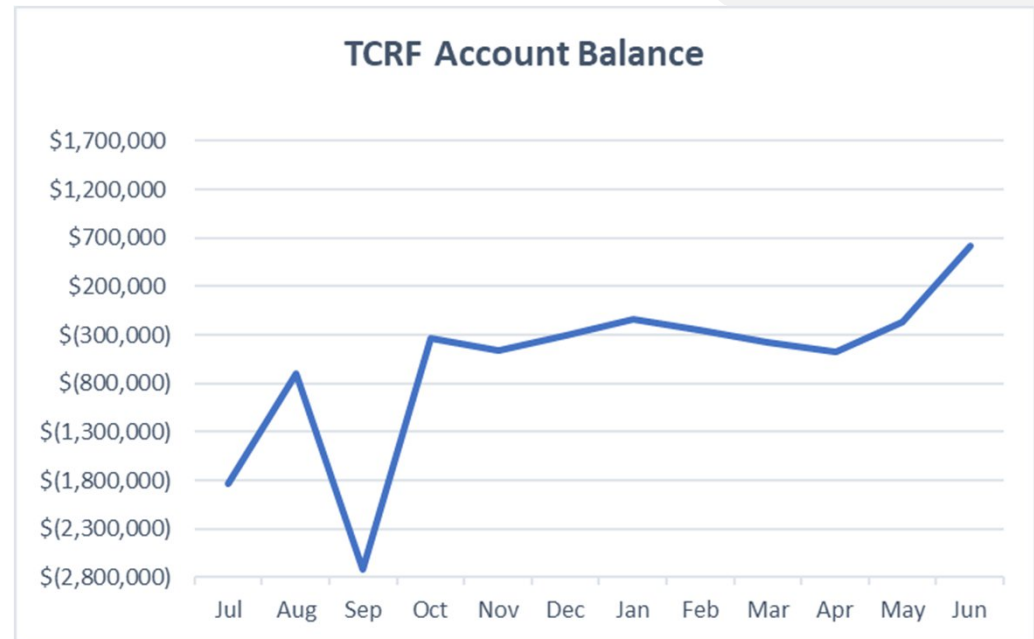
Native Load ECA Forecasted Account Balance

ECA Account Balance Forecast		
Month	Year	Maintain Rate
		\$ 0.0462
July	2025	\$ 18,478,721.06
August	2025	\$ 12,869,440.18
September	2025	\$ 11,064,437.72
October	2025	\$ 11,871,298.01
November	2025	\$ 12,725,589.61
December	2025	\$ 13,488,646.89
January	2026	\$ 13,264,054.55
February	2026	\$ 13,954,102.15
March	2026	\$ 15,135,225.76
April	2026	\$ 16,295,659.67
May	2026	\$ 17,757,969.18
June	2026	\$ 19,633,412.34



TCRF Forecasted Account Balance

TCRF Account Balance Forecast		
Month	Year	Maintain Rate
		\$ 0.0176
Jul	2025	\$ (1,832,849)
Aug	2025	\$ (705,887)
Sep	2025	\$ (2,710,618)
Oct	2025	\$ (332,614)
Nov	2025	\$ (465,792)
Dec	2025	\$ (306,694)
Jan	2026	\$ (138,432)
Feb	2026	\$ (255,953)
Mar	2026	\$ (376,181)
Apr	2026	\$ (476,696)
May	2026	\$ (165,418)
Jun	2026	\$ 623,890



Recommendation

DME General Manager and Finance Department recommendation.

Native Load ECA

- No requested changes for next quarter
- Large Load ECA (Effective 10/15/25)
 - Increase Large Load ECA rate to \$0.0577/kWh
- TCRF
 - No requested changes for next quarter



Questions?



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB25-144, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract and lease agreement with Mayhill Renewables, LLC, to design, fabricate, construct, commission, and operate a Renewable Natural Gas (RNG) Facility to treat landfill and digester gas at the City of Denton Landfill for the Solid Waste and Water Utilities Departments; providing for the expenditure of funds therefor; and providing an effective date (RFP 8465 - awarded to Mayhill Renewables, LLC, for a primary construction phase and twenty (20) year term).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Christine Taylor
DATE: August 25, 2025

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract and lease agreement with Mayhill Renewables, LLC, to design, fabricate, construct, commission, and operate a Renewable Natural Gas (RNG) Facility to treat landfill and digester gas at the City of Denton Landfill for the Solid Waste and Water Utilities Departments; providing for the expenditure of funds therefor; and providing an effective date (RFP 8465 – awarded to Mayhill Renewables, LLC, for a primary construction phase and twenty (20) year term).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Promote Sustainability and the Environment.

INFORMATION/BACKGROUND

In 2020, the City commissioned a study on possible Landfill Gas-to-Energy (LFGE) projects at the landfill, with the refinement of the gas into high-Btu fuel for export into a nearby natural gas pipeline owned by Atmos being the preferred option. The City, working with an outside consultant, developed a Request for Proposals (RFP) to identify an experienced, qualified company to design and construct an LFGE plan to clean the gathered landfill and treatment plant gas and sell it on the open market. The City will cost-share with the successful operator.

Additional biogas for this project will be provided for the project from the Pecan Creek Wastewater Treatment Plant (WWTP). This LFGE project is in conjunction with the Solid Waste and Water Reclamation Departments. This is a revenue-generating contract; the City shall receive an allocation of the Net Sales Revenue from the sale of Gas to Third Party Purchasers, subject to the terms and conditions.

Mayhill Renewables offered the best proposal and the highest price for One Million British Thermal Units (MMBtu) of Renewable Gas sold to a third party (Atmos Gas).

Project Facilities Construction Cost Recovery

Mayhill Renewables will assume wellfield operations about 6 months prior to the project coming online. Once onsite, they will complete a detailed evaluation of the wellfield and develop plans to bring the wellfield to their standards. Mayhill Renewables will complete a large wellfield construction effort that will include about 70 new wells with the goal of exceeding 90% efficiency and a flow of at least 2,500 standard cubic feet per minute (SCFM).

For the use of the approximately 1.7 acres of landfill, Mayhill Renewables will pay a monthly lease to the City.

Request for Proposals was sent to 485 prospective suppliers of this item, including 22 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Nine (9) proposals were received, references were checked, and proposals were evaluated based upon published criteria, including similar projects and references, project approach and schedule, qualifications and financial resources, and price. Based upon this evaluation, Techline, Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	906 - (Service Only) - Architectural Services, Professional & 915 – (Service Only) – Communications & Media Related Services
Notifications sent for Solicitation sent in IonWave:	485
Number of Suppliers that viewed Solicitation in IonWave:	14
HUB-Historically Underutilized Business Invitations sent out:	67
SBE-Small Business Enterprise Invitations sent out:	160
Responses from Solicitation:	9

RECOMMENDATION

Award a contract with Mayhill Renewables, LLC, to design, fabricate, construct, commission, and operate a Renewable Natural Gas (RNG) Facility to treat landfill and digester gas at the City of Denton Landfill for the Solid Waste and Water Utilities Departments, in a twenty (20) year term.

PRINCIPAL PLACE OF BUSINESS

Mayhill Renewables, LLC
Midland, TX

SUSTAINABILITY MEASURES

Currently, to manage the landfill gas as required by Texas Commission on Environmental Quality regulations, all landfill gas is diverted to a flare station, then flared off (destroyed). The flare requires a major maintenance expense as well as the electrical need for mechanized components, resulting in a revenue loss.

Landfill gas can be considered an asset for the City of Denton, as it produces a financial profit. This asset is being protected and utilized efficiently. Many advantages are gained by producing a clean, reusable landfill gas.

Air quality is improved by not producing possible gas emissions, therefore minimizing greenhouse gas emissions. Gaining a financial profit is advantageous versus losing this byproduct by destruction is a sensible alternative.

All governing and operating permits will be secured by Mayhill Renewables, LLC. to ensure all environmental needs are met. Mayhill Renewables can provide and maintain a software program or website for the project to share information, manage documents, and publish reports and information to keep all those involved informed on all aspects of the project.

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval. A timeline will be provided by Mayhill Renewables for the development and construction, and then the operations aspect of the project. This is a twenty (20) year contract with options to terminate by either party.

FISCAL INFORMATION

This is a revenue-generating contract; the City shall receive an allocation of the Net Sales Revenue from the sale of Landfill Gas to Third Party Purchasers.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Pricing Evaluation
Exhibit 3: Lease Agreement
Exhibit 4: Presentation
Exhibit 5: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Brenda Haney, 940-349-8056.

Legal point of contact: Marcella Lunn at 940-349-8333.

Exhibit 2
RFP 8465 - Pricing Evaluation for Landfill Gas to Energy Project

Solicitation Scores										
Respondent's Business Name		Mayhill Renewables, LLC	Morrow Renewables	Vitol BioMethane	Waga Energy, Inc.	Kinder Morgan RNG	Hunt, Guillot & Associates, LLC	Redtail Renewables Holding, LLC	Terreva Renewables, LLC	Northern Biogas
Principal Place of Business (City and State):		Midland, TX	McKinney, TX	Houston, TX	Bala Cynwyd, PA	Indianapolis, IN	Ruston, LA	Indianapolis, IN	Atlanta, GA	Morgantown, WV
Item #	Standard Criteria									
1	Similar Projects/References - 20%	18.00	17.00	15.00	15.00	14.00	12.00	13.00	14.00	11.00
2	Project Approach and Schedule - 30%	27.00	22.50	22.50	18.00	18.00	16.50	18.00	18.00	18.00
3	Qualifications/Financial Resources - 20%	17.00	17.00	14.00	14.00	14.00	11.00	10.00	11.00	12.00
4	Price, Total Cost of Ownership - 30%	26.00	24.00	29.00	27.00	25.00	30.00	28.00	22.00	23.00
Total Score:		88.00	80.50	80.50	74.00	71.00	69.50	69.00	65.00	64.00

Interview Scores				
Item #	Standard Criteria	Mayhill Renewables, LLC	Vitol BioMethane	Morrow Renewables
1	Similar Projects/References - 20%	18.00	14.00	14.67
2	Project Approach and Schedule - 30%	27.00	20.00	24.00
3	Qualifications/Financial Resources - 20%	18.67	15.33	14.00
4	Price, Total Cost of Ownership - 30%	26.00	29.00	24.00
Total Score:		89.67	78.33	76.67

LEASE AGREEMENT

between

CITY OF DENTON

and

MAYHILL RENEWABLES, LLC

dated as of

_____, 2025

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") effective as of this _____ day of _____, 2025, by and between the CITY OF DENTON, a Texas home-rule municipal corporation ("City"), and Mayhill Renewables, LLC, a Texas limited liability company ("Lessee") and, together with City, the "Parties" and each a "Party").

RECITALS

WHEREAS, City is the owner of the property described in **Exhibit A** located in Denton, Texas (the "Property");

WHEREAS, City and Lessee have entered into or will enter into that certain Landfill & Digester Gas Agreement regarding constructing and operating facilities at the Property (the "LDGA");

WHEREAS, Lessee is a company specializing in designing and operating Landfill Gas (as defined in the LDGA) processing facilities and converting Landfill Gas to High-BTU Gas (as defined in the LDGA);

WHEREAS, City has the right, title and interest in and to the real property located in and around the landfill depicted on **Exhibit A**, together with the facilities, rights, and privileges hereinafter granted, (collectively referred to herein as the "Leased Property") and has full power and authority to enter into this Agreement in respect thereof;

WHEREAS, Lessee plans to develop a Landfill and Digester Gas processing facility, subject to the terms set forth herein and in the LDGA (the "Project");

WHEREAS, City desires to develop and permit uses of the Leased Property that are beneficial to the City and the general public;

WHEREAS, City has determined that the Project on the Leased Property will be beneficial to the City and serve a public purpose; and

WHEREAS, Lessee is qualified, willing and able to undertake such commercial development and use, and the City is willing to lease the Leased Property to Lessee for such activities; and

WHEREAS, the Parties hereto wish to memorialize their agreement with respect to the Leased Property herein.

NOW, THEREFORE, in consideration of the foregoing Recitals, which by this reference are hereby incorporated into this Agreement, and the mutual covenants contained in this Agreement, and for other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, the Parties hereto agree as follows:

ARTICLE I LEASE OF LEASED PROPERTY; TERM

Section 1.1 Lease of Leased Property.

A. City hereby leases to Lessee, and Lessee hereby rents from City for its exclusive use the Leased Property and any preexisting improvements (as defined herein), and all herein described rights incident thereto, for and during the Lease Term (hereafter defined) and upon and subject to the terms, provisions and conditions herein set forth. All improvements preexisting in, on or under the Leased Property as of the Commencement Date, as hereafter defined, shall be referred to herein as "Preexisting Improvements". The "Leased Property" shall be deemed to include the Preexisting Improvements and the LDGA Facilities, as hereafter defined.

Section 1.2 Lease Term. The term of this Agreement shall be for an initial term commencing on _____, 2025 (the "Commencement Date") and continuing for twenty (20) years thereafter, unless sooner terminated pursuant to the provisions of this Agreement. The Lease Term may be extended by mutual consent of the Parties for conditioned upon the coincident extension of the LDGA between the City and Lessee. However, the foregoing shall not preclude the Parties from entering into a new lease to be effective after the expiration of the Lease Term. If the LDGA is terminated for any reason, this Agreement shall also automatically terminate, and City and Lessee shall have no further obligations or liabilities hereunder except as otherwise stated herein.

Section 1.3 Holding Over; Rights at Expiration.

A. If Lessee does not vacate the Premises following termination of this Agreement, Lessee will become a tenant at sufferance. No holding over by Lessee, whether with or without the consent of Landlord, will extend the Agreement term. Lessee stipulates that its possession of the Leased Property after the expiration of the Agreement term, as a tenant of sufferance, will cause damage to City in excess of fair market value of rent resulting, in part, due to City operations at the Property.

B. Lessee further agrees that, upon the expiration or termination of the Lease Term, the Leased Property will be delivered to City in good working order and condition, reasonable wear and tear and matters covered by insurance excepted, and the Improvements, as hereafter defined, will be delivered to City in as good a condition as when such Improvements were constructed, located, installed, placed or erected in, upon or under the Leased Property, reasonable wear and tear and matters covered by insurance excepted.

C. Except as otherwise expressly set forth elsewhere herein, Lessee shall have no rights with respect to any improvements made to the Leased Property during the Lease Term that are not otherwise required to be removed by City.

Section 1.4 Inspection of Leased Property; Access to Books and Records. City, through its duly authorized agents, shall have at any reasonable time the right to enter the Leased Property and the Improvements, as hereafter defined in Section 3.2.A., for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement; provided, however, that except in the case of emergency, Lessee shall have no less than forty-eight (48) hours' notice and an opportunity to have an employee or agent present. The City agrees that any entry pursuant to this Section 1.4 will not unreasonably interfere with Lessee's construction or operations. Lessee agrees to provide any documents that may be reasonably requested by City to determine compliance with this Agreement within thirty (30) days of such request.

Section 1.5 Ownership of Leased Property. City and Lessee intend and hereby agree that the Leased Property shall be and remain the property of City during the entire term of this Agreement and thereafter.

ARTICLE II

RENTAL

Section 2.1 Rent.

A. In consideration for the use of the Leased Property herein granted, Lessee shall pay to City the following rental amounts (the "Rent"). The monthly rent shall be in the sum of ONE THOUSAND AND NO/100 DOLLARS (\$1000) per month (sales tax included). On or prior to the Commencement Date, Lessee shall pay City a sum equal to the first month's Rent, which shall be applied to the first month's Rent due under this Agreement. All other Rent payments will be due in advance on or before the first day of the month to which the Rent payment relates. Failure to receive an invoice reflecting Rent in a timely manner does not absolve Lessee from its obligation to pay the monthly Rent on or before the first day of the month to which the Rent payment relates. If the Commencement Date or a termination date occurs on a day other than the first day of a calendar month, Rent for the first and last partial months will be prorated on the basis of the number of actual days in such month.

B. The Rent for the Leased Property shall be increased, but not decreased if extended pursuant to Section 1.2, with the first adjustment occurring on the first day of the month of any such Lease Term extensions. Adjustments to the rent shall be on the basis of the proportion that the then current and available month United States Consumer Price Index for all urban consumers ("CPI-U") for the Dallas-Fort Worth Bureau of Labor Statistics bears to the January 2025 index.

Section 2.2 Time and Place of Payments. The Rent, shall be payable by wire transfer monthly prior to the Commercial Operations Date as set forth in the LDGA. Thereafter, Rent shall be payable monthly along with the royalty payments consistent with Section 4.4 of the LDGA and is considered a Reimbursable Cost.

Section 2.3 Delinquent Rent. In the event Rent due pursuant to Section 2.1 or any other amounts payable by Lessee hereunder shall not be paid by Lessee on or before thirty (30) days after the due date thereof (the "Grace Period"), Lessee shall pay to City

as additional Rent, an interest charge equal to the lower of (i) the annual rate equal to the Prime Rate (as defined herein) then in effect plus two percent (2%) and (ii) the maximum percentage allowed by law, multiplied by the amount due for each full calendar month of delinquency, computed as simple interest. Interest shall be computed and assessed from the due date. The "Prime Rate" means the interest rate (sometimes referred to as the "base rate") for large commercial loans to creditworthy entities announced from time to time by Citibank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the "Prime Rate" from time to time (or, if more than one rate is published, the arithmetic average of such rates), in either case determined as of the date the obligation to pay interest arises.

ARTICLE III

OCCUPANCY, USE AND CONDITIONS OF LEASED PROPERTY

Section 3.1 Condition of Leased Property. Lessee accepts the Leased Property in their present "as is" condition. **LESSEE RELEASES CITY AND HOLDS CITY AND CITY'S OFFICERS, DIRECTORS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AND AGENTS HARMLESS FOR ANY CLAIMS ARISING OUT OF OR RELATED TO ANY CONDITION OF THE LEASED PROPERTY.**

Section 3.2 Project Construction and Ownership of Improvements.

A. The Parties agree that this Agreement is entered into specifically with the understanding that Lessee will build, construct, and complete the Project at its own expense in accordance with the requirements of the Denton Development Code and other City of Denton specifications unless this Agreement is sooner terminated pursuant to the terms herein. Any and all buildings, structures, fixtures, appurtenances, site work, site utilities, or other improvements to be located or constructed on the Leased Property by Lessee during the Lease Term shall be known as "Improvements". Improvements shall not include any Preexisting Improvements, Lessee Personal Property or LDGA Improvements, as hereafter defined. Those improvements made by City or Lessee to enable the delivery of Landfill Gas or Digester Gas from City to the equipment of Lessee will be referred to herein as the "LDGA Improvements". Any structures from which the Project business will be conducted that are placed on the Leased Property by Lessee during the Lease Term that can be disassembled and removed from the Leased Property without causing material damage to the Leased Property, Preexisting Improvements, Improvements or LDGA Improvements will be considered the personal property of Lessee ("Lessee Personal Property") and will not be considered "Improvements". Lessee agrees to commence construction of the Project within ninety (90) days after the Commencement Date and to complete the Project in accordance with all governmental requirements and specifications and to obtain a Certificate of Occupancy, and/or such other evidence of completion as may be applicable, as soon as practicable after the Commencement Date. Lessee shall not construct, locate, install, place or erect any improvements, other than the Improvements and LDGA Improvements, at, upon or under the Leased Property without the express prior written consent of City, which consent shall not be unreasonably withheld or delayed.

B. Lessee will own, operate, and maintain the LDGA Improvements as further set forth in the LDGA during the Lease Term. Effective upon the expiration or termination of this Agreement, the LDGA Improvements shall be removed by Lessee without material damage to the Leased Property by the date of expiration or termination of this Agreement. The Lessee Personal Property and any other personal property of Lessee that can be removed by Lessee without material damage to the Leased Property or to the Improvements, Preexisting Improvements or LDGA Improvements may remain the personal property of Lessee and may be removed by Lessee at any time on or before the end of the Lease Term. In connection with the expiration or termination of this Agreement, City reserves the right to require Lessee to remove the Lessee Personal Property from the Leased Property by the date of expiration or termination of this Agreement. If so required, Lessee shall remove the Lessee Personal Property from the Leased Property by the date of expiration or termination of this Agreement. Lessee shall, in removing any such Lessee Personal Property or other personal property, repair all damage to the Leased Property, Improvements, Preexisting Improvements, and LDGA Improvements caused by such removal. Any Lessee Personal Property or any other property, of any kind or type, left or remaining on the Leased Property at the expiration or termination of this Agreement shall be deemed abandoned property and, without liability of any kind to City and without payment of consideration of any kind to Lessee, at City's option may be removed, retained, stored, destroyed, or disposed of by City or its contractors, all at Lessee's expense. Lessee shall remove from property any and all hazardous or environmentally sensitive materials that are the result of Lessee's activities and are located upon or may accumulate or otherwise be placed on the Property ("Lessee Hazardous Material") and dispose of same in accordance with all applicable statutes, regulations, rules, orders, and ordinances. Lessee is not responsible for any Hazardous Materials that were on the Property prior to Lessee taking possession of the Property. It is expressly stipulated that Lessee Hazardous Material shall be deemed at all times the property of Lessee; and City may remove, retain, store (at Lessee's expense), destroy, or dispose of any personal property and any other property, of any kind or type, left or remaining on the Property at the termination of the Lease, without liability of any kind to the City. Preexisting Improvements are and shall continue to be owned by City. The rights and obligations provided in this Section 3.2.B, shall survive any expiration or termination of this Agreement.

Section 3.3 Access; Staging Areas. City agrees that if Lessee is not in breach of this Agreement beyond any applicable notice and cure period, Lessee and Lessee's employees, officers, directors, Project employees, contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Lessee's Associates") are authorized to enter, exit and transit across the existing roads in the non-controlled access areas of the Property on a non-exclusive basis for purposes of ingress and egress to the extent reasonably necessary in connection with Lessee's construction of the Project authorized by City, Lessee's construction of the LDGA Improvements, and for Lessee's use, occupancy, and operations at the Leased Property. If one or more of the unimproved existing roads in the non-controlled access areas of the Property require improvement or modification, if approved in writing in advance by City, Lessee may undertake such road improvement or modification at Lessee's expense. If in connection with any construction authorized hereunder, Lessee wishes (i) to use or access the City's utility poles for purposes of attaching any telecommunications lines or cables, Lessee may do so only with City's prior approval pursuant to the template Pole Attachment Agreement passed by Ordinance 2016-271 signed by the Parties, or (ii) to temporarily stage any construction materials or

equipment, Lessee may do so only at those locations in the non-controlled access areas of the Property authorized by City in writing and only in the manner, and for the duration, permitted by City evidenced by the Temporary Construction Easement attached hereto as Exhibit B. Lessee shall not be obligated to pay any fees for the Temporary Construction Easement, however, Lessee shall provide a survey of the proposed Temporary Construction Easement for review, comment, and approval by the City. Lessee shall, at its expense, in connection with any of the activities described in this Section 3.3 or elsewhere in this Agreement, repair or restore any and all damage to the Property, Leased Property, Improvements, Preexisting Improvements, and LDGA Improvements caused by or resulting from the acts or omissions of Lessee or any of Lessee's Associates. Lessee and Lessee's Associates agree to comply with the reasonable security and safety policies, procedures and practices of the City at all times.

Section 3.4 Use of Leased Property and Compliance with all Laws and Regulations. Lessee agrees that it shall use the Leased Property and the Improvements only for its reasonable business purposes authorized by City from time to time in its sole discretion, which City-authorized business purposes include the construction and operation of Project facilities. Lessee and Lessee's Associates shall comply at all times, at Lessee's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Lessee's business or to Lessee's construction of the Improvements or LDGA Improvements, including any applicable laws or regulations pertaining to the construction of buildings or other improvements on public property, and that are applicable to Lessee's use, occupancy, or operations at the Leased Property, the Improvements or, to the limited extent provided herein, the Property (the "Laws and Regulations"), which include, but are not limited to, all laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law that may be applicable at any time during the term of this Agreement including, but not limited to, master plans and zoning codes, and all Laws and Regulations pertaining to the environment (the "Environmental Laws"); any and all plans and programs developed in compliance with such requirements; and all lawful, reasonable, and nondiscriminatory City policies and other requirements, including but not limited to restrictions on noise, dust and light spillover and any current or future agreements to which the City is a party restricting noise, dust, light spillover or operations on the Property. Lessee shall provide all required notices under the Laws and Regulations with respect to the Leased Property or the Improvements. If requested by City in writing, Lessee will verify, within a reasonable time frame, compliance with any Laws and Regulations. Further, in its use of the Leased Property and the Improvements, Lessee shall comply with the following:

A. **Address.** Lessee shall file with the Solid Waste Department and keep current its mailing and email addresses, landline telephone and cell phone numbers, and contacts where it can be reached in an emergency.

Section 3.5 No Unauthorized Use. Lessee and Lessee's Associates shall use the Leased Property, the Improvements and, to the limited extent provided herein only for purposes that are expressly authorized by this Agreement and shall not engage in any

unauthorized use of the same. Unauthorized uses include, but are not limited to, restricting access on any road or other area that Lessee does not lease; placing waste materials on or around the Leased Property or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or adversely impact adjacent landowners; parking outside of the Leased Property or using automobile parking areas outside of the Leased Property, unless authorized by DME in writing; use of automobile parking areas within the Leased Property in a manner not authorized by this Agreement or City; any use that would interfere with any operation at the landfill or that would decrease the landfill's effectiveness (as determined by City in its sole discretion); and any use that would be prohibited by or would impair coverage under either Party's insurance policies or would cause an increase in the existing rate of insurance upon the Leased Premise.

Section 3.6 Permits and Licenses. Lessee shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Lessee's construction of Improvements or LDGA Improvements and the use, occupancy, or operations at the Leased Property or of the Improvements. Those permits and licenses include, but are not limited to, (i) all contractors doing work on the Leased Property, including work on or for the Improvements or LDGA Improvements, must be licensed by the State of Texas, (ii) if applicable, prior to commencing construction of any Improvements or LDGA Improvements, a permit must be obtained from the City and a copy of the permit must be furnished to DME, and (iii) if applicable, clearance must be obtained from the responsible health department or other agency. In the event that Lessee receives notice from any governmental entity that Lessee lacks, or is in violation of, any such permit, license or other requirement, Lessee shall provide City with timely written notice of the same and Lessee shall diligently pursue the resolution of any such issues.

Section 3.7 Payment of Taxes. Lessee shall pay (before their respective due dates) all taxes, including ad valorem taxes, and all fees, charges, assessments, and levies that relate to Lessee's use, occupancy, or operations at the Leased Property or the Improvements and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for any Improvements or LDGA Improvements). During the Lease Term, Lessee shall be responsible for any and all taxes generated by the Denton County Tax Assessor / Collector. With respect to the Leased Property and the Improvements, such taxes shall be prorated between Lessee and City on a daily basis for the tax years in which the Lease Term commences and expires or terminates. City shall either forward tax bills for the Leased Property to Lessee, or cause the taxing authority to mail the bills directly to Lessee.

Section 3.8 No Liens. No liens related to Lessee or Lessee's use, occupancy or operations may be placed upon the Leased Property. Within thirty (30) days, Lessee shall pay all lawful claims made against City and discharge all liens filed or which exist against the Leased Property to the extent such claims arise out of or in connection with, whether directly or indirectly, the failure to make payment for work done or materials provided by Lessee its contractors, subcontractors, or materialmen. However, Lessee shall have the right to contest the amount or validity of any such claim or lien without being in default

under this Agreement upon furnishing security in form acceptable to City, in an amount equal to one hundred percent (100%) of such claim or lien, which insures that such claim or lien will be properly and fully discharged forthwith in the event that such contest is finally determined against Lessee or City. City shall give timely notice to Lessee of all such claims and liens of which it becomes aware. When contracting for any work in connection with the Leased Property, Improvements or LDGA Improvements, Lessee shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein. Lessee is solely responsible for ensuring that all requirements are met such that such lien waivers are effective and enforceable (such as filing such contracts, if necessary). Furthermore, when completed, the Improvements and LDGA Improvements on the Leased Property shall be free from all construction liens.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations by City. City represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of City.

Section 4.2 Representations by Lessee. Lessee represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of Lessee.

ARTICLE V

OBLIGATIONS OF LESSEE

Section 5.1 Plans and Specifications; Re-Zoning. With respect to any Improvements and LDGA Improvements, Lessee shall select qualified architects and engineers to prepare and, if applicable, submit for approval, prior to construction or on a phased basis during construction, any architectural, site, structural, civil, mechanical, and/or electrical drawings and specifications for the Improvements and LDGA Improvements in the form and with the content required by the appropriate local planning and zoning authorities and pursuant to all applicable Laws and Regulations and this Agreement (collectively, the "Plans and Specifications").

Section 5.2 Operations and Maintenance. Lessee shall maintain the Leased Property and all Improvements in a condition that is clean, free of debris, safe, sanitary, and in good repair and shall not accumulate or permit the accumulation of any trash, refuse, debris, or anything that is unsightly, creates a fire hazard or nuisance, or causes inconvenience to adjoining properties. Lessee shall at its own expense create, execute, and maintain a comprehensive landscaping, tree canopy, and irrigation plan for the Leased Property in accordance with relevant local development and landscaping codes. Lessee

shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. Lessee shall promptly remedy any condition that fails to meet this standard. Without limiting the foregoing obligations, Lessee shall not store on the Leased Property any inoperable equipment, excess, discarded or unsightly materials, or materials likely to create a hazard; shall not use areas outside of enclosed buildings for storage; and shall store trash in covered metal receptacles. Any substance or material that is regulated by any Environmental Law ("Hazardous Materials") shall be governed by Section 5.6. In addition, Lessee agrees to comply with all applicable provisions of City's Texas Pollutant Discharge Elimination Multi-Sector General Permit.

Section 5.3 Utilities. City represents that there are water, sewer, and electrical lines accessible within the general vicinity of the Leased Property. Lessee shall be responsible, at Lessee's sole cost and expense, for obtaining all utility connections at or for the Leased Property, Improvements and Lessee Personal Property. Further, Lessee shall pay for telecommunications, television, internet, gas, light bulbs, electricity, water, sewer, and garbage and trash removal services provided to or used by Lessee and shall make such deposits as are required to secure service. Lessee shall be responsible for any water or sewer impact fees incurred by Lessee's and Lessee's Associates' use of the Leased Property. Any repairs of the LDGA Improvements or other utility lines, other than those which are the responsibility of the utility service, are the responsibility of Lessee.

Section 5.4 Signs. Lessee shall not place, or cause to be placed, any sign or signs on the Leased Property or the Improvements unless otherwise agreed to in writing by City.

Section 5.5 Security. Lessee is responsible to comply (at Lessee's sole cost) with all security measures that City, the United States Department of Homeland Security ("Homeland Security"), the National Electric Regulatory Commission ("NERC"), the Texas Reliability Entity ("TRE"), or any other governmental entity having jurisdiction may require now or in the future in connection with the Lessee's activities and operations on the Leased Property, including, but not limited to, any access credential and escort requirements, and any civil penalty obligations and other costs arising from a breach of security requirements caused or permitted by Lessee or Lessee's Associates. Lessee shall protect and preserve security at the Leased Property.

Section 5.6 Hazardous Materials.

A. **No Violation of Environmental Laws.** Lessee shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the Leased Property by Lessee or Lessee's Associates in violation of applicable Environmental Laws. Lessee is responsible for any such violation as provided by Section 7.1.

B. **Response to Violations.** Lessee agrees that in the event of a release or threat of release of any Hazardous Material by Lessee or Lessee's Associates at the DEC Property, Lessee shall provide City with prompt notice of the same. Lessee shall respond to any such release or threat of release in accordance with applicable Laws and Regulations. If City has reasonable cause to believe that any such release or threat of release has occurred, City may request, in writing, that

Lessee conduct reasonable testing and analysis (using qualified independent experts reasonably acceptable to City) to show that Lessee is complying with applicable Environmental Laws. City may conduct the same at Lessee's expense if Lessee fails to respond in a reasonable manner. Lessee shall cease any or all of Lessee's activities as City determines necessary, in its sole and absolute discretion, in connection with any investigation, cure, or remediation. If Lessee or Lessee's Associates violate any Environmental Laws at the Leased Property (whether due to the release of a Hazardous Material or otherwise), Lessee, at Lessee's sole expense, shall have the following obligations, which shall survive any expiration or termination of this Agreement: (i) promptly remediate such violation in compliance with applicable Environmental Laws; (ii) submit to City a written remediation plan, and City reserves the right to approve such plan (which approval shall not be unreasonably withheld) and to review and inspect all work; (iii) work with City and other governmental authorities having jurisdiction in connection with any violation; and (iv) promptly provide City copies of all documents pertaining to any environmental concern that are not subject to Lessee's attorney-client privilege.

C. **Obligations upon Termination and Authorized Transfers.** Upon any expiration or termination of this Agreement or any change in possession of the Leased Property authorized by City, Lessee shall demonstrate to City's reasonable satisfaction that Lessee has removed any Hazardous Materials and is in compliance with applicable Environmental Laws. Such demonstration may include, but is not limited to, independent analysis and testing to the extent that facts and circumstances warrant analysis and testing, such as evidence of past violations or specific uses of the Leased Property. If the site is contaminated during Lessee's possession, Lessee shall bear all costs and responsibility for the required clean up, and shall hold City, its officers, elected and appointed officials, employees, and agents harmless therefrom unless such contamination was caused directly by the City. Notwithstanding anything to the contrary, the obligations of this Section 5.6.C. shall survive any termination of this Agreement.

Section 5.7 Trash, Garbage, and Other Refuse. Lessee shall pick up and provide for a complete and proper arrangement for the adequate sanitary handling and disposal of trash, garbage and other refuse, away from the Property through the City or any other licensed refuse hauler. Lessee is responsible for contacting the refuse hauler and arranging for such waste management, handling and disposal services and for payment of such services. Lessee shall provide and use suitable covered metal receptacles for all such garbage, trash, and other refuse on the Leased Property. Lessee shall not pile boxes, cartons, barrels, pallets, debris, or similar items in an unattractive or unsafe manner, on or about the Leased Property.

ARTICLE VI

INDEMNIFICATION AND INSURANCE

Section 6.1 Insurance. Lessee agrees to purchase at their own cost and maintain the minimum insurance coverage as provided below. Lessee shall provide satisfactory certificate(s) of insurance, including any applicable endorsements to the City no less than thirty (30) days prior to the scheduled program date.

- A. 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 or better**.
- B. Each policy shall be primary and noncontributory with any other coverage elsewhere afforded or available to the City, as well as provide primary coverage for all losses and damages caused by the perils covered thereby related to or arising from the Lessee's use of the property and shall not require the exhaustion of any other coverages afforded or available to the City.
- C. 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 Lessee. 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 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.
 - Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.
- D. All Risk Property Insurance covering LESSOR'S buildings, including improvements and betterments with insured value equal to 80% replacement cost. Covered perils shall include, but not be limited to, Fire, Extended Coverage, and Vandalism & Malicious Mischief. The City of Denton will be shown as a loss payee, as their interest may appear.
- E. Pollution Liability Insurance covering losses caused by pollution conditions that arise from the operation of the Lessee coverage not less than \$1,000,000 each incident and in the aggregate. This can be achieved through a standalone pollution liability policy with limits not less than \$1,000,000 per occurrence and in the aggregate or through the addition of a pollution liability endorsement onto the general liability policy with limits not less than \$1,000,000 per occurrence and in the aggregate.

Liability policies shall be endorsed to provide the following:

- Name as Additional Insured the City of Denton, its Officials, Agents, Employees, and Volunteers.
- 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.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

Notice of Cancellation, Material Change, and Non-Renewal: All insurance required herein shall be endorsed to provide a 30-day notice of cancellation, material change, and non-renewal to the City to the extent commercially available. If this endorsement cannot be provided, Lessee will immediately provide written notice to the City should any of the insurance policies required herein be canceled, limited in scope, or not renewed upon expiration. Said notice must be provided no later than 30-days prior (except 10 days for nonpayment of premium) to any such action being taken. Lessee agrees to purchase general liability insurance in the amount of \$1,000,000.00 combined single limit to cover Lessee's operations as described in Section 3.4. Insurance coverage shall include City as an additional named insured, providing fifteen (15) days' notice of cancellation. Lessee shall submit Certificate(s) of Insurance to City within ten (10) working days after the effective date of this Agreement, and yearly thereafter.

Section 6.2 Indemnification and Duty to Pay Damages.

A. LESSEE SHALL INDEMNIFY AND HOLD CITY AND CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AND AGENTS EXEMPT AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, JUDGMENTS, COSTS, AND EXPENSES ASSERTED BY ANY PERSON OR PERSONS (INCLUDING AGENTS OR EMPLOYEES OF CITY, LESSEE, OR SUBLESSEE) BY REASON OF DEATH OR INJURY TO PERSONS OR LOSS OF OR DAMAGE TO PROPERTY RESULTING FROM (I) LESSEE'S BREACH OR OTHER VIOLATION OF THIS AGREEMENT, OR AND (II) LESSEE'S ACTIVITIES, INCLUDING BUT NOT LIMITED TO CONSTRUCTION ACTIVITIES BY LESSEE OR BY ANY OF LESSEE'S ASSOCIATES, OR OPERATIONS, OR ANYTHING DONE OR OMITTED BY LESSEE OR BY ANY OF LESSEE'S ASSOCIATES, UNDER THIS AGREEMENT EXCEPT TO THE EXTENT THAT SUCH CLAIMS, DEMANDS, SUITS, JUDGMENTS, COSTS, AND EXPENSES MAY BE ATTRIBUTED TO THE SOLE NEGLIGENCE OF CITY, ITS AGENTS, ITS EMPLOYEES.

B. LESSEE SHALL INDEMNIFY, DEFEND, RELEASE AND HOLD HARMLESS THE CITY OF DENTON TO ANY AND ALL CLAIMS FOR DAMAGES, FINES, PENALTIES, COSTS OR EXPENSES TO PERSONS OR PROPERTY THAT MAY ARISE OUT OF, OR BE OCCASIONED BY OR FROM: (I) THE USE AND OCCUPANCY OF THE AREA DESCRIBED IN EXHIBIT A; (II) THE PRESENCE, GENERATION, SPILLAGE, DISCHARGE, RELEASE, TREATMENT OR DISPOSITION OF ANY LESSEE HAZARDOUS SUBSTANCE ON OR AFFECTING THE AREA SET OUT IN EXHIBIT A; (III) ALL CORRECTIVE ACTIONS CONCERNING ANY DISCOVERED LESSEE HAZARDOUS SUBSTANCES ON OR AFFECTING THE AREA DESCRIBED IN EXHIBIT A, WHICH LESSEE AGREES TO UNDERTAKE AND COMPLETE IN ACCORDANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS. LESSEE AGREES TO DEFEND ANY AND ALL SUITS, CLAIMS, OR CAUSES OF ACTION BROUGHT AGAINST THE CITY OF DENTON ON ACCOUNT OF SAME, AND DISCHARGE ANY JUDGMENT OR JUDGMENTS THAT MAY BE RENDERED AGAINST THE CITY OF DENTON IN CONNECTION THEREWITH. FOR

PURPOSES HEREOF, "LESSEE HAZARDOUS SUBSTANCE" MEANS THE FOLLOWING: (A) ANY "HAZARDOUS SUBSTANCES" UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, 42 U.S.C. SECTION 9601 ET SEQ., AS AMENDED DUE TO LESSEE'S ACTIVITIES; (B) ANY "HAZARDOUS SUBSTANCE" UNDER THE TEXAS HAZARDOUS SUBSTANCES SPILL PREVENTION AND CONTROL ACT, TEX. WATER CODE, SECTION 26.261 ET SEQ., AS AMENDED DUE TO LESSEE'S ACTIVITIES; (C) PETROLEUM OR PETROLEUM-BASED PRODUCTS (OR ANY DERIVATIVE OR HAZARDOUS CONSTITUENTS THEREOF OR ADDITIVES THERETO), INCLUDING WITHOUT LIMITATION, FUEL AND LUBRICATING OILS DUE TO LESSEE'S ACTIVITIES; (D) ANY "HAZARDOUS CHEMICALS" OR "TOXIC CHEMICALS" UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT, 29 U.S.C. SECTION 651 ET SEQ., AS AMENDED DUE TO LESSEE'S ACTIVITIES; (E) ANY "HAZARDOUS WASTE" UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. SECTION 6901 ET SEQ., AS AMENDED; AND (F) ANY "CHEMICAL SUBSTANCE" UNDER THE TOXIC SUBSTANCE CONTROL ACT, 15 U.S.C. SECTION 2601 ET SEQ., AS AMENDED. REFERENCES TO PARTICULAR ACTS OR CODIFICATIONS IN THIS DEFINITION INCLUDE ALL PAST AND FUTURE AMENDMENTS THERETO, AS WELL AS APPLICABLE RULES AND REGULATIONS AS NOW OR HEREAFTER PROMULGATED THEREUNDER DUE TO LESSEE'S ACTIVITIES. THIS SECTION BY NO MEANS IMPOSES ADDITIONAL LIABILITY UPON LESSEE FOR HAZARDOUS MATERIALS THAT WERE ON THE PROPERTY PRIOR TO LESSEE TAKING POSSESSION OF THE PROPERTY.

C. City shall not be liable to Lessee for any damage by or from any act or negligence of any tenant or other occupant by any owner or occupant of adjoining or contiguous property.

D. Lessee agrees to pay for all damages to the Leased Property, the Improvements, the Preexisting Improvements, the LDGA Improvements, and any related apparatus or appurtenances caused by Lessee's misuse or neglect thereof.

E. Lessee shall be responsible and liable for its conduct and the conduct of Lessee's Associates in, on and around the Leased Property, including but not limited to under or around any transmission lines.

F. The provisions of this Section 6.2 and the remedies and rights provided in this Section 6.2 shall survive any expiration or termination of this Agreement.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1 Lessee's Default. The occurrence of any of the following events shall constitute a default by Lessee under this Agreement unless cured within thirty (30) days following written notice of such violation from City: (i) Lessee fails to timely pay any Rent; (ii) Lessee or Lessee's Associates violate any requirement under this Agreement (including, but not limited to, abandonment of the Leased Property); (iii) Lessee assigns

or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Leased Property except as expressly permitted in this Agreement; (iv) Lessee files a petition in bankruptcy or has a petition filed against Lessee in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Lessee petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; (vi) Lessee defaults in constructing any Improvements that are required to be constructed under this Agreement; (vii) Lessee dissolves or dies; (viii) Lessee is in default under the terms of the LDGA; or (ix) the LDGA terminates or expires. Notwithstanding the foregoing, with respect to clause (ii) of the previous sentence, if the nature of Lessee's requirement is such that more than thirty (30) days are reasonably required for performance or cure of such requirement, Lessee shall not be in default if Lessee commences performance within such 30-day period and thereafter diligently pursues the same to completion.

Section 7.2 Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within thirty (30) days after written notice by Lessee to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

Section 7.3 Remedies for Failure to Pay Rent. If any Rent required by this Agreement shall not be paid when due, and City has provided Lessee with the required notice and opportunity to cure as set forth in Section 7.1, City shall have the option to:

A. Terminate this Agreement, take possession of the Improvements, resume possession of the Leased Property for its own account, and recover immediately from Lessee the differences between the Rent and the fair rental value of the Property for the Lease Term, reduced to present worth; or

B. Terminate this Agreement and the LDGA, take possession of the Leased Property, resume possession of the Leased Property, re-lease the Leased Property for the remainder of the Lease Term for the account of Lessee, and recover from Lessee, at the end of the Lease Term or at the time each payment of Rent comes due under this Agreement as City may choose, the difference between the Rent and the rent received on the re-leasing or renting of the Leased Property

In an event of default by Lessee City shall also recover all reasonable and documented expenses incurred by reason of an event of default, including reasonable attorneys' fees.

Section 7.4 Remedies for Breach of Agreement. If Lessee breaches or fails to perform any provision of this Agreement other than the agreement of Lessee to pay Rent, City shall provide written notice to Lessee identifying the breach or specifying the performance required. If Lessee fails to remedy the breach within the required notice and cure period set forth in Section 7.1 City may terminate this Agreement or take any such action it is legally entitled to take, including instituting litigation to compel performance of this Agreement. Should litigation be filed by City and it is the prevailing party in that

litigation, Lessee shall be liable for all reasonable and documented expenses related to such litigation, including City's reasonable attorneys' fees.

Section 7.5 **Cross Default.** Any event of default under the LDGA (or under any of the other agreements referenced therein or executed in connection therewith) by either City or Lessee shall be an event of default hereunder.

Section 7.6 **Survival.** The provisions of this Article VII and the remedies and rights provided in this Article VII shall survive any expiration or termination of this Agreement.

ARTICLE VIII

ASSIGNMENT AND SUBLEASING

Section 8.1 Assignment by Lessee.

A. Except as otherwise set forth in Section 8.1(B) of this Agreement, Lessee shall not assign any of its rights under this Agreement, including, but not limited to, rights in any Improvements, (whether such assignment is voluntarily or involuntarily, by consolidation, dissolution, change in control, or any other manner), and shall not delegate any performance under this Agreement, except with the prior written consent of City to any of the same, in City's sole discretion. As a condition of obtaining such consent, the City reserves the right to require the transferee receiving any such rights from Lessee to (i) provide its financial statements or other financial or credit information to City for review, (ii) provide replacement insurance certificates for the insurance required under this Agreement prior to the effective date of the transfer or assignment, (iii) provide a security deposit or letter of credit in the manner and form acceptable to City securing payment and other obligations under this Agreement, and/or (iv) execute a new lease agreement provided by City. Regardless of City's consent, Lessee shall not be released from any obligations for matters arising during the time when this Agreement was in effect. Any purported assignment or delegation of rights or delegation of performance in violation of this section is void.

B. Notwithstanding anything to the contrary contained in this Article VIII, an assignment or transfer of this Agreement (each a "Transfer"): (i) to a successor to Lessee by merger, consolidation or reorganization or in connection with the sale of all or substantially all of the assets of Lessee (a "Successor"); or (ii) to an entity which is controlled by, controls, or is under common control with Lessee, shall not require City's consent. Lessee shall notify City of any such Transfer and promptly supply City with any documents or information reasonably requested by City regarding such Transfer or such entity, and further provided that no uncured event of default exists. "Control," as used in this Section, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether by the ownership of voting securities, by contract or otherwise.

C. Upon the expiration or termination of this Agreement with respect to the Improvements and upon construction or installation with respect to the LDGA Improvements, Lessee hereby grants, assigns, transfers, and conveys to City, without warranty, the following:

(a) The non-exclusive right to the use of the Plans and Specifications at the Leased Property to the extent the Plan and Specifications are owned by Lessee;

(b) A non-exclusive license to any copyright interests in the Plans and Specifications held by Lessee to reproduce and distribute in connection with the Leased Property only; and

(c) The right to enforce, in Lessee's own name as a proper party, (i) any subcontracts related to the Improvements or other maintenance or services contracts in force with respect to the Leased Property or Improvements and any warranties arising under any of them or in connection with the performance thereof, as the case may be.

Section 8.2 Assignment by City. City shall have the right, in City's sole discretion, to assign any of its rights under this Agreement (and in connection therewith, shall be deemed to have delegated its duties), and upon any such assignment, Lessee agrees that Lessee shall perform its obligations under this Agreement in favor of such assignee.

Section 8.3 Encumbrances. Lessee shall not encumber or permit the encumbrance of the Leased Property or any of Lessee's rights under this Agreement. Any purported encumbrance of rights in violation of this Section 8.3 is void.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1 Waiver of Exemption. Any constitutional or statutory exemption of Lessee of any property usually kept on the Leased Property, from distress or forced sale, is waived.

Section 9.2 Addresses. All notices given under this Agreement to City shall be sent to the City in care of Solid Waste Director, City of Denton Solid Waste, 1527 S. Mayhill Rd. Denton, Texas 76208, with a copy to the City Attorney, City of Denton, at 215 E. McKinney, Denton, Texas 76201 and to the Real Estate Department 401 N. Elm St. Denton, Texas 76201, or such other place as City shall specify in writing. All notices given under this Agreement to Lessee shall be sent to:

Name _____

Address _____

City, State, ZIP _____

Telephone Number _____

E-mail address _____

Notices given under this Agreement to the Lender, if any, shall be sent to the address provided by the Lender to City in writing. Any notice properly mailed by registered mail, postage and fee prepaid, shall be deemed delivered when mailed, whether received or not, and all notices sent via overnight delivery service or email shall be deemed delivered when received.

Section 9.3 No Waiver. The waiver by City in writing of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Rent hereunder by City shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Agreement, other than the failure of Lessee to pay the particular Rent so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such Rent.

Section 9.4 Lessee's Subordination. Lessee hereby subordinates and makes this Agreement inferior to all existing and future mortgages, trust indentures or other security interest of City or City's successor in interest. Lessee shall execute and deliver to City any documents required to evidence and perfect such subordination.

Section 9.5 Additional Charges as Rent. Any charges assessed against Lessee by City for services or for work done on the Leased Property or the Improvements by order of Lessee or otherwise accruing under this Agreement shall be considered as Rent due.

Section 9.6 Non-Interference With Operation of the Landfill. Lessee expressly agrees for itself, its successors, and assigns that Lessee and its successors and assigns will not conduct operations in or on the Leased Property or the Improvements in a manner that in the reasonable judgment of City, (i) interferes or might interfere with the reasonable use or operation of the Landfill or Property by the City; (ii) hinders or might hinder police, fire fighting, or other emergency personnel in the discharge of their duties; (iii) would or would be likely to constitute a hazardous condition at the Landfill or Property; (iv) would or would be likely to increase the premiums for insurance policies maintained by City; (v) is in contradiction to any rule, regulation, directive, or similar restriction issued by agencies having jurisdiction over the Landfill or Property; or (vi) would involve any illegal purposes. In the event this covenant is breached, City reserves the right, after prior written notice to Lessee, to enter upon the Leased Property and the Improvements and cause the abatement of such interference at the expense of Lessee. In the event of a breach in security caused by Lessee, resulting in fine or penalty, such fine or penalty will be considered and charged to Lessee as Rent.

Section 9.7 Interpretation.

A. References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified.

B. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement. The term “including” shall not be construed in a limiting nature, but shall be construed to mean “including, without limitation.”

C. Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.

D. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

E. Words importing the singular shall include the plural and vice versa. Words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders.

F. Capitalized terms in this Agreement that are used throughout this Agreement and in any Annexes, Exhibits and Schedules hereto shall have the meaning or definition ascribed to it herein. Absent such meaning or definition in this Agreement, such term shall have the meaning or definition ascribed to it in the LDGA between the Parties.

Section 9.8 Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Lessee from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Lessee in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the Party so delayed or hindered. A “force majeure event” is an act or event, whether foreseen or unforeseen, that prevents a Party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such Party, and that such Party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, epidemics, pandemics (but not the COVID-19 pandemic), viruses, diseases, quarantines, acts of government, public health emergencies and changes in law. Lessee hereby releases City and City’s officers, elected and appointed officials, employees, and agents from any and all liability, whether in contract or tort (including strict liability and negligence) for any loss, damage, or injury of any nature whatsoever sustained by Lessee, its employees, agents, or invitees during the Lease Term, including, but not limited to, loss, damage, or injury to the Leased Property or the personal property of Lessee that may be located or stored in, on or under the Leased Property or the Improvements due to a force majeure event.

Section 9.9 Governing Law and Venue. This Agreement has been made in and will be construed in accordance with the laws of the State of Texas. In any action initiated by one Party against the other, exclusive venue and jurisdiction will be in the appropriate state courts in and for Denton County, Texas.

Section 9.10 Amendments and Waivers. No amendment to this Agreement shall be binding on City or Lessee unless reduced to writing and signed by both Parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the Party against whom the waiver is sought to be enforced.

Section 9.11 Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any Party. If any provision of this Agreement is held invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

Section 9.12 Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the Parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

Section 9.13 Further Assurances. Each Party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

Section 9.14 The Lessee hereby represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.

Section 9.15 Texas Local Government Code 2274.0102 Certification

The Lessee hereby represents that Mayhill Renewables, LLC is not:

(A) owned by or the majority of stock or other ownership interest in Mayhill Renewables, LLC is not held or controlled by:

(i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country under Section 2274.0102, Texas Government Code; or

(ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

(B) headquartered in China, Iran, North Korea, Russia, or a designated country.

Section 9.16 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together,

shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 9.17 Prohibition on Contracts with Companies Boycotting Israel. Lessee acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. By signing this Agreement, Lessee certifies that Lessee's signature provides written verification to the City that Lessee: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 9.18 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Lessee acknowledges that in accordance with Chapter 2276 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. By signing this agreement, Lessee certifies that Lessee's signature provides written verification to the City that Lessee: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 9.19 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations. Lessee acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. By signing this Agreement, Lessee certifies that Lessee's signature provides written verification to the City that Lessee: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 9.20 Prohibition On Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization. Section 2252 of the Texas Government Code restricts City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. By signing this Agreement, Lessee certifies that Lessee's signature provides written

verification to the City that Lessee, pursuant to Chapter 2252, is not ineligible to enter into this Agreement and will not become ineligible to receive payments under this Agreement by doing business with Iran, Sudan, or a foreign terrorist organization. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 9.21 Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies. The City of Denton may terminate this Agreement immediately without any further liability if the City of Denton determines, in its sole judgment, that this Agreement meets the requirements under Chapter 2275, and Lessee is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

[SIGNATURE PAGES FOLLOW]

____CITY

____LESSEE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the ____ day
of _____, 2025.

CITY OF DENTON

By: _____
Sara Hensley, City Manager

ATTEST:
Lauren Thoden, City Secretary

**THIS AGREEMENT HAS BEEN BOTH
REVIEWED AND APPROVED**
as to financial and operational obligations
and business terms.

By: _____

Signature

APPROVED AS TO LEGAL FORM:
Mack Reinwand, City Attorney

Title

Department

By: _____

Date Signed: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2025,
by Sara Hensley, City Manager of the City of Denton, on behalf of said municipality.

NOTARY PUBLIC, STATE OF TEXAS

MAYHILL RENEWABLES, LLC, LESSEE

By: _____

Name: PAUL MORROW

Title: PRESIDENT

LESSEE NOTARY

THE STATE OF Texas §

COUNTY OF Midland §

This instrument was acknowledged before me on the 24 day of July, 2025, by Paul Morrow on behalf of said company.

Karla Garver
NOTARY PUBLIC, STATE OF TEXAS

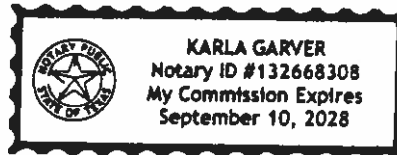


EXHIBIT A LEASE PROPERTY



Coleman & Assoc. Land Surveying

P. O. Box 686
Denton, Texas 76202
Phone (940)565-8215 Fax (940)565-9800
REGISTRATION #10095100

1.703 Acres of Land

FIELD NOTES to all that certain tract of land situated in the G. Walker Survey Abstract Number 1330, City of Denton, Denton County, Texas and being a part of Lot C, Solid Waste I as shown by the plat thereof recorded in Cabinet V, Page 987 of the Plat Records of Denton County, Texas; a part of the called 0.5050 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 207 of the Deed Records of Denton County, Texas; a part of the called 114.7 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 166 of the said Deed Records; a part of the called 2.6465 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 171 of the said Deed Records; part of the called 0.126 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 166 of the said Deed Records; and part of the called 0.4729 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 191 of the said Deed Records; the subject tract being more particularly described as follows:

BEGINNING for the Northeast corner of the tract being described herein at a 5/8 inch iron rod with a red plastic cap stamped "COLEMAN RPLS 4001" set (hereinafter referred to as 5/8IRS) in the North line of the current City of Denton Landfill Permit Boundary on the South side of an asphalt road and being South 88 Degrees 09 Minutes 42 Seconds East a distance of 95.66 feet from the Northeast corner of the said Lot C;

THENCE South 01 Degrees 12 Minutes 45 Seconds West departing the road across the 0.4729 acre tract a distance of 143.77 feet to a 5/8IRS for the Southeast corner of the herein described tract on the North side of an open ditch;

THENCE South 89 Degrees 50 Minutes 56 Seconds West along the North side of the said ditch across the 0.4729 acre tract passing at a distance of 97.3 feet the East line of Lot C and continuing along, in all, a total distance of 191.80 feet to a 5/8IRS for an angle point in the South line of the herein described tract;

THENCE North 01 Degrees 22 Minutes 14 Seconds West departing the North side of the ditch and continuing across Lot C a distance of 14.63 feet to a 5/8IRS for an angle point in the South line of the herein described tract;

THENCE North 87 Degrees 23 Minutes 07 Seconds West continuing across Lot C passing at a distance of 205.5 feet the West line thereof and across the 114.7 acre tract and the 0.5050 acre tract, in all, a total distance of 345.04 feet to a 5/8IRS for the Southwest corner of the herein described tract;

THENCE North 01 Degrees 41 Minutes 24 Seconds East across the 0.5050 acre tract a distance of 131.11 feet to a 5/8IRS for the Northwest corner of the herein described tract;

THENCE South 88 Degrees 09 Minutes 42 Seconds East across the said 0.5050 acre tract and the said 114.7 acre tract passing at a distance of 139.91 feet the Northwest corner of Lot C and continuing along the same course, in all, a total distance of 535.58 feet to the PLACE OF BEGINNING and enclosing 1.703 acres of land.

See accompanying Exhibit.



Exhibit B
Temporary Construction Easement

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

TEMPORARY CONSTRUCTION EASEMENT

THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DENTON	§	

THAT the City of Denton ("Grantor"), a Texas home-rule municipal corporation, in consideration of the sum of Ten and No/100 Dollars (\$10.⁰⁰) and other good and valuable consideration in hand paid by _____ ("Grantee"), a _____ corporation, receipt of which is hereby acknowledged, has granted, bargained, sold, and conveyed, and does by these presents grant, bargain, sell, and convey unto Grantee a non-exclusive temporary construction easement for _____ (the "Construction Activities"), in, along, upon, under, and across the following described property owned by Grantor, and situated in Denton County, Texas, located in the _____ Survey, Abstract Number _____ (the "Property") to wit:

**PROPERTY AREA DESCRIBED AND
DEPICTED IN EXHIBIT "A"
ATTACHED HERETO AND MADE A PART HEREOF**

It is agreed that Grantee, in consideration of the benefits above set out, will remove from the Property such obstructions as may now be found upon said Property as reasonably necessary in connection with, and solely for the purpose of, the Construction Activities and access in, along, upon, under, and across said Property. Grantee shall not make changes in grade, elevation, or contour of the land or surface of the land within the Property, the project area, or other adjacent areas without the prior written consent of the City.

Grantee, its agents, employees, contractors, workmen, and representatives shall have the right of ingress, egress, and regress in, along, upon, under, and across said Property for the purpose of the Construction Activities or any part thereof.

Grantee hereby agrees to obtain all required permits and governmental approvals for its Construction Activities so as to meet all regulatory requirements and shall complete all construction in a workmanlike manner. Grantee shall not construct any permanent improvements on the Property hereunder that would continue to exist on the Property after the termination of this temporary construction easement without prior consent of the City. Upon completion of construction, Grantee shall promptly restore the surface of the Property, the project area, and any other area disturbed by its Construction Activities, including but not limited to the public roadway and adjoining pedestrian walkways, as applicable, to a condition that is substantially the same as or better than it existed prior to such construction, and shall leave the Property, the project area, and adjacent areas free of all trash, litter, refuse, and debris generated or resulting in connection with the Construction Activities.

TO HAVE AND TO HOLD said temporary construction easement unto the said Grantee until the earlier of (i) the completion of the Construction Activities, or (ii) ____ days after the Effective Date hereof (as hereafter defined), at which time this temporary construction easement will terminate and be of no further force and effect.

Witness my hand, this the _____ day of _____, 20__ (the "Effective Date").

GRANTOR:

CITY OF DENTON

BY: _____
Sara Hensley, City Manager

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

BY: _____

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

Signature

Title

Department

Date Signed: _____

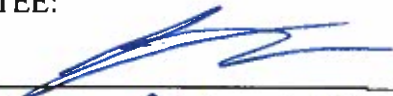
THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared **Sara Hensley**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same as the act and deed of the **City of Denton, a Texas home-rule municipal corporation**, as the **City Manager** thereof, for the purposes and consideration therein expressed, in the capacity therein stated and she is authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____ 2021.

Notary Public, State of Texas

GRANTEE:

By: 
Printed Name: PAUL MORROW
Title: PRESIDENT

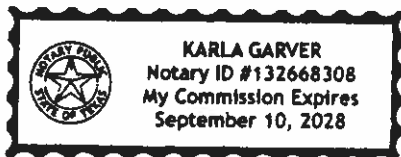
THE STATE OF Texas §
 §
COUNTY OF Midland §

BEFORE ME, the undersigned authority, on this day personally appeared Paul Morrow, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of the

Maghill Renewables, LLC, as the President thereof, for the purposes and consideration therein expressed, in the capacity therein stated and he is authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25th day of July 2025

Karla Garver
Notary Public, State of Texas





Landfill Gas-to Energy (LFGE) the City of Denton Landfill

Award of Contract 8465

**Brenda A. Haney, P.E., Director of
Solid Waste & Recycling**

Date: August 25, 2025

PUB25-144



SUSTAINABILITY/BENEFITAL MEASURES

Current practice (i.e., flaring landfill gas) constitutes:

- Major maintenance expense
- Need for mechanized components
- Opportunity Costs associated with potential LFG sales revenue

Landfill Gas (LFG) is an asset of the City

- Processed LFG is a clean reusable commodity
- Beneficial reuse increases sustainability and lessens carbon footprint of Denton
- Beneficial reuse is a profitable and an environmentally responsible alternative



Historical Timeline

- Through 2020, the City was operating a LFG to Energy (LFGE) Facility, which was subsequently decommissioned
- The City commissioned a study on possible LFGE projects at the landfill, specifically refining the gas to high-Btu fuel
 - In 2023, the City issued an RFP for an LFGE project, but this never progressed due to negotiations
 - In 2024, the City issued an RFP for an LFGE project, which was evaluated, and Morrow Energy was selected
- City has installed a gas collection infrastructure
 - 139 gas collection wells onsite to collect LFG
- Currently, all landfill gas is diverted to a flare station, then destroyed (“flared off”)



Project Schedule & Action Requested

- In May 2024, an RFP for a Landfill gas to Energy Project was released
- In August 2024, Morrow Energy, operating as Mayhill Renewables, was selected
- Mayhill Renewables will assume wellfield operations; expand the existing wellfield; improve overall gas collection; clean and compress the LFG to sell in the open market
- Council Action Requested
 - Approve ordinance authorizing the City Manager to execute the Lease Agreement and the Gas Rights Agreement



Questions?

Brenda Haney
Director of Solid Waste & Recycling



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT AND LEASE AGREEMENT WITH MAYHILL RENEWABLES, LLC, TO DESIGN, FABRICATE, CONSTRUCT, COMMISSION, AND OPERATE A RENEWABLE NATURAL GAS (RNG) FACILITY TO TREAT LANDFILL AND DIGESTER GAS AT THE CITY OF DENTON LANDFILL FOR THE SOLID WASTE AND WATER UTILITIES DEPARTMENTS; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8465 – AWARDED TO MAYHILL RENEWABLES, LLC, FOR A PRIMARY CONSTRUCTION PHASE AND TWENTY (20) YEAR TERM).

WHEREAS, the City has solicited, received, and evaluated competitive proposals to design, fabricate, construct, commission, and operate a Renewable Natural Gas (RNG) Facility to treat landfill and digester gas at the City of Denton Landfill for the Solid Waste and Water Utilities Departments; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Manager, or a designated employee, has received and reviewed and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services, shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

RFP NUMBER

CONTRACTOR

8465

Mayhill Renewables, LLC

SECTION 2. By the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. Should the City and person submitting approved and accepted items and of the submitted proposals wish to enter into a formal written agreement as a result of the acceptance,

approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. The ordinance was passed and approved by the following vote [____ - ____]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

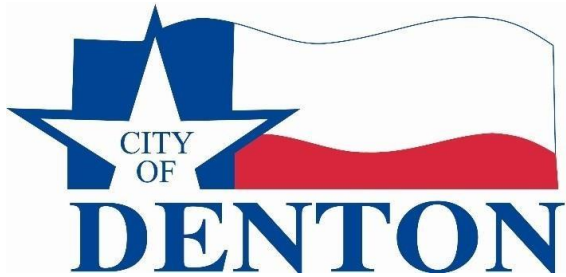
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

RFP	8465
File Name	LANDFILL GAS TO ENERGY
Purchasing Contact	Crystal Westbrook
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

LANDFILL & DIGESTER GAS AGREEMENT

THIS LANDFILL & DIGESTER GAS AGREEMENT (“Agreement”), effective _____, 2025, is entered into by and between the CITY OF DENTON, DENTON, TEXAS (“COD”), a Texas home-rule municipal corporation and MAYHILL RENEWABLES, LLC (“MHR”), a Texas limited liability company (each individually a “Party” and collectively, the “Parties”).

RECITALS

- A. WHEREAS, COD owns and operates the Landfill (as defined herein);
- B. WHEREAS, COD owns and operates the WWTP (as defined herein), which produces Digester Gas (defined herein);
- C. WHEREAS, COD owns and operates the GCCS (as defined herein) at the Landfill through which COD collects and manages Landfill Gas (as defined herein);
- D. WHEREAS, MHR designs and operates Landfill Gas processing facilities, converting Landfill Gas to High-BTU Gas (defined herein);
- E. WHEREAS, MHR designs and operates processing facilities, converting Digester Gas to High-BTU Gas;
- F. WHEREAS, MHR desires to purchase Landfill Gas and Digester Gas from COD and to construct and operate facilities at the Landfill to process Biogas, creating High-BTU Gas for sale;
- G. WHEREAS, COD desires to have MHR construct and operate facilities at the Landfill, creating High-BTU Gas, and to receive a royalty payment from the sale of High-BTU Gas by MHR; and
- H. WHEREAS, MHR acknowledges that the primary purpose of the Landfill is and shall remain as a municipal solid waste landfill and that collecting and treating Landfill Gas shall remain secondary to Landfill’s continued use as a municipal solid waste landfill;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein, the Parties agree as follows:

ARTICLE I: DEFINITIONS

As used herein the following terms shall have the following meanings:

- 1.1. “Air Permits” means permit number O2059 (Title V), and all permits referenced therein, including Standard Air Permit 80971 issued by the TCEQ, as the Air Permits may be amended or modified from time to time.
- 1.2. “Affiliate” means, with respect to any Person, any other Person that directly or indirectly, or through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person. “Control” for purposes of this definition includes, without limitation, the ability to vote fifty percent (50%) or more of the voting equity of a Person.
- 1.3. “Alternative Supply” has the meaning given in Section 4.2.2.
- 1.4. “Bankruptcy Code” the United States Code governing insolvency and debt adjustment as amended or replaced.

- 1.5. “Biogas” means collectively Landfill Gas and/or Digester Gas.
- 1.6. “Blower-Flare Facility” means all piping, equipment and appurtenances designated as Blower-Flare Facility on Exhibit 1-B, which exhibit is incorporated fully herein.
- 1.7. “BTU” means British Thermal Unit; the amount of heat required to raise the temperature of one pound of pure water from 60 degrees Fahrenheit to 61 degrees Fahrenheit.
- 1.8. “COD’s Permits” means the Air Permit, Landfill Permit and the WWTP Permit.
- 1.9. “COD Indemnities” has the meaning given in Section 12.1.
- 1.10. “Commercial Operations Date” means the date MHR is able to treat, process and/or manage Biogas, produce High-BTU Gas, deliver such High-BTU Gas to the Sales Interconnection Point, and for such High-BTU Gas to be received by the interconnecting pipeline at the Sales Interconnection Point; but in no event shall the Commercial Operations Date be later than two hundred seventy (270) days following the Effective Date, subject to MHR successfully obtaining (i) a Sales Interconnection Point, (ii) EPA pathway approval designating Biogas eligible for RINs, (iii) all necessary utility services, and (iv) all necessary permits.
- 1.11. “Contractor” means the contractor hired by MHR to construct the MHR Facilities.
- 1.12. “Cure Period” has the meaning given in Section 7.3.2.1.
- 1.13. “Default Notice” has the meaning given in Section 7.3.2.1.
- 1.14. “Digester Gas” means methane, carbon dioxide, and other gases produced at the WWTP.
- 1.15. “Effective Date” means the date on which this Agreement shall be effective.
- 1.16. “EPA” means the Environmental Protection Agency, including its predecessor and successor agencies.
- 1.17. “Engineer Standards of Performance”
 - A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by an engineer under this Agreement or as related to engineering performed in relation to this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
 - B. Technical Accuracy: COD shall not be responsible for discovering deficiencies in the technical accuracy of engineer’s services.
 - C. An engineer performing any obligations of this Agreement shall comply with applicable laws and regulations.
- 1.18. “Engineering Practices Act” means Chapter 1001 of the Texas Occupations Code as amended or replaced.
- 1.19. “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the extraction, collection, and recovery of Biogas including the generation of energy, or its displacement of conventional energy generation.

By way of example, Environmental Attributes include, but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights (Green Tag Reporting Rights being the right of a Green Tag purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other Party at the Green Tag purchaser's discretion); (4) any RINs associated with the EPA's Renewable Fuels Standard program; and (5) LCFS credits, carbon credits, or any other or future credits associated with Biogas.

Environmental Attributes do not include (i) production tax credits associated with the construction or operation of MHR's Facilities, or any other associated contract or right, and other financial incentives in the form of credits, reductions, or allowances associated with MHR's Facilities or the Landfill that are applicable to a state or federal income taxation obligation, or (ii) emission reduction credits encumbered or used by MHR's Facilities for compliance with local, state, or federal operating and/or air quality permits.

1.20. "Environmental Laws" shall mean any applicable federal, state, or local governmental law, statute, rule, regulation, order, consent decree, decree, judgment, permit, license, covenant, deed restriction, ordinance or other requirement or standard relating to pollution or the regulation or protection of health, safety, natural resources, or the environment, now existing or hereafter in effect, including, without limitation, those relating to the release, discharge, emission, injection, leaching, or disposal of solid waste or Hazardous Substances or pollution into air, water, land or groundwater; to the withdrawal or use of groundwater; or to the use, handling, treatment, removal, storage, disposal, processing, distribution, transport, or management of solid waste or Hazardous Substances. "Environmental Laws" shall include, but shall not be limited to, the Clean Air Act; the federal Water Pollution Control Act; the Safe Drinking Water Act; the Toxic Substances Control Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act; the Occupational Safety and Health Act; the Hazardous Materials Transportation Act; the Oil Pollution Act of 1990; Chapter 30 of the Tex. Admin. Code (including odor and landfill gas migration requirements), Federal Plan OOO and NESHAP AAAA requirements, civil odor nuisance requirements, and any similar federal, state, or local statutes, ordinances, and regulations.

1.21. "Facility Downtime" means the amount of time that MHR's Facility is not actively delivering High-BTU Gas to the Sales Interconnection Point.

1.22. "Fault" has the meaning given in Section 12.1.

1.23. "Final Engineering and Design Plans and Specifications" has the meaning given in Section 5.1.2.

1.24. "First Extension" has the meaning given in Section 7.2.1.

1.25. "Flare Meter(s)" means the meter, or combination of meters, that measure the flow of LFG to all the flares, inclusive of the Blower-Flare Facility, MHR's Flare, and any flares that may be

installed in the future.

1.26. “Force Majeure” means acts of God; winds; hurricanes; tornadoes; fires; pandemic (but not the COVID-19 pandemic); epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; extended closures of banks and/or financial institutions; acts of public enemies; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances; explosions; or any other cause or event, not reasonably within the control of the Party claiming Force Majeure (other than the financial inability of such Party), which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement.

1.27. “Gathering System Operations Date” means the date that MHR assumes its responsibilities relating to the GCCS and Blower-Flare Facility, as detailed in Section 6.1.1, but in no event shall the Gathering System Operations Date be later than the first (1st) day of the calendar month following ninety (90) days after the Effective Date.

1.28. “GCSS” means the Gas Collection and Control System, comprised of the system of wells and piping that collects or assists in the collection and destruction of Landfill Gas from the Landfill, including but not limited to, extraction wells, horizontal wells, lateral and header piping, valves, sumps, wellheads, air supply piping, liquid force-main piping, pumps, blowers, motors, flares, air compressors, flow meters, flare facility controls, any monitoring and recording device, the Blower-Flare Facility, Meters, and other appurtenances. Future expansions of the GCCS shall be considered part of the GCCS, but the GCCS shall not include any equipment installed downstream of the Landfill Connection Point.

1.29. “GCSS Vacuum Failure Event” has the meaning given in Section 7.3.2.4.

1.30. “Green Tag” means renewable energy certificates that represent the intangible environmental attributes associated with producing one (1) megawatt hour of electricity from a renewable resource.

1.31. “Gross Revenues” means all Biogas sources of income, including revenues received by MHR from the sale of High BTU Gas (including the value of any exchange services or similar in-kind exchanges relating to the sale or use of High BTU Gas, if any) and related by-products, and the value of any Environmental Attributes made available to MHR; provided that, with respect to sales by MHR to a related Party (i.e., one in which MHR or an Affiliate of MHR has an interest), such sales shall be valued at market value, regardless of the price charged by MHR. MHR agrees to disclose to COD any contractual provisions that provide for any exchanged services or similar in-kind exchanges in place of the receipt of revenues relating to the processing, destruction, sale or use of Biogas, or High BTU Gas, if any, it being the intent of the Parties that the market value of such in-kind exchanges, as reasonably determined by the Parties, will be included in the determination of Gross Revenues. Tax credits are not included in Gross Revenues.

1.32. “Hazardous Substances” means any substance as defined by Environmental Laws, and shall further include Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS), polychlorinated biphenyls or substances containing polychlorinated biphenyls, asbestos or materials containing asbestos, urea formaldehyde foam insulation, petroleum or petroleum products, flammable or explosive substances, radon gas, and any other wastes, pollutant, contaminant, material, chemical, gas or other substance that could subject any person to liability for costs of cleanup, removal, response or remediation or the exposure to which is prohibited, limited or regulated.

1.33. “Hazardous Wastes” means any waste material – solid, liquid, or gaseous – that because of

its quantity, concentration, or physical, chemical or infectious characteristic may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

1.34. “High-BTU Gas” means Biogas, whether processed or not, that is sold by MHR.

1.35. “Indemnified Claims” has the meaning given in Section 12.1.

1.36. “Initial Design Capacity” means the capacity of MHR’s Facility to process Biogas into High-BTU Gas, which shall be five thousand (5,000) scfm upon the Commercial Operations Date.

1.37. “Initial Term” has the meaning given that term in Section 7.1. of this Agreement.

1.38. “Landfill” means COD’s Disposal Facility Landfill located at 1527 S MAYHILL, DENTON, TEXAS 76208, and subject to the Landfill Permit.

1.39. “Landfill Connection Point” means, the location shown on Exhibit 1, the point of interconnection between COD’s GCCS and MHR’s Facility.

1.40. “Landfill Gas” and “LFG” shall mean methane, carbon dioxide, and other gases produced at the Landfill.

1.41. “Landfill Permit” means permit number MSW 1590B issued by the TCEQ, as it may be amended from time to time.

1.42. “LCFS” means low carbon fuel standard.

1.27 “Losses” means claims, losses, liability, damages, penalties, fines, costs, and expenses, including, without limitation, reasonable attorneys’ fees, expert witness fees, litigation expenses, and court and other costs, whether taxable or not.

1.28 “Meters” means, collectively, the methane analyzer and flow meters to measure the quality and/or quantity of LFG delivered to the Blower-Flare Facility, MHR’s Flare and/or the Sales Interconnection Point, as shown on Exhibit 1.

1.29 “MMBTU” means one million BTUs.

1.30 “MHR’s Facility” or “MHR’s Facilities” means all facilities installed by MHR to (i) enable MHR to interconnect with the GCCS at the Landfill Connection Point, (ii) accept delivery of Landfill Gas at the Landfill Connection Point; (iii) enable MHR to interconnect with the WWTP at the WWTP Connection Point, (iv) accept delivery of Digester Gas at the WWTP Connection Point, (iv) treat, process, and/or manage Biogas to produce High-BTU Gas; and (vi) deliver High-BTU Gas to the Sales Interconnection Point.

1.31 “MHR’s Flare” means the flare that is part of MHR’s Facility.

1.32 “MHR Permit” has the meaning given in Section 5.2.1.

1.33 “Mod Application” has the meaning given in Section 5.2.1.

- 1.34 “NMOCs” means nonmethane organic compounds.
- 1.35 “NSPS” means New Source Performance Standards for Municipal Solid Waste Landfills: federal EPA rules, which regulate the amount of NMOCs a landfill can emit into the atmosphere, including 40 Code of Federal Regulations Part 60, as they may be amended from time-to-time.
- 1.36 “OSHA” has the meaning given in Section 6.3.1.
- 1.37 “Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, or other entity, or a government or any political subdivision or agency thereof, or any trustee, receiver, custodian, or similar official.
- 1.38 “Reimbursable Costs,” pursuant to Section 4.3, means expenditures or investments made by MHR at the Landfill, including premiums and interest, recovered by MHR through a reduction in the royalty paid to COD.
- 1.39 “Removal Period” has the meaning given in Section 7.5.
- 1.40 “Requested Termination Date” has the meaning given in Section 7.3.3.2.1.
- 1.41 “RINs” means Renewable Identification Numbers.
- 1.42 “Sales Interconnection Point” means the point at which custody of High-BTU Gas produced from MHR’s Facility is transferred to a transportation pipeline.
- 1.43 “Sales Pipeline Meters” means the Meters located at Sales Interconnection Point, if any.
- 1.44 “Service Contract” means the contract between the Contractor and MHR.
- 1.45 “Site” means the premises described in Exhibit 2 to this Agreement.
- 1.46 “Subsequent Extensions” has the meaning given in Section 7.2.2.
- 1.47 “TCEQ” means the Texas Commission on Environmental Quality, including its predecessor and successor agencies.
- 1.48 “Term” has the meaning given in Section 7.2.5.
- 1.49 “Termination Notice” has the meaning given in Section 7.3.3.2.
- 1.50 “Test Period” has the meaning given that term in Section 7.3.3.5.
- 1.51 “Unused Biogas” means LFG or Digester Gas not sold by MHR and not defined as Waste Gas.
- 1.52 “Utilization Trigger” has the meaning given that term in Section 6.2.2.2.
- 1.53 “Waste Gas” means any LFG or Digester Gas that has been fully or partially processed by MHR’s Facility and not sold by MHR.
- 1.54 “Wastewater Treatment Plant” or “WWTP” means COD’s Pecan Creek Water

Reclamation Plant located at 1100 S MAYHILL, DENTON, TEXAS 76208.

1.55 “WWTP Connection Point” means the point of interconnection between the WWTP and MHR’s Facilities.

1.56 “WWTP Permit” means permit number WQ0010027003 issued by the TCEQ, as may be amended or modified from time to time.

ARTICLE II: FACILITIES

2.1. COD’s Facilities.

2.1.1. COD has the responsibility to manage the Landfill in compliance with Environmental Laws, and all Landfill and WWTP Permits including Air Permits. Notwithstanding anything in this Agreement to the contrary, MHR recognizes that COD’s and MHR’s responsibilities to comply with Environmental Laws, including, without limitation, those pertaining to solid waste management, water/wastewater management, and air pollution, take priority over Landfill Gas production. Consequently, each obligation of COD and MHR set forth in this Agreement is conditioned on maintaining the Landfill’s safe operation and regulatory compliance, and COD’s and MHR’s obligations to comply with Environmental Laws, including the Landfill Permit and the Air Permit, are paramount to any rights granted to MHR under this Agreement. MHR agrees to take no action that would cause a violation of Environmental Laws, including the Landfill Permit and the Air Permit. Within five (5) days of the Effective Date, unless provided sooner, COD shall provide a copy of the Landfill and WWTP Permits and the Air Permits to MHR, and MHR shall become familiar with COD’s obligations thereunder. Except as necessary to comply with Environmental Laws, including the Landfill and WWTP Permits and Air Permit or to protect public health and safety, COD shall not take any intentional and unnecessary action that would materially harm the rights of MHR under this Agreement.

2.1.2. Nothing in this Agreement shall be construed to mean that COD does not retain ownership of the Landfill GCCS and Blower-Flare Facility.

2.1.3. Beginning on the Gathering System Operations Date and throughout the Term, MHR will operate, modify as necessary, and maintain the GCCS and Blower-Flare Facility as described herein.

2.1.4. Except as provided in Section 2.1.5, MHR shall be solely responsible for obtaining and paying for all utilities, including extensions of service, installation, and ongoing service, including utilities for the GCCS, and MHR’s Facility. MHR acknowledges that no high-speed internet service is available to the Site. COD shall be solely responsible for paying for all utilities for the Blower-Flare Facility.

2.1.5. COD will provide water to MHR’s Facility on the same terms and conditions as other similarly situated entities in the City of Denton. Specifically, service to MHR will be subject to COD Rate Ordinance, as amended, and all other applicable COD ordinances, policies, and regulations as all are amended from time to time. MHR shall be solely responsible for designing, connecting to, and extending a water line from COD’s existing water line to MHR’s Facility, along a route agreed to by COD. MHR shall use the water only for normal office use. MHR may not resell the water. Should any state or local code or other regulatory entity require a fire suppression sprinkler system within MHR’s Facility, MHR shall be responsible for verifying and installing the appropriate size water main to handle the anticipated flow rates and pressures required for the fire suppression system. COD does not warrant that it can or will provide sufficient water for fire suppression.

2.1.6. COD shall be solely responsible for insuring the GCCS and the Blower-Flare Facility.

2.1.7. MHR shall not incur or create any liens, levies, and encumbrances of any nature or kind (except liens, levies, and encumbrances created by COD) on the GCCS, the Blower-Flare Facility, or any other COD property, whether real or personal, and shall at all times take whatever action is necessary to keep the GCCS, the Blower-Flare Facility, or any other COD property, free of any liens, levies, and encumbrances of any nature or kind (except liens, levies, and encumbrances created by COD).

2.1.8. COD owns and operates the WWTP and has the responsibility to manage the WWTP in compliance with Environmental Laws, permits, and regulations.

2.2. MHR's Facilities.

2.2.1. MHR shall make all necessary filings and obtain all governmental authorizations necessary to (i) provide for and continue the delivery of Landfill Gas to the Landfill Connection Point, (ii) receive Digester Gas from the WWTP Connection Point, (iii) process such Biogas, and (iv) enable the subsequent use of such processed Biogas by MHR. COD shall cooperate with MHR (at no out-of-pocket cost to COD) in connection with such filings. MHR shall keep COD apprised of its progress toward obtaining the necessary authorizations.

2.2.2. MHR shall be solely responsible for the design, installation, and operation of MHR's Facilities, including, without limitation, all pipeline connection fees, regardless of whether such work is performed by MHR, a subcontractor, or by anyone directly or indirectly employed by any of them to perform any of the design, installation or operation of MHR's Facilities. MHR shall: (i) design, construct, install, operate, and maintain MHR's Facilities in accordance with Engineer Standards of Performance and in compliance with applicable laws, including all governmental approvals, any required permits, and, without limitation, Environmental Laws, and (ii) obtain all necessary authorizations to construct and operate MHR's Facilities.

2.2.3. MHR and COD shall use reasonable, good-faith efforts to coordinate the installation and maintenance of interconnections between their respective facilities. MHR will be responsible for all costs and expenses of bringing and connecting the respective facilities of COD and MHR to the Landfill Connection Point and the WWTP Connection Point.

2.2.4. MHR shall be solely responsible for the design, construction, operation, maintenance, modification, repair, income taxes, insuring, and regulatory compliance of MHR's Facility.

2.2.5. MHR shall be solely responsible for all costs and expenses of securing rights-of-way for the pipeline from MHR's Facility to the Sales Interconnection Point. COD will provide necessary easements and/or rights-of-way on COD property to MHR at no cost.

2.2.6. MHR shall not incur or create and shall, at all times, take whatever action is necessary, to keep MHR's Facilities free of, liens, levies, and encumbrances of any nature or kind; provided, however, nothing herein shall be construed to prohibit MHR from creating a lien on MHR's Facilities in connection with any financing of such facility.

2.3 Respective Duties.

2.3.1. MHR's and COD's respective duties are further set forth in Exhibit 3 hereto, which is incorporated fully herein; however, no representation is made that each Party's respective duties are fully set forth in Exhibit 3. Any duty not set forth explicitly in Exhibit 3, and in the case of a conflict between the duties as set forth in Exhibit 3 and as otherwise in this Agreement shall be governed by the terms and provisions otherwise set forth in this Agreement.

ARTICLE III. PURCHASE, TREATMENT, AND SALE OF BIOGAS

3.1. Title to and Responsibility for Biogas.

3.1.1. Beginning on the Commercial Operations Date and through the Term, COD shall transfer ownership of Biogas, free of any and all encumbrances, including all Environmental Attributes associated with Biogas, to MHR at the Landfill Connection Point and the WWTP Connection Point in exchange for a royalty described in Article IV. MHR shall purchase all Biogas delivered to the Landfill Connection Point and the WWTP Connection Point, as measured by the Meters, as described in this Agreement, after the Commercial Operations Date, including (i) LFG and Digester Gas converted to High BTU Gas and (ii) flared LFG and Digester Gas. MHR, as operator of the GCCS and Blower-Flare Facility, shall be solely responsible for delivery of Landfill Gas to the Landfill Connection Point and to MHR's Facilities or to the Blower-Flare Facility and the delivery of Digester Gas, received at the WWTP Connection Point, to MHR's Facilities or to the Blower-Flare Facility. Ownership and title to Landfill Gas shall pass from COD to MHR at the Landfill Connection Point. Ownership and title to Digester Gas shall pass from COD to MHR at the WWTP Connection Point. Control, liability, and risk of loss with regard to Landfill Gas shall pass from COD to MHR when the Landfill Gas enters the GCCS.

3.1.2 Beginning on the Commercial Operations Date and through the Term, COD grants MHR the exclusive right to treat, process, and sell all Landfill Gas produced at the Landfill and sell all Digester Gas produced at the WWTP. Except as otherwise provided herein, MHR shall (a) process and treat Landfill Gas collected by the GCCS to create a High-BTU Gas in compliance with COD's Permits and Environmental Laws, and (b) process and treat Digester Gas received at the WWTP Connection Point to create a High-BTU Gas in compliance with COD's Permits and Environmental Laws.

3.2. Delivery of Landfill Gas.

3.2.1. In no event shall COD be obligated to provide, sell, or deliver an amount of Landfill Gas in excess of the actual production of Landfill Gas from the Landfill, or in excess of the amount of Landfill Gas that can be withdrawn from the Landfill safely and in compliance with the Landfill Permit and Environmental Laws.

3.2.2. In the event MHR's Facility is shut down for any reason, or MHR fails, for any reason, to take and process all Landfill Gas made available to MHR, MHR shall immediately divert the LFG to the Blower-Flare Facility and promptly notify COD. MHR's inability to process Landfill Gas shall not release MHR from the obligation to accept Landfill Gas at the Landfill Connection Point, to meet the requirements of all Environmental Laws, and to pay for Landfill Gas in accordance with Article IV. If the GCCS is shut down for longer than four (4) hours in any 24-hour period, MHR shall notify COD in writing within twenty-four (24) hours of the beginning of the shutdown. However, in any event, MHR shall be responsible for compliance with all regulatory notice requirements pursuant to Environmental Laws.

3.2.3. MHR shall give COD at least three (3) business days' notice if MHR's Facility is to be taken out of operation for scheduled repairs or other reasons.

3.2.4. In order to (i) address emergency situations, (ii) maintain compliance with the Landfill Permit or Environmental Laws, and/or (iii) protect human health or risk to the environment (and only for those reasons), COD shall have the option, but not the obligation, to cease providing Landfill Gas. To the extent practicable under the circumstances at the time, COD shall provide notice to MHR prior to any such suspension. MHR acknowledges that it is not COD's responsibility to ensure that MHR is operating safely or legally. Thereafter, COD and MHR shall promptly meet to discuss possible remedies. As soon as practical after the situation has been addressed, COD shall resume providing Landfill Gas.

3.2.5. MHR shall not reduce the capacity of MHR's Facility below the Initial Design Capacity without the express written consent of COD, such consent to be granted or denied in COD's sole discretion.

3.3. Delivery of Digester Gas.

3.3.1. In no event shall COD be obligated to provide, sell, or deliver an amount of Digester Gas in excess of actual production.

3.3.2. In the event MHR's Facility is shut down for any reason, or MHR fails, for any reason, to take and process all Digester Gas made available to MHR, MHR shall immediately divert the Digester Gas to the Blower-Flare Facility and promptly notify COD. MHR's inability to process Digester Gas shall not release MHR from the obligation to accept Digester Gas at the WWTP Connection Point, to meet the requirements of all Environmental Laws, and to pay for Biogas in accordance with Article IV. If MHR's Facility is shut down for longer than four (4) hours in any 24-hour period, MHR shall notify COD in writing within twenty-four (24) hours of the beginning of the shutdown. However, in any event, MHR shall be responsible for compliance with all regulatory notice requirements pursuant to Environmental Laws.

3.2.3 MHR shall give COD at least three (3) business days' notice if MHR's Facility is to be taken out of operation for scheduled repairs or other reasons.

3.2.3 In order to (i) address emergency situations, (ii) maintain compliance with the WWTP Permit or Environmental Laws, and/or (iii) protect human health or risk to the environment (and only for those reasons), COD shall have the option, but not the obligation, to cease providing Digester Gas. To the extent practicable under the circumstances at the time, COD shall provide notice to MHR prior to any such suspension. MHR acknowledges that it is not COD's responsibility to ensure that MHR is operating safely or legally. Thereafter, COD and MHR shall promptly meet to discuss possible remedies. As soon as practical after the situation has been addressed, COD shall resume providing Digester Gas.

3.4. Metering Equipment.

3.4.1. MHR shall, at no cost to COD, install, operate, and maintain, in accurate working order, separate Meters to measure the flow and quality of each of Landfill Gas and Digester Gas (including BTU per cubic foot). Such Meters shall be mutually acceptable to COD and MHR, and are identified in Exhibit 1.

3.4.1.1. The Meters shall be configured to take and record flow readings

in standard cubic feet (“SCF”) per minute no less often than every ten (10) minutes. MHR’s Flare Meters and the Sales Pipeline Meters shall be configured to take and record energy content readings in BTU/SCF no less often than every ten (10) minutes.

3.4.1.2. MHR shall calculate the amount of energy (in MMBTUs) each day sent to the Blower-Flare Facility, using the data recorded pursuant to Section 3.4.1.1, multiplied by 0.5 (accounting for an assumption hereby agreed upon by the Parties that the LFG is 50% methane), and multiplied by 0.001 MMBTU/cubic foot of methane.

3.4.1.3 MHR shall calculate the amount of energy (in MMBTUs) each day sent to MHR’s Flare Meters and the Sales Pipeline Meters, by multiplying the flow readings by the energy content readings recorded pursuant to Section 3.4.1.1.

3.4.2. MHR shall test the Meters no less than once per quarter. Notification of any proposed test shall be provided to COD at least seventy-two (72) hours prior to such test being conducted. COD may observe such test, if COD so desires. Copies of the results of each test, whether or not COD observes such test, shall be provided to COD within seven (7) days following each test.

3.4.3. COD shall have access to, and may test, at COD’s cost, the Meters, at all reasonable times, provided COD provides MHR with a minimum of seventy- two (72) hours’ notice prior to testing the Meters, so that MHR can have a representative present, at MHR’s discretion.

3.3.4 If the accuracy of the Meters is less than +/- five percent (5%), MHR shall calibrate or repair the Meters as soon as practicable. For purposes of calculating payments in accordance with Article IV during the time that the Meters were not accurate, the registration of the defective meter shall be corrected for a period extending back to the time such inaccuracy began, if such time is ascertainable; or, if such time is not ascertainable, then for a period extending back one half (1/2) of the time elapsed since the date of the last test, but in no event further back than a period of six (6) months.

3.3.5. MHR shall calibrate the Meters no less than once per year. All calibration of the Meters shall be performed by an independent third party qualified to perform calibration of the Meters. Within thirty (30) days following each calibration, MHR shall provide a certificate of calibration to COD from the third-party calibrator.

3.3.6. COD shall have the option but not the obligation, at COD’s expense, to install, maintain, and operate additional meters, instruments, and other equipment, for verifying the Meters. MHR’s Meters shall be presumed correct unless testing confirms that the Meters are inaccurate, provided that the additional meters do not interfere with the correct operation of the Meters. MHR shall install a one-inch (1”) port for COD’s use at a sufficient distance from the Meters for verification of the Meters.

3.3.7. If the Meters are out of service or out of repair so that the quantity or quality of LFG cannot be determined, the LFG delivered during the period the Meters are out of service or out of repair shall be estimated and agreed upon by the Parties based upon the best data available. The basis for estimating the LFG quality or quantity includes, but is not limited to, measurements by COD’s meters, if any, or extrapolation of past patterns for the Meters under similar conditions.

3.5. “AS-IS” Condition; No Warranties.

ALL BIOGAS SHALL BE TAKEN BY MHR IN AN “AS IS” CONDITION. MHR

ACKNOWLEDGES THAT IT IS SOLELY RESPONSIBLE FOR ITS OWN DUE DILIGENCE AS TO THE QUALITY OF BIOGAS SOLD HEREUNDER AND THAT COD MAKES NO WARRANTY CONCERNING THE QUALITY OR QUANTITY OF THE BIOGAS. ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND DO NOT APPLY TO THE BIOGAS SOLD HEREUNDER. MHR RECOGNIZES THAT BIOGAS MAY CONTAIN CORROSIVE OR DELETERIOUS SUBSTANCES. COD SHALL HAVE NO OBLIGATION TO PAY COSTS FOR REPAIR OR REPLACEMENT OF MHR'S FACILITIES CAUSED BY SUCH SUBSTANCES AND MHR ACCEPTS THE RISK OF SUCH SUBSTANCES.

3.6. Risks.

MHR shall incur all permitting, market, resource, non-specification energy, changes in law, construction, and performance-related risks.

3.6.1. Resource risks refer to all risks associated with the quality and/or quantity of Biogas, including risks that Biogas may damage MHR's Facility.

3.6.2. Non-specification energy risks refer to all risks associated with the quality and/or quantity of High-BTU Gas, including risks that High-BTU Gas may cause damage to MHR's equipment or to a downstream purchaser's equipment.

ARTICLE IV. PRICE, ROYALTIES, BILLING AND PAYMENTS

4.1. High-BTU Gas Sales.

MHR shall be solely responsible for, and shall have sole discretion regarding, the sale of High-BTU Gas, including the negotiation of gas sales agreements; provided, that MHR shall keep COD apprised of major developments in its negotiation of gas sales agreements. If, within two hundred and forty (240) days from the Effective Date, MHR is unable, notwithstanding its best efforts, to obtain the necessary rights-of-way, permits, and/or approvals, or is otherwise unable to develop an economically viable, High-BTU Gas treatment facility at the Landfill, MHR will provide written notice to COD to that effect.

4.2. Price and Royalties.

4.2.1. Effective after the Commercial Operations Date, MHR shall pay COD a royalty, as shown on Exhibit 4. MHR may reduce the amount to be paid to COD for the recovery of Reimbursable Costs, per Section 4.3.

4.2.2. Reflecting the goal to optimize revenue from the sale of Digester Gas produced at the WWTP, MHR will procure non-Biogas, natural gas (the "Alternative Supply") and deliver such Alternative Supply to the WWTP for its use, increasing the quantity of available Biogas to be sold as High-BTU Gas. The royalty paid to COD for Digester Gas will reflect the impact on Gross Revenues to procure and provide such Alternative Supply.

4.2.3. MHR shall be entitled to all Environmental Attributes, tax credits, and other credits, including, but not limited to the proceeds from the sale of such Environmental Attributes, tax credits, and other credits.

4.2.4. MHR's Facility shall be permitted a maximum of 5% of Facility Downtime (exclusive of Force Majeure events) per year (the first year beginning on the Commercial Operations Date and each subsequent year beginning on the first day of the first full month following the anniversary of the Commercial Operations Date). MHR shall pay twenty-five cents (\$0.25) per MMBTU for all Biogas flared by either the Blower-Flare Facility or the MHR Flare, after the first 438 hours of flaring per year. By way of explanation:

4.2.4.1. If, in year 2, the combined time that the Blower-Flare Facility and the MHR Flare is flaring Biogas is 438 hours or less, MHR would not be required to pay for the Biogas that was flared in either flare;

4.2.4.1.1. If, in year 2, the combined time that the Blower-Flare Facility and the MHR Flare is flaring Biogas is 538 hours, MHR would not be required to pay for the Biogas that was flared during the first 438 hours; but, would be required to pay \$0.25 per MMBTU (based on the assumption that the Biogas' energy value is 50% as provided in Section 3.4.1.2) for the Biogas that was flared during the last 100 hours (from the 438th hour through the 538th hour).

4.3. Royalty Reductions and Reimbursable Costs.

4.3.1 To allow MHR to recover Reimbursable Costs, MHR may reduce the monthly royalty paid to COD by 50% per month (or some amount larger than 50%, at COD's discretion), until the Reimbursable Cost balance is reduced to zero. At COD's discretion, COD may elect to pay the full amount within thirty (30) days after MHR invoices the Reimbursable Cost, rather than through a royalty reduction.

4.3.2. Reimbursable Costs are limited to:

4.3.2.1. cost to repair one or more of the pieces of equipment as further described in Section 6.1.2;

4.3.2.2. cost to expand the Blower-Flare Facility as further described in Section 6.2.2.1;

4.3.2.3. cost for repairs as further described in Section 6.2.7.

4.3.2.4. cost of Rent as that term is defined in the lease agreement referenced in Section 8.1; provided, however, Rent incurred prior to the Commercial Operations Date shall not be considered a Reimbursable Cost.

4.3.2.5. interest applied to any outstanding Reimbursable Cost balance, shall conform with Section 2251.025 of the Texas Government Code. Interest will accrue starting on the date a Reimbursable Cost is paid by MHR.

4.3.3. MHR shall promptly deliver to COD an itemized statement detailing all Reimbursable Costs. MHR shall certify in writing that the itemized statement is a true and correct representation of the actual expenditures by MHR. MHR shall not reduce COD's royalty until the itemized statement is delivered to COD.

4.4. Billing and Payments.

4.4.1. Within seventy-five (75) days after the end of each month, MHR shall provide

COD with a statement detailing amounts owed by MHR since the most recently invoiced period. The statement shall include (i) records of readings from the Meters and revenue statements from High-BTU Gas sales, and showing Gross Revenues; (ii) the amount of Facility Downtime (in minutes) of MHR's Facilities during the invoiced period and the cumulative amount of Facility Downtime for the year; (iii) any royalty reduction being applied, including the basis for the royalty reduction; and (iv) such additional information as COD may reasonably require confirming the amounts payable by MHR. The statement will include backup for any further reimbursements or payments owed by MHR or COD.

4.4.2. The first partial month following the Commercial Operations Date shall be combined with the first full month following the Commercial Operations Date, such that all statements subsequent to the first statement will cover a period beginning on the first day of each month and ending on the last day of each month.

4.4.3. MHR shall pay to COD, all amounts owed to COD within thirty (30) days after COD's receipt of the billing statement, subject to Section 4.6 (Disputed Amounts).

4.5. Audit Rights.

MHR shall keep such records and books of account in accordance with generally accepted accounting principles and practices in the natural gas industry, with such variations as may be reasonably required to enable COD to readily determine the amounts it is owed. COD shall keep such records and books of account in accordance with generally accepted accounting principles and practices in the landfill industry as may be reasonably required to enable MHR to determine that COD is in compliance with its duties and obligations under and pursuant to this Agreement. MHR and COD and their respective representatives shall have the right to audit, to examine, and to make copies of all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement. MHR and COD shall, at all times during the Term, and for a period of five (5) years after termination of this Agreement for any reason, maintain such records, together with supporting or underlying documents and materials. Upon either Party's request, the other Party, whether during or after termination of this Agreement, will make such records available for inspection and audit during normal business hours. If an audit reveals an underpayment by MHR greater than \$10,000, the cost of such audit shall be borne by MHR. If an audit reveals an underpayment of less than \$10,000, the cost of the audit shall be borne by COD.

4.6. Disputed Amounts.

MHR and COD shall use diligent, good-faith efforts to resolve any dispute regarding the amounts due to either Party. If any portion of any disputed amount is determined to be due and owing to COD, MHR shall pay COD. If it is determined that MHR overpaid COD, such overpayment may only be offset against future payments due to COD from MHR at the time such payments are due; provided, however, overpayments occurring in the last twenty-four (24) months of this Agreement will be invoiced to COD and paid within thirty (30) days of receipt of such invoice if future payments are reasonably expected to be insufficient to provide for reimbursement by offset.

ARTICLE V. DESIGN AND CONSTRUCTION

5.1. Design.

5.1.1. MHR shall be solely responsible for the adequacy of the design of (i) MHR's Facility; (ii) modifications, expansions, and improvements made by MHR to the GCCS; and (iv) the

interconnection between MHR's Facilities and the GCCS and WWTP, regardless of whether designed by MHR, any subcontractor, or by anyone directly or indirectly employed by any of them to perform any of the design. MHR shall ensure no asbestos-containing materials are used in the construction unless MHR can demonstrate there is no alternative material or part.

5.1.2. Prior to beginning any construction within the Landfill boundary, MHR, at MHR's sole expense, shall prepare Final Engineering and Design Plans and Specifications of (i) the Landfill Connection Point, (ii) the WWTP Connection Point, and (iii) any modifications or improvements to the GCCS (the "Final Engineering and Design Plans and Specifications"), sealed by a professional engineer licensed in the State of Texas, for COD's review. The Final Engineering and Design Plans and Specifications shall conform to all COD's Permits, to all Environmental Laws, the Engineering Practices Act, and with Engineer Standards of Performance.

5.1.3. MHR shall provide the Final Engineering and Design Plans and Specifications to COD promptly following the completion of such plans and specifications. COD shall have the right but not the obligation to review the Final Engineering and Design Plans and Specifications. COD shall have ten (10) business days to complete its review of the Final Engineering and Design Plans and Specifications and to provide written comments. MHR shall either address COD's comments or explain in writing why it did not address COD's comments. Revisions to the Final Engineering and Design Plans and Specifications shall conform to all Environmental Laws, the Engineering Practices Act, and with Engineer Standards of Performance. The Parties shall negotiate in good faith to resolve any of COD's comments that, in COD's judgment, were not adequately addressed. With respect to Final Engineering and Design Plans and Specifications submitted before the Gathering System Operations Date, in the event that COD's comments are not addressed to COD's satisfaction, either Party may terminate this Agreement, provided that notice of the terminating Party's intent to do so is provided to the other Party prior to the later of (i) MHR beginning construction or (2) within thirty (30) days of MHR receiving COD's written explanation of why it did not address COD's Comments, and neither Party shall have any further duties or obligations hereunder. MHR acknowledges that the adequacy of the Final Engineering and Design Plans and Specifications is entirely MHR's responsibility; neither COD's review nor failure to review the Final Engineering and Design Plans and Specifications shall be construed as an endorsement by COD of the adequacy of the Final Engineering and Design Plans and Specifications, and shall not impose any liability or responsibility on COD.

5.1.4. MHR shall provide to COD revised engineering and design plans and specifications for any modifications or expansions to the GCCS proposed or made after MHR begins construction. All revised Final Engineering and Design Plans and Specifications shall conform to all COD's Permits, Environmental Laws, and with Engineer Standards of Performance. COD shall have the same opportunity to review and comment on the revised engineering and design plans and specifications as the Final Engineering and Design Plans and Specifications. All revised Final Engineering and Design Plans and Specifications shall conform to all Environmental Laws, the Engineering Practices Act, and with Engineer Standards of Performance.

5.1.5. MHR's design shall include a manually operated isolation valve as shown on Exhibit 1, which, if closed, will shut off all LFG and Digester Gas to MHR's Facilities, and will direct all LFG and Digester Gas to the Blower-Flare Facility. If MHR's design includes any storage facilities for storing either LFG, Digester Gas, or processed fuel, MHR shall submit drawings of such storage facilities for approval by COD, and MHR shall not install such storage facilities without the approval of COD.

5.2. Permits.

5.2.1. Within thirty (30) days prior to MHR beginning construction, MHR shall prepare and submit, at MHR's sole expense, an application to the TCEQ for their facility (the "MHR Permit"). Any modifications required to COD's Permits to include MHR's Facility shall be prepared by COD's engineer at MHR's expense (the "Mod Application"), and MHR will diligently prosecute the approval of the Mod Application. MHR shall submit a draft of the Mod Application to COD to review and approve prior to submitting the Mod Application to TCEQ and shall address all of COD's comments prior to submittal. MHR shall not submit the Mod Application to TCEQ until such application has been approved by COD, and shall provide a copy of the final Mod Application to COD concurrently with its submittal to TCEQ, COD's approval not to be unreasonably delayed. COD shall provide reasonable assistance to MHR in preparing and prosecuting the Mod Application, but shall not be required to expend funds in so doing.

5.2.2. Prior to MHR beginning construction, MHR shall prepare and submit, at MHR's sole expense, all applications to any appropriate agencies for any authorizations necessary to construct and/or operate MHR's Facility and will diligently prosecute the approval of its application(s). MHR shall provide a copy of its application(s) to COD concurrently with its submittal to such agency. COD shall provide reasonable assistance to MHR in preparing and prosecuting MHR's applications, but shall not be required to expend funds in so doing. Notwithstanding anything to the contrary contained in this Agreement, in the event MHR is unable to obtain a separate air permit from TCEQ for MHR's Facility and is required instead to operate MHR's Facility under the Air Permit, MHR shall, at its sole cost, prepare the application to TCEQ to amend COD's Air Permit to include MHR's Facility, and MHR shall not submit such application to TCEQ until such application has been approved by COD.

5.2.3. Prior to or concurrently with MHR beginning construction, MHR shall prepare and submit, at MHR's sole expense, any additional applications to any other governmental entities (whether local, state or federal) for any authorizations necessary to construct and/or operate MHR's Facility, and will diligently prosecute the approval of its application(s). MHR shall provide a copy of its application(s) to COD concurrently with its submittal(s). COD shall provide reasonable assistance to MHR in preparing and prosecuting MHR's application, but shall not be required to expend funds in so doing.

5.2.4. MHR acknowledges that it is responsible for its compliance with Environmental Laws with respect to pre-permit construction, and that any work performed before the MHR Permit and any modifications of COD's Permits as provided in this Section are in place is done at MHR's sole risk.

5.2.5. Permitting for expansions and modifications to the GCCS shall be subject to Section 6.2.3.

5.3. Construction.

5.3.1. Subject to the requirements in Section 5.2, MHR may begin construction of improvements to the GCCS and MHR's Facility as of the Effective Date provided any applicable building or construction permits or development services requirements are met. MHR shall ensure that all construction is carried out in a good and workmanlike manner, and all construction, including improvements and expansions to the GCCS, are in accordance with the Final Engineering and Design Plans and Specifications and COD's Permits. If MHR plans to materially deviate from the Final Engineering and Design Plans and Specifications, MHR shall provide revised engineering and design plans and specifications to COD for COD's approval, such approval to not be unreasonably denied or delayed, in advance.

5.3.2. MHR shall provide COD with (i) a minimum of forty-eight (48) hours' notice of planned construction activities and (ii) notice as soon as practical for emergency repairs that affect the operation of the GCCS. COD shall have the right, but not the obligation, to have a representative on site to observe construction activities. Observation by COD shall not relieve MHR of any of its obligations regarding the quality of its construction.

5.3.3. Unless otherwise approved by COD in writing, in COD's sole discretion, all construction shall be performed between 7:00 AM and sunset, Monday through Saturday. MHR shall not perform construction on Sundays or the following holidays:

- January 1 (New Year's Day)
- Thanksgiving Day
- Christmas Day

ARTICLE VI. OPERATION AND MAINTENANCE

6.1. General Operation, Maintenance, and Reporting Requirements.

6.1.1. Beginning on the earlier of (i) the date that MHR initiates drilling of a well or other improvements to the GCCS, or (ii) the first (1st) day of the calendar month following sixty (60) days after the Effective Date, MHR will assume all responsibilities to:

6.1.1.1. operate, maintain, repair, and expand the GCCS, including assuming sole responsibility for the costs to operate, maintain, repair, and expand the GCCS;

6.1.1.2. operate, maintain, and repair the Blower-Flare Facility, including assuming sole responsibility to operate, maintain, and repair the Blower-Flare Facility; however, COD will be solely responsible for all costs to expand the Blower-Flare Facility as set forth in Section 6.2.2; and

6.1.1.3. operate, maintain, repair, and expand MHR's Facilities and the Landfill and WWTP Connection Points, including all costs to operate, maintain, repair, and expand MHR's Facilities and the Landfill and WWTP Connection Points.

6.1.2. In the event that the reasonable cost to repair one or more of the pieces of equipment listed in this Section 6.1.2, exceeds fifty percent (50%) of the reasonable cost to replace the equipment with an equivalent or better piece of equipment, MHR may request in writing that COD purchase the equivalent or better piece of equipment. If COD approves the request, such approval will not be unreasonably withheld or delayed, COD shall, at COD's discretion, either (i) provide the replacement equipment to MHR, (ii) direct MHR to purchase the equipment and reimburse MHR for such equipment within six (6) months of the purchase date, or (iii) credit MHR the cost of the replacement equipment against future royalties. MHR shall be responsible for the labor and any additional materials needed to replace the part. This Section 6.1.2 shall apply to the following equipment located within the Blower-Flare Facility:

- flares
- flame arresters
- blowers
- air compressor(s)
- flare controls
- knock-out pot(s)

6.1.3. Except as provided in Section 6.1.3.1, MHR shall perform all operating, maintenance, and reporting duties related to the MHR Facilities and the GCCS, and all piping (Biogas and natural gas) between the WWTP and the MHR Facility, such that all facilities for which MHR is responsible are kept in good working order and condition; operated in a safe, secure, effective, and efficient matter, secure from hazards such as explosions, leaks and other dangers to human health and the environment; are operated (including testing and reporting requirements) in strict compliance with COD's Permits, and in compliance with all applicable laws, including without limitation, NSPS requirements, all governmental approvals, any required permits, Environmental Laws, local ordinances and/or regulations, and Occupational Health and Safety Administration ("OSHA") laws and regulations.

6.1.3.1. COD shall be responsible for performing all NSPS surface emission monitoring and reporting.

6.1.3.2. To the extent MHR gathers any information relating to the GCCS that COD is required to report to a governmental authority, MHR will provide such information to COD in within five (5) business days of receipt of the information and will certify in writing to COD as to the accuracy and completeness of such information.

6.1.4 MHR shall have access to MHR's Facilities and the GCCS at all times, except (i) during or to prevent an emergency, (ii) during or to prevent an unexpected shutdown of MHR's Facilities, or (iii) when approved in advance by COD, MHR shall not conduct repairs or maintenance activities except during the hours between 6:00 AM and sunset, Monday through Saturday. Except during or to prevent an emergency, MHR shall not conduct repairs or maintenance activities on Sundays or the following holidays:

- January 1 (New Year's Day)
- Thanksgiving Day
- Christmas Day

6.1.5. Condensate.

6.1.5.1. Subject to COD's Permits and Environmental Laws, COD agrees to accept condensate collected from the GCCS, WWTP, and MHR's Facilities into its leachate collection system at a location(s) acceptable to COD, at no charge to MHR, and only to the extent that COD has capacity available in the WWTP. If the WWTP does not have sufficient capacity to accept the condensate, COD shall provide MHR a minimum of three (3) day's advance notice, or as soon as reasonably practicable after an emergency, and thereafter MHR shall be solely responsible for disposal of all condensate collected from MHR's Facilities, until such time that COD notifies MHR that there is again sufficient capacity. Nothing in this provision shall require COD to accept condensate if it does not have the capacity to do so in the event of an emergency, or as COD deems necessary in its sole discretion to protect health and safety.

6.1.5.2. MHR shall use reasonable efforts to ensure there is no spillage or discharge of condensate into the environment and that all tanks, pipelines and other equipment used by MHR for the handling of condensate are operated and maintained in compliance with COD's Permits, MHR's Permit, and Environmental Laws.

6.1.5.3. MHR shall provide a sampling port for its condensate upstream of the contaminated water storage pond. COD shall have the right to sample the condensate at any time.

6.1.6. Unauthorized Emissions and Odors.

6.1.6.1. Except as provided in Section 6.1.6.2, MHR shall be solely liable for any damages or claims caused by the release of Landfill Gas from (i) areas that are required by Environmental Laws to have a GCCS, (ii) the GCCS, and (iii) MHR's Facilities. In the event that any governmental agency brings an enforcement action against COD based on failure of the Landfill to comply with Environmental Laws related to Landfill Gas or odors, MHR shall reimburse COD for all reasonable costs incurred in connection with such enforcement action, including fines and attorneys' fees.

6.1.6.2. COD shall be solely liable for any damages or claims caused by odors or the release of Landfill Gas that can be demonstrated as (i) having escaped from the working face of the Landfill or (ii) being due to the failure by COD to place adequate soil cover or alternate daily cover on the Landfill in accordance with COD's Permit. In the event that any governmental agency brings any enforcement action against COD based on failure of the Landfill to comply with Environmental Laws related to operations at the working face of the Landfill, or for inadequate cover of the Landfill, MHR shall not be responsible for fines and/or costs incurred responding to such enforcement action. COD shall also be solely responsible for any damages or claims caused by odors or the release of Landfill Gas from any area of the Landfill that (i) does not have a GCCS system installed and being operated by MHR, and (ii) is not legally required to have a GCCS, unless COD requests MHR in writing, for the purpose of ensuring the Landfill's continuous compliance with Environmental Laws, more than one hundred eighty (180) days prior to the damage or claim, to expand the GCCS to the area of the Landfill where the odors or Landfill Gas were released.

6.1.6.3. In the event MHR expands the GCCS into an area that is not legally required to have a gas collection and control system, MHR may request that COD place additional soil cover to help control gas migration. COD shall not unreasonably deny such request.

6.1.7. Emergency Conditions. Notwithstanding anything herein to the contrary, if COD, in good faith, determines that it must access the GCCS to make modifications to comply with COD's Permits or Environmental Laws, or to prevent threatened or actual harm to human health or the environment or respond to odor complaints resulting from Landfill Gas emissions, then, after COD provides notice to MHR to the extent practicable under the circumstances at the time, qualified technical representatives of COD and MHR shall meet within seven (7) days to discuss possible remedies; however, COD will take immediate action to resolve any emergency situations. If the Parties cannot reach an agreement, then COD may access the GCCS to make any necessary modifications to comply with COD's Permits or Environmental Laws, or to prevent threatened or actual harm to human health or the environment or respond to odor complaints resulting from Landfill Gas emissions.

6.1.8. Coordination of Facilities. MHR shall install valves and controls in the Blower-Flare Facility to allow startup of the Blower-Flare Facility's flare in the event MHR's Facility goes off-line, and shall also install piping and fixtures (if needed) to allow MHR to flare LFG, other than Waste Gas through the Blower-Flare Facility.

6.1.9. MHR shall copy COD on all written communications with any regulatory agency.

6.2. GCCS Operations, Expansion, Repair, Maintenance, and Management.

6.2.1. Except as discussed in Section 6.2.2, MHR, at MHR's sole expense, shall be solely responsible for all aspects of the expansion, operation, repair, replacement, modification, maintenance, and capital expenditures of the GCCS and piping to the WWTP and for the collection and management of Biogas, whether (i) necessary to comply with COD's Permit or Environmental Laws, or

(ii) that MHR desires to make.

6.2.2. MHR shall be responsible for the operation, maintenance and repair of the Blower-Flare Facility, but shall not be responsible for the cost of expansions to the Blower-Flare Facility as described in Sections 6.1.1.2 and 6.2.2.1.

6.2.2.1. COD shall have the right, but not the obligation, in its sole discretion, to expand the Blower-Flare Facility at any time, at COD's sole expense. If COD desires to expand the Blower-Flare Facility, the Parties will work cooperatively to determine the scope and reasonable costs for the expansion. COD may then elect to either (i) have MHR perform the expansion, in which case MHR shall be responsible for performing the expansion in accordance with the scope and costs agreed to by COD, and COD shall reimburse MHR, either through a direct payment or through a reduction in royalty payments (the method of reimbursement being at COD's option), the cost agreed to between COD and MHR, with MHR bearing the risk of cost overruns, unless a change order detailing the cost increase is approved in writing by both MHR and COD in advance; or (ii) perform the expansion, itself or through a third party, at COD's sole expense.

6.2.2.2. If capacity utilization of the Blower-Flare facility exceeds 85% (the "Utilization Trigger"), COD shall inform MHR. The Parties shall then work cooperatively to determine if an expansion of the Blower-Flare Facility is needed, and to plan for such expansion if such expansion is needed. Any expansion (whether before or after the Utilization Trigger) shall ultimately be at COD's sole discretion, and subject to Section 6.2.2.1.

6.2.2.3. While the Blower-Flare Facility is being expanded (whether by MHR, COD, or a third party), the Parties shall coordinate with each other to minimize the disruption to the other's operations to the extent reasonably practicable.

6.2.3. MHR, at MHR's sole expense, may make modifications and improvements to the GCCS, including, but not limited to, any repair, retrofit, modification, expansion, or replacement of the GCCS or any component or part thereof. MHR shall be responsible for all such modifications and improvements, including obtaining all required permits. All modifications shall be consistent with the final engineering plans, design plans, and specifications and with COD's comments addressed. In making any modifications to the GCCS, MHR shall use reasonable care and diligence and shall perform all work in a proper and workmanlike manner and in accordance with applicable laws, including all governmental approvals, any required permits, and, without limitation, Environmental Laws. Title to all modifications made by or on behalf of MHR shall pass to COD free and clear of all liens, claims, encumbrances and security interests as of the date of the incorporation of such modifications into the GCCS.

6.2.4. MHR, at MHR's sole expense, may expand the GCCS at any time, with the consent of COD, which consent shall not be unreasonably withheld or delayed. MHR, at MHR's sole expense, shall have the obligation to expand the GCCS within one hundred-eighty (180) days following its receipt of written notice from COD that an expansion is necessary for the Landfill's compliance with Environmental Laws. At MHR's sole expense, MHR shall (i) prepare an application, if one is required by Environmental Laws, to be submitted by COD, for approval of any expansions by the appropriate regulatory authority; (ii) obtain from the appropriate regulatory authority all required approvals prior to expanding the GCCS; (iii) expand the GCCS in accordance with Engineer Standards of Performance and in compliance with applicable laws, including all governmental approvals, any permits required for construction or operation, and, without limitation, Environmental Laws; and (iv) if required, submit an as-built permit drawing to the regulatory authority following expansion of the GCCS. Title to all expansions made by or on behalf of MHR shall pass to COD free and clear of all liens, claims, encumbrances, and security interests as of the date of the incorporation of such expansion into the GCCS.

6.2.5. MHR shall provide COD with reasonable notice of any planned repair, maintenance, or replacement activities to the GCCS that would reasonably and foreseeably impact Landfill operations.

6.2.6. COD and MHR shall determine the maximum and minimum level of vacuum needed to operate the GCCS safely and in accordance with COD's Permits and Environmental Laws. Initially, this range shall be set at -30 to -80 inches of water column. If either Party determines that the range needs to be revised, the Parties will work together to resolve the revisions to the range. COD shall have the right to revise the range upon three (3) day's written notice to MHR, if the change is required to be in compliance with applicable Environmental Laws. MHR shall not deviate from the range in effect at the time without prior written approval from COD. In the event that MHR deviates from the range, MHR shall notify COD within twelve (12) hours. If the GCCS is operated outside the acceptable range, COD shall have the right, but not the obligation, to install additional equipment, and/or operate the GCCS such that the GCCS is operated within the specified range.

6.2.7. COD shall not have any obligation to undertake any repair, retrofit, modification, replacement, or expansion of the GCCS or any component or part thereof unless such repair, retrofit, modification, replacement, or expansion is required as a direct result of damage to the GCCS caused by COD's or any of COD's invitees' negligence. If any repair, retrofit, modification, or replacement is required as a result of damage caused by COD's or any of COD's invitees' negligence, COD shall complete such repair, retrofit, modification, or replacement as soon as practicable, or reimburse MHR for the cost of such repair, retrofit, modification, or replacement, at COD's sole discretion.

6.3. Operation of MHR's Facilities.

6.3.1. COD shall not be responsible for the repair or replacement of MHR's Facilities unless the repair or replacement is required as a direct result of damage caused by COD's, or COD's invitees', negligence.

6.3.2. Except as described in Section 6.1.5 (regarding condensate), MHR shall be solely responsible, at MHR's sole cost and in accordance with all applicable Environmental Laws, for disposal of all MHR's waste, including but not limited to (i) Hazardous Wastes, (ii) Hazardous Substances that are no longer intended to be used, (iii) Unused Biogas, and (iv) Waste Gas.

6.3.2.1. If requested by MHR, COD shall accept at the Landfill, MHR's waste, provided that the waste is non-hazardous, generated on the Site, and that the Landfill is authorized to accept in accordance with COD's Permits. All waste must be collected and hauled by COD personnel pursuant to Chapter 24 of the City of Denton Code of Ordinances.

6.3.2.2. MHR is responsible for flaring all Waste Gas in accordance with regulatory requirements. The Blower- Flare Facility shall not be used to combust any Waste Gas.

6.3.2.3. MHR is responsible for flaring all Unused Biogas in accordance with regulatory requirements. The Blower- Flare Facility may be used to combust Unused Biogas.

ARTICLE VII. TERM AND TERMINATION

7.1. Initial Term.

The initial term of this Agreement shall begin on the Effective Date and continue for twenty (20) years following the Effective Date (the “Initial Term”), unless terminated earlier as provided in this Agreement.

7.2 Extensions.

7.2.1. Following the Initial Term and subject to COD approval, if MHR has (i) operated MHR’s Facilities in accordance with the terms and provisions of this Agreement, (ii) received no notices of default from COD or resolved all notices of default from COD within the Cure Period, (iii) neither MHR, nor COD, has received any notices of violation from the TCEQ or other governmental authority related to landfill gas (including but not limited to odors and landfill gas migration), or has resolved any such notice of violation without the matter escalating beyond a notice of violation, and (iv) discusses the current technology of MHR Facilities with COD and addresses any technological advances to COD’s satisfaction, the Term of this Agreement shall be extended for one (1), five (5) year period (the “First Extension”).

7.2.2. Following the First Extension or any Subsequent Extension, subject to COD approval, if MHR has (i) operated MHR’s Facilities in accordance with the terms and provisions of this Agreement, (ii) received no notices of default from COD or resolved all notices of default from COD within the Cure Period, (iii) neither MHR, nor COD, has received any notices of violation from the TCEQ or other governmental authority related to landfill gas (including but not limited to odors and landfill gas migration), or has resolved any such notice of violation without the matter escalating beyond a notice of violation, and (iv) discusses the current technology of MHR Facilities with COD and addresses any technological advances to COD’s satisfaction, this Agreement shall be extended for additional consecutive five (5) year periods (“Subsequent Extensions”). The term of this Agreement will be limited by any current or future statutory limitations COD is subject to regarding the term of leases for municipalities.

7.2.3. Following the Initial Term, First Extension, or any Subsequent Extension, if MHR does not qualify for an automatic extension pursuant to Sections 7.2.1 or 7.2.2, this Agreement may only be extended in writing signed by both Parties.

7.2.4. Notwithstanding the forgoing, if either Party elects, in its sole discretion, to not extend this Agreement beyond the Initial Term, First Extension, or any Subsequent Extension, either Party may notify the other in writing no less than one-hundred eighty (180) days prior to the expiration of the Initial Term, First Extension or Subsequent Extension, of its intention to not extend the Term of this Agreement beyond the then-current Term, and this Agreement shall terminate at the end of the then-current Term.

7.2.5. The Initial Term, First Extension (if any) and all Subsequent Extensions (if any), are collectively referred to as the “Term.”

7.3. Termination. This Agreement shall continue for the Term unless terminated early in accordance with one of the following:

7.3.1. This Agreement may be terminated by written agreement signed by both Parties.

7.3.2. COD shall have the right to terminate the Agreement under the following circumstances. COD’s right to terminate shall not be exclusive and shall not prevent COD from pursuing any other remedies to which it may be entitled at law or in equity. Failure of COD to exercise its right to terminate shall not constitute a waiver of its right to terminate, or of any other remedy available to COD, at law or in equity.

7.3.2.1. Failure of MHR to operate or maintain MHR's Facilities in a manner that complies with COD's Permits, applicable Environmental Laws, and, in all material respects, with this Agreement. In the event COD seeks to terminate this Agreement pursuant to this Section 7.3.2.1, COD shall notify MHR in writing of the basis, and of COD's intent to terminate this Agreement (a "Default Notice"). If MHR cures the failure within thirty (30) days following receipt of the Default Notice (the "Cure Period"), the failure shall not constitute grounds for termination. If MHR is unable to cure the failure within thirty (30) days following receipt of the Default Notice, but initiates steps to cure the failure within thirty (30) days following receipt of the Default Notice, diligently pursues the cure, and cures the failure within one hundred (100) days following receipt of the Default Notice, the failure shall not constitute grounds for termination. All cure notice periods under this Agreement are subject to any compliance demands from any applicable regulatory agency under Environmental Laws and will be amended to reflect such demands.

7.3.2.2. The institution by MHR of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing of a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, or similar official or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of action by any of them in furtherance of any such action. The foregoing notwithstanding, if any such proceeding is dismissed within sixty (60) days, such proceedings shall not create a default under this Agreement.

7.3.2.3. Following the Commercial Operations Date, failure of MHR's Facilities to accept Biogas for seventy (70) consecutive, calendar days or one hundred (100) total days in any three-hundred and sixty-five (365) day period, unless due to Force Majeure.

7.3.2.4. A GCCS Vacuum Failure Event, as hereinafter defined, occurs for a period of five (5) consecutive days or for more than ten (10) days in any month. A "GCCS Vacuum Failure Event" shall be deemed to have occurred on any day during which the level of vacuum on the GCCS is greater than or less than the range set forth in Section 6.2.6 (as may be subsequently amended), unless due to Force Majeure.

7.3.2.5. In accordance with Section 5.1.3.

7.3.2.6. The failure of MHR to make any payment due under this Agreement within thirty (30) days of receiving written notice from COD that such payment is at least thirty (30) days overdue, the basis for the amount due, and COD's intent to terminate this Agreement. Failure to pay a disputed amount subject to Section 4.6 shall not be considered a failure to make a payment due under this Agreement until thirty (30) days following COD's receipt of written notice from MHR that an amount is in dispute, the amount in dispute, and the basis for the dispute. In the event that a court of competent jurisdiction finds that a claim by MHR of an amount in dispute was not made in good faith, COD may terminate this Agreement upon written notice to MHR, and MHR shall pay COD all amounts due and owing within thirty (30) days following termination.

7.3.2.7. Failure of MHR to meet the following milestones, unless due to Force Majeure. In the event that COD seeks to terminate this Agreement because MHR fails to meet a milestone, COD shall notify MHR in writing of the failure, and of COD's intent to terminate this Agreement. If MHR meets the milestone within thirty (30) days following receipt of COD's notice, the milestone shall be considered met.

7.3.2.7.1. By the first (1st) day of the calendar month following sixty (60) days after the Effective Date, the failure to assume all responsibilities under Section 6.1.1.

7.3.2.7.2. Within two hundred seventy (270) days following the Effective Date, begin making payments in accordance with Section 4.4, subject to MHR successfully obtaining (i) a Sales Interconnection Point, (ii) EPA pathway approval designating the Biogas eligible for RINs, (iii) all necessary utility services, and (iv) all necessary permits.

7.3.3. MHR shall have the right to terminate the Agreement under the following circumstances. MHR's right to terminate shall not be exclusive and shall not prevent MHR from pursuing any other remedies to which it may be entitled at law or in equity. Failure of MHR to exercise its right to terminate shall not constitute a waiver of its right to terminate, or of any other remedy available to MHR, at law or in equity.

7.3.3.1. Any breach by COD of a material term of this Agreement that has a material adverse effect on MHR. In the event that MHR seeks to terminate this Agreement because COD breaches a material term of this Agreement that has a material adverse effect on MHR, MHR shall notify COD in writing of the breach, and of MHR's intent to terminate this Agreement. If COD cures the failure within thirty (30) days following receipt of MHR's notice, the breach shall not constitute grounds for termination. If COD is unable to cure the failure within thirty (30) days following receipt of MHR's notice, but initiates steps to cure the failure within thirty (30) days following receipt of MHR's notice, diligently pursues the cure, and cures the failure within one hundred (100) days following receipt of MHR's notice, the failure shall not constitute grounds for termination.

7.3.3.2. If, after the Commercial Operations Date, MHR deems, in MHR's reasonable judgment, subject to confirmation by COD and any third party consultant COD might engage, that it is not commercially feasible to continue to operate MHR's Facilities, MHR may terminate this Agreement by providing written notice to COD of its determination that it is not commercially reasonable to continue to operate MHR's Facilities, and of its intent to terminate this Agreement (the "Termination Notice"). If MHR submits a Termination Notice:

7.3.3.2.1. This Agreement shall continue in full force and effect, except as otherwise provided in this Section 7.3.3.2, for three hundred, sixty-five (365) days following COD's receipt of the Termination Notice (the three hundred, sixty-fifth (365th) day following COD's receipt of the Termination Notice being the "Requested Termination Date");

7.3.3.2.2. MHR's obligation to operate MHR's Facilities shall end one hundred eighty (180) days following COD's receipt of the Termination Notice;

7.3.3.2.3. MHR's obligation to make payments under Section 4.4 shall continue until the later of (i) the date that MHR actually ceases operating MHR's Facilities, or (ii) one hundred eighty (180) days following COD's receipt of the Termination Notice;

7.3.3.2.4. MHR may revoke the Termination Notice at any time prior to the Requested Termination Date, by providing written notice to COD of its request to revoke the Termination Notice, provided that (i) MHR tenders payment of all amounts that would have been due to COD pursuant to Section 4.2.1 if MHR had not provided the Termination Notice, plus a penalty set by COD at COD's sole discretion, and (ii) COD accepts MHR's request to revoke the Termination Notice in writing

signed by COD.

7.3.3.3. Condemnation by eminent domain of the Site or a part thereof sufficient to substantially interfere with the purposes of this Agreement. MHR shall provide notice to COD of its intent to terminate this Agreement as soon as practicable after being notified of an impending condemnation, and in no case less than ninety (90) days in advance of terminating this Agreement. MHR shall continue to operate for as long as practicable.

7.3.3.4. The institution by COD of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing of a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, or similar official or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of action by any of them in furtherance of any such action. The foregoing notwithstanding, if any such proceeding is dismissed within sixty (60) days, such proceedings shall not create a default under this Agreement.

7.3.3.5. Notwithstanding any other provision to the contrary contained herein, if, during the one-hundred and eighty (180) days following the Effective Date (“Test Period”), MHR determines that the project contemplated by this Agreement is not commercially feasible, or that it is not able, notwithstanding its reasonable efforts, to obtain the necessary rights-of-way from MHR’s Facility to the point of interconnect with the pipeline transporting Biogas, MHR may, in its sole discretion, and upon written notice to COD, terminate this Agreement, with such termination to be effective thirty (30) days after notice of termination has been given to COD. If after one-hundred and eighty (180) days, MHR has been unable to obtain the necessary rights-of-way, but has diligently and continuously exercised its reasonable efforts to obtain the necessary rights-of-way, MHR and COD may by written agreement, extend the Test Period up to an additional five-hundred and forty (540) days, provided that such extension shall only continue as long as MHR diligently and continuously exercises its reasonable efforts to obtain the necessary rights-of-way.

7.4. Force Majeure. If by reason of Force Majeure either Party is unable in whole or in part to carry out the obligations on its part contained in this Agreement (other than COD’s or MHR’s obligations to pay amounts due and owing), such Party shall not be deemed in default during the first one hundred eighty (180) days of the continuance of such inability, provided that (i) the Party unable to carry out its obligations, within three (3) business days after the occurrence of the event of Force Majeure, gives the other Party written notice describing the event of Force Majeure; (ii) the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure, and shall not in any event be longer than one hundred eighty (180) days; (iii) no obligations of the Party unable to carry out its obligations which arose prior to the occurrence causing the suspension of performance shall be excused as a result of such occurrence; and (iv) the non-performing Party shall use its reasonable good faith efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations; except that the requirement that a Party use reasonable good faith efforts to remedy any event of Force Majeure shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing Party when such course is inadvisable in the discretion of the Party having the difficulty.

7.5. Restoration.

Subject to the lease agreement referenced in Section 8.1, upon the expiration of the Term, or earlier termination of this Agreement, MHR shall have a period of one hundred and eighty (180) days, commencing

on the date of expiration or termination (the “Removal Period”), to remove MHR’s Facilities from the Site. MHR will be responsible for any necessary asbestos inspection necessary to allow removal/demolition in accordance with Environmental Laws. MHR, at its sole cost and expense, shall repair any damage caused by such removal, and restore the Site to substantially its condition as of the Effective Date. Any part of MHR’s Facilities or any MHR waste (not covered under Section 6.3.2.1 or 6.1.1) that has not been removed prior to the expiration of the Removal Period shall, at COD’s option, be deemed to have been abandoned, and title to such items shall, at COD’s option, vest in COD at the end of the Removal Period, without any payment or other consideration given by COD. Alternatively, COD may require MHR to remove all or any part of the remaining portion of MHR’s Facilities at MHR’s expense and, if MHR fails to remove such items, COD may remove them at MHR’s expense. All investments by MHR, other than (i) MHR’s Facilities, and (ii) those portions of the GCCS that are proprietary to MHR, and are not necessary for the GCCS to continue to function in compliance with Environmental Laws, shall become the property of COD without any further payment or other consideration given by COD.

7.6. Survivability of Terms. The following terms shall survive the end of the Term, or earlier termination of this Agreement.

- 7.6.1. Indemnity provisions;
- 7.6.2. Restoration requirements;
- 7.6.3. Representations and Warranties;
- 7.6.4. Provisions that are not intended to be performed before the end of the Term;
- 7.6.5. Payment obligations.

ARTICLE VIII. GROUND LEASE

8.1. COD and MHR will enter into a ground lease at the Landfill on mutually agreeable terms.

ARTICLE IX. REPRESENTATIONS AND WARRANTIES

9.1. COD Representations and Warranties. COD warrants and represents to MHR that, to the best of COD’s knowledge and belief:

9.1.1. COD has all requisite power and authority to own its property and assets and execute and deliver this Agreement and perform its obligations hereunder.

9.1.2. The execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, its organizational instruments; this Agreement has been duly executed and delivered for COD by the signatories so authorized; and this Agreement constitutes its legal, valid and binding obligation, enforceable against COD in accordance with the terms hereof subject to the bankruptcy, insolvency, fraudulent conveyance, transfer, reorganization, governmental immunity, and similar laws relating to or affecting COD’s rights generally, and general principles of equity.

9.1.3. The execution, delivery, and performance of this Agreement will not conflict with, violate or result in a breach of or constitute a default under, any agreement, lease, or instrument to which COD or by which COD or COD’s properties may be bound or affected, or create or cause the imposition of any mortgage, pledge, lien, security interest or other encumbrance under any term or condition of any mortgage, indenture or other agreement or instrument as to which COD or any of COD’s properties

are bound or affected.

9.1.4. As of the Effective Date, (a) COD has in place all necessary permits and licenses to operate and maintain the GCCS; (b) there are no liens and encumbrances against the GCCS, other than those liens in favor of its senior and mezzanine lenders and its bonding company; and (c) there are no claims existing, or potential claims existing or threatened against COD as a result of the ownership or operation of the GCCS.

9.1.5. As of the Effective Date, there is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or governmental authority, pending or threatened, against it, wherein an anticipated decision, ruling or finding would likely materially adversely affect the performance of COD's obligations hereunder or the performance of COD's obligations under the transactions contemplated hereby or likely adversely materially affect the validity or enforceability of this Agreement. There is no outstanding order, writ, injunction, decree, judgment or award by any court, arbitration panel or other government entity against or affecting it, its business, operations, or properties, or that would likely adversely materially affect the performance of COD's obligations hereunder.

9.2. MHR Representations and Warranties.

MHR warrants and represents to COD that, to the best of MHR's knowledge and belief:

9.2.1. MHR is duly organized, validly existing, and in good standing under the laws of Texas, is duly authorized to conduct business in the State of Texas, and has all requisite power and authority to own its property and assets and execute and deliver this Agreement and perform its obligations hereunder.

9.2.2. As of the Effective Date, there is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or governmental authority, pending, or threatened, against it, wherein an anticipated decision, ruling or finding would be reasonably likely to materially adversely affect the performance of MHR's obligations hereunder or the performance of MHR's obligations under the transactions contemplated hereby or be reasonably likely to adversely materially affect the validity or enforceability of this Agreement. To the best of MHR's knowledge, there is no outstanding order, writ, injunction, decree, judgment or award by any court, arbitration panel or other government entity against or affecting it, its business, operations, or properties, or that would be reasonably likely to adversely materially affect the performance of MHR's obligations hereunder.

9.2.3. MHR has the technical expertise and financial ability to perform its obligations under this Agreement.

9.2.4. The execution, delivery and performance of this Agreement have been duly authorized by, or are in accordance with, its organizational instruments; this Agreement has been duly executed and delivered for MHR by the signatories so authorized; and this Agreement constitutes its legal, valid and binding obligation, enforceable against MHR in accordance with the terms hereof subject to the bankruptcy, insolvency, fraudulent conveyance, transfer, reorganization, and similar laws, and general principles of equity.

ARTICLE X. ASSIGNMENT AND PERFORMANCE

10.1. Assignment by COD. COD may assign its rights, obligations, and interests hereunder to a third-party upon the sale of COD's entire interest in the Landfill without the consent of MHR. COD may

assign all or substantially all its interests hereunder only if the assignee assumes all of COD's obligations hereunder, confirmed in writing to MHR.

10.2. Assignment by MHR. MHR may assign or transfer all or a portion of its rights, obligations, and interests hereunder to any Affiliate of MHR without the consent of COD; provided that any such assignment shall not relieve MHR of any liabilities or obligations under this Agreement. MHR may assign all or substantially all its interests hereunder to a non-Affiliate upon the sale of MHR's entire interest in MHR's Facility at any time only with the consent of COD, which consent shall not be unreasonably withheld, conditioned, or delayed.

10.3. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon MHR and COD and their authorized successors and assigns.

ARTICLE XI. INSURANCE

11.1. Insurance Policies.

MHR shall maintain the following minimum insurance coverage, either by one or more policies, including in combination with an excess liability policy. Within ten (10) days of the Effective Date, and on each annual anniversary of the Effective Date thereafter, MHR shall provide Certificates of Insurance and Declarations pages of policies (including schedules attached to such Declarations pages) to COD evidencing the required coverage. Except for Worker's Compensation policy(ies), all insurance shall be primary and non-contributory, shall include completed operations coverage, and shall include contractual liability insurance covering MHR's indemnity obligations under Section 12.1. COD shall be named as an additional insured on all policies obtained. COD shall have the right at any time to review the coverage, form, and amount of insurance provided.

Worker's Compensation and Employer's Liability

This insurance shall protect MHR against all claims under applicable state worker's compensation laws. MHR shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a Worker's Compensation law. The liability limits shall be not less than:

Worker's Compensation: Bodily Injury by Accident: \$500,000.00 Each Accident

Bodily Injury by Disease: \$500,000.00 Each Employee

Bodily Injury by Disease: \$500,000.00 Policy Limit

Employer's Liability: \$1,000,000 each occurrence

Comprehensive Automobile Liability

This insurance shall be written in comprehensive form and shall protect MHR against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the Site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. The liability limits shall be not less than:

Bodily Injury: \$1,000,000 each occurrence; \$5,000,000 aggregate Property

Damage: \$1,000,000 each occurrence; \$5,000,000 aggregate

Comprehensive General Liability / Pollution Incident

This insurance shall be written in comprehensive form and shall protect MHR against all claims arising from injuries to persons other than MHR's employees or damage to the property of COD or others arising out of any act and/or omission of MHR or its employees, subcontractors, agents, advisors or consultants. This insurance shall include coverage for bodily injury or property damage arising out of, or resulting from, the discharge, emission, seepage, migration, dispersal, release or escape of High-BTU Gas, Biogas, or any other pollutant. This insurance shall also not contain an "insured versus insured" exclusion. The liability limits shall be not less than:

Bodily Injury: \$1,000,000 each occurrence; \$5,000,000 aggregate Property

Damage: \$1,000,000 each occurrence; \$5,000,000 aggregate

Installation and Materials Risk

This insurance shall be of the "all risks" type, shall be written in completed value form, and shall protect MHR and COD and its employees (including any of its agents, advisors or consultants) against risks of damage to buildings, structures, materials and equipment. The amount of such insurance shall be not less than MHR's total capital investment pursuant to this Agreement.

Installation and Materials risk insurance may be in the form of an installation floater, and shall provide for losses to be payable to MHR and COD and its employees (including any of its agents, advisors or consultants) as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against MHR or COD and its employees (including any of its agents, advisors or consultants).

Errors and Omissions

Errors and omissions liability insurance shall cover the liability for design or other professional services performed by the Contractor or its employees, subcontractors, agents, advisors or consultants which cause either a failure of MHR's Facilities to perform as specified or injury to persons or their property.

The limits of errors and omissions liability insurance shall not be less than: Each

occurrence: \$1,000,000; Aggregate: \$3,000,000

If errors and omissions liability coverage is written on a Claims Made form:

1. The "Retro Date" must be shown and must be on or before the date of the Service Contract.
2. Insurance must be maintained and evidence of insurance must be provided over the term of the agreed upon Service Contract, plus five years after the date of final

completion of the Service Contract.

3. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a period covering the remaining term of the agreed upon Service Contract.

4. A copy of the claims reporting requirements must be submitted to COD for review.

Environmental Liability Insurance

MHR shall procure, maintain, and keep in force at all times during the Term, at MHR's sole expense, Environmental Liability Insurance which includes coverage for sudden and accidental pollution arising out of the handling of hazardous materials or hazardous wastes. The limits of Environmental Liability Insurance shall not be less than:

Each occurrence: \$1,000,000; Aggregate: \$5,000,000

11.2. Notification of Cancellation / Changes. The policies of insurance set forth in Section 11.1 shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to MHR and COD. MHR shall provide notification of cancellation or change in insurance carriers or agencies to COD at least 30 days prior to such cancellation or change. MHR's notification shall include current certificates of insurance satisfactory to COD.

11.3. Subcontractors. MHR shall require all subcontractors to provide insurance meeting the requirements of Article XI. In lieu of this requirement, MHR may provide coverage for subcontractors by obtaining an endorsement to each policy which lists by name the subcontractors as additional insureds, provided the insurance afforded to such subcontractors is the same as that afforded to MHR.

11.4. Performance and Payment Bond. MHR, at its own expense, shall procure and maintain for the duration of the design and construction phase of the Service Contract, Performance and Payment Bonds in an amount of not less than four hundred thousand dollars (\$400,000.00) for construction of MHR's Facility. The Performance Bond and Payment Bond shall be on forms reasonably acceptable to COD. Bonds shall be executed by a surety company authorized to do business in the State of Texas and listed in the current Federal Department of Treasury Circular 570. MHR shall provide evidence of the bonds within ten (10) days following the Effective Date.

ARTICLE XII. INDEMNIFICATION

12.1. Indemnification.

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments, and liability of every character, type, or description, including all reasonable costs and expenses of litigation, mediation, or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to COD, MHR, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income

or wages to any person (including but not limited to the agents, officers and employees of COD, MHR, MHR's subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

B. MHR SHALL DEFEND (AT THE OPTION OF THE COD), INDEMNIFY, AND HOLD THE COD, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS ("COD INDEMNITEES") HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF MHR, OR MHR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF MHR'S OBLIGATIONS UNDER THE AGREEMENT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF COD OR MHR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

MHR SHALL AT ALL TIMES REMAIN FULLY RESPONSIBLE FOR THE ACTS, INSURANCE, FEES, COSTS, BILLINGS, DECISIONS AND OMISSIONS OF ITS OWN EMPLOYEES AND SUCH THIRD PARTIES AS MHR MAY RETAIN, REGARDLESS OF THE EXTENT OF ITS CONTROL OVER THE PERFORMANCE OF SUCH THIRD PARTIES SO RETAINED.

COD SHALL AT ALL TIMES REMAIN FULLY RESPONSIBLE FOR THE ACTS, INSURANCE, FEES, COSTS, BILLINGS, DECISIONS AND OMISSIONS OF ITS OWN EMPLOYEES AND SUCH THIRD PARTIES AS COD MAY RETAIN, REGARDLESS OF THE EXTENT OF ITS CONTROL OVER THE PERFORMANCE OF SUCH THIRD PARTIES SO RETAINED.

12.2. Notice of Claims.

If any COD Indemnitee believes that it has suffered or incurred or will suffer or incur any Losses for which it is entitled to indemnification, COD shall notify MHR within thirty (30) days after COD becomes aware of the Losses for which COD is claiming indemnification. The failure of COD to give any notice required by this Article shall not affect any of such Party's rights, except to the extent that such failure is prejudicial to the rights of COD or to the ability of MHR to defend.

12.3. Third party Claims.

12.3.1. If COD gives notice to MHR of a proceeding by a third party, MHR will be entitled to assume the defense of such proceeding with counsel reasonably satisfactory to COD, unless (i) MHR is also a Party to such proceeding and COD determines in good faith that joint representation would be inappropriate, (ii) MHR fails to provide written assurance to COD of its acceptance of responsibility to defend such proceeding and provide indemnification with respect to such proceeding and of its financial capacity to provide such defense and indemnification, (iii) the claim is asserted by a governmental authority or (iv) the claim involves the seeking of an injunction that could affect COD's business, in which event COD shall be entitled to select counsel of its own choosing, reasonably satisfactory to MHR, and MHR shall be obligated to pay the fees and expenses of such counsel.

12.3.2. Except as set forth in Section 12.3.1. above, after notice from MHR to COD of its election to assume the defense of such proceeding, MHR will not, so long as it diligently conducts such defense, be liable to COD for any fees of other counsel or any other expenses with respect to the defense

of such proceeding, in each case subsequently incurred by COD in connection with the defense of such proceeding, other than reasonable costs of investigation.

12.3.3. If MHR assumes the defense of a proceeding: (i) no compromise or settlement of such claims may be effected by MHR without COD's consent, which consent may not be unreasonably withheld or delayed, unless the sole relief provided is monetary damages that are paid in full by MHR, and (ii) COD will have no liability with respect to any compromise or settlement of such claims effected without its consent.

12.4. Indemnification Rights Not Exclusive.

The rights to indemnification set forth herein are not intended to be exclusive of any other right or remedy otherwise available. All rights hereunder shall be cumulative and in addition to all other rights and remedies.

ARTICLE XIII. MISCELLANEOUS

13.1. Notices.

All notices, certificates, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed properly served (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if by mail, on the third (3rd) business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; (iii) if by Federal Express or other reputable express mail service for overnight delivery, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement, or (iv) if by email, on the first (1st) business day after the email was sent, provided the sender is not notified that the email was not delivered. All notices required or permitted to be served upon either Party hereunder will be directed to:

if to MHR:

Mayhill Renewables, LLC
Attention: Paul Morrow, President
10818 West County Road 72
Midland, Texas 79707
Email: paul@morrowenergy.com

with copies to:

General Counsel
5615 Knobby Knoll
Houston, TX 77092
Attention: Steve McCain
Email: legal@morrowenergy.com

if to COD:

City of Denton
Solid Waste Director
1527 S Mayhill Rd

Denton, TX 76208
Email: customer.service@cityofdenton.com

with copies to:

City of Denton
City Attorney's Office
215 E. McKinney Street
Denton, TX 76201
Email: legal@cityofdenton.com

MHR and COD may, by notice given hereunder, designate any further or different addresses to which notices, certificates, or other communications shall be sent; provided that any such notice will be deemed given only upon actual receipt.

13.3. Entire Agreement/Amendments.

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. All Exhibits attached hereto are incorporated herein by this reference.

13.4. Third party Beneficiaries.

This Agreement is not intended to confer upon any Person other than the Parties hereto any rights or remedies hereunder.

13.5. Amendments.

This Agreement may not be amended or altered except by the written agreement of MHR and COD.

13.6. Severability.

If any term or provision of this Agreement is judged to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, except as it might be necessary to effectuate the intent of the Parties, and each provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

13.7. Governing Law; Venue.

13.7.1. Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties hereunder shall be determined in accordance with the laws and regulations of the State of Texas, without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Texas.

13.7.2. Venue. The Parties acknowledge and agree that proper venue for any action for the enforcement or interpretation of this Agreement or for damages on account of a breach will be in the State of Texas, County of Denton.

13.8. Captions.

The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

13.9. No Joint Venture.

Nothing in this Agreement shall be deemed to constitute either Party a partner, agent, or legal representative of the other Party or to create any joint venture or fiduciary or other relationship between the Parties.

13.10. Remedies.

No remedy provided in this Agreement is exclusive of any other available remedy or remedies under law or in equity.

13.11. Time is of the Essence.

Time is of the essence with respect to all dates and time periods set forth in this Agreement.

13.12. Waiver.

To the extent permitted by law, no delay or omission to exercise any right or remedy of a Party hereto shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be expedient. Any actual waiver shall be in writing and signed by the Party against whom it is to operate. For either Party to exercise any remedy hereunder, it shall not be necessary to give any notice other than as may be required in this Agreement. If any covenant contained in this Agreement should be breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

13.13. Days.

All references to days in this Agreement shall refer to calendar days unless specified otherwise.

13.14 Public Information Act.

COD shall release information in accordance with the Texas Public Information Act, Tex. Gov't Code Chapter 552, and other applicable law or court orders. If requested, MHR shall make public information available to COD in an electronic format, and any portions of records claimed by MHR to be proprietary must be clearly marked as such. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and MHR agrees that the Agreement can be terminated if MHR knowingly or intentionally fails to comply with a requirement of that subchapter.

13.15 Required Certifications.

Prohibition on Agreements with Companies Boycotting Israel. MHR acknowledges that in accordance with Chapter 2271 of the Texas Government Code, COD is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from

the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this Agreement, MHR certifies that MHR’s signature provides written verification to COD that MHR: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Agreements with Companies Boycotting Certain Energy Companies. MHR acknowledges that in accordance with Chapter 2276 of the Texas Government Code, COD is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, MHR certifies that MHR’s signature provides written verification to COD that MHR: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the Agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Agreements with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations. MHR acknowledges that in accordance with Chapter 2274 of the Texas Government Code, COD is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this Agreement, MHR certifies that MHR’s signature provides written verification to COD that MHR: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Agreements with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization. Section 2252 of the Texas Government Code restricts COD from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this Agreement, MHR certifies that MHR’s signature provides written verification to COD that MHR, pursuant to Chapter 2252, is not ineligible to enter into this Agreement and will not become ineligible to receive payments under this Agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Termination Right for Agreements with Companies Doing Business with Certain Foreign-Owned Companies. The COD may terminate this Agreement immediately without any further liability if COD determines, in its sole judgment, that this Agreement meets the requirements under Chapter 2275, and MHR is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North

Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed duplicate originals by their duly authorized undersigned officers this _____ day of _____, 2025.

MAYHILL RENEWABLES, LLC

a Texas limited liability company

Paul Morrow

By: _____

Name: Paul D. Morrow

Title: President

CITY OF DENTON, DENTON, TEXAS

A Texas non-profit local government corporation By:

_____ Name:

Title:

ATTEST:

LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:

MACK REINWAND, CITY ATTORNEY

DocuSigned by:

Marcella Lunn

BY: _____

THIS CONTRACT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations and
business terms.

Signed by:

Brenda Haney

Brenda Haney

C3C63BE563154A1...

SIGNATURE PRINTED NAME

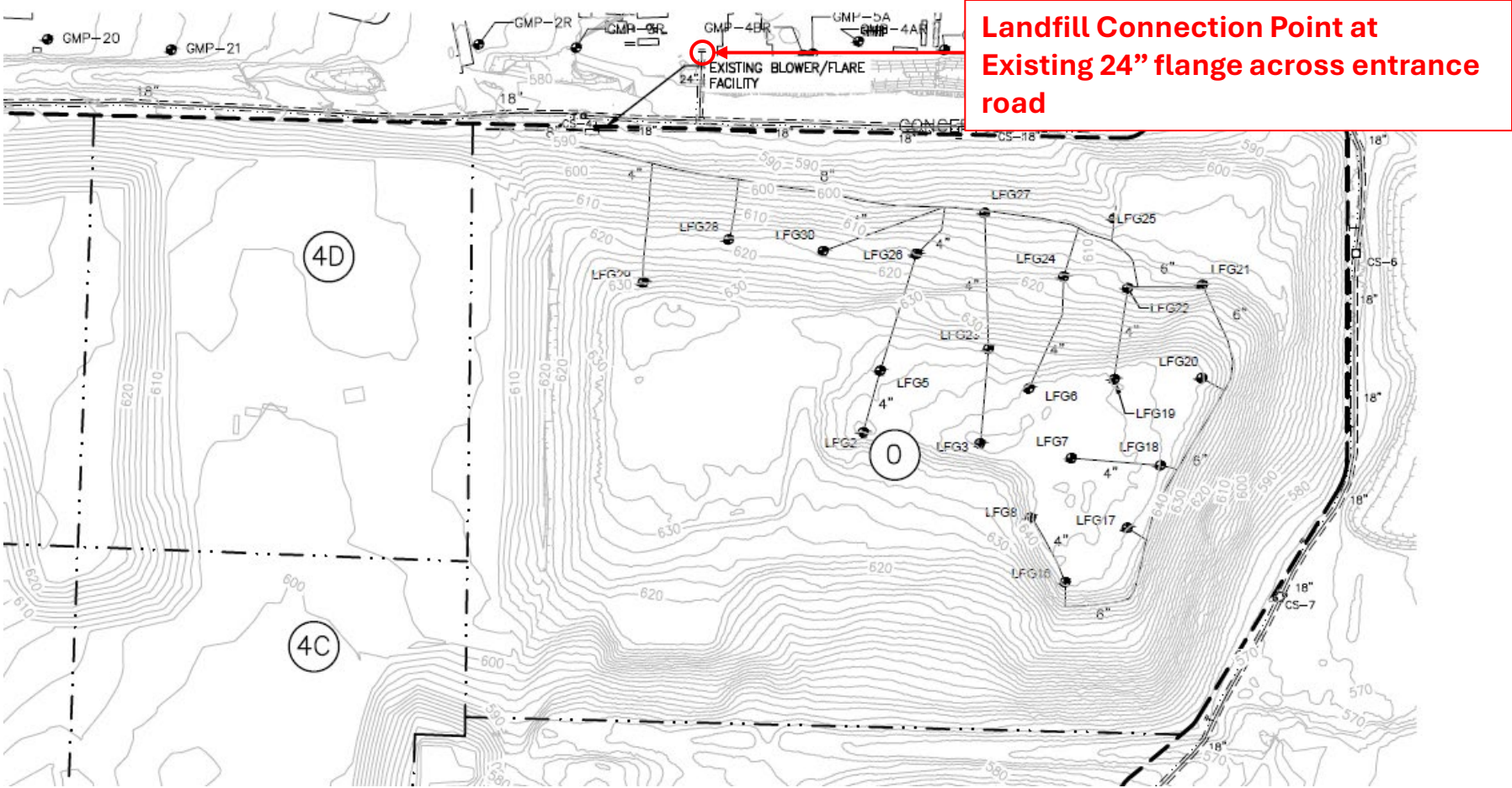
Director

TITLE

Solid Waste & Recycling

DEPARTMENT

EXHIBIT 1
LANDFILL CONNECTION POINT



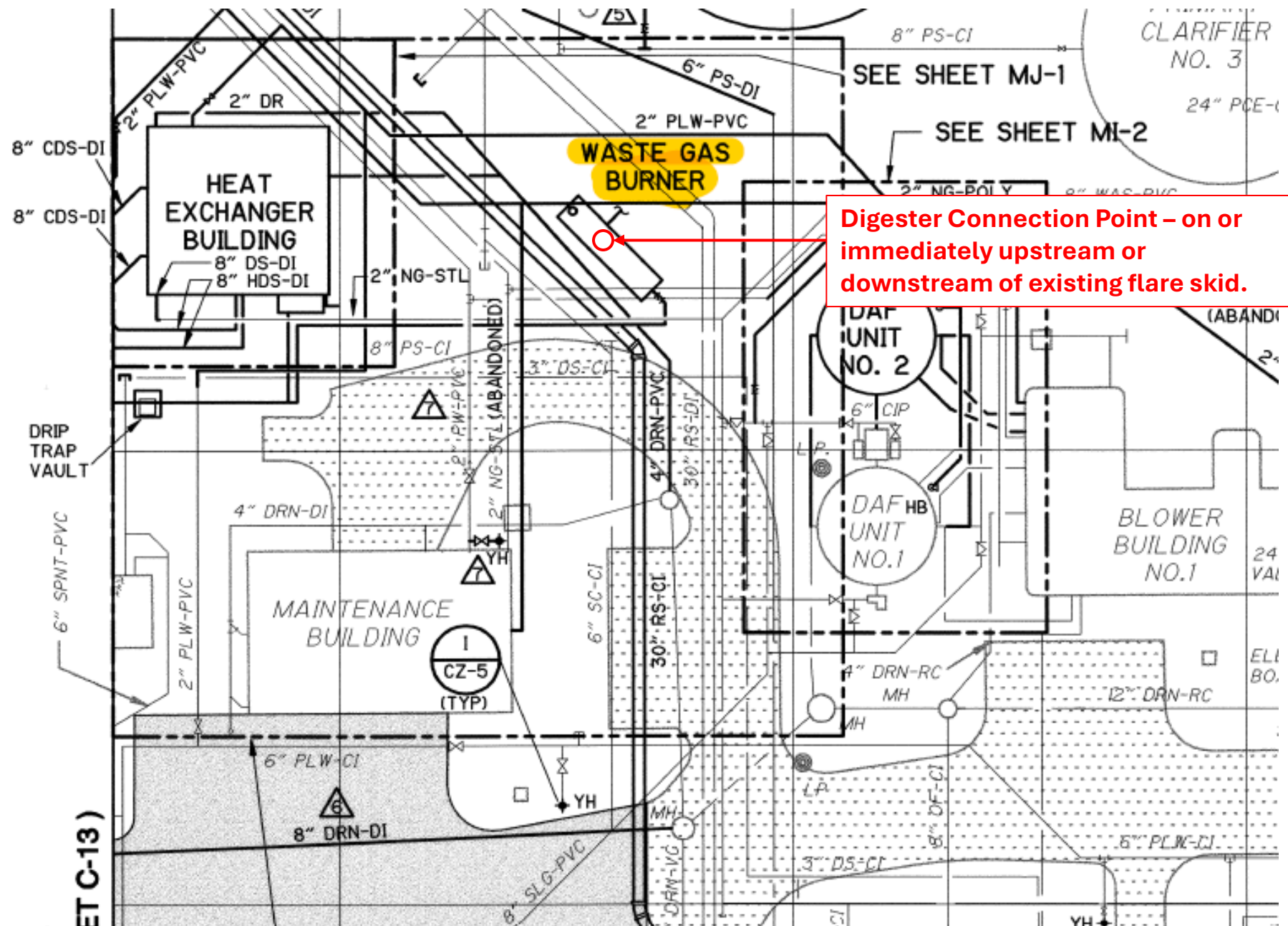
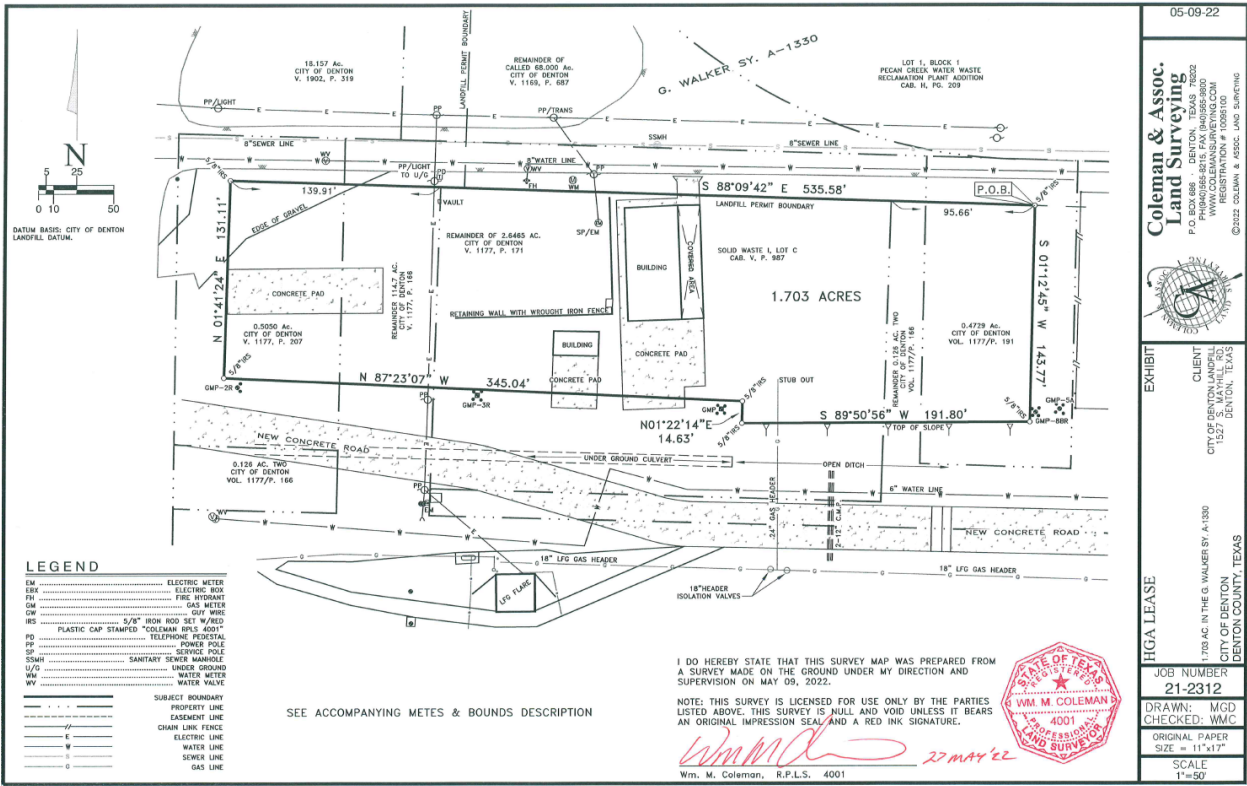


EXHIBIT 2
Site Description





Coleman & Assoc. Land Surveying

P. O. Box 686
Denton, Texas 76202
Phone (940)565-8215 Fax (940)565-9800
REGISTRATION #10095100

1.703 Acres of Land

FIELD NOTES to all that certain tract of land situated in the G. Walker Survey Abstract Number 1330, City of Denton, Denton County, Texas and being a part of Lot C, Solid Waste I as shown by the plat thereof recorded in Cabinet V, Page 987 of the Plat Records of Denton County, Texas; a part of the called 0.5050 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 207 of the Deed Records of Denton County, Texas; a part of the called 114.7 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 166 of the said Deed Records; a part of the called 2.6465 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 171 of the said Deed Records; part of the called 0.126 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 166 of the said Deed Records; and part of the called 0.4729 acre tract described in the deed to the City of Denton recorded in Volume 1177, Page 191 of the said Deed Records; the subject tract being more particularly described as follows:

BEGINNING for the Northeast corner of the tract being described herein at a 5/8 inch iron rod with a red plastic cap stamped "COLEMAN RPLS 4001" set (hereinafter referred to as 5/8IRS) in the North line of the current City of Denton Landfill Permit Boundary on the South side of an asphalt road and being South 88 Degrees 09 Minutes 42 Seconds East a distance of 95.66 feet from the Northeast corner of the said Lot C;

THENCE South 01 Degrees 12 Minutes 45 Seconds West departing the road across the 0.4729 acre tract a distance of 143.77 feet to a 5/8IRS for the Southeast corner of the herein described tract on the North side of an open ditch;

THENCE South 89 Degrees 50 Minutes 56 Seconds West along the North side of the said ditch across the 0.4729 acre tract passing at a distance of 97.3 feet the East line of Lot C and continuing along, in all, a total distance of 191.80 feet to a 5/8IRS for an angle point in the South line of the herein described tract;

THENCE North 01 Degrees 22 Minutes 14 Seconds West departing the North side of the ditch and continuing across Lot C a distance of 14.63 feet to a 5/8IRS for an angle point in the South line of the herein described tract;

THENCE North 87 Degrees 23 Minutes 07 Seconds West continuing across Lot C passing at a distance of 205.5 feet the West line thereof and across the 114.7 acre tract and the 0.5050 acre tract, in all, a total distance of 345.04 feet to a 5/8IRS for the Southwest corner of the herein described tract;

THENCE North 01 Degrees 41 Minutes 24 Seconds East across the 0.5050 acre tract a distance of 131.11 feet to a 5/8IRS for the Northwest corner of the herein described tract;

THENCE South 88 Degrees 09 Minutes 42 Seconds East across the said 0.5050 acre tract and the said 114.7 acre tract passing at a distance of 139.91 feet the Northwest corner of Lot C and continuing along the same course, in all, a total distance of 535.58 feet to the PLACE OF BEGINNING and enclosing 1.703 acres of land.

See accompanying Exhibit.



EXHIBIT 3

City / Developer Responsibilities

LANDFILL GAS COLLECTION SYSTEM COD / DEVELOPER RESPONSIBILITIES

TASK LIST	PHYSICAL RESPONSIBILITIES		FINANCIAL RESPONSIBILITIES	
	COD	Developer	COD	Developer
Gas Collection System Operation & Maintenance				
Providing vacuum to the wellfield		X		X
Monitoring wellfield		X		X
Extraction Wells – installation, operation, maintenance, and monitoring		X		X
Horizontal collectors – installation, operation, maintenance, and monitoring		X		X
LFG Piping – installation, operation, maintenance, and monitoring		X		X
LFG Valves – installation, operation, maintenance, and monitoring		X		X
Condensate Sump/Pumps – installation, operation, maintenance, and monitoring		X		X
Well Pumps – installation, operation, maintenance, and monitoring		X		X
Airline piping – installation, operation, maintenance, and monitoring		X		X
Condensate force main piping – installation, operation, maintenance, and monitoring		X		X
Electrical conduit – installation, operation, maintenance, and monitoring	X		X	
Maintenance of monitoring instruments		X		X
Perimeter LFG Probes				
Quarterly LFG probe Monitoring	X		X	
Maintain Records of probe readings	X		X	
Submittal of Probe Reports to State	X		X	
Maintenance/repair of probes (to be determined based on need)	X		X	
Regulatory Issues				
NSPS surface emission monitoring (includes remonitoring)	X		X	
NSPS wellhead monitoring (includes remonitoring)		X		X
SSM recordkeeping/reporting		X		X
Maintain records of well		X		X
General landfill cover maintenance	X		X	
Emission Fees (flare)	X		X	
Emission Fees (landfill)	X		X	
Emission Fees (energy)		X		X
Recordkeeping (flare data)		X		X
Recordkeeping (energy data)		X		X
Compliance Investigation	X		X	
Groundwater remediation due to LFG impacts – coordination with state	X		X	
Groundwater remediation due to LFG impacts		X		X
Probe remediation due to LFG migration– coordination with state	X		X	
Probe remediation due to LFG migration		X		X
Odor remediation related to LFG – coordination with state	X		X	
Odor remediation related to LFG		X		X

TASK LIST	PHYSICAL RESPONSIBILITIES		FINANCIAL RESPONSIBILITIES	
	COD	Developer	COD	Developer
Subsurface combustion related to LFG system – coordination with state	X		X	
Subsurface combustion related to LFG system		X		X
Monthly GHG methane readings (flare)		X		X
Monthly GHG methane readings (energy)		X		X
Reporting				
Semi-annual NSPS Report to State Authority (landfill)	X		X	
Semi-annual NSPS Report to State Authority (energy)		X		X
Semi-annual Title V Report to State Authority – Landfill permit (landfill)	X		X	
Semi-annual Title V Report to State Authority – Landfill permit (energy)		X		X
Semi Annual SSM report to State Authority (landfill)	X		X	
Semi Annual SSM report to State Authority (energy)		X		X
Emission Inventory report for landfill/flare to State Authority	X		X	
Emission Inventory report for energy facility to State Authority		X		X
Annual GHG Reporting to EPA (landfill)	X		X	
Annual GHG Reporting to EPA (energy)		X		X
TCEQ MSW Annual Report (landfill)	X		X	
TCEQ MSW Annual Report (energy)		X		X
GOPG'S Flare and Blower System				
Blower and flare system maintenance		X	X	
Blower and flare system operation		X	X	
General record keeping maintained on site		X	X	
Propane		X	X	
Calibration gas		X	X	
Calibrating flare flow meter		X	X	
Spare parts for inventory (flare system)		X	X	
Air Compressor		X	X	
Nitrogen bottle		X	X	
Blower and flare system repairs		X	X	
Flare visible emission observations	X		X	
Buyer's Facility		X		X
Grounds Maintenance				
Mowing	X		X	
General landfill cover maintenance	X		X	
Weed whipping for access (wells, probes, valves)	X		X	
Probe bollard repairs	X		X	
Road maintenance/snow removal of landfill roads	X		X	
Gas Collection System Repairs				
Piping repairs due to landfill equipment or personnel (includes cover material)		X		X
Piping repairs not caused by landfill equipment or personnel (includes cover material)		X		X
Subsurface well repairs		X		X
Condensate sump repairs		X		X

TASK LIST	PHYSICAL RESPONSIBILITIES		FINANCIAL RESPONSIBILITIES	
	COD	Developer	COD	Developer
GCCS expansions in the landfill (construction, engineering, permitting)		X		X
GCCS expansions (CQA) – As applicable/if needed		X	X	
Condensate Disposal				
Condensate disposal (field sumps)		X	X	
Condensate disposal (energy facility equipment)		X		X
Meters				
Sales Flow Meter		X		X
Calibrating Sales Flow Meter		X		X
Methane/BTU Analyzer		X		X
Calibrating Methane/BTU Analyzer		X		X
Data Recorder (Flow and Methane/BTU)		X		X
Monitoring Port		X		X

EXHIBIT 4

Royalties

Gross Revenue Each Month	Royalty
\$ 0.01 – \$ 500,000.00	15% of Gross Revenue
\$ 500,000.01 – 1,000,000.00	21% of Gross Revenue
\$ 1,000,000.01 and above	27% of Gross Revenue

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) and by City of Denton Ethics Code, Ordinance 18-757.

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.

MAYHILL RENEWABLES, LLC

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 7th 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.

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government 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.

4 ☒ **I have no Conflict of Interest to disclose.**

5 DocuSigned by:

Paul Morrow

7/30/2025

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: A3ED5FC4-E02F-4C1C-94A5-27F649D1CB12

Status: Sent

Subject: Please DocuSign: City Council Contract 8465 Landfill Gas to Energy Project

Source Envelope:

Document Pages: 49

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Crystal Westbrook

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US & Canada)

crystal.westbrook@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

Holder: Crystal Westbrook

Location: DocuSign

7/28/2025 10:33:34 AM

crystal.westbrook@cityofdenton.com

Signer Events

Signature

Timestamp

Crystal Westbrook

Completed

Sent: 7/28/2025 10:40:29 AM

crystal.westbrook@cityofdenton.com

Viewed: 7/28/2025 11:37:22 AM

Senior Buyer

Using IP Address: 198.49.140.10

Signed: 7/28/2025 11:39:32 AM

City of Denton

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell

Sent: 7/28/2025 11:39:35 AM

lori.hewell@cityofdenton.com

Viewed: 7/30/2025 10:29:27 AM

Purchasing Manager

Signed: 7/30/2025 10:29:48 AM

City of Denton

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn

DocuSigned by:
Marcella Lunn
4B070831B4AA43B...

Sent: 7/30/2025 10:29:51 AM

marcella.lunn@cityofdenton.com

Viewed: 7/30/2025 10:32:05 AM

Senior Deputy City Attorney

Signed: 7/30/2025 10:33:28 AM

City of Denton

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Paul Morrow

DocuSigned by:
Paul Morrow
EB8C53D1662A43B...

Sent: 7/30/2025 10:33:31 AM

paul@morrowenergy.com

Viewed: 7/30/2025 11:21:07 AM

President

Signed: 7/30/2025 11:26:53 AM

Morrow Family Capital Investments

Security Level: Email, Account Authentication
(None)

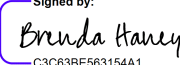
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Using IP Address: 12.182.147.58

Electronic Record and Signature Disclosure:

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Signer Events	Signature	Timestamp
Brenda Haney brenda.haney@cityofdenton.com Director Security Level: Email, Account Authentication (None)	Signed by:  C3C63BE563154A1... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/30/2025 11:26:57 AM Viewed: 7/30/2025 11:28:49 AM Signed: 7/30/2025 11:29:09 AM

Electronic Record and Signature Disclosure:
Accepted: 7/30/2025 11:28:49 AM
ID: ec10f393-a01e-4c73-baf6-d51b0f6a88f9

Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton
Security Level: Email, Account Authentication (None)

Sent: 7/30/2025 11:29:13 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley
sara.hensley@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lauren Thoden
lauren.thoden@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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
Carbon Copy Events	Status	Timestamp

Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton
Security Level: Email, Account Authentication (None)

COPIED

Sent: 7/28/2025 11:39:35 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Gretna Jones
gretna.jones@cityofdenton.com
Legal Secretary
City of Denton
Security Level: Email, Account Authentication (None)

COPIED

Sent: 7/30/2025 11:29:13 AM
Viewed: 7/30/2025 4:08:00 PM

Carbon Copy Events	Status	Timestamp
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City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Peter Smith psmith@morrowenergy.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/28/2025 10:40:29 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.

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: 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 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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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:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB25-152, **Version:** 1

AGENDA CAPTION

Management Reports

1. Future Agenda Items
2. New Business Action Items

Future Public Utilities Board Agenda Items

Note: This is a working draft of pending PUB items and is subject to change without notice.

Meeting Date	Item	Dept
August 25, 2025		
September 15, 2025		
September 29, 2025		
October 13, 2025		
October 27, 2025		
November 17, 2025		
December 15, 2025		

Codes: Work Session WS, Consent Agenda CA, Individual Consideration IC

PUBLIC UTILITIES BOARD - NEW BUSINESS ACTION ITEMS

	DATE REQUESTED	REQUESTOR	ITEM	DEPT	STATUS
1.					
2.					



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB25-121, **Version:** 1

Receive a report, hold a discussion, and give staff direction regarding the City of Denton utility billing programs.



City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Customer Service

DCM: Cassey Ogden

DATE: August 25, 2025

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding the City of Denton utility billing programs.

BACKGROUND

Customer Service conducted independent evaluations of utility billing and collections processes in 2008, then again in 2018. During review of the commercial deposit requirements, it was determined that an updated review was in order. The FY24/25 budget included council approved funding to review billing & collections processes to ensure operational efficiency and program alignment with utility sector best practices.

Departmental revenue collection performance was reviewed against industry benchmarks. Additionally, three City policies were evaluated and recommendations for improvement were provided. These included commercial deposits, payment agreements, and leak adjustments.

EXHIBITS

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Presentation

Exhibit 3 – Ascent Group Study

Respectfully submitted:
Antonio Puente, Jr., (940) 349-8487
DME General Manager

For information concerning this acquisition, contact: Christa Foster, 940-349-7412.



Utility Billing Update

Christa Foster

Customer Service Manager, Customer Service

August 25, 2025

PUB25-121

Background & Objectives

Background: City Council approved funding for an updated review of utility billing and collections processes and policy to ensure practices are competitive with the industry and continue Denton's history of excellence in performance.

Objectives:

Benchmarking & Revenue Trends

- Comparison of Denton Performance to Industry
- Review of Year Over Year Revenue Trends
- Overall Findings

Commercial Deposits

- Benchmark Findings
- Consultant & Staff Recommendation – Part 1

Payment Arrangements

- Benchmark Findings
- Consultant & Staff Recommendation – Part 2

Leak Adjustments

- Benchmark Findings
- Consultant & Staff Recommendation – Part 3

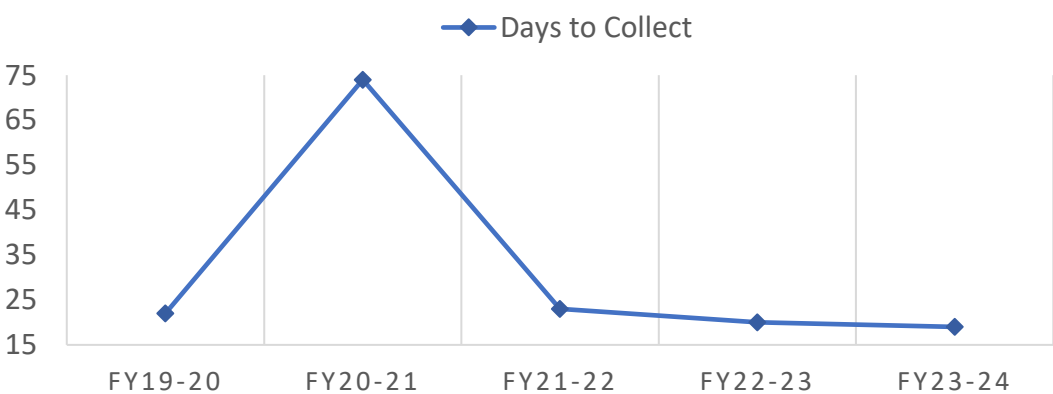
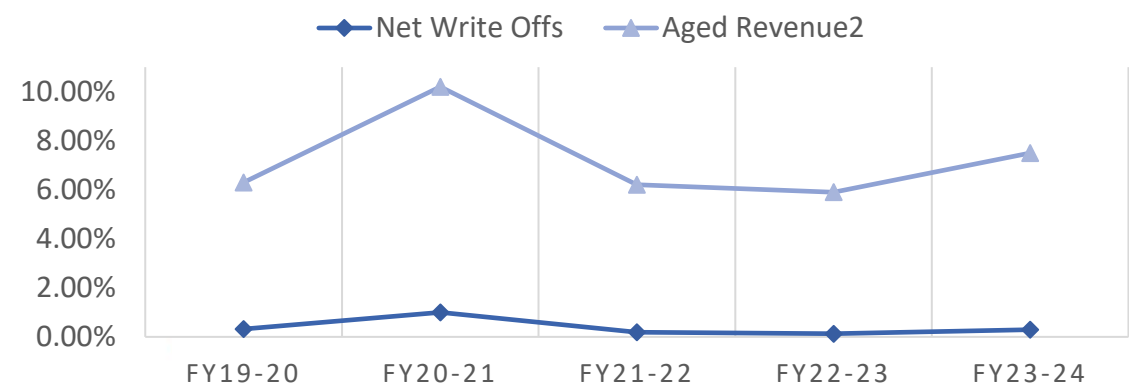
Summary of Recommendations

Questions

Benchmarking & Revenue Trends

- Performance compared to more than 100 US utilities including 22 Texas municipal utilities
- Denton performs significantly better than industry
- Performance is consistent over time
 - ✓ Irregularities are attributed to the pandemic

	Net Write Offs (% of Revenue)	Aged Revenue (>60 Days)	Days to Collect (Average)
All Utilities	0.70%	29.37%	30
Electric Utilities	0.63%	32.66%	29.8
Water Utilities	0.86%	25.44%	30
Denton	0.29%	7.50%	19



Commercial Deposits

BENCHMARKING RESULTS

- Deposit Calculation Requirement is Consistent with Peers
- Application of Deposit Interest is Consistent with Peers
- Retention Period Not Aligned with Other Texas Cities
 - ✓ Most Return Deposit with 1-2 Years of Good Payment History
- Current Ordinance Requires Manual Screening of All Deposit Refunds

RECOMMENDATION

- Residential Refund at 12 Months
Commercial Refund at 24 Months
- Qualifications
- “A” Credit Rating
 - No Disconnections
 - No Meter Tampering
 - Account is Current

Payment Arrangements

BENCHMARKING RESULTS

- Due Date Calculation is Manual
 - ✓ Time Consuming
 - ✓ Prone to Errors
- Eligibility and Administration is Restrictive
 - ✓ One Arrangement Allowed Every 6 Months
 - ✓ Any Deviation to Established Guidelines Require Council Approval

RECOMMENDATION

Move Due Date to Current Bill Due Date

Remove Restriction on Number of Arrangements

12 Month Suspension of Access for Failing 2 Agreements

Update Ordinance

- Authorize Program Authority to City Manager
- Authorize Discretion to Head of Customer Service
- Ensure Council Review Prior to Program Changes

Leak Adjustments

BENCHMARKING RESULTS

- Policy not Aligned with Benchmarks in Other Texas Cities
 - ✓ Process is Hard-Coded in Ordinance
 - ✓ All Deviations to Process Require Council Approval
 - ✓ Short Filing Time
 - ✓ Restrictive Policy in Comparison
- No consideration for AMI metering
- Low Customer Eligibility
- Language Excludes Renters

RECOMMENDATION

Revise 100,000g Cap to Commercial Customers

- No Cap for Residential

Add Provision for Sprinklers and Pools

- Excess Usage Capped at 5K Gallons
- Credit at Lower Rate (25%)

Increase Submission Deadline (30 to 60 Days)

Update Ordinance

- Provision for Renters
- Authorize Program Authority to City Manager
- Authorize Discretion to Head of Customer Service
- Council Review Prior to Program Changes
- Add Provision for AMI

Summary of Recommendations

Denton continues to compare favorably to other municipalities in Texas and nationwide. Overall, processes are effective and cost efficient. Collection and bad debt management are highly competitive with the industry.

SUMMARY OF RECOMMENDATIONS

- Implement Recommended Policy Changes to Be More Responsive to Customer Needs
 - ✓ Commercial Deposits
 - ✓ Payment Arrangements
 - ✓ Leak Adjustments

Questions?



Credit & Collections Review for the City of Denton, Texas



August 2025

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Business Process Review

BACKGROUND

Project Scope & Work Completed

The Ascent Group conducted a focused operational assessment of the Credit & Collections functions for the City of Denton with the goal of identifying action items or areas of focus for further improvement. A similar assessment was conducted in 2018.

Scope of Review:

- Residential and Commercial revenue collection cycle and practices
- Customer Deposit policy and practices
- Leak Adjustment policy and practices
- Payment Plan policy and practices

Work Completed:

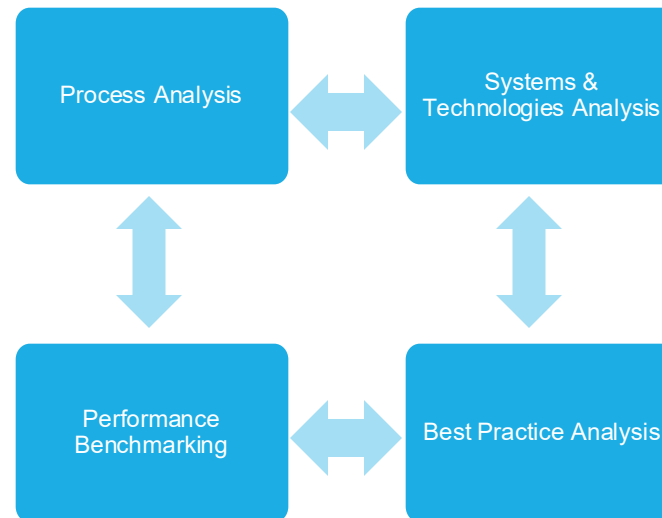
- Interviewed management and staff in Customer Service and Collections
- Reviewed business processes
- Listened to recorded customer calls
- Reviewed reports and business documents
- Gathered workload, cost, and performance data
- Benchmarked cost and service level performance to industry

Project Approach



- Mobilize
- Work plan
- Communications
- Clarify expectations
- Identify sponsors & stakeholders
- Review data & results
- Schedule interviews & working sessions
- Initial data request
- Project management

Work Plan



Assessment Report

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Present Results to Management,
Public Utility Board and City
Council

Denton Collection Practices Changes

2011

Developed internal credit scoring and customer credit classes

Online Utility Exchange to verify identify and determine deposit based on credit risk

Shortened collections action timeline by 8 days

Deposit assessments quarterly based on internal credit rating

Refunded deposits for 12 months of good payment behavior

Began writing off bad debt at 180 days

Using the CIS to manage payment arrangements

Late fees increased to \$20

2018

Lessened deposit requirements for average to higher risk credit classes

Redefined credit class thresholds and internal credit points for collection actions

Increased Plus One assistance funding and assistance available to individuals

Credit & Collection Review

OPERATIONAL BENCHMARKS

Benchmarks – Texas Municipal Utilities & U.S. Utilities

- We compared Denton's Credit and Collection practices to 23 other municipal utilities in Texas.

Arlington	El Paso	McKinney
Austin	Fort Worth	New Braunfels
Boerne	Garland	Plano
Bryan	Georgetown	Rowlett
Carrollton	Greenville	San Antonio
College Station	Houston	San Marcos
Dallas	Lewisville	San Marcos
Denton	Lubbock	

- We compared Denton's Credit and Collection performance to our database of U.S. utilities:

Type	Coop	Gas	IOU	Muni	Total
Electric / Gas / Water Utility			1	2	3
Electric / Gas Utility			21	1	22
Electric / Water Utility			2	4	6
Electric Utility	2		39	6	47
Gas Utility	1	3	13	1	18
Water Utility			1	14	15
Grand Total	3	3	77	28	111

- A list of benchmark utilities is included at the end of this section.

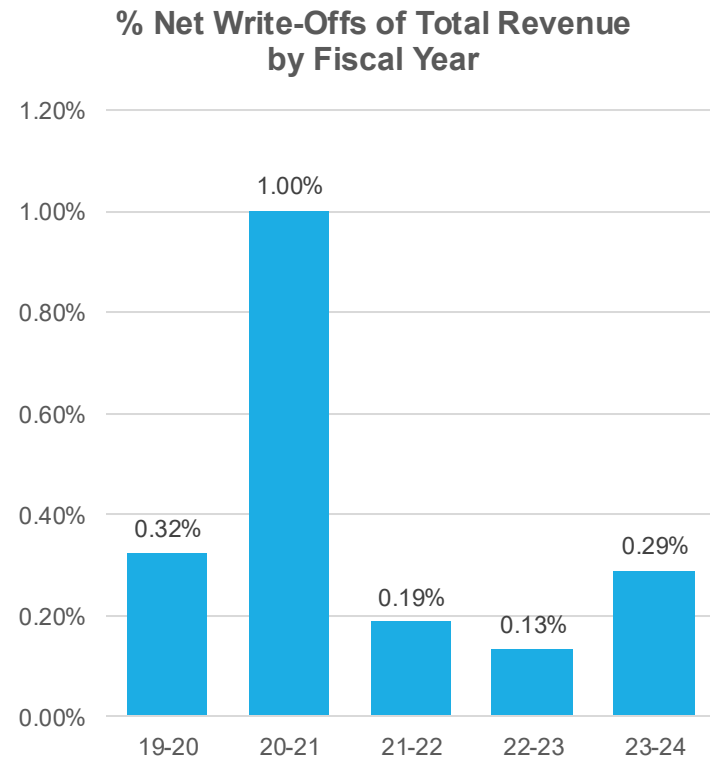
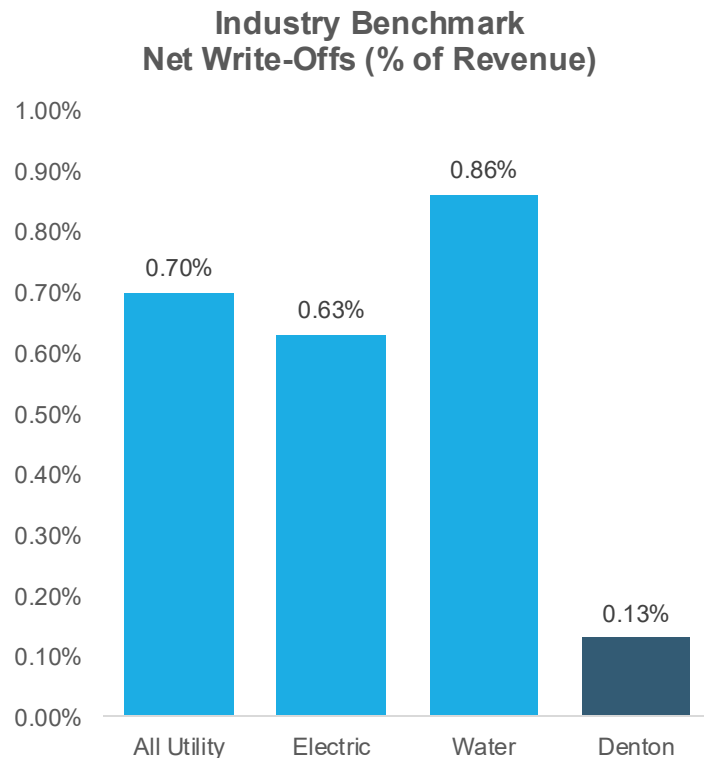
Benchmarks – U.S. Utilities

We compared Denton's Credit and Collection performance to our benchmark panel using the following metrics:

Metric	Focus	Definition
% Net Write-Offs	Effectiveness	Uncollectible Accounts Receivables Written-Off (adjusted for recoveries) / Total Revenue
Days Sales Outstanding (DSO)	Effectiveness	(Customer Receivables / Total Revenue) X days in period
% Customer Receivables Older than 60 days	Effectiveness	Customer Receivables older than 60 days / Total Receivables
Collection Actions per FTE	Productivity	Number of Collection Actions / Collection FTEs
Cost per Collection Action	Unit Cost	Collection Cost / Collection Actions

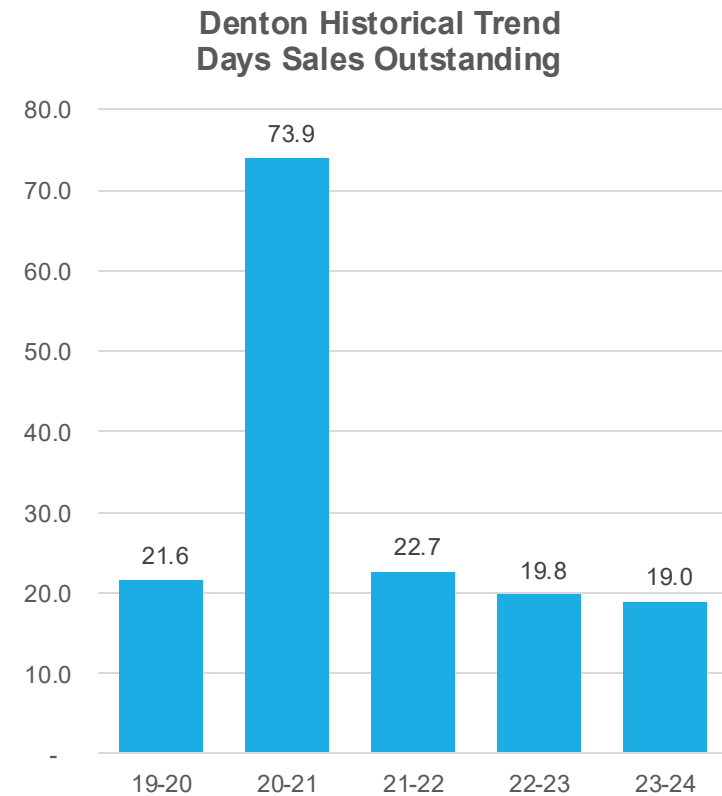
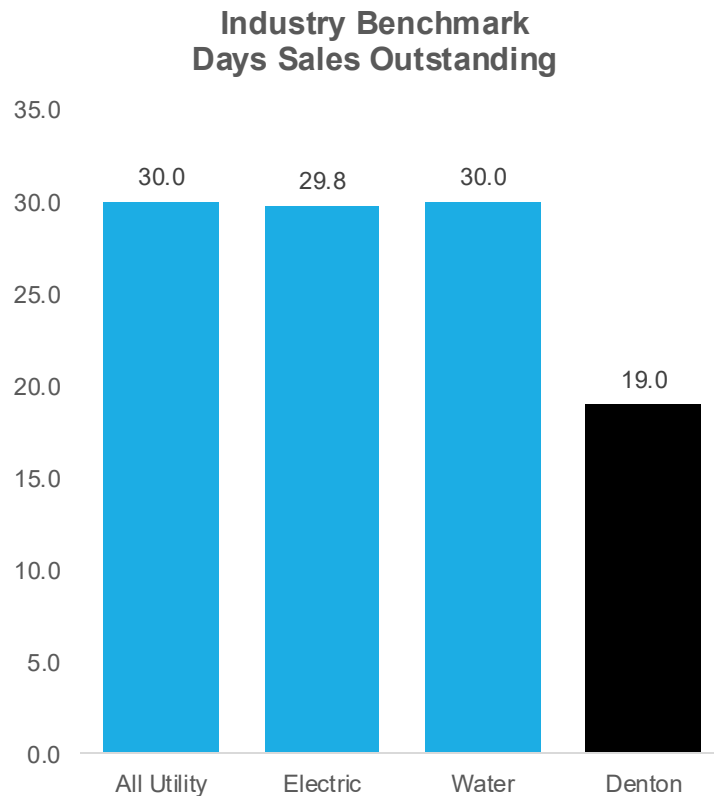
Benchmarks – U.S. Utilities

- Denton leads benchmark panel for Percent of Net Write-Offs.
- Denton has progressively reduced net write-offs over the past five years.
- FY20-21 reflects impact of pandemic on bad debt.



Benchmarks – U.S. Utilities

- Days Sales Outstanding (DSO) measures how long it takes to collect.
- Denton leads industry and historical is trending positive.

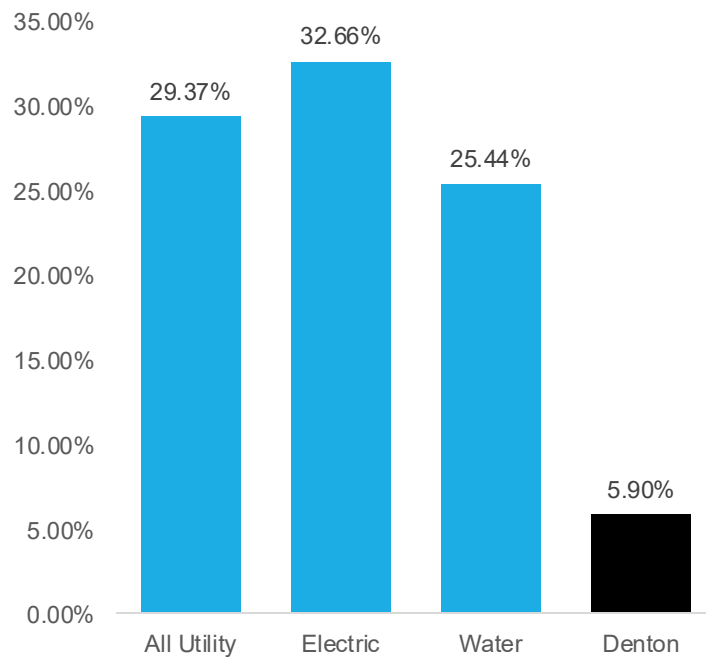


FY23-24 only 4 months of data

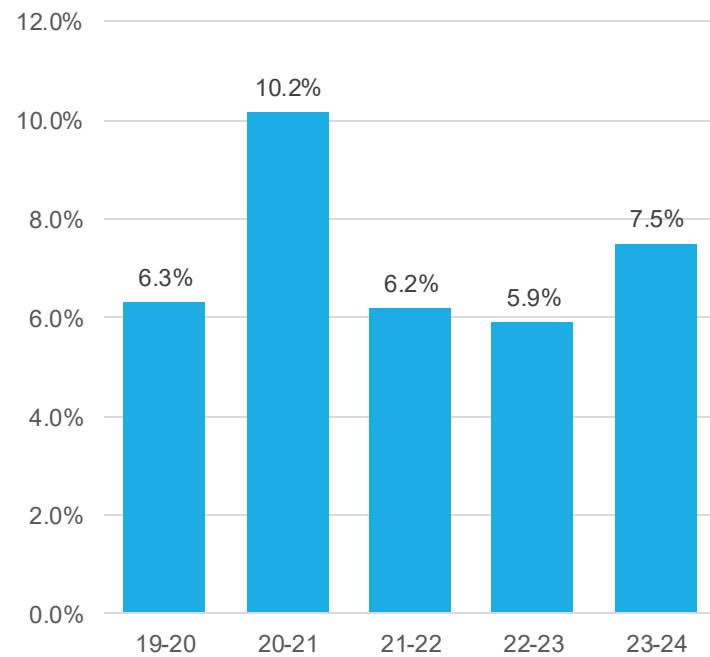
Benchmarks – U.S. Utilities

- Denton well below industry benchmark for customer receivables 60-day or older.
- Customer receivables older than 60 days under 8% except during pandemic.

**Industry Benchmark
Aged Receivables Under 60 Days**



**Denton Historical Trend
Aged Receivables Under 60 Days**



FY23-24 only 4 months of data

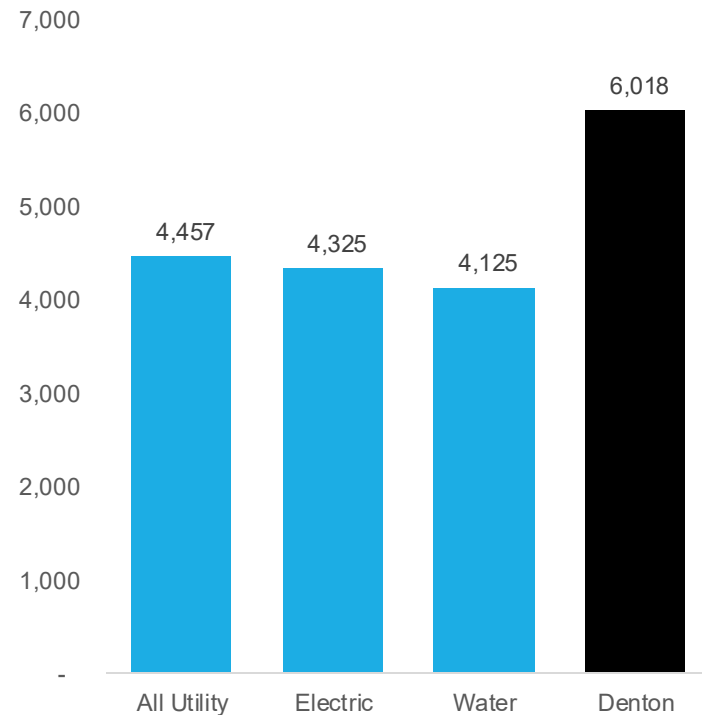
Benchmarks – U.S. Utilities

- Denton's cost per collection action is better than industry as is collection productivity.

Industry Benchmark
Cost per Collection Action



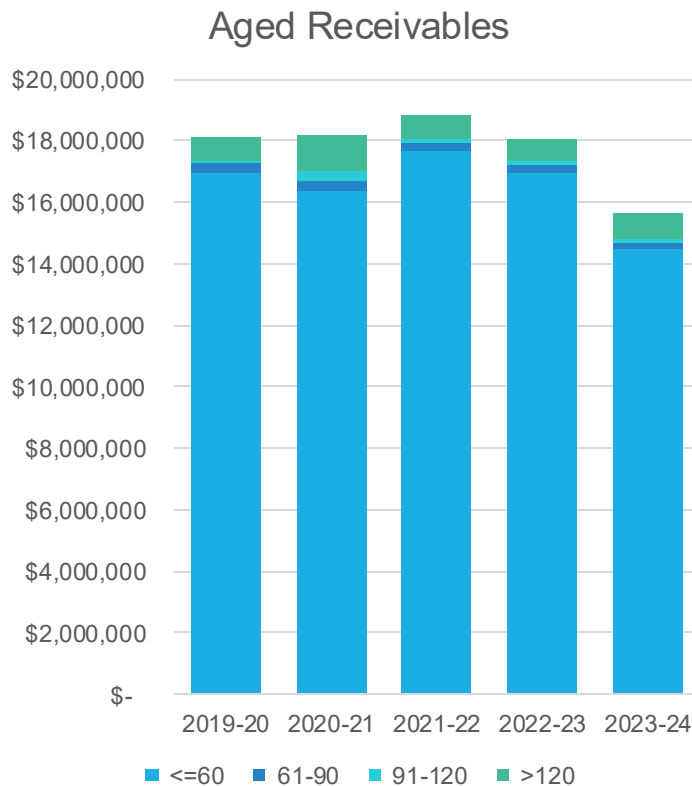
Industry Benchmark
Collection Actions per FTE



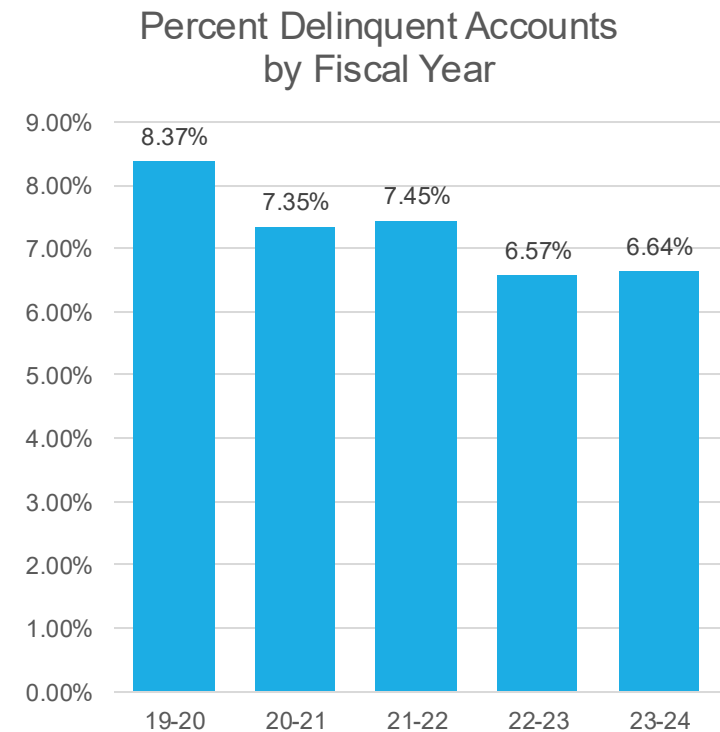
FY23-24 only 4 months of data

Delinquencies and Arrearages have reduced

- Aged receivables are improving as the percent of delinquent accounts has declined.



FY23-24 only 4 months of data



FY23-24 only 4 months of data

Benchmark Participants

AEP	Eversource	Northern Indiana Public Service Co
Alabama Power	Exelon - Delmarva Power	Northwestern Corporation
Alliant Energy	Exelon Atlantic City Electric	Nova Scotia Power
Ameren Illinois	Exelon BGE	NV Energy
Ameren MO	Exelon ComEd	Oklahoma Gas and Electric Company
Aquarion Water Co.	Exelon PECO Energy	Oklahoma Natural Gas
Arizona Public Service	FirstEnergy Corporation	Orlando Utilities Commission
Atmos Energy	FirstEnergy JCP&L	Pacific Gas & Electric Company
Austin Energy	FirstEnergy Met-Ed	Pacific Power
Avista Utilities	FirstEnergy Mon Power	Passaic Valley Water Commission
Black Hills Power	FirstEnergy Ohio Edison	Peninsula Light Company
CenterPoint Energy - Texas	FirstEnergy Penelec	Peoples Natural Gas
Chelan County PUD	FirstEnergy Penn Power	PHI - Pepco
Chesapeake Utilities	FirstEnergy Potomac Edison	PNM Electric & Gas Services
Chesterfield County Department of Utilities	FirstEnergy Toledo Power	Portland General Electric
City of Boeme	FirstEnergy West Penn Power	PPL Electric Utilities
City of Clearwater	Florida Power & Light	PPL Kentucky
City of Denton	Ft Worth Water Department	PSE&G
City of Independence Utilities	Georgia Power Company	PSEG Long Island
City of Long Beach	Golden Valley Electric Association	Sacramento Municipal Utilities District
City of Phoenix	Grant County PUD	San Antonio Water System
City of Regina, Saskatchewan	Hawaiian Electric Company	Sarasota County Environmental Services
Clayton County Water Authority	JEA	SD1
Cleveland Water	Kansas Gas Service	SEMCO Energy, Inc.
College Station Utilities	Kentucky Utilities Company	Southern California Edison
Colorado Springs Utilities	Lakeland Electric	Southern California Gas
Consolidated Edison Company of New York, Inc.	Liberty Utilities - Empire	Southern Company Gas
Consumers Energy	Liberty Utilities - NH	Southwest Gas Corporation
CPS Energy	Louisville Gas & Electric	Spire Alabama
Dominion Energy West Virginia	Louisville Water Company	Spire Missouri
Dominion Gas	Macon Water Authority	Tampa Electric
Dominion Virginia Power	Madison Gas & Electric Company	Texas Gas Service
DTE Energy	National Grid - KEDLI	Truckee Meadows Water Authority
Duquesne Light	National Grid Massachusetts	Tualatin Valley Water District
East Central Energy	National Grid Upstate	UGI Utilities, Inc.
El Paso Electric Company	New Jersey Natural Gas	Washington Gas
Entergy		Xcel Energy

Credit & Collection Review

POLICY BENCHMARKS

Leak Adjustment Policy Benchmarks

Texas Municipal Utilities

City	Eligibility	Proof Required?	Application Requirements	Potential Adjustment Amount	Limitations	Pools & Irrigation leaks eligible?
Denton	Repaired within one month of detection, 60 days to submit proof, must be at least 50% higher than normal. Eligible if repair shows significant reduction in usage and plumbing permits were obtained and pass inspection.	Yes, repair documentation with permit and permit inspection.	Authorized account holder must submit Utility Assistance Form (online) with repair documentation.	Normal charges will be deducted from leak charges and 50% of the excess will be credited (up to 100Kg) Credits will be applied after one full leak-free month of billed service.	One adjustment per year; may cover up to 2 consecutive months of water charges. Sprinklers, pools, water filtration units do not qualify for water adjustment but may for sewer adjustment.	No
Garland	Repairs must be completed and usage back to normal before submitting application.	Proof of repair: receipts, photos, or plumber's bill.	Submit Leak Adjustment Request with receipts, proof of repair within 6 months.	Credit on water charges above normal usage	Cannot exceed one adjustment per 12 months	Not specifically excluded.
Fort Worth	Residential leaks eligible if usage returns to normal after repair	Repair receipts.	Submit application within 60 days of repair with receipts	50% of excess usage at a max of two consecutive billing periods	One adjustment per year. Adjustment only applies to water, not sewer	No
Dallas	Substantial leak causing high usage eligible once per year	Repair documentation	Complete form with repair details, account number, and related documentation Must pay typical bill during review period to avoid service disruption	Recalculates excess water at the lowest rate, max of 3 months	Limited to one adjustment per 12 months for a maximum of 3 months.	No
Austin	Eligible if leak repair shows return to average use Apply within 90 days of repair with proof of completed work	Proof of work completed. For high volume adjustment, company investigates high usage and inspects meter and premise	Usage must be greater than or equal to 3X the normal usage Restricted to water consumption, not wastewater	Credit calculated on excess usage; 50% of charges above normal will be credited; remainder will be adjusted to a discounted rate. Water leaks were not within customer's control and due diligence exercised in repairing leaks	Leak adjustment once per year for up to 2 consecutive billing periods. Sewer may be adjusted if lower volume charged. High volume adjustment limited to water usage up to 2 consecutive billing periods (once in 2 years and at least 4 months billing history).	No, but irrigation system leaks may be eligible for sewer adjustment.

Leak Adjustment Policy Benchmarks

Texas Municipal Utilities

City	Eligibility	Proof Required?	Application Requirements	Potential Adjustment Amount	Limitations	Pools & Irrigation leaks eligible?
San Antonio	Allowed for substantial water loss due to leaks, with completed repair. Receipts must be submitted within 90 days of repairs	Provide documentation of repair and water usage details		Percentage of excess usage may be credited. Courtesy adjustment up to 25% of the excess usage.	Limited to 1 annually Adjustments are discretionary; sewer charges are not adjusted	Yes, both may be eligible.
Houston	Significant leak causing high bill eligible for residential accounts File within 6 months a sworn written application of the repair.	Requires proof of complete repair, must resume normal usage after repair	Application with repair documentation and receipts required Leak balance must be greater than \$1000.00 or \$100 for elderly customers.	100% repaired 30 days 75% repaired 60 days 50% repaired after 60 days; 100% credit on excess wastewater charges. Account may be reduced by up to \$10,000 of an Exceptional Circumstance Adjustment (once)	Up to 3 consecutive months. Multiple leak adjustments per year. Exceptional circumstances (2X average) 1 in 2 years. Large bill (200% or greater than average) 1 per year - - adjusted to 125% of average.	No, but irrigation system leaks may be eligible for sewer adjustment.
College Station	Submit completed application with documentation within 60 days.	Proof of repair.	Must have an active account and proof of leak repair. Written request	50% of the amount over average use for the last 12 months Adjustments are based on prior consumption.	Adjustments for one month's bill, not exceeding 50% of usage. Only one adjustment per year.	No, but irrigation system leaks may be eligible for sewer adjustment.
Arlington	Proof of repairs and a request must be made within 90 days of the leak detection.	Proof of repair is required, receipts or plumber's statement. Residential.	Only residential accounts are eligible.	Water usage must exceed 2X normal usage of same period over prior 3 years or twice the city average for customers without 3 years service (200%)	One adjustment over two years. Within past 90 days but limited to 2 consecutive months.	No, but irrigation system leaks may be eligible for sewer adjustment.

Leak Adjustment Policy Benchmarks

Texas Municipal Utilities

City	Eligibility	Proof Required?	Application Requirements	Potential Adjustment Amount	Limitations	Pools & Irrigation leaks eligible?
Georgetown	Written request required with repair details.	Yes, repair receipts and verification by field personnel.	Residential and non-residential accounts can be eligible. Non-residential customers must have more than 12 months continuous active water and/or sewer service and high usage must exceed 3X average monthly bill.	Residential customers (>1 year service) up to 50% of excess over system average usage (not to exceed \$250). Excess based on system average of 5,000 gallons per month usage for new customers. Non-residential will be adjusted based on the excess	One adjustment per 12 months and 2 in five years. Sewer can be adjusted if watering new landscaping or filling a swimming pool (only one month usage adjusted).	No, but irrigation system leaks may be eligible for sewer adjustment.
Lubbock	Application must be filed within 30 of leak's detection.	Must provide repair receipts and demonstrate the leak was fixed.	Active accounts in good standing only.	50% of the overage for one billing period Adjustments are capped based on historical averages	One adjustment a year.	Irrigation systems are not eligible however pools are not specifically excluded.
San Marcos	Request must be submitted within 30 days of the leak's detection..	Must provide proof of repair documentation, receipts or statement from a plumber, photos	Active accounts in good standing only.	Credit up to 50% of the excess usage 10-14 days to process application.	Adjustments are limited to one annually, up to 2 consecutive months adjusted. Not more than 2 months retroactively.	No.
Weatherford	Submit completed leaks within 60 days.	Must provide proof of leak repair and past consumption records.	Only available for leaks not caused by customer negligence.	Credit for one billing cycle, up to 50% of excess usage	One adjustment allowed every 12 months, maximum two months billed.	No.

Leak Adjustment Policy Benchmarks

Texas Municipal Utilities

City	Eligibility	Proof Required?	Application Requirements	Potential Adjustment Amount	Limitations	Pools & Irrigation leaks eligible?
El Paso	Written request required along with explanation of repair; must occur within 60 days.	Show reduced consumption in subsequent month.	Account holder. All customers are eligible and automatically opted-into ServLine Leak Protection Program. More than 10 ccfs excess usage	50 percent of the difference above standard use of same billing cycle a year ago If customer participates and pays for Leak Protection Program covers up to \$1000 in leaks (ServeLine) but same basic limitations as normal leak adjustment.	Limited to one adjustment per 24 months. Up to 2 consecutive months of usage. Does not apply to sewer or other services.	No
Boerne	Submit application	Documentation of repairs needed and completed form.	During Dec-Mar indicate if excess usage impacted sewer usage for possible sewer adjustment.	Up to 50% adjustment of excess as compared to average usage (over Jan-Mar) If usage is 50% higher than normal usage.	One adjustment per year.	Not specifically excluded.
Carrollton	Submit application within 90 days of bill with leak.	Proof of repair within 3 months of leak's detection. Leak-free billing period confirmed.	Customer of Record. Not pools or other manageable acts. No adjustment if not repaired within 6 billing periods.	60% adjustment for water leak outside sewer, difference between leak and average usage over same month for 2 prior years. 50% of the difference if inside sewer.	One per 12 months, two within 60 months. Up to two months of consecutive usage adjusted. Not for irrigation systems or pools.	No.

Leak Adjustment Policy Benchmarks

Texas Municipal Utilities

City	Eligibility	Proof Required?	Application Requirements	Potential Adjustment Amount	Limitations	Pools & Irrigation leaks eligible?
Greenville	Application with proof of repair. No timeframe indicated.	Proof of repair, plumber receipt or statement or notarized statement detailing self-repair.	Residential accounts only, 3 months of billing history at the location. Concealed leaks.	If approved, water usage will be charge at production cost of \$1.45 per 1,000 gallons.	One adjustment in 2 years.	Not specifically excluded.
McKinney	Submit adjustment form within 60 days of repair date.	Proof of repair.	Three times normal bill during same period of prior year.		One adjustment within 12 months	Not specifically excluded.
Plano	Request must be submitted within 90 days of repair. Submit application within 6 months of repair.	Proof of repair required. Verified by AMI meter reading data	Account in good standing. Leak must exceed 30,000 gallons over average usage on a single statement.		Limited to three billing statements, excess determined based on average consumption. One adjustment every 2 years.	Pools are not eligible. Irrigation systems are not specifically excluded.
Lewisville	Repair within 30 days of detection, submit application withing 60 days of bill.	Proof of repair.	Customer of record. Hidden leaks only. Submit written request with proof of repair. Substantial increase in water or one that impacts the three-month winter average period.	In excess of 100% of average water usage for same month over 3 prior years. Bill average of two monthly water usage levels billed immediately preceding the excess usage.	One in 12 months, up to two consecutive months. Sewer adjustment for one month usage, during November to February and no adjustment for water or sewer within prior 6 months.	Not specifically excluded.

Leak Adjustment Policy Review

Current Policy/Process

- Low customer eligibility.
- Language excludes renters.
- Policy not aligned with benchmarks from other cities in Texas:
 - Process is hard-coded in Ordinance
 - Permit requirement
 - Short filing time
 - Restrictive policy in comparison

Recommended Changes

- Proposed redlines to ordinance are appropriate and will provide needed flexibility to enhance and change Leak Adjustment policy and process going forward without requiring changes to ordinance.
- Eligibility should continue be determined systematically and consistently.
- Discretion to handle individual situational exceptions without City Council approval.
- Self-service application process should be intuitive and offer payment plan options to eligible customers.
- Once Water AMI is available, it will shorten time to identify leaks and alert customers sooner to reduce amounts adjusted.
- Water AMI should be used to verify leak resolution.

Commercial Deposit Policy Benchmarks

Texas Municipal Utilities

City	Amount	Waivers	Refunded When?
Arlington	2.5X or minimum of \$300	No waivers	Account Closure
Austin	1/6 average bill	Letter of Reference or Good Credit History	24 months good status
Boerne	1/6 th average annual usage charges		36 months if no more than 2 past due payments
Bryan	Minimum \$175 electric, \$85 water, \$50 solid waste (or 1/8 annual billing)		24 months good standing
Carrollton	\$100 or 1/6th average annual usage		Account closure for commercial and apartments.
College Station	2X monthly bill	Letter of credit	24 months no late payments, returned checks or disconnects non-pay.
Dallas	1/6 th annual billings		12 months good standing
Denton	2 X Average Bill	Irrevocable letter of credit	Account Closure
El Paso	\$150 Commercial, \$500 Industrial; 2x average for poor payment history		Account closure
Fort Worth	Varies	No waivers	Account Closure
Garland	Varies	Established acceptable credit.	12 months acceptable pay history
Georgetown	2X or minimum of \$300	Letter of Credit or AutoPay for 12 months	12 months good status
Greenville	\$250 min for electric, \$40 garbage, \$150 water and up to 2 or 3x highest bill depending on credit score.	Experian good credit score	24 months with no cuts for non-payment and no more than 2 late payments
Houston	Varies	Surety bonds for \$5000 or more deposits.	Account closure
Lewisville	\$150 to 1,850 based on meter size	None.	Account closure
Lubbock	\$550	Letter of Credit	12 months good status
McKinney	2 months or minimum of \$100		Account closure.
New Braunfels	2x average bill	Irrevocable letter of credit or small business customers with 24 months good credit history	36 months good standing for small commercials, life of account for large commercial.
Plano	1 month or \$100		36 months in good standing
Rowlett	\$150	Letter of credit	Account closure
San Antonio	\$100 to \$800 depending on meter size.		12 months of good payment history.
San Marcos	Electric is 1/6 th (\$50 min), Water is \$50, Sewer is \$50, and Garbage is \$35	Letter of credit	12 months good status

Commercial Deposit Policy Review

Current Policy/Process

- Denton's 2x average bill deposit requirement is consistent with peers
- Application of deposit interest is consistent with peers.
- Current Ordinance requires manual screening on all deposit refunds.
- Denton's policy to retain deposits for the life of the account is not aligned with benchmarks from other cities in Texas.
 - Most return deposits with 1 to 2 years, with good payment history.

Recommended Changes

- Return commercial deposits, with deposit interest, after 2 years total service and at least 12 consecutive months of excellent payment history:
 - Account is current
 - "A" credit rating
 - No disconnections for non-payment
 - No meter tampering

Payment Arrangement Policy Benchmarks

Texas Municipal Utilities

City	Eligibility	Type Arrangement	Down Payment	Duration
Denton	If payment arrangement are broken twice in 12 months, must wait another 12 months before another payment arrangement.	Payment extension and payment arrangement	50% down	3 months
Garland		Payment extension		
Fort Worth	No broken arrangements Elderly and disabled receive standard 10-day extension	Payment arrangement and extensions		10-day
Dallas		Payment plan and online platform launched in August 2024		Up to 6 months
Austin	Max of 8 months terms with down payment for "subject to disconnection" status customers.	Deferred payment arrangement	Up to 50% down (due in 15 days)	Up to 24 months
San Antonio	Customers can apply online or by phone. No prior broken promises			3, 6, 9 months
Houston		Deferred payment arrangement		
College Station		Payment arrangement		
Arlington		Payment extensions and plans		
Georgetown	\$15 administrative fee	Repayment plan for unique circumstances (substantial water leak or electrical equipment malfunction)		Up to 6 months
Lubbock		"Pay in 6 Plan"		Up to 6 installments
San Marcos	Request no later than 1 day prior to the date an account is subject to disconnection	Extended payment arrangements		

Payment Arrangement Policy Benchmarks

Texas Municipal Utilities

City	Eligibility	Type Arrangement	Down Payment	Duration
Greenville	Extensions of not more than fourteen (14) calendar days from the last day to pay will only be allowed for two (2) billings during a rolling twelve (12) month period. No extensions will be allowed on first bills nor extensions on top of extensions, nor bills containing additional deposits.	Payment extension		14 days
El Paso		Up to 6 installments		6 months
Boerne	Payment extensions and contract payment plans Deferred Deposit Installment Plan	One payment extension per year	25% of the balance at payment extension contract signing. Additional deposit payment plan	Up to 5 months on the deferred deposit installment plan for additional deposits.
Carrollton	14-day extension or 45-day payment extension	Payment extension		14 days or 45 day extensions.
Lewisville	Request made in writing	Service extension agreement	15% of balance	Up to 6 months
McKinney	Not on first bill Request prior to extension date, no disconnects or returned payments in past 6 months, only allow 2 non-consecutive requests per year	19-day automatic payment extension Payment plan	50% of the balance for the payment plan	19 days for extension Up to 12 installments
Plano		30-day extension no approval needed		30 days
Rowlett	Available once every 3 months, extensions cannot be consecutive, signed agreement, 12 months without broken agreement.	10-day extension		10 days

Payment Arrangement Policy Review

Current Policy/Process

- 5-day extensions are available to customers, but employees must manually calculate the due date of the extension (5 days past interruption date) which is time consuming and prone to mistakes.
- Multi-month arrangements (up to 3 months) with 50% of outstanding balance are available, one every six months.
- Only one extension or multi-month arrangement is allowed in six months.
- Ordinance states that payment arrangement guidelines will be established by the City Council and on file in the City Secretary's office.

Recommended Changes

- Match due date of payment extension to next bill due date.
- Payment arrangement can be made for up to 3 months with 50% down.
- Do not limit the number of allowed payment arrangements if arrangements are not broken.
- However, if broken twice in 12 months, the customer must wait 12 months before entering another payment arrangement.
- Ordinance should be updated to require payment extension and arrangement guidelines to be approved by the City Manager and on file with the City Secretary. City Council should be notified of any changes prior to implementation.
- Discretion to handle individual situational exceptions without City Council approval.

Credit & Collection Review

FINDINGS & RECOMMENDATIONS

Continued Best Practice Success

Denton Continues to Improve Collections Effectiveness:

- Compares favorably to other municipalities in Texas and nationwide.
- Bad debt has declined significantly.
- Customers have more options to self-serve.
- AML meters provide billing data sooner, remote connect/disconnect capabilities.
- Increased participation in Pay As You Go program.
- More funding available for P L U S assistance program.
- Liens now used for delinquent drainage accounts.

Growth & Opportunity

- Implement recommended changes to make policies more responsive to customer needs and less onerous to change for:
 - Leak Adjustments
 - Commercial Deposits
 - Payment Arrangements
- Investigate the option to apply outside collection fees on customers' final accounts (with proper notification) prior to sending accounts to outside collections.
- Continue to expand IVR and Web self-service options.
- Continue investigating options to help payment-challenged customers reduce bills.
- Expand customer outreach for crisis assistance.





City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB25-153, **Version:** 1

AGENDA CAPTION

Deliberations Regarding Certain Public Power Utilities: Competitive Matters - Under Texas Government Code Section 551.086.

Receive information from staff regarding the energy cost adjustment schedule of rates for large load commercial customers that include public power utility competitive data; discuss, deliberate, and provide direction to staff regarding same.