

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH BURNS & MCDONNELL ENGINEERING COMPANY, INC., TO PROVIDE OWNER ENGINEER SERVICES ON SEVERAL ONGOING INITIATIVES FOR THE DENTON MUNICIPAL ELECTRIC DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7804-009 – PROFESSIONAL SERVICES AGREEMENT FOR PROFESSIONAL SERVICES AWARDED TO BURNS & MCDONNELL ENGINEERING COMPANY, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$763,641.00).

WHEREAS, on December 14, 2021, the City Council approved a pre-qualified professional services list of professional engineering services for Denton Municipal Electric (Ordinance 21-2687), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

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

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; 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 Burns & McDonnell Engineering Company, Inc., to provide professional engineering 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:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

GERARD HUDSPETH, MAYOR

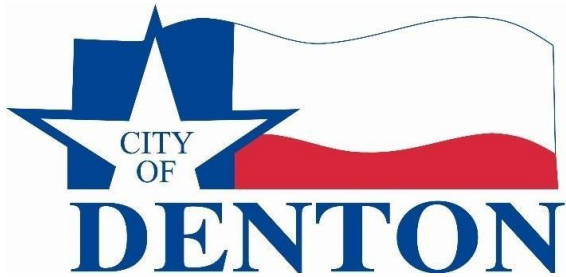
ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o,
ou=City of Denton,
email=marcella.lunn@cityofd
enton.com, c=US
Date: 2023.05.10 10:49:04
-05'00'



Docusign City Council Transmittal Coversheet

PSA	7804-009
File Name	Owner's Engineer Maximo Implementation
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS
7804-009 OWNERS ENGINEER FOR MAXIMO IMPLEMENTATION SERVICES
STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL
SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and **Burns & McDonnell Engineering Company, Inc.**, with its corporate office at 100 Energy Way, Suite 1700, Fort Worth TX 76102 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: 7804-009 Owner's Engineer Maximo Implementation Solution Services (the "PROJECT").

SECTION 1
Scope of Services

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.
- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

SECTION 2
Compensation and Term of Agreement

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed **\$763,641.00** in the manner and in accordance with the fee schedule as set forth in Attachment A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

SECTION 3
Terms of Payment

Payments to the ENGINEER will be made as follows:

A. Invoice and Payment

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment A to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

SECTION 4 Obligations of the Engineer

A. General

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

B. Standard of Care

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

C. Subsurface Investigations

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

D. Preparation of Engineering Drawings

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

E. Engineer's Personnel at Construction Site

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.
- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress

or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.

- (3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

F. Opinions of Probable Cost, Financial Considerations, and Schedules

- (1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.
- (2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

G. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the

construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

H. Record Drawings

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

I. Right to Audit

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

J. INSURANCE

(1) ENGINEER'S INSURANCE

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
 - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. 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 insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
 - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
 - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ENGINEER shall maintain workers

compensation and employers liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.

- i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

(2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.

- f. Insurers for all policies must be authorized to do business in the State of Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.
- g. Any deductible or self insured retention in excess of \$25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

K. Independent Consultant

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

L. Disclosure

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

M. Asbestos or Hazardous Substances

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

N. Permitting Authorities - Design Changes

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

O. Schedule

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment A to this AGREEMENT.

P. Equal Opportunity

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents

shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.

- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

SECTION 5

Obligations of the City

A. City-Furnished Data

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

B. Access to Facilities and Property

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

C. Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

D. Timely Review

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment A.

E. Prompt Notice

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's

services or of any defect in the work of the ENGINEER or construction contractors.

F. Asbestos or Hazardous Substances Release.

- (1) CITY acknowledges ENGINEER will perform part of the work at CITY's facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.
- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

G. Contractor Indemnification and Claims

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

H. Contractor Claims and Third-Party Beneficiaries

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."
- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.
- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

I. CITY's Insurance

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

J. Litigation Assistance

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

K. Changes

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

B. Reuse of Project Documents

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

C. Force Majeure

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

D. Termination

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
- b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.

(2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:

- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
- b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
- c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.

(3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

E. Suspension, Delay, or Interruption to Work

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

F. Indemnification

IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.

G. Assignment

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

H. Jurisdiction

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

I. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

J. Observe and Comply

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

K. Immigration Nationality Act

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

L. Prohibition On Contracts With Companies Boycotting Israel

Engineer 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, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (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.

M. 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, Engineer certifies that Engineer's signature provides written verification to the City that Engineer, 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.

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Engineer 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, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (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.

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

Engineer 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, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (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.

P. 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 Engineer 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.

Q. 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 Engineer submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Engineer 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/filinginfo/1295/>
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 7804-009** – 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.

O. Prohibition Against Personal Interest In Contracts

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 18-757 and in the City Charter chapter 2 article XI(Ethics). 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 Engineer shall complete and submit the City's Conflict of Interest Questionnaire.

P. Agreement Documents

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of

this AGREEMENT:

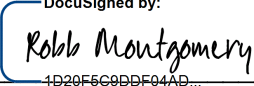
Attachment A – Statement of Work

These documents make up the AGREEMENT 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 AGREEMENT documents, the inconsistency or conflict shall be resolved by giving precedence first to the written AGREEMENT then to the AGREEMENT documents in the order in which they are listed above.

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.

Duly executed by each party's designated representative to be effective on _____.

**BURNS & MCDONNELL, ENGINEERING
COMPANY, INC.**

BY: 
 1D20F5C8DDF04AD
 AUTHORIZED SIGNATURE

Printed Name: Robb Montgomery

Title: Director

913-484-3535
PHONE NUMBER

robb.montgomery@1898andco.com
EMAIL ADDRESS

2023- Robb.Montgomery@1898andco.com
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

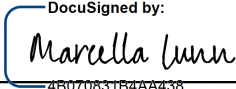
CITY OF DENTON, TEXAS

BY: _____

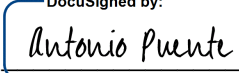
ATTEST:
JESUS SALAZAR, INTERIM CITY
SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

 _____
E3760944C2BF4B5
SIGNATURE Antonio Puente
PRINTED NAME

_____ DME General Manager
TITLE

_____ Electric
DEPARTMENT

Attachment A



Statement of Work

Enterprise Work and Asset Management Consulting Support Services

Submitted To: Denton Municipal Electric

Date: March 30th, 2023

Submitted by

Robb Montgomery

Director - 1898 & Co.

Phone Number: 1 (913) 484-3535

E-Mail: Robb.montgomery@1898andco.com

Submitted to

Denton Municipal Electric

Procurement Contact: Christa Christian

Phone Number

E-mail: christa.christian@cityofdenton.com

Table Of Contents

1 Project Name 3

2 Definitions..... 3

3 Project Summary 3

4 Consulting Services 4

 4.1 Owners Engineer EAM Senior Consultant..... 4

 4.2 Transformation Change Journey and Business Readiness..... 5

5 Project Governance..... 8

 5.1 Organizational Chart..... 9

6 Assumptions 9

 6.1 Prerequisites and DME Obligations 10

7 Schedule..... 11

8 Change Management Process..... 12

9 Escalation Process 12

10 Pricing 14

Denton Municipal Electric / Maximo Implementation Support Service SOW

This Statement of Work, effective June 1st, 2023, (referred to as "SOW") is subject to and entered pursuant to the terms and conditions under the current approved "Standard Agreement for Engineering Related Professional Services" between the City of Denton and Burns & McDonnell Engineering Company, Inc. executed on December 14th, 2021. Such terms and conditions are incorporated and made a part of this agreement. In the event of a conflict between the terms of the Agreement and this SOW, the terms of this SOW shall prevail. All capitalized terms in this SOW shall have the meaning assigned herein or, if not defined in this SOW, the meaning assigned in the Agreement.

1 Project Name

Denton Municipal Electric (DME) Maximo Implementation Support Services (the "Project")

2 Definitions

EWAM – Enterprise Work and Asset Management

3 Project Summary

Denton Municipal Electric (DME) is embarking on a significant effort to implement Maximo. This implementation effort will position DME to take advantage of new capabilities and will allow the organization to leverage the power of a leading enterprise work and asset management system for many years.

The project to implement Maximo is multi-faceted, it includes new system implementation, third-party software integration, and user training and change management.

DME has requested 1898 & Co. to provide a Senior EAM Consultant to work seamlessly with, and under the direction of DME to relieve DME of the day-to-day management responsibilities for the Maximo Implementation project (the Project). The 1898 & Co. roles will support the design, analysis, integration, documentation, commissioning and other project implementation and technical activities as directed by DME. 1898 & Co. will utilize the DME Integrated Project Management Methodology where available and conform to DME's architectural and testing standards, and policies.

DME is seeking to make the most of their existing assets and resources, while embracing a future that demands change—both in services offered and the new, more sustainable ways energy will be generated and distributed.

Maximo is tested and proven foundation for implementing a modern EWAM system, to leverage efficiencies throughout the lifecycle of work.

This journey will additionally require significant process change and acceptance across your business. Denton will need to prepare their people and improve their resource competencies and skills.

1898 & Co. recommends partnering with DME to prepare, manage and sustain this transformational journey and ensure organization readiness in the following additional area.

Transformation Change Journey and Business readiness - 1898 & Co. has successfully architected, co-created, and delivered many change journeys for Utilities across North America. Our primary outcome of the change journey is to build “job ready” employees and “leader ready” leaders to drive business outcomes. We accomplish this through data-driven insights and human-centered methods to help employees understand the change, how they will be supported through training and upskilling, and the opportunities that come from new ways of working.

4 Consulting Services

To support the efforts, 1898 & Co. will perform the Services and produce the Deliverables as described in this SOW.

4.1 Owners Engineer EAM Senior Consultant

1898 & Co. will provide the Services with a resource knowledgeable of the following key areas:

- Maximo functional and IT systems knowledge in the Electric Utility domain.
- Project leadership experience in similar efforts including but not limited to managing a full end to end delivery of a similar solution, vendor management, budget tracking, schedule management & overall project coordination.

Role will be responsible for the following:

- Leverage 1898 & Co Delivery Methods standards for Program, Project, and Service Management.
- Support coordinating delivery of work across all phases of the project and vendors to support timeliness and quality are met, as well as adherence to scope and cost.
- Consult with DME Project Manager in managing internal and external resources, 3rd party consultants contracted to deliver solutions.
- Assist with coordinating project delivery lifecycle activities supporting DME program/project managers and 3rd parties focusing on scope, schedule, and budget.
- Set up weekly meetings, identifying and mitigating risks and issues, and leading the team to accomplish all deliverables on time, on scope and on budget.
- Provide a weekly status report of accomplishments and upcoming tasks.
- Provide technical guidance to appropriate team members.
- Provide inputs to DME’s Project Manager in developing the integrated Project schedule (activities related to technical, solution implementation etc.)
- Coordinate with other DME’s internal leads to ensure that cross-project and solution dependencies and impacts are identified and managed appropriately.
- Perform and support DME’s internal project related tasks as required by the Project.

Deliverables

Deliverable	Description
Project Schedule	Project schedule that includes all program activities, vendors, and workstreams in Microsoft Project and Excel
Project Status	Prepare and report project status on an agreed upon interval

4.2 Transformation Change Journey and Business Readiness

The pace of change across the utility industry is rapidly increasing due to the promise of new technologies, evolving business processes, and new roles & capabilities. DME is amid its own change journey, exemplified by the investment in the IBM Maximo platform. We believe this investment is a wise decision—for now, and for the future. Maximo a tested and proven foundation for implementing a modern EWAM framework, which will serve as the foundation for continuously driving efficiencies throughout the lifecycle of work at DME.

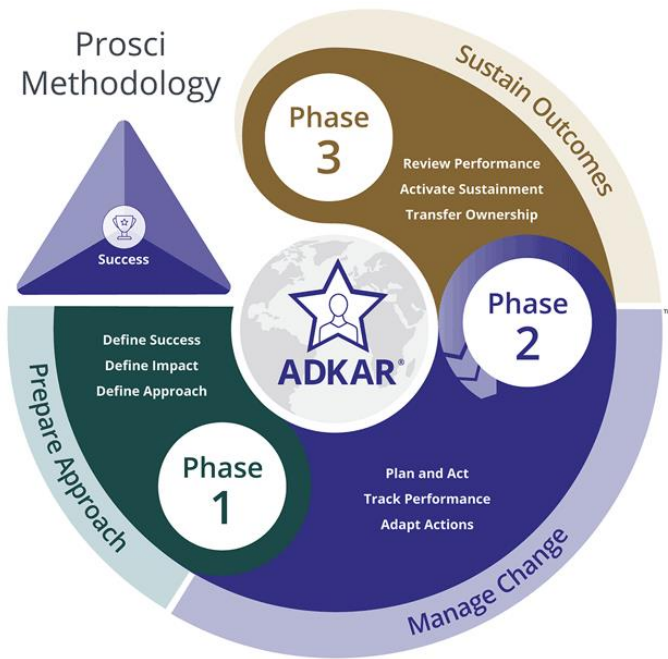
In this way, an EWAM program represents a transformational effort that will enable DME's future growth and help meet operational objectives. While application and role-based training of the Maximo application is certainly needed and under the scope of the system integrator, this journey does not stop there and will additionally require significant process change and acceptance across your business. You will need to prepare your people and improve your own resource competencies and skills. In short, guiding DME through the EWAM transition in a methodical and purposeful way – considering fully the people and process impacts of the new technology – is therefore critical for realizing the program's objectives.

Evidence confirms that complex technology projects that incorporate change management are far more likely to achieve desired outcomes and avoid delay, rework, and cost overruns. Managing change is a core aspect of any significant technology initiative. Stated simply, change management is the application of a structured process and set of tools for managing the people side of change to achieve a desired outcome. More specifically, change management is the application of:

- A process used by project teams to manage the people side of technology, process, and organizational changes to achieve project and program objectives.
- A competency applied by managers and business leaders to help employees through the transition from the current state to the future state. A strategic capability to increase organizational change capacity and to accelerate the adoption of changes related to a project or program.

1898 & Co. has a dedicated organizational change management team committed to working alongside organizations like DME to design and execute change management plans to optimize speed of adoption, deliver “buy-in” around new technologies and processes, and increase proficiency around new ways of working.

Denton Municipal Electric / Maximo Implementation Support Service SOW



Our approach to change management is founded on Prosci methodologies, tools, and techniques. The Prosci method (supported by world class research and development) is used by utilities, energy companies, and companies across all other major sectors. We have adapted Prosci over the course of numerous projects and incorporated aspects of other well-known change management methodologies to supplement and tailor our approach for utility clients.

To this end, our change management effort will focus on completing Prosci's **Prepare Approach**. We will work with DME to understand what is changing and the potential impact of that change and design the preliminary plans to successfully address the change. The stages of our work will include Phase 1 focus areas identified above that include:

1. Define Success – We work closely with the top leadership of DME to co-create a compelling North Star vision and change management plan for the Maximo program. We will then work with key senior leaders through the organization to cascade “what” and “why” for the program to win the “hearts and minds” of the employees and enable adoption and alignment of the technology and processes across business groups.
2. Define Impact – Describe how the change emerging from the EWAM program will impact specific individuals in terms of changes to “ways of working” using activities that include identifying impacted groups and defining key areas of adoption and usage.
3. Define Approach – Define what steps DME will need to take to achieve project success by assessing risk to the program, identifying potential resistance, and confirming or establishing required change management roles.
4. Define the Plan – Establish how to best prepare, equip, and support people who will be impacted by the change through the design of common change management plans (including communication, change agent, and sponsor plans).

The following is a detailed description of our recommended change management activities.

- Change Impact & Readiness Assessment: Conducting assessments to 1) confirm the nature of the change, including impact to specific workflows, jobs/roles, and other elements of the “current state” due to the technology transition, and 2) assess the organization’s ability to take on the change introduced by the EWAM, including the presence of change fatigue, understanding other large-scale projects that might compete with this effort, among other topics.
- Stakeholder Assessment: Work with DME project leaders to create a comprehensive stakeholder register, reflecting the full list of decision makers (internal and external), “influencers”, and others with whom the team should communicate and whose views we should gather during the program. Our stakeholder analysis will confirm key information for each stakeholder (including role, organization) with a focus on the “stake” or “perspective” each stakeholder has in relation to the program.

Denton Municipal Electric / Maximo Implementation Support Service SOW

- **Change Agent Plan:** Leverage the Stakeholder Assessment to identify and prepare Change Agents. Ensuring that communication and other change management strategies are supported by a strong cohort of Change Agents is important in this type of program. Change Agents (respected leaders across all levels of the organization) will provide communication and feedback support for this effort and serve as the “eyes and ears” for implementation efforts. Once identified, we will provide guidance to Change Agents, who will help support the EWAM transformation and other efforts (with a particular emphasis on communication).
- **Sponsor Engagement Plan:** Along with communication, sponsor engagement is routinely identified as central to successful change efforts. We will define communication techniques – featuring DME leadership – to help clarify and build momentum around the EWAM program and spell out the strategic path for the organization. Sponsor Plans will focus on the entire sponsor network across the organization and align to initiative milestones or other important dates.
- **Communication Plan:** Communication is central to effective change management and this scope of work. 1898 & Co. will define the methods, frequency, and types of messages to be delivered to key stakeholders, aligned to initiative program milestones. We will design the overall communication plan and also draft initial communications, based on a prioritization agreed with DME leadership.
- **Communication & Engagement Materials:** We will work closely with DME project leadership to agree on the key themes associated with outreach messages, and objectives of each outreach and communication initiative. In this role, we will support the creation of specific communications, working alongside DME project team members to confirm preferred forms of communication used routinely at DME (such as digital newsletters, “brownbag” meetings, and other formats) around which we will build our communication plans.
- **Change Enablement Plan:** We believe it is critical to build a change management plan that: 1) documents the vision, strategy, and objectives for the EWAM program, 2) reflects major change management activities and plans, and 3) reflects key milestones / integrates closely with project / program technical activities. We will create an overarching change management plan, which will be closely monitored throughout the early stages of the program.

Deliverables

Activity	Activity Description	Deliverable
Change Impact & Readiness Assessment	Document that identifies the key impacts (people, process, technology, and data) brought on by the Maximo program. Additional focus on DME’s readiness to take-on the program.	• Maximo Change Impact & Readiness Assessment
Stakeholder Analysis	Inventory and analysis of stakeholders impacted by the enterprise work and asset management system integrator program on the in-scope stakeholders.	• Maximo Stakeholder Assessment Findings
Change Agent Plan	Identification of change agents across the organization and supporting training and awareness materials	• Change Agent Plan and Awareness Materials
Sponsor Engagement Plan	Sponsor network and supporting materials to empower sponsor engagement and communication	• Sponsor Plan and Awareness Materials

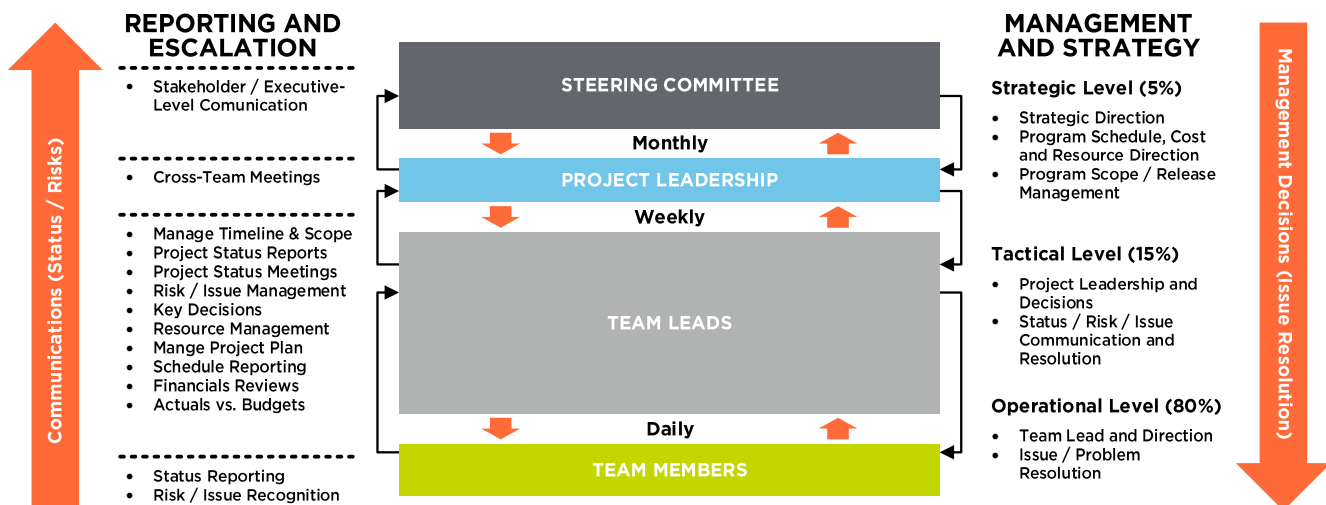
Denton Municipal Electric / Maximo Implementation Support Service SOW

Activity	Activity Description	Deliverable
Communications Plan	Plan that defines the tactical communications that will be used to communicate the changes and develop stakeholder commitment required by Maximo	Communication Plan
Communication & Engagement Materials	Periodic communications to key DME stakeholders of the enterprise work and asset management system integrator program to inform, update, and convey important messages about the change or any related changes that come with it.	- Leadership Forum Materials - Maximo Communication Materials
Change Enablement Plan	Microsoft PowerPoint document that defines the tactical plan across all change management work streams (engagement, communications, learning and measurement) needed to prepare stakeholders for their change journey.	- Enterprise-wise Change Plan - Stakeholder Register and Plan - Communication Plan - Sponsor Plan - Change Agent Plan

5 Project Governance

Governance processes will facilitate proper stakeholder evaluation of key decisions throughout the Project. Expected governance will be directed by working under the DME PMO governance structure and consist of three levels: Strategic Level, Tactical Level and Operational Level. Each Level will meet at an agreed cadence to discuss the program and validate success for both DME and 1898 & Co.

The framework for decision-making will drive timeliness and resolution of issues at the appropriate levels. The Steering Committee will be engaged to confirm decisions and resolve escalated issues. Also, the framework will keep stakeholders apprised of decisions and impacts to confirm and get feedback. Responsibilities are defined in the Figure below:

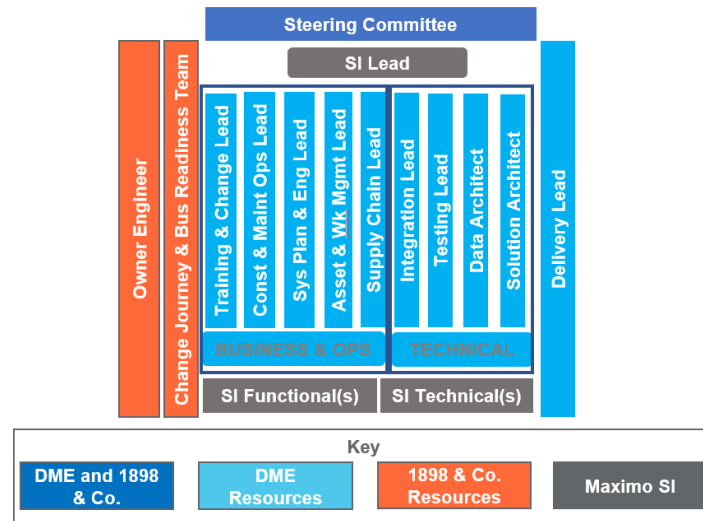


1898 & Co.'s Program Management Operational Model

Denton Municipal Electric / Maximo Implementation Support Service SOW

5.1 Organizational Chart

The program framework of how DME resources, 1898 & Co. and the System Integrator has been created as follows.



Project Team Model

6 Assumptions

The following assumptions have been used to develop this proposal. Should any of these assumptions prove incorrect or there is any material deviation from the project assumptions, a change order may be required. In said case, changes to the project schedule, fees and expenses, deliverables, and/or level of effort required to perform the services covered by this proposal and will be expressed to DME in writing prior to execution.

- Anything not identified as specifically in scope is excluded from the scope.
- Any additional scope outside of this proposal and corresponding SOW will require a mutually agreed-upon change order.
- The time and materials fees are based on the following core assumptions:
 - The overall project duration is approximately 104 weeks
 - Section 4.1 role will be a minimum of 16 hours per week for the duration of the project
 - Travel is anticipated to support of being onsite 1 time per month
 - 1898 & Co. will work with DME to confirm specific travel plans
 - DME will reimburse 1898 & Co. for actual travel expenses as incurred (Estimated at 9% of fees)
 - 1898 & Co. resources will follow travel and expense policies and procedures as defined in the current Master Services Agreement between Burns & McDonnell and DME
- Each party will maintain open communication with the other party at all levels and proactively resolve issues by escalating unresolved issues to successively higher levels of DME and our management
- DME will commit resources and management involvement as described in this proposal as required by the work effort to promptly support the delivery of the services and perform the agreed-upon acceptance procedures. 1898 & Co. shall not incur any penalties due to delays caused by DME in the event of any delays or failure to provide resources by DME that prevent us

Denton Municipal Electric / Maximo Implementation Support Service SOW

from our ability to meet DME's established end date, we 1898 & Co. shall not incur any penalties as a result of the delay

- DME is responsible for the contractual relationship with its third-party vendor(s) and facilitates their cooperation with our efforts. 1898 & Co. will not be responsible for the performance of other contractors or vendors engaged by DME
- DME shall provide appropriate access and log-in privileges to all applicable system environments including production and ticketing tool for the purposes of the Services. All required application support software, support licenses and tools will be provided by DME. Any product support will be provided by the relevant product vendor(s), and DME will purchase the necessary product support from these vendors. For the newly onboarded resources, all accesses will be provided within five (5) working days
- 1898 & Co. shall submit the Deliverables to a defined recipient for review and approval per DME and 1898 & Co.'s agreed to process
 - Deliverables submitted to DME for approval will be deemed accepted if, within five business days after delivery, DME has not provided to 1898 & Co. written notice explicitly identifying how the Deliverables fail to comply with their applicable specifications materially
 - If DME responds within five business days, the Parties will mutually agree on a timeline for the identified Deliverable(s) to be revised and submitted to DME (the "Revised Deliverable"). Upon 1898 & Co.'s submission of the Revised Deliverable, DME's five business day review period identified above will re-commence
- DME will be responsible for its operation, and use of deliverables provided by 1898 & Co. and ensuring that the deliverables meet DME's requirements through the signoff and deliverable acceptance procedures noted above
- **Additional services not included in this response are open for discussion for future services:**
 - Testing Support Services
 - Data Cleansing & Data Conversion
 - Integration Services
 - Analytics & Reporting
 - Application Rationalization
 - End User Application Training

6.1 Prerequisites and DME Obligations

In addition to any other responsibilities prerequisites, or assumptions described in this SOW, set forth below is a list of the obligations for which DME will be responsible, conditions on 1898 & Co. performance, and assumptions upon which 1898 & Co. relies in agreeing to perform the Services described in this SOW on the terms set out herein (collectively "DME's Obligations"). If any of DME's Obligations are not performed or prove to be incorrect, it may cause changes to the fees, and expenses, level of effort required, or otherwise impact on 1898 & Co.'s performance of the Services described in this SOW, and 1898 & Co. shall have no liability for delays in performing Services to the extent such delays were caused solely and directly by DME failure to correctly perform its obligations. Both parties will mutually agree and execute a change order if 1898 & Co. needs additional time to provide the Services, as the case may be. 1898 & Co. to document in the change order any dollars, schedule, or scope change.

- DME shall set overall direction for the Project, make choices on direction, options and priorities, and take ownership for the outcomes
- Any Confidential Information disclosed to third parties contracted by DME shall be subject to the confidentiality obligations of the Agreement

Denton Municipal Electric / Maximo Implementation Support Service SOW

- DME shall be responsible for the performance of other contractors or vendors engaged by DME in connection with the Project and ensure that they cooperate with 1898 & Co.
- DME will provide 1898 & Co. access to other third-party service provider resources and any other resources required to provide adequate knowledge transition to the 1898 & Co. team
- DME shall be responsible for obtaining, at no cost to 1898 & Co, consents for 1898 & Co.'s use of any third-party products, including, but not limited to software (including purchase of any licenses), necessary for 1898 & Co. to perform its obligations under this SOW
 - For example, DME requires 1898 & Co. to manage all work via VPN to their environment using a virtual machine. DME would be responsible for setup of the virtual machine, VPN and any software needed on the VPN that would be relevant to a DME standard image.
- DME will provide 1898 & Co. access to detailed design documentation such as architecture designs, schema design, source code, and coding standards, if any exist as needed to fulfill the Services
- DME will provide access to test accounts and test data from its information system and other sources to adequately test the solution
- DME will provide timely access to stakeholders and decision-makers and decisions will be made promptly and without delay
- Identified DME executive sponsors shall be responsible for resolving all escalated decisions regarding scope, duration, resources, and finances
- DME acknowledges and agrees that 1898 & Co. is not providing any tax, legal, accounting or regulatory services or advice while providing the Services
- DME will commit the necessary resources and management involvement to support the Project, and will give access to 1898 & Co. to tools and data required for the Project
- Any change in technology/ skill mix will need to be mutually agreed upon
- DME shall provide appropriate access and log-in privileges to all applicable System environments including production and ticketing tool for the purposes of the Services. All required application support software, support licenses and tools will be provided by the DME. Any product support will be provided by the relevant product vendor(s), and DME will purchase the necessary product support from these vendors. For the newly onboarded resources, all accesses will be provided within five (5) working days
- DME shall be responsible for its operation for determining whether to use or refrain from using any recommendation that may be made by 1898 & Co. DME will be solely responsible for determining whether any Services provided by 1898 & Co. (i) meet DME requirements; (ii) comply with all laws and regulations applicable to DME, and (iii) comply with DME's applicable internal guidelines and any other agreements it has with third parties

7 Schedule

Anticipated Start date of June 1st, 2023 until June 1st, 2025 for a total of 24 months.

Denton Municipal Electric / Maximo Implementation Support Service SOW



8 Change Management Process

1898 & Co. shall inform DME of any pending or possible changes in the use or status of all 1898 & Co. Project personnel.

Any changes to 1898 & Co. staff, including work assignments and participation level, shall be subject to DME approval.

DME shall have the right to have any 1898 & Co. staff replaced or removed from the Project for cause.

“Change Request” means a written instrument by which either Party may request a change or modification to the Work which shall detail the cost of the change and impact of the change on the total cost of the Work, the impact of the change on the SOW and the technical description or specification of the requested change.

Change Procedure. Either Party may request changes to the scope of the Work at any time. When a change could affect the cost, delivery schedule or other terms of the Contract, both DME and Consultant must approve the change before the change is implemented, by executing a Change Request. If either Party wishes to make a change, it shall notify the other Party of the requested change in writing, including sufficient details to enable the other Party to evaluate the change. Within a reasonable period, Consultant shall deliver a Change Request to DME. Upon acceptance and execution of the Change Request (now “Change Order” or “Amendment”) by DME, the Change Request shall be incorporated into the Work. Both Parties shall continue to proceed in accordance with the agreed upon terms and conditions then in effect while Change Requests are being reviewed and approved.

9 Escalation Process

Significant issues related to resource skills, availability, and quality, which cannot be resolved by the core team, will be governed by the framework defined in Section 5 and follow a specific escalation path framework defined in the process and figure below:

Representatives at each stage should make good faith efforts to resolve any issue, that is within their authority, within 10 business days.

As soon as it is determined that a representative does not have the authority to resolve an issue, or, there is an impasse at that stage, it should be immediately escalated within that representative’s organization.

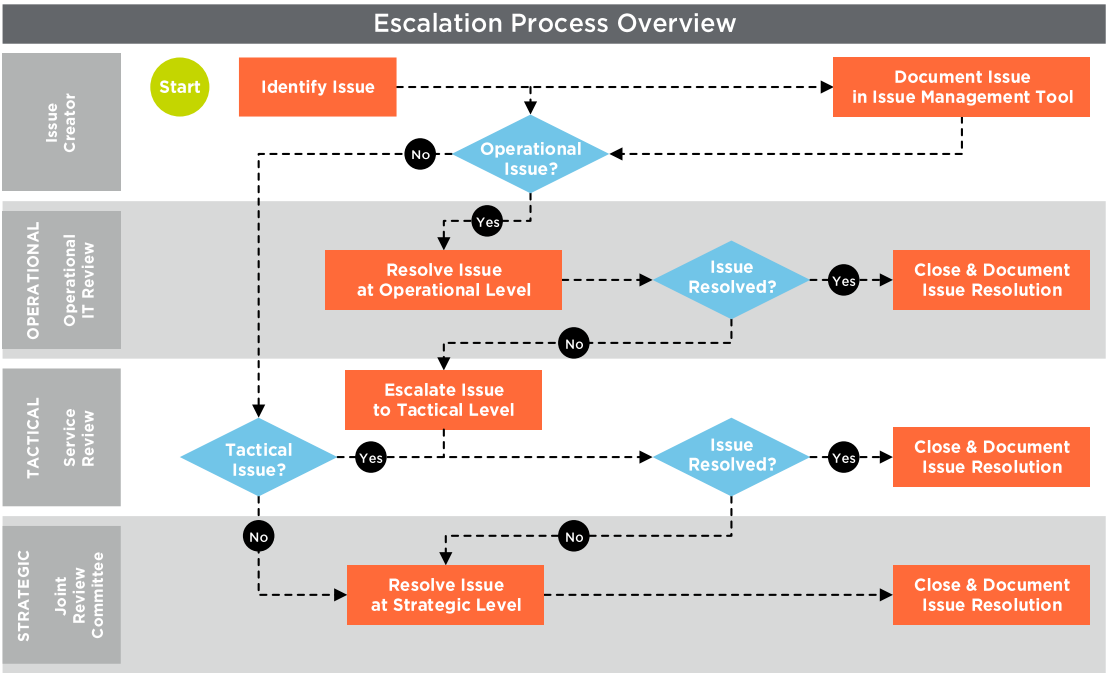
The escalation of the issue should include a summary of unresolved issues together with the recommendation of each of the DME and 1898 & Co. designed points of contact. When escalating an issue,

Denton Municipal Electric / Maximo Implementation Support Service SOW

both the 1898 & Co. and DME representatives listed in the respective stages below, should be included in the correspondence.

DME requires that unresolved issues be discussed at the next stage within 5 days of being escalated. To that end, within 24 hours of an issue being escalated, a conference call will be set up between the representatives at the next stage.

Ultimately, DME has full authority to arbitrate any Project related decision. However, DME will be responsible to pay for any additional fees and costs related to the decision.



1898 & Co.'s Issue Management Process

10 Pricing

1898 & Co. will perform its Services on a time and materials basis. Based on the terms set forth in the SOW, 1898 & Co's fees for its services will be \$700,588 plus expenses not to exceed 9% of 1898 & Co. fees will include, but not necessarily limited to, travel and lodging expenses, and all taxes, as applicable, and will be billed as incurred.

The rates below are effective for services through December 31st, 2023 and are subject to revision thereafter. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt. A late payment charge of 1.5% per month may be added to all amounts not paid within 30 days of the invoice date.

Details	Duration	Price Estimate
4.1: Owners Engineer	104 Weeks	\$611,520
4.2: Transformation Change Journey and Business Readiness	36 Weeks	\$89,068
Total Fees		\$700,588
Total Expenses (9% of Fees)		\$63,053
Total Cost		\$763,641

Estimated Fee Breakdown by Calendar Year:

Details	2023	2024	2025
4.1: Owners Engineer	\$205,800	\$305,760	\$99,960
4.2: Transformation Change Journey and Business Readiness	\$74,223	\$14,845	
Total Fees	\$208,023	\$320,605	\$99,960

Professional services hours will be charged using the following rate classifications:

Scope	Role	Hourly Rate	Estimated Hours	Estimated Project Fees
4.1: Owners Engineer	Senior EAM Consultant	\$294	2,080	\$611,520
4.2 Change Transformation	Change Lead	\$335	84	\$28,140
4.2 Change Transformation	Change Consultant	\$224	272	\$60,928

Denton Municipal Electric / Maximo Implementation Support Service SOW

DME Representative

Name / Title: Christa Christian, Procurement

Email: christa.christian@cityofdenton.com

Responsibility: DME representative

1898 & Co. Representative

Name / Title: Chris Underwood

Email: chris.underwood@1898andco.com

Phone: 1 (816) 822-4313

Responsibility: VP - 1898 & Co

IN WITNESS WHEREOF, the Parties have executed this SOW through their duly authorized representatives effective as of the Effective Date first set forth above.

Denton Municipal Electric

By: _____

Name: _____

Title: _____

Date: _____

Burns & McDonnell Engineering Inc
d/b/a 1898 & Co. Engineering Co, Inc.



By: _____

Name: Chris Underwood

Title: Vice President & General Manager

Date: March 20, 2023

Certificate Of Completion

Envelope Id: 220E24FE7AFF49DEA900C0C0945323BB

Status: Sent

Subject: Please DocuSign: City Council Contract 7804-009 Owner's Engineer Maximo Implementation

Source Envelope:

Document Pages: 36

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

Holder: Christa Christian

Location: DocuSign

4/11/2023 10:14:15 AM

Christa.Christian@cityofdenton.com

Signer Events**Signature****Timestamp**

Christa Christian

Completed

Sent: 4/11/2023 10:23:57 AM

christa.christian@cityofdenton.com

Viewed: 4/11/2023 10:24:25 AM

Senior Buyer

Signed: 4/11/2023 10:24:30 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Lori Hewell



Sent: 4/11/2023 10:24:33 AM

lori.hewell@cityofdenton.com

Viewed: 4/12/2023 8:29:20 AM

Purchasing Manager

Signed: 4/12/2023 8:32:33 AM

City of Denton

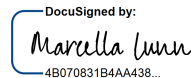
Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication
(None)

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn



Sent: 4/12/2023 8:32:36 AM

marcella.lunn@cityofdenton.com

Viewed: 4/17/2023 2:56:27 PM

Mack Reinwand City Attorney

Signed: 4/17/2023 3:05:54 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication
(None)

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Robb Montgomery



Sent: 4/17/2023 3:06:00 PM

robb.montgomery@1898andco.com

Viewed: 4/18/2023 8:09:17 AM

Director

Signed: 4/18/2023 8:12:12 AM

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 45.22.105.57

Electronic Record and Signature Disclosure:

Accepted: 9/7/2022 9:49:52 AM

ID: 2f536dcb-77b8-4e6f-b64e-23c45613f34c

Signer Events	Signature	Timestamp
Antonio Puente Antonio.Puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	DocuSigned by:  E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 4/18/2023 8:12:16 AM Viewed: 4/18/2023 8:23:16 AM Signed: 4/18/2023 8:23:33 AM

Electronic Record and Signature Disclosure:
Accepted: 4/18/2023 8:23:16 AM
ID: ff095c95-6ea7-4f66-8615-1e456e21a643

Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton
Security Level: Email, Account Authentication (None)

Sent: 4/18/2023 8:23:36 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

Jesus Salazar
jesus.salazar@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Accepted: 4/18/2023 11:33:32 AM
ID: eeb3c2f4-b9b8-4bf8-9660-4e7a0d3091ca

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)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

COPIED

Sent: 4/11/2023 10:24:34 AM

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) 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 Jerry Looper jerry.looper@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 4/13/2023 4:12:52 PM ID: af22ea55-eb87-44b9-909e-c6c54b94d41e	COPIED	Sent: 4/18/2023 8:23:36 AM Viewed: 4/18/2023 3:58:58 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/11/2023 10:23:57 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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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.

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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.

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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.

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