



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Meeting Agenda Public Utilities Board

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Monday, March 23, 2026

9:00 AM

Council Work Session Room

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### **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, March 23, 2026, 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 – D). 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. [PUB26-022](#) Consider recommending adoption of an ordinance of the City of Denton adopting and

approving a pole attachment license agreement with Spectrum Gulf Coast, LLC (“Charter”) for all pole attachments involving poles and conduits owned by the City of Denton (“City”); authorizing the City Manager to execute said agreements; authorizing the expenditure of funds therefor; and providing an effective date.

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                              [Exhibit 2 - Pole Attachment Agreement](#)  
                              [Exhibit 3 - Ordinance](#)

- B. [PUB26-034](#) 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 Schweitzer Engineering Laboratories, Inc., for the purchase of protective relay panels for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8965 - awarded to Schweitzer Engineering Laboratories, Inc., in the not-to-exceed amount of \$110,583.00).

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

- C. [PUB26-035](#) Consider recommending adoption of an ordinance authorizing the City Manager to execute and deliver Supplemental Agreement No. 1 to the Standard Utility Agreement (“Agreement”) by and between the City of Denton and the Texas Department of Transportation (“TxDOT”), for the reimbursement of design, property acquisition and related services, construction, inspection, project management, and other direct costs associated with the adjustment, removal, and/or relocation of wastewater utilities along I-35E from Mayhill to Loop 288 more specifically called the I-35E/Mayhill Utility Relocations Project (Utility ID No. U00011546) for wastewater relocation efforts, within the County and City of Denton, Texas; providing for the expenditure of funds not to exceed an increase of One Hundred Sixty-Two Thousand, Eight Hundred Fifteen and 90/100 dollars (\$162,815.90) therefore; and providing an effective date.

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                              [Exhibit 2 - Ordinance and Agreement](#)  
                              [Exhibit 3 - Original Standard Utility Agreement](#)

- D. [PUB26-036](#) 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 Closner Equipment Co., Inc., for the acquisition, rental, maintenance, and repairs of various medium-duty and heavy-duty construction equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8987 - awarded to Closner Equipment Co., Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$4,168,500.00).

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

### 3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [PUB26-038](#) Consider approval of the March 9, 2026 minutes.

Attachments: [3.9.26 Minutes](#)

- B. [PUB26-033](#) 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 Accelleron US Inc., for turbo replacement, parts, and service for the Denton Energy Center; providing for the expenditure of funds therefor; and providing an effective date (RFP 8816 - awarded to Accelleron US Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$9,520,000.00).

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

- C. [PUB26-039](#) 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 salutory 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.

#### 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 March 17, 2026, in advance of the three (3) business day posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

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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 TWO (2) BUSINESS DAYS 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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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Denton Municipal Electric

**DCM:** Cassey Ogden

**DATE:** March 23, 2026

### SUBJECT

Consider recommending adoption of an ordinance of the City of Denton adopting and approving a pole attachment license agreement with Spectrum Gulf Coast, LLC (“Charter”) for all pole attachments involving poles and conduits owned by the City of Denton (“City”); authorizing the City Manager to execute said agreements; authorizing the expenditure of funds therefor; and providing an effective date.

### BACKGROUND

Spectrum Gulf Coast LLC (“Charter”) is a telecommunications company which provides voice, video, internet, and other data transmission services by means of wire, cable, fiber, wireless, and other equipment. It is beneficial for telecommunication companies to be attached to and rent space on utility poles and underground infrastructure. The rental rate is defined in the City’s Utility Rate Book. The Pole Attachment License Agreement provides the terms and conditions upon which Charter may apply for and attach lines and equipment to utility poles owned by the City of Denton.

### RECOMMENDATION

Staff recommend approval of the agreement.

### EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Pole Attachment Agreement
- Exhibit 3: Ordinance

**Respectfully submitted:**  
Antonio Puente Jr.  
DME General Manager

**Prepared by:**  
Aaron Bennion  
DME Engineering Services Supervisor

## NOTICE

This Agreement does not authorize Licensee to install or maintain wireless communications devices on City of Denton poles or other infrastructure, electric or otherwise. Should Licensee desire to install wireless communications devices on City of Denton poles or other infrastructure, electric or otherwise, Licensee must enter into a separate agreement.

### **POLE ATTACHMENT LICENSE AGREEMENT BETWEEN THE CITY OF DENTON AND LICENSEE**

This License Agreement is between the City of Denton ("CITY"), a Texas home-rule municipal corporation, and Spectrum Gulf Coast, LLC, a Delaware limited liability company and its affiliates under common control ("Licensee") (collectively referred to as the "Parties").

WHEREAS, CITY, operates or controls certain utility poles in the public rights of way managed and controlled by CITY throughout Denton; and

WHEREAS, Licensee desires to provide voice, video, internet, or data transmission and other lawful communications services within CITY's service area; and

WHEREAS, to provide voice, video, internet, or data transmission and other lawful communications services, Licensee seeks to place and maintain cables, equipment, facilities, within CITY's service area and desires to place such cables, equipment, and facilities on various Poles and easements owned by CITY; and

WHEREAS, CITY is willing to grant Licensee a revocable, non-exclusive license to use certain Poles on the strict terms and conditions set forth in this Agreement and subject to the CITY Code of Ordinances, Electrical Code, and Distribution Construction Standards, and applicable law, as they may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, CITY and Licensee do hereby mutually covenant and agree as follows:

#### **ARTICLE 1 DEFINITIONS AND CONSTRUCTION**

1.1 **Definitions:** For purposes of this Agreement, capitalized terms are defined as follows:

**A. CITY Distribution Construction Standards** means those engineering and construction standards, specifications, and designs maintained and referenced internally by CITY, and complied with in all material respects by CITY, for its own Pole distribution construction and engineering efforts, applied on a nondiscriminatory basis.

**B. Annual Usage Charge** means the recurring charge that Licensee is to pay CITY annually under this Agreement for attachment to CITY's Poles. The Annual Usage Charge is in addition to any Costs and Filing Fees Licensee may incur during a Contract Year and shall be

determined by CITY as of December 1 of each Contract Year, other than the first Contract Year. The Annual Usage Charge for any Contract Year shall be the number of billable Attachments shown on CITY's records to exist as of December 1 of the preceding Contract Year multiplied by the Usage Rate for the new Contract Year for each attachment of equipment. Unless applicable state or federal law is amended to allow a charge for over-lashed Cable, the Annual Usage Charge shall not apply to over-lashed Cable over-lashed with any of Licensee's Attachments for which a Usage Rate is chargeable or for any equipment located in the unusable space, such as risers and power supplies. Unless otherwise expressly provided in this Agreement, Annual Usage Charges are not refundable.

**C. Attachment Application** means the CITY prescribed application sheet, together with all required prints, maps, proposed routes, project descriptions, studies, and proposed schedules that Licensee must submit, in full, to CITY in order to request, have reviewed, perform required and then be granted an Attachment License for a particular Pole or group of Poles. For the avoidance of doubt, any Licensee Attachment that was affixed to any CITY Pole prior to the Effective Date will not require a new Attachment Application to remain on such Pole.

**D. Attachment** means (other than for Annual Usage Charge Purposes):

1. each Cable owned, controlled, or used by Licensee, together with its associated messenger strand, guy wires, span guys, anchors, and other appurtenant and incidental facilities, affixed to a Pole regardless of the means by which affixed (a Cable lashed to another Cable and each Cable lashed to a common messenger is a separate Attachment);
2. each amplifier, repeater, controller, box, cabinet, appliance, device, or piece of equipment owned, controlled, or used by Licensee and affixed to a Pole, regardless of the means by which it is affixed;
3. each amplifier, repeater, controller, box, cabinet, appliance, device, or piece of equipment owned, controlled, or used by Licensee that is resting on the ground but is connected to a Pole, Attachment, or CITY line by a conductor;
4. a new or existing service wire drop that is (i) located in the same one foot of space assigned to the Licensee's Cable Attachment, and (ii) is attached to the same Pole as an existing Attachment of Licensee shall NOT constitute an additional Attachment.
5. risers installed by the Licensee for the purpose of transitioning overhead Cable to underground Cable or vice versa; or risers installed by the Licensee for the purpose of extending service to a customer shall NOT be considered an additional attachment(s).

**E. Attachment License** means the revocable (solely pursuant to the terms and condition hereof and applicable law), non-exclusive right of Licensee to make an Attachment to a Pole under this Agreement, pursuant to CITY's approval of an Attachment Application and subject to (1) any modifications, conditions, and specifications imposed by CITY pursuant to this

Agreement or applicable law when approving the Attachment Application and (2) all Design Documents issued by CITY with respect to the Attachment and Pole in question. An Attachment License authorizes Attachments solely for lawful communications purposes, as described in this Agreement. The use of any Attachment for any purpose other than providing lawful communications as described in this Agreement is prohibited and shall constitute a breach of this Agreement.

**F. Boxing** means the use of a cross arm or through bolt to facilitate a Pole attachment on the opposite side of the Pole from any existing attachment and the installation of Cable or facilities on both sides of the same Pole at approximately the same height. Licensee is prohibited from Boxing on CITY Poles.

**G. Cable** means a conductor, wire, or fiber or a bound or sheathed assembly of conductors, wires, or fibers used as a wire communications or transmission medium (a bare messenger is also a Cable).

**H. Communications Space** means the area on any given Pole, below and sufficiently remote from the Supply Space as required by Electrical Code, within which Attachments and Pole Contacts may lie. The term Communications Space has the equivalent meaning as that used in the Electrical Code. The top surface of the Communications Space must remain at least 40 inches from the lowest surface of the Supply Space and from any other electrical lines, conductors, or equipment, or below the Supply Space at a distance as defined by the National Electric Safety Code for a specified condition. The bottom surface of the Communications Space must maintain a clearance in accordance with National Electrical Safety Code standards. Any make ready for a new or modified Attachment that may be required to meet these standards shall be paid for by the Licensee.

**I. Conduit** means a structure owned by CITY containing one or more Ducts, usually placed in the ground, in which Cables or wires may be installed. CITY-owned electrical Conduit is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

**J. Conduit System** means any combination of Ducts, Conduits, Manholes, and Handholes joined to form an integrated whole. As used in this Agreement, the term refers to Conduit Systems owned or controlled by CITY. CITY-owned electrical Conduit System is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

**K. Contract Year** means any calendar year during which this Agreement is in effect, beginning January 1 and ending December 31, except that the first Contract Year shall run from the Effective Date until December 31 of that year and the final Contract Year shall run from January 1 of that year until the date of termination.

**L. Contractor** includes subcontractors.

**M. Cost** means the total cost reasonably and actually incurred by CITY for any particular task under this Agreement, and as permitted by applicable law, and includes without limitation reasonable labor, material, equipment usage, outside Contractor and vendor charges.

reasonable overhead, and reasonable general and administrative expenses, except to the extent those general and administrative expenses already are recovered in the Annual Charge. Costs may be incurred for, without limitation, engineering and engineering review, Make-Ready construction, inspections and oversight auditing, public relations and intervention, and other services. Certain Cost rates are specified in Exhibit A to this Agreement, which CITY may change no more than once per year; provided, however, that any such change to such Cost rates shall be based on CITY's reasonable cost of labor, materials, and equipment usage. Subject to the foregoing, Costs shall be determined by CITY in its reasonable judgment and reasonable discretion and in accordance with law, and shall be paid by Licensee in accordance with either of the following, at CITY's sole option:

1. Any advance Make-Ready estimate provided by CITY, in which event CITY shall have the right to refuse to incur the Costs until the estimate is paid; and/or
2. Any final invoice submitted by CITY. In the event an advance estimate was paid by Licensee for Costs, the final invoice will reflect such payment.

**N. Design Documents** means all specifications, drawings, schematics, blueprints, engineering documents, and written requirements for materials, equipment, design, construction, and workmanship with respect to Make-Ready and installation work on a particular Attachment or Pole or group of Attachments or Poles. Any and all design documents must be sealed by a licensed professional engineer. No more than one stamp shall be required on any packet provided by Licensee and the stamp shall apply to the entire package.

**O. Duct** means a single enclosed tube, pipe, or channel for enclosing and carrying Cables, wires, and other facilities owned by CITY. As used in this Agreement, the term Duct includes Inner-Ducts created by subdividing a Duct into smaller channels. CITY-owned electrical and/or electric communication Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

**P. Effective Date** means the date CITY signs this Agreement as shown on the signature page of this Agreement.

**Q. Electrical Code** means the National Electrical Safety Code (NESC), the National Electrical Code (NEC), and Chapter 752 of the Texas Health and Safety Code.

**R. Filing Fee** means the initial, non-refundable fee charged to Licensee for filing an Attachment Application for an Attachment License. Filing Fees are set by the CITY and shall not exceed the actual and reasonable Cost to CITY of reviewing and processing an Attachment Application. The Filing Fee is solely to compensate CITY for reviewing and processing an Attachment Application and does not include or offset Costs or Annual Usage Charges.

**S. Handholes** means an enclosure, usually below ground level, used for the purpose of installing, operating, and maintaining Attachments in a Conduit. A Handhole is too small to permit personnel to physically enter. CITY-owned electrical Handholes are expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

**T. Infrastructure Usage Regulations** means the Denton City Code of Ordinances and any other CITY ordinance that may be enacted to govern electric utility infrastructure usage or rental.

**U. Inner-Duct** means a pathway created by subdividing a Duct into smaller channels. CITY-owned electrical and/or electric utility communication Inner-Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

**V. Make-Ready** means all work required to accommodate Licensee's Attachments on a Pole with respect to CITY and Third Party User needs and in compliance with Electrical Code, CITY Distribution Construction Standards, generally accepted engineering and construction practices, and applicable laws. Licensee shall not be responsible for work performed to correct pre-existing safety violations caused by CITY and/or any Third Party User.

**W. Manhole (also called "Pullbox" or "Vault")** an enclosure, usually below ground level and entered through a hole on the surface covered with a cast iron or concrete Manhole cover, which personnel may enter and use for the purpose of installing, operating, and maintaining Attachments in a Conduit. CITY-owned electrical Manholes are expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.

**X. Maximum Lawful Usage Rate** means the maximum amount that CITY may lawfully charge for an Attachment under applicable state and federal law, rules and regulations in effect from time to time. If, for any Contract Year, applicable state or federal law does not limit the amount CITY may charge Licensee for a particular Attachment or service under this Agreement, the Maximum Lawful Usage Rate for the Attachment or service shall be the amount that CITY determines, in its sole judgment and discretion, to constitute a reasonable and non-discriminatory annual Usage Rate.

**V. Pole** means any electric distribution pole owned by CITY that supports electric lines having a nominal voltage of not more than 35kV; provided, however, that any electric distribution pole having a nominal voltage of more than 35kV will also be a "Pole" if the pole is also used for distribution of power from a local substation to customers. Unless otherwise agreed by CITY with respect to a particular pole, the term Pole does not include (1) street lighting, traffic signal, AMI extender bridge, or dusk to dawn light poles; (2) metal or wood poles or towers supporting transmission lines carrying a nominal voltage greater than 35kV, unless such wood poles are also used to support distribution lines carrying a nominal voltage of not more than 35kV and where predesigned to accept telecommunication installations; (3) any structure or facility within a substation; (4) conduits (except as otherwise provided in Article 11); or (5) any structure not used for electric power distribution.

**Z. Pole Contact** means the point or contiguous area on a Pole at which one or more of Licensee's Attachments makes physical contact with a Pole regardless of the duration for which the Pole Contact existed.

**AA. Service Drop** means a Cable used to connect directly to a customer's location from one Pole and attached to no more than one additional Pole where the additional Pole does not support voltage greater than six hundred volts (600V) or a Cable used to connect a customer's location through the use of multiple licensed Poles where Service Drop Make-Ready has been

performed.

**BB. Supply Space** means the area on any given Pole, above the Communications Space, that is reserved for the placement of electric supply lines, electrical equipment, and other CITY facilities. The term Supply Space has the equivalent meaning as that used in the Electrical Code. Licensee may not place any Attachments or Pole Contacts in the Supply Space.

**CC. Third Party User** means any third party that has, or may be granted, an attachment license or other right to attach with respect to a Pole. Third-parties that are allowed by Licensee to overlash third-party conductors onto existing Licensee Attachment(s) shall also execute a Pole Attachment License Agreement with the CITY, regardless of the duration for which the Attachment or Pole Contact existed. At least thirty (30) days before third-party overlash operations, Licensee shall provide advanced written notice to CITY that identifies the proposed third-party overlash entity and all proposed third-party overlash locations.

**DD. Unauthorized Attachment** means an Attachment or any other affixing or placing of Licensee's facilities onto CITY property for which Licensee does not have a valid Attachment License.

**EE. Usage Rate** means, for each given Contract Year, the amount Licensee must pay CITY for each Attachment. Usage Rates are specified in Exhibit A to this Agreement and which CITY may change no more than once per year.

1.2 **Syntax** Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular and plural.

1.3 **Amendments** Any reference to a law, code, or document shall mean such law, code, or document as it may be amended from time to time.

1.4 **Third Party User Agreements** CITY has in the past entered into other Pole usage agreements with Third Party Users. In construing this Agreement, no variations between this Agreement and other agreements with Third Party Users shall have any evidentiary value or be construed against CITY. It is the Parties intent that this provision is not meant to unlawfully discriminate against Licensee in favor of other licensees.

1.5 **No Construction against CITY** The rule of construction that ambiguities in a contract are to be constructed against the drafting party shall not apply to this Agreement.

1.6 **Headings** The descriptive headings in this Agreement are only for the convenience of the parties and shall not be deemed to affect the meaning or construction of any provision.

## **ARTICLE 2 SCOPE AND TERM OF AGREEMENT**

2.1 **General Purpose** In accordance with the provisions of this Agreement and applicable law, CITY shall issue Attachment Licenses to Licensee on the terms and conditions set forth herein. Before Licensee makes any Attachment to or begins any work on a Pole, excluding Service Drops, it shall file an Attachment Application and await CITY's issuance of an Attachment License and Design Documents

with respect to that particular Attachment or Pole, as set forth in Article 4. For Service Drops, Licensee shall notify the City in writing on monthly basis, regarding Service Drops made in the prior month. Nothing in this Agreement shall be construed to obligate CITY to grant an Attachment License with respect to any particular Pole where Licensee has failed to fulfill the requirements herein for the grant of such Attachment License.

- A. The use of any Attachment for any purpose other than providing lawful communications as described in this Agreement is prohibited and shall constitute a breach of this Agreement.
- B. Licensee is prohibited from Boxing on CITY Poles.
- C. CITY-owned electrical Conduit is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.
- D. CITY-owned electrical Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.
- E. CITY-owned electrical Handholes are expressly reserved for utility reliability and expansion purposes and are not available for use by Licensee.
- F. City-owned electrical Inner-Duct is expressly reserved for utility reliability and expansion purposes and is not available for use by Licensee.
- G. CITY-owned electrical Manholes are expressly reserved for utility reliability and expansion purposes and are not available for use by Licensee.

**2.2 Term.** The initial term of this Agreement is six (6) years, beginning on the Effective Date and renewing thereafter for five (5) successive one (1) year terms, subject to the default provisions, or unless terminated by either Party. At the end of each then-current term, Licensee shall, if it intends to terminate, give CITY written notice of its request to terminate 180 days before the end of the then-current term. If Licensee is in default during the course of the then-current term and Licensee has not cured the default, this Agreement shall not renew. If Licensee has defaulted and not cured such default, renewal will be granted in CITY's reasonable discretion. If renewal is denied, CITY will give written notice of the reasons for denial within thirty (30) days of making that determination and this Agreement will expire at the end of the then-current term.

**2.3 Existing Facilities Only.** Except as otherwise set forth in paragraph 6.4, (i) CITY is under no obligation to add, build, keep, maintain, or replace Poles or any other facilities for the use or convenience of Licensee; and (ii) the maintenance, replacement, removal, relocation, or addition of CITY Poles and facilities shall remain within the sole province and discretion of CITY. Notwithstanding the foregoing, any actions of the CITY under this Agreement shall be taken on a nondiscriminatory basis.

**2.4 Poles Only.** This Agreement is limited to and only addresses Attachments to CITY Poles. This Agreement does not authorize Licensee to install or maintain Attachments on other CITY property and facilities, including without limitation Conduits, buildings, and towers.

**2.5 City Rights-of-Ways.** Except for the placement of Attachments or other facilities covered by this

Agreement on CITY Poles and notwithstanding that a Pole to which Licensee may attach its facilities is in the CITY's public streets or rights-of-way, nothing in this Agreement shall be construed to grant, nor does this Agreement grant, Licensee any right or authorization to use or occupy the public streets or rights-of-way of the CITY or any other public property.

**2.6 Access to Rights of Ways limited** Except to access the CITY's rights of ways as an incident of attaching facilities to CITY'S Poles under this Agreement, Licensee and CITY expressly agree that the authority to attach to CITY Poles does not grant Licensee authority to use or occupy CITY's public streets or rights-of-way.

**2.7 Separate Agreement and Franchise Needed for Access to Rights of Ways.** Licensee expressly agrees that should it intend to use the CITY'S rights of ways, Licensee shall enter into a separate franchise agreement for such privileges if Licensee does not already have such privileges as part of another existing agreement, a franchise with City, and/or a state issued franchisee.

**2.8 Private Easements** Licensee understands that some Poles are located on dedicated easements over private property that, by their terms, restrict the use of the easement to CITY for the sole purpose of electric distribution or transmission. Nothing in this Agreement and no action by CITY shall be construed to offer, grant or approve any right or license to use such easement or to affix an Attachment to a Pole within such easement without the consent of the owner of the property to which the easement is appurtenant, unless otherwise allowed by law. CITY has no obligation to expand or obtain rights in such easement on Licensee's behalf. It is the sole obligation of Licensee to obtain the necessary consent or additional easement rights, if any, at Licensee's own expense.

**2.9 Eminent Domain** CITY is under no obligation to exercise any power of eminent domain on Licensee's behalf.

**2.10 No Property Rights In Poles** All Poles shall remain the property of CITY and no payment made by Licensee shall create or vest in Licensee any ownership right, title, or interest in any Pole, but Licensee's interest shall remain a bare license. The existence of such a license shall not in any way alter or affect CITY's right to use, change, reclaim, operate, maintain, or remove its Poles, subject to the terms and conditions hereof. Nothing in this Agreement shall prohibit Licensee from repairing, operating, or maintaining a Pole at Licensee's sole cost and expense if: (i) CITY expressly abandons the Pole or constructively abandons the Pole by electing not to repair, operate, or maintain the Pole to such an extent that a reasonable person would conclude that CITY has abandoned the Pole; and (ii) Licensee is permitted to do so under the City Code, the terms of Licensee's franchise, if applicable, and any applicable easements; provided, however, that CITY may remove an abandoned Pole if such removal manifestly serves the public interest. If CITY's use of its Poles materially and adversely affects Licensee's use and operation of an Attachment, Licensee may, by written notice to CITY, remove its Attachments from any adversely affected Pole. Such termination shall be implemented by written notice to the CITY.

**2.11 License Not Exclusive** Licensee acknowledges that CITY has entered into other agreements concerning the use of Poles by third parties, including Licensee's competitors and may in the future enter into similar agreements. Nothing in this Agreement shall be construed to limit or in any way affect CITY's right or ability to enter into or honor other agreements, or to grant any rights, licenses, or access concerning any Pole, irrespective of the character or degree of economic competition or loss caused to Licensee, so long as CITY's actions are not unreasonably discriminatory.

**2.12 CITY Priority** The primary purpose of a Pole is electric distribution and public health and safety, and CITY reserves to itself first priority in the use of a Pole. In the event of any conflict between the use of a Pole by CITY and Licensee, the use of a Pole for the distribution of electric power to CITY customers shall prevail and have priority over Licensee's use of the Pole,. CITY retains and shall have exclusive use of the Supply Space. All of Licensee's Aerial Attachments shall remain within the Communications Space.

**2.13 Discretion of CITY Final** CITY reserves the right to deny any Attachment Application pursuant to the terms and conditions of this Agreement, and on a nondiscriminatory basis, subject to applicable law, reserve any Pole to its own use pursuant to a *bona fide* development plan, or modify any Pole for legal, safety, mechanical, structural, engineering, environmental, reliability, or service reasons. Determination of these issues shall at all times remain within the reasonable discretion of CITY, subject in all respects to the terms and conditions of this Agreement and applicable law. Licensee will not be required to pay for any modifications to any Pole or its Attachments in order to accommodate a Third Party User.

**2.14 No Cost or Expense to CITY** The engineering, construction, installation, use, operation, and maintenance of Licensee's Attachments shall be at Licensee's sole expense, except as otherwise provided herein. Unless otherwise expressly provided of this Agreement, nothing in this Agreement shall be construed to require CITY to expend any funds or to incur or bear any cost or expense.

**2.15 Pole Attachment Procedures and Construction Standards Conflicts** In the event of a difference, conflict, or discrepancy between or among the requirements or practices of this Agreement and the Pole Attachment Procedures and Construction Standards, the terms of this Agreement shall govern.

### **ARTICLE 3 USAGE RATES AND CHARGES**

**3.1 Payment Due upon License Approval** CITY's approval of an Attachment License shall be conditioned on Licensee's payment of the then current Usage Rate for each approved Attachment, prorated to reflect the number of months remaining in the Contract Year with any partial month being considered to be a full month. Licensee's payment is due within 45 days from the date of receipt CITY'S approval of an Attachment License.

**3.2 Calculation of Usage Rates** For each Contract Year, the Usage Rate shall not exceed the Maximum Lawful Usage Rate. Before each new Contract Year, CITY will notify Licensee in writing of the Maximum Lawful Usage Rate for such Contract Year at least 60 days in advance of any invoice. The CITY shall provide its Maximum Lawful Usage Rate calculations and relevant support data so Licensee may verify that the such Usage Rate is calculated in accordance with applicable law. The Maximum Lawful Usage Rate may take into account changes in applicable laws that are to go into effect during the upcoming Contract Year.

**3.3 Dispute of Maximum Lawful Usage Rate** If Licensee disagrees in good faith with CITY's determination of the Maximum Lawful Usage Rate, Licensee may protest the CITY'S Usage Rate in writing within 30 days of receipt of the notice of the then proposed Usage Rate. The protest shall include

copies of all records and other documentation that support Licensee's position. Failure to timely protest CITY's proposed Usage Rate shall constitute agreement to and acceptance of CITY's determination and a waiver of Licensee's rights to dispute CITY'S Usage Rate, unless such rate is unlawful pursuant to applicable law. If Licensee timely protests a proposed Usage Rate, the parties shall endeavor in good faith to negotiate a resolution of the dispute. If the parties are unable to resolve the dispute within 60 days from the date of Licensee's protest, then either party may seek relief from the Public Utility Commission of Texas ("PUCT") pursuant to section 54.204 of the Texas Utilities Code, any successor regulation, or any other law that confers jurisdiction on the PUCT. The PUCT shall be the sole and exclusive forum for resolution of a dispute regarding CITY'S Usage Rate, unless the PUCT lacks jurisdiction, in which event the dispute resolution provisions set forth in paragraph 18.7 shall control. If the dispute is not resolved by the time the Annual Usage Charge invoice is issued, Licensee shall nonetheless pay the invoice based upon the disputed Usage Rate. Payment by Licensee of the invoice shall not prejudice Licensee's ability to continue to contest the Usage Rate, and CITY agrees not to interpose any claim, defense, or counterclaim that Licensee has waived its right to contest the Usage Rate by paying the disputed invoice. Failure to pay the disputed Usage Rate shall constitute a breach of this Agreement. CITY shall process Licensee's applications in accordance with this Agreement or the duration of the dispute.

**3.4 Subsequent Annual Usage Charges** In each January of each Contract Year and continuing thereafter until the expiration or termination of this Agreement, CITY will invoice for, and Licensee shall pay, within 45 days after receipt of invoice, the Annual Usage Charge for the new Contract Year. All overdue balances shall accrue interest at the rate of 1% per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

**3.5 Invoice Disputes** If Licensee believes in good faith that an Attachment count contained in an Annual Usage Charge invoice is incorrect, it shall nonetheless pay the invoice under protest. To protest an invoice, Licensee must give CITY written notice of the nature of its protest no later than the due date for payment of the invoice together with copies of records and other documentation supporting its position. The parties shall promptly meet to resolve the discrepancies in their records to determine the correct Attachment count. If the parties are unable to resolve a discrepancy as to the correct count, the parties may, upon mutual agreement, jointly conduct a physical inventory of geographical grids or other mutually agreeable census to determine the correct count. The Cost to conduct such inventory or census shall be equally divided between the parties.

**3.6 Adjustments** If upon resolution of a dispute between the parties under paragraph 3.3 or paragraph 3.5, a refund is due to Licensee, CITY shall refund the amount of the overcharge together with interest at the rate specified in paragraph 18.5 from the date of CITY's receipt of the protested Annual Usage Charge payment. If Licensee owes additional money, a corrected invoice shall be issued by CITY for the additional Annual Usage Charge due, plus accrued interest at the rate specified in paragraph 18.5 from the due date of the original invoice.

**3.7 No Allowances** Unless otherwise expressly stated in this Agreement, there shall be no offsets against any sums due under this Agreement, or any other allowances, for system improvement, materials or labor supplied, upgrading, life extension, or other direct or incidental benefits conferred by Licensee upon CITY or its Poles, system, or facilities. All such improvements and benefits belong solely to CITY, and the fact that such improvements or benefits may accrue shall in no way alter or affect Licensee's

obligations under this Agreement.

**3.8 Schedule PAF Conflicts** In the event of a difference, conflict, or discrepancy between or among the requirements of the Schedule PAF and those of this Agreement, the terms of this Agreement shall govern. For the avoidance of doubt, the calculation and rates set forth in Schedule PAF shall control to the extent such calculation or rate is referenced herein.

#### **ARTICLE 4 ATTACHMENT LICENSES**

**4.1 Attachment License Required** Licensee shall have an Attachment License with CITY before performing any new Attachment work on a Pole or making any Contact with, or Attachment to, a Pole or other facility on CITY property or easement. Maintenance of existing equipment shall be allowed, including transfers for new Poles and for Make-Ready work of other licensees, if Licensee has a current Attachment License that covers the existing Attachments and equipment. Licensee must have an Attachment License for each Pole or group of Poles to which Licensee's Attachments are to be affixed, identifying each separate Attachment to the Pole(s) by type. An Attachment License is not needed to perform visual inspections necessary for preparing an Attachment Application.

**4.2 Overlapping**

Licensee must provide 15 business days' advance notice when it seeks to overlap to an existing Licensee or Third Party User Attachment or Pole Contact. Licensee may not allow another party to overlap to Licensee's facilities without such party first having an agreement with and attachment license from CITY. Poles are the sole property of CITY, and Licensee shall not charge or accept any financial consideration for allowing a third party to overlap to an Attachment or Pole Contact without CITY's written consent.

**4.3 Application Process** The Attachment Application must be submitted in the then approved CITY format. The Attachment Application form, and all required supporting documentation and other procedures, are within the reasonable discretion of CITY and may change from time to time upon prior written notice (provided such changes are not inconsistent with the terms and conditions of this Agreement and applied in a nondiscriminatory manner). CITY may reject entirely an incomplete Attachment Application, or it may request additional information to support the Attachment Application, in which event the requested information shall be promptly furnished. In the event that CITY denies an Attachment Application, it shall provide written notice of its reason for denial to Licensee within 15 business days of the date the Attachment Application was submitted.

**4.4 Approval**

**A.** CITY retains sole and complete discretion to deny or modify any Attachment Application in order to be able to preserve the safety, reliability, integrity, and effectiveness of the electric distribution system that constitutes the core of its business and its governmental mandate. CITY

will approve, modify, or deny an Attachment Application within 15 business days of submission. Licensee may request CITY to reconsider a denial or modification of an Attachment Application. CITY may approve an Attachment Application as submitted, approve it on a modified or conditional basis, or may deny the Attachment Application on a reasonable basis in accordance with the policies adopted by CITY. An Attachment Application may be denied solely for the reason set forth. The CITY's City Manager, or designee, may deny an application if:

1. the applicant fails to submit a complete Attachment Application;
2. the applicant fails to supplement its Attachment Application with additional information or otherwise cooperate with the utility as requested in the evaluation of the Attachment Application;
3. the applicant fails to pay the applicable Filing Fee;
4. the proposed attachments are of excessive size or weight or would otherwise subject utility infrastructure to unacceptable levels of additional stress;
5. approval would, for reasonable documented concerns provided to Licensee (such as under the Electrical Code), jeopardize the reliability or integrity of the electric system or of individual units of utility infrastructure.;
6. approval would present a safety hazard to a City employee or the public;
7. approval would impair the City's ability to operate or maintain utility infrastructure;  
or
8. approval would require a change, upgrade, or addition to utility infrastructure, unless Licensee agrees to pay the costs incurred.

**B.** In the event that CITY intends to deny an Attachment Application based on subparagraph numbers 1 - 8 set forth in Paragraph 4.5.A. above, or for any other reason for which denial is permitted by law, and the Pole may be modified or replaced to resolve that issue, CITY shall approve the Attachment Application provided that:

1. the Licensee agrees to pay CITY's Costs to so modify or replace the Pole; and
2. the Attachment Application is otherwise acceptable and grantable pursuant to the terms and conditions of this Agreement and applicable law. Provided, however, that nothing in this sentence abridges or modifies the requirements set forth in paragraph 6.4.

**4.5 Order of Approval** Attachment Applications concerning a particular Pole will be considered and acted upon by CITY in the order in which they are filed. For purposes of evaluating an Attachment Application with respect to Pole capacity and existing Third Party User Attachments, CITY will consider not only all existing attachments but also all valid Attachment Licenses and reserved CITY space.

**4.6 Engineering** Licensee shall submit documentation of its field evaluation that has been sealed by a professional engineer licensed by the State of Texas. CITY shall accept and rely on such documentation, but shall reserve the right to perform, or have a firm retained by CITY perform, its own

engineering and field evaluation including pole loading analysis. All Costs for such engineering and field evaluation shall be paid by Licensee. With respect to a particular Pole, CITY's engineering shall take into account and allow space for all Attachment Licenses, which are valid for that Pole. In granting an Attachment License, CITY shall issue to Licensee the related Design Documents that were paid for by the Licensee.

**4.7 Attachment License Expiration** All Attachment Licenses and Design Documents and any rights conferred thereunder shall expire on the later of (i) 120 days after issuance (or such longer period as the parties may agree to in writing) or (ii) 60 days after completion of all Make-Ready work, unless all Make-Ready and installation work has occurred in accordance with the Design Documents before the end of such period. If an Attachment License for a Pole expires, Licensee shall re-apply, *de nova*, for an Attachment License and must receive such License from the CITY before Licensee can begin working on or making an Attachment to that Pole.

## **ARTICLE 5 GENERAL REQUIREMENTS**

**5.1 Work Site Safety** In performing any work on or near Poles supporting energized electric lines, Licensee, and its Contractors, agents and employees shall comply with Chapter 752 of the Texas Health and Safety Code and all federal, state and local laws, rules and regulations governing work in proximity to energized electric lines, including without limitation, those promulgated by the Occupational Safety and Health Administration. The indemnification requirements of Article 16 shall apply to any breach by licensee of its obligations under this paragraph.

**5.2 Electrical Code** Licensee, and its Contractors, agents and employees, and all work, Contacts, and Attachments on a Pole shall at all times comply with the-then current Electrical Code, as applicable.

**5.3 Design Documents** All installation and other work performed by Licensee on a Pole or Attachment shall at all times comply with the Design Documents and CITY Distribution Construction Standards and CITY requirements subsequent to Make-Ready inspections.

**5.4 Service Interruptions** Licensee shall not cause any interruption of CITY or Third Party User services without first obtaining CITY's express written consent as provided by Article 6. If it is necessary for CITY to de-energize any equipment or lines for Licensee's benefit, Licensee shall (a) reimburse CITY in full for all Costs in doing so, and (b) coordinate any customer or system outages with the CITY. In the event Licensee damages any of CITY's equipment or lines or causes any service interruption, Licensee, at its sole expense, shall immediately do all things reasonable to avoid injury and further damage, direct and incidental, resulting therefrom and shall notify CITY immediately. Licensee shall be liable for all Costs resulting from such damage and any necessary repairs, subject to the limitations set forth in Section 16.1.

**5.5 CITY Oversight** CITY shall have the right to conduct on-site field oversight and inspections of Licensee's Attachments, work, and operations on CITY'S Poles. CITY may conduct pre-construction surveys, and post-construction inspections at Licensee's expense and shall provide Licensee with the results. CITY shall at all times have unrestricted access to Poles and to all field work sites of Licensee and Licensee's Contractors. Both CITY and CITY's representative at any Pole site shall have complete and final authority to order the immediate suspension of Licensee's construction or installation activities

if CITY or CITY's representative, in its sole discretion and judgment, deems such action necessary for reasons of safety, engineering, electrical service reliability, or failure to obtain proper licenses and permits. If an immediate suspension order is issued, the CITY or CITY's representative shall have the right to inspect any and all facilities installed up to that point on Licensee's Attachment submittal, at Licensee's expense. In the event of an oral suspension order, CITY shall send written notice to Licensee within three (3) days after such suspension, identifying the bases for suspension. Such suspension shall be in effect until such time as the Licensee cures, at Licensee's sole Cost, the alleged bases for suspension. In no event shall CITY be responsible for any damages, losses, or costs incurred by Licensee as a result of such work stoppage. Licensee's failure to obey a suspension order issued in accordance with this Agreement shall constitute a breach of this Agreement.

**5.6 Laws** To the extent that the Code of the City of Denton lawfully requires Licensee to possess a valid franchise or construction permit before engaging in a particular act, Licensee must comply with such requirement before beginning installing Attachments. Nothing in this Agreement shall be construed as waiving other CITY requirements or permitting the construction of facilities other than Attachments. Attachments must conform to local, state, or federal law. Licensee's use of any Pole and Licensee's Attachments shall at all times conform to the requirements the CITY's Code of Ordinances, infrastructure usage regulations, and the published policies promulgated by the CITY pursuant thereto.

**5.7 Other Permits** Licensee shall apply for and obtain all licenses, permits or other authorizations required to provide its service or to use, operate or maintain its Attachments. If Licensee is denied any required license, permit or authorization, Licensee may, upon written notice to CITY, terminate any Attachment License granted hereunder that was predicated upon the grant of such license, permit or authorization.

**5.8 Taxes and Liens** Licensee shall pay all taxes and assessments lawfully levied on Licensee's Attachments and any tax, assessments, fee, or charge levied on Poles solely because of their use by Licensee. In no event shall Licensee permit any lien to be filed or to exist upon any Poles or CITY property as a result of any claim against Licensee. Licensee shall promptly pay upon receipt of written notice from CITY all such liens together with all fees and costs necessary to discharge same, or shall bond around such liens in the manner provided by law.

**5.9 Electrical Code Conflicts** In the event of a difference, conflict, or discrepancy between or among the requirements or practices of any Electrical Code or safety regulations, laws, or industry standards the following rules shall apply: (A) if one specification or practice is more stringent than the other, the more stringent shall apply; (B) if one is not more stringent than the other, the NESC shall govern to the extent permitted by law; (C) if the first two rules are insufficient to resolve the conflict in a clear and unambiguous manner, CITY shall determine which standard shall apply, giving highest priority to safety considerations.

**5.10 Design Document Conflicts** In the event of a difference, conflict, or discrepancy between or among the requirements or practices of the Design Documents and CITY Distribution Construction Standard, the Design Documents shall govern. In the event Licensee believes a Design Document or CITY Distribution Construction Standard is inconsistent with Electrical Code or applicable law, Licensee shall refer the matter to CITY for determination.

**ARTICLE 6**  
**MAKE-READY CONSTRUCTION GENERAL PROVISIONS**

**6.1 Performance and Cost of Make-Ready Work** All Make-Ready Work on CITY facilities shall be performed by the CITY and/or a contractor authorized by CITY to perform such work. All such Make-Ready Costs shall be borne solely by Licensee, including without limitation, costs of planning, engineering, construction, and pole replacement or modifications, except as set forth in paragraphs 6.3, 6.4, and 6.5. CITY will advise Licensee of estimated Make-Ready Costs. Make-Ready Work will not commence until Licensee has paid estimated Make-Ready Costs.

**6.2 Payment of Make-Ready Work** Upon completion of Make-Ready Work, CITY shall invoice Licensee for CITY's actual cost of such Make-Ready Work. After completion of the Make-Ready Work the actual Make-Ready Cost will be trued up against the estimated Make-Ready Costs payment.

**6.3 Third Party Facilities** Make-Ready Costs that are to be paid by Licensee include all costs and expenses to relocate or alter the attachments or facilities of any pre-existing Third Party User as may be necessary to accommodate Licensee's Attachment. CITY shall provide at least 30 days' written notice to each Third Party User that needs to relocate or alter its facilities to accommodate Licensee and attempt to make all other necessary arrangements directly with the affected Third Party Users. CITY agrees to make best efforts to cause a Third Party User to relocate such Third Party User's facilities, including declaring such Third Party User's facilities to be unauthorized, in accordance with the terms of CITY's pole attachment agreement with such Third Party User, if the Third Party User fails to relocate its facilities within the time periods specified in the pole attachment agreement between CITY and such Third Party User.

**6.4 Non-Conforming Attachments** Notwithstanding paragraphs 6.1 or 6.2, Licensee shall not be liable for any cost or expense to modify, replace, relocate, or alter any attachments of CITY or a Third Party User that do not comply with the Electrical Code or applicable law. Licensee shall notify CITY if Licensee determines that any Third Party User attachments are out of compliance with the Electrical Code or applicable law, and CITY shall use its best efforts to cause any Third Party User to bring existing attachments into compliance within 30 days of such notice. If after 30 days the owner of the out-of-compliance attachment has not completed its work and brought its attachment in to compliance with the Electrical Code and applicable law, CITY shall declare such Third Party User's facilities to be unauthorized, and CITY or Licensee may relocate or alter the Third Party User's attachment at the Third Party User's expense. CITY shall use its best efforts to cause the Third Party User to pay Licensee its costs and expenses for bringing such Third Party User's attachment in compliance with the Electrical Code and applicable law.

**6.5 Pole Replacement and Maintenance** CITY shall change, modify, or replace any Pole, at Licensee's request, unless such change, modification, or replacement will jeopardize the safety or reliability of CITY's electrical service. Except as otherwise provided in this paragraph, Pole replacement Costs shall be borne by Licensee if Pole replacement is requested by Licensee or if, because of insufficient capacity, approval of Licensee's Attachment Application first causes the need for the Pole replacement. CITY agrees that if a Pole is broken or rotten, standard Pole replacement costs shall be borne by CITY, except for additional Pole height above the height of the existing Pole; or Pole strength required to accommodate Licensee's new attachments. If the non-compliance with the Electrical Code or applicable law or the broken Pole is the result of Licensee's actions or the actions of Licensee's subcontractors, the Licensee shall be liable for the expense.

**6.6 Pole Inspections** Notwithstanding anything set forth in paragraph 6.4 and 6.5 with respect to Licensee's responsibility to pay CITY's costs of changing, modifying, or replacing any Pole, CITY shall continue its existing Pole maintenance and inspection program.

## **ARTICLE 7 INSTALLATION AND MAINTENANCE OF ATTACHMENTS**

**7.1 Installation** Upon (A) completion of Make-Ready work, and (B) CITY's receipt of full payment of all sums owing to CITY, if any, for engineering, Make-Ready, and other Costs in connection with the applicable Pole, Licensee may affix its Attachments to the Pole as set forth in the Attachment License and Design Documents.

**7.2 Communication Space** Except as otherwise provided herein, all Attachments and Contacts on a Pole must remain in the Communications Space. Licensee operations in the Supply Space or in the space separating the Communication and Supply Spaces are prohibited. The Communications Space includes the space reserved for each attachment on a given Pole. Each attachment or space reserved in the Communications Space shall have a maximum size of twelve (12) inches. Each thru-bolt type Attachment where the Pole is drilled and bolted to support Cable and messenger or band used to support Cable or messenger shall maintain a minimum of 12" vertical separation from adjacent bolts or bands.

**7.3 Maintenance** Licensee shall, at its sole expense, make and maintain its Attachments in a safe condition and in good repair including maintain tree trimming and clearances, and in such a manner as to not interfere with or interrupt CITY's lines, facilities, and services or with Third Party User attachments, facilities, and services.

**7.4 No Damage** Licensee shall not cause damage to CITY or Third Party User facilities or operations. If Licensee, its Contractors, agents, employees, or Attachments cause damage to CITY or Third Party User facilities or operations, Licensee assumes all responsibility for, and shall, as determined by CITY, either repair or promptly reimburse CITY or the Third Party User for all direct loss and expense caused by such damage. Licensee shall immediately inform CITY and all damaged Third Party Users of any damage to their facilities.

**7.5 Sag and Mid-Span Clearances** Licensee shall leave proper sag in its lines and Cables and shall observe the established sag of power line conductors and other Cables so that during the life of the Attachment minimum clearances are (A) achieved at Poles located on both sides of the span and (B) maintained throughout the span. A minimum clearance between surfaces must be maintained between Licensee's and others' Cables at mid-span and between Licensee's and others' Attachments and Pole Contacts on the Poles. Licensee will correct any clearance violations caused by its facilities or Attachments. In no event will Licensee be responsible for clearance violations caused by any other party, including CITY. Licensee will be responsible to resolve or remedy any incident where their Attachments fail to comply with Electrical Code safety clearance standards.

**7.6 Climbing Space** An unobstructed climbing space must be maintained at all times on the face of all Poles as required by Electrical Code, as well as adequate ground access to Poles. All Attachments must be placed as to allow and maintain a clear and proper climbing space. Licensee shall place its Attachments on the same side of the Pole as the majority of existing Attachments, if any. Licensee is

prohibited from Boxing on CITY poles. Notwithstanding the foregoing, in no event will Licensee be responsible for climbing space violations caused by any other party, including CITY.

**7.7 Tagging** Each Attachment shall be identified at all times by an identifying marker at each Pole approved by CITY that, at minimum, (A) is permanent in duration and not degradable by rain or sunlight (B) has coloring and numbering or lettering unique to Licensee, and (C) is capable of being read unaided from the ground by a person with reasonable vision. Licensee shall replace any tags that are missing, improper, or incorrect, at any time such Attachments are encountered including pre-existing Attachments CITY notifies Licensee of.

**7.8 Tree Trimming** Licensee shall be responsible for all tree trimming necessary for the safe and reliable installation, use, and maintenance of its Attachments, and to avoid stress on Poles caused by contact between tree limbs and Licensee's Attachments. All tree trimming shall be performed in accordance with the then current CITY tree-trimming policies (to the extent not inconsistent with the terms and conditions of this Agreement), including without limitation those relating to owner notification and consent. The Licensee shall immediately resolve any citizen complaint of tree-trimming related to the Licensee's Attachments to the satisfaction of the CITY.

**7.9 Anchors and Guying** Licensee shall provide all anchors and guying necessary to accommodate the additional stress and load placed upon a Pole by its Attachments. Anchors, guys, and guy guards shall be in place and in effect prior to the installation of Attachments, Cables, or any other facilities on a Pole. Licensee shall not attach to any CITY anchors or guying. Anchors shall not be placed outside of the easement in which a Pole stands.

## **ARTICLE 8 MODIFICATION OF ATTACHMENTS**

**8.1 No Unauthorized Modifications** Except for routine modifications as provided in Section 8.2, Licensee shall not change the type, nature, or location of any Attachment or alter its use of a Pole without prior written CITY consent. Any such unauthorized modifications shall be deemed an Unauthorized Attachment and the remedial provisions in Article 10 (Unauthorized Attachments) shall apply, except for Unauthorized Attachment Fees.

**8.2 Routine Modifications** Licensee does not need CITY consent for (A) changes incident to routine maintenance and repair; (B) installations of Service Drops; (C) removal of Licensee's Attachments; or (D) upgrades of existing equipment that do not materially alter Pole loading or Pole space utilization.

**8.3 CITY Mandated Modifications** Within 30 calendar days of written request by CITY or within such other mutually agreed upon timeframe, Licensee shall move or rearrange its Attachments in order to maximize the usable available Pole space and/or to accommodate CITY facilities. Licensee shall do so at its sole cost and risk, except that Licensee shall not be responsible for any costs or expenses incurred to relocate or alter its Attachments to accommodate the Make-Ready work of other Third Party Users. If Licensee fails or refuses to comply with the directions of CITY to change, alter, improve, move, remove or rearrange any of its Attachments in accordance with this Agreement, CITY may then opt to change, alter, improve, move, remove or rearrange such Attachments without incurring any liability, except as provided in Article 16, to Licensee and at Licensee's sole cost and risk, or CITY may proceed under Article 13 of this Agreement and will provide an invoice to the costs to Licensee.

**8.4 Emergencies** In case of an Emergency, including electrical service restorations, CITY may move, rearrange or transfer Licensee's Attachments, without notice and without liability to Licensee or to any other person, except as provided in Article 16. Licensee shall be responsible for all Costs and shall reimburse CITY for the costs CITY incurs relating to such work within forty-five (45) calendar days of the date CITY sends Licensee an invoice for such work. An "Emergency" is a condition that: (i) poses an immediate threat to the safety of utility workers or the public; (ii) materially and adversely interferes with the performance of CITY or another Third Party User's service obligations; or (iii) poses an immediate threat to the integrity of CITY or another Third Party User's Poles or equipment. As soon as practical thereafter, CITY shall notify Licensee of such events and actions, but in no case later than ten (10) days following the emergency.

**8.5 Destroyed Poles** If any Pole on which Licensee has an Attachment is substantially destroyed or damaged by fire, storm, accident, or otherwise, CITY shall be under no obligation to rebuild or replace such Pole, but may elect to terminate Licensee's Attachment License for such Pole without any liability to Licensee. CITY shall notify Licensee in writing of a termination under this paragraph, and Licensee shall be entitled to a pro-rata refund of any prepaid but unearned Annual Usage Charge attributable to the Attachments on such damaged or destroyed Pole. Nothing herein shall prohibit Licensee from repairing or replacing such damaged or destroyed Poles at Licensee's sole cost and expense if: (A) CITY elects not to repair or replace same, and (B) Licensee is permitted to do so under the City Code, the terms of Licensee's franchise, if applicable, and any applicable easements.

**8.6 Pole Transfers**

**A.** Licensee and CITY expressly agree that for the orderly management of public rights-of-way and aesthetic considerations, double or multiple Poles shall be prohibited if a new Pole contains sufficient carrying capacity to support existing Pole attachments. If CITY replaces an existing Pole supporting an Attachment with a new Pole, CITY will provide at least 30 days' advance written notice via email as well as the NJUNS system to Licensee that Licensee must transfer its Attachment to the new Pole except for emergencies. If mutually agreed upon and if reasonably feasible and safe to do so, CITY will transfer the Attachment to the replacement Pole when CITY transfers its own lines and facilities. Licensee may also notify the CITY in writing within 15 days of the notice that it does not desire to occupy the new Pole. Failure of Licensee to timely respond to CITY's notice shall be deemed an election to occupy the new Pole. If Licensee opts not to occupy the new Pole, Licensee shall remove its facilities from CITY'S Pole within 30 days from the date the replacement Pole is installed and ready for use and Licensee's Attachment License to the replaced Pole shall terminate as of the date of replacement but Licensee shall pay the Usage Rates for such Pole until its Attachments are removed and/or CITY may remove such Attachments at Licensee's sole risk and expense. Should the existing Pole upon which Licensee's facilities remain attached become damaged or rotten, the City shall not be responsible for its replacement and the Licensee will need to make other arrangements for their facilities. Licensee shall not be entitled to a refund of any Annual Usage Charge as a result. For each Attachment transferred by CITY, Licensee shall pay a transfer Fee as set forth in Exhibit A, unless the transfer is the result of a Third Party User attachment request, in which case the Third Party User will pay for Licensee's transfer.

**B.** All Poles, including any new Poles that may be required, shall be installed in the same

line of existing Poles unless it is infeasible to do so either safely, technically, or legally.

**8.7 Relocation** Upon at least 60 days advance written notice, Licensee agrees that it will bear all actual and reasonable Costs associated with the relocation or re-routing of its Attachments in the event CITY facilities are removed from a Pole. In such event, CITY shall be under no obligation to maintain any Poles that no longer support CITY lines and may remove Licensee's Attachments when removing the abandoned Pole at Licensee's sole Cost and risk if Licensee fails to relocate its facilities in a timely manner. City is not responsible for any negotiations for reimbursement for developer related relocations.

**8.8 Underground Conversion** Upon written notice, Licensee agrees that it will bear all Costs associated with the relocation or re-routing of its Attachments in the event CITY facilities are removed from a Pole and re-routed through underground Conduits. In such event, CITY shall be under no obligation to maintain any Poles that no longer support CITY supply lines and may remove Licensee's Attachments when removing the abandoned Pole at Licensee's sole Cost and risk. CITY will afford Licensee the opportunity to relocate underground, at Licensee's expense, where reasonably practicable.

## ARTICLE 9

### INVENTORY, INSPECTIONS, ANNUAL REPORTING, RIGHT TO AUDIT

**9.1 Right to Inspect** CITY may inspect Licensee's work and Attachments at any time. CITY may conduct these inspections for any purpose relating to this Agreement, including without limitation: (A) determining compliance with the Design Documents or other design and installation requirements; or (B) determining compliance with Electrical Code. The making of an inspection by CITY shall not operate in any way to relieve Licensee or Licensee's insurers of any responsibility, duty, obligation, or liability under this Agreement or otherwise, nor does CITY's ability to make inspections relieve Licensee from its obligations to exercise due care in the operation and inspection of its Attachments. Further, by conducting any inspection CITY is not responsible for the design, installation, or maintenance of Licensee's facilities or for any damages in anyway related to Licensee's Attachments to CITY'S Pole. Licensee shall reimburse CITY for the Cost of an inspection which finds a violation of the standards and terms of this Agreement caused solely by Licensee, but subject to the City having provided Licensee with proper written notice and opportunity to verify, challenge, and cure, pursuant to Article 9.2 of this Agreement. If an inspection reveals a violation caused by multiple parties (third party attachers and/or Licensor), or where the sole cause of the violation cannot be determined, Licensee shall reimburse the CITY for its costs proportional to that of the violation reasonably attributable to Licensee, subject to the City having provided Licensee with proper written notice and opportunity to verify, challenge, and cure, pursuant to Article 9.2 of this Agreement.

**9.2 Compliance** In the event any inspection of an existing Attachment reveals that corrections or other actions are required of Licensee under this Agreement, including without limitation those required for reasons of safety or structural integrity, Licensee shall either provide an explanation refuting responsibility or must make such corrections or take the requested actions within 30 days after the date CITY sends Licensee a written notice informing Licensee of the corrections to be made. If such corrections cannot be made within 30 days, the parties will agree on a mutually acceptable timeframe. If Licensee does not refute responsibility for or correct the violation(s) within 30 days (or other mutually agreed period of time) as required, CITY may perform such corrective work, at Licensee's sole Cost and

risk, except as provided in Article 16, if CITY determines in its reasonable judgment and discretion that an Emergency does not permit full advance notice to Licensee. If Licensee fails or refuses to comply with the directions of CITY, the Attachment License(s) for the Attachments in question shall be terminated. In no event will Licensee be responsible for corrections of violations caused by another party, including CITY. CITY may opt to change, alter, improve, move, remove or rearrange such Attachments without incurring any liability to Licensee, except as provided in Article 16, and at Licensee's sole Cost and risk, or proceed under Article 13 of this Agreement.

**9.3 System-wide Inventory** Not more than once every 3 years, nor less often than once every 10 years, CITY may, but is under no obligation to, conduct a system-wide inventory of all Licensee Attachments and Third-Party User attachments on its Poles, for which Licensee shall bear its proportionate share of Costs with all other Licensee's and Third Party Users. CITY will notify Licensee at least 90 days in advance of the times and places of such inventory, and Licensee may have representatives accompany CITY on the inventory. CITY may use the results of the inventory for purposes of calculating the Annual Usage Charge, but may also rely upon geographical grids or other mutually agreeable census to determine the correct count.

**9.4** At the CITY's request, and not more than once every two (2) years, Licensee will confer with the CITY to verify:

- A.** Installations: The Licensee shall verify where it has Attachments installed (by CITY Pole number, if available)
- B.** Non-Functional Attachment: If available, the Licensee shall provide a list of all Attachments or other installations that have either become non-functional, surrendered, or for which the Licensee is no longer paying under the Annual Usage Charge. Licensee shall identify the specific Pole (by CITY Pole number, if available) on which the nonfunctional Attachment or installation is located.
- C.** Removed Equipment: If available, the Licensee shall provide a list of any equipment removed (and not replaced by substantially similar equipment) from specific Poles (by CITY Pole number, if available).
- D.** Contact Personnel: The Licensee shall provide accurate and current contact information. Contact information shall include: (1) emails for field construction, engineering, and city relationship personnel, as well as an email and contact for a vice president level executive, and (2) a phone line that can be contacted by CITY at all times. Should contact information change Licensee shall provide updated information to the CITY within five (5) business days.

**9.5 Right to Audit** The Licensee grants the CITY, or its designees, the right to audit, examine or inspect, at the CITY's election, all of the Licensee's records relating to number and types of Licensee's Attachments during the term of the Agreement and retention period herein, provided however, that this Article 9.5 shall not apply so long as Licensee's ultimate parent company remains publicly traded, nor shall Article 9.5 apply so long as Licensee holds a state issued franchise covering the CITY. The audit, examination or inspection may be performed by a CITY designee, which may include its internal auditors or an outside representative engaged by the CITY. The Licensee agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the Agreement, then, such retention period shall extend until final resolution of the dispute. "Licensee's Records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Licensee records include but are not limited to billings,

books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, policies, procedures, and any and all other agreements, sources of information and matters that may in the CITY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Agreement. The CITY agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Licensee agrees to allow the CITY's designee access to all of the Licensee's Records, Licensee's facilities, and current or former employees of Licensee, deemed necessary by CITY or its designee(s), to perform such audit, inspection or examination. Licensee also agrees to provide adequate and appropriate work space necessary to CITY or its designees to conduct such audits, inspections or examinations. Licensee must include this audit clause in any subcontractor, supplier or vendor contract.

## **ARTICLE 10 UNAUTHORIZED ATTACHMENTS**

**10.1 Unauthorized Attachments** Licensee shall not place any Attachments on a Pole or other CITY infrastructure except as authorized by an Attachment License. If one or more Unauthorized Attachments are discovered, Licensee shall comply with this Article 10 or, if Licensee fails to comply, CITY may, but shall not be required to, remove the Unauthorized Attachment without incurring any liability to Licensee and at Licensee's sole Cost, as described in this paragraph 10.1. With respect to any Unauthorized Attachment, CITY may opt to:

A. Require that Licensee remove such Unauthorized Attachment upon written notice or, if Licensee fails to do as described in part B of this paragraph 10.1, remove such Attachment at Licensee's sole Cost and risk; or

B. Require that Licensee pay all costs to correct any Code or other violation, all inspection and engineering costs to field-check necessary Poles, Unauthorized Attachment Fees, with interest, for each unauthorized Attachment (as shown in Exhibit A Pole Attachment Charges), and submit an Attachment Application for each such Unauthorized Attachment, together with the then-current Filing Fee and Annual Usage Charge for the current year. If such penalty fees, Attachment Application, and charges are not received by CITY within 30 days of notice of the Unauthorized Attachment, or such reasonable time under the circumstances, CITY may then opt to remove Licensee's Unauthorized Attachments pursuant to Part A. of paragraph 10.1. CITY reserves the right to immediately remove any Unauthorized Attachments that, in the CITY'S sole opinion, pose an imminent danger to electrical utility operations or the public.

**10.2 Remedies Cumulative** The remedies afforded CITY under this Article 10 are in addition to any civil or criminal penalties provided by City Ordinance, as amended.

**10.3 Ratification Must Be in Writing** No act or failure to act by CITY with respect to an Unauthorized Attachment or any other unauthorized use of CITY Poles or property shall be considered to be a ratification, licensing, or permitting of the unauthorized use, irrespective of any otherwise applicable doctrine of waiver or laches.

**10.4 Excessive Unauthorized Attachments** Following the first audit after the Effective Date, if CITY

determines that Licensee has made more than 30 Unauthorized Attachments cumulatively during any Contract Year, Licensee shall be considered to be in breach of this Agreement and CITY retains the right to terminate this Agreement and require removal of Licensee's Attachments in accordance with Article 13 of this Agreement. Licensee herein reserves the right to challenge any such termination and maintain its Attachments until such challenge is exhausted.

## **ARTICLE 11 ACCESS TO CONDUIT AND DUCTS**

**11.1 Scope** Nothing in this Agreement require, or shall be construed as to require CITY to provide Licensee with access to CITY's electrical Ducts and Conduits.

## **ARTICLE 12 CUSTOMER INTERACTION**

**12.1 Purpose** Licensee acknowledges that the scope of its proposed project and Attachment installation it intends to undertake under this Agreement will require Licensee to make extensive and repeated intrusions onto the private property of CITY customers in order to access Poles. The purpose of this Article is to establish minimum standards of conduct with respect to property owners and CITY customers.

**12.2 Licensee Conduct** Before engaging in electrical installation work on the property of a CITY customer (except for connections or disconnections of customer's service or doing maintenance on existing Licensee facilities), Licensee shall, at minimum:

- A.** Provide CITY's Electric Utility Dispatch Center, (940) 349-7644, or such other department or division and number as CITY from time to time may designate, with notice of the times, locations, and nature of the work to be performed;
- B.** Require all field crews, and those of its Contractors, to carry and distribute upon request information packets explaining in detail the nature, extent, and purpose of the work being done and listing the telephone number and web site where additional information can be found;
- C.** Establish and maintain a call-center telephone number during all hours during which field work is being done that is staffed by knowledgeable personnel who can answer and resolve customer questions and complaints in a timely manner concerning the work being done on their premises;
- D.** Require all field crews to wear I.D. badges that identify themselves as employees or Contractors of Licensee;
- E.** Have all vehicles used in field work bear the logo(s) of Licensee's Contractors or Licensee; and
- F.** Have readily available, during all hours in which field work is being done, one or more knowledgeable personnel who can communicate with and assist the City Manager's Office and City Council members regarding property owner complaints, and also have available qualified personnel to conduct on-site resolution of property owner complaints.

**12.3 No CITY Affiliation** Licensee, and its employees, Contractors, and agents shall not at any time represent themselves to the public, any CITY customer, or any resident as being associated with, having the permission of, or having been requested by the City of Denton to be on private property. Licensee shall inform any such persons that it is allowed to work on CITY Poles by virtue of state and federal law, not by voluntary association with the City of Denton.

**12.4 Service Interruptions** If applicable, Licensee shall provide written notice to affected CITY customers of any planned electrical service interruptions by Licensee's contractors that will affect them not less than 48 hours in advance of such interruption. Such notice shall contain the specific dates and times for such interruptions and the reasons therefor.

### **ARTICLE 13 TERMINATION**

**13.1 Termination of Attachment Licenses** Attachment Licenses for specific Attachments shall terminate upon any of the following events or conditions:

- A. Licensee has not completed the Attachment installation within the later of (i) 120 days from issuance of the Attachment License (or such longer period as the parties may agree in writing); or (ii) 60 days after completion of all electrical Make-Ready work, unless Licensee and CITY agree in writing for a longer period;
- B. Licensee removes the Attachment other than in the course of routine maintenance or replacement;
- C. Licensee ceases to offer services, or provides services unlawfully, through the Attachment;
- D. Licensee fails to comply with paragraphs 8.3, 8.7 or 9.2 of this Agreement, except as otherwise provided by those paragraphs.

**13.2 Right of Suspension** Except in the case of a good faith dispute between the Parties, if Licensee fails either to make any payment required under this Agreement, or to perform timely any obligation under this Agreement, and such default continues for 30 days after the date the payment or performance is due if such cure can reasonably be completed within thirty (30) days, and if not, such cure has commenced and is being diligently and consistently pursued then, in addition to any other available right or remedy, CITY may, upon written notice to Licensee, immediately suspend all Attachment Licenses of Licensee hereunder until such time as the default is cured. The payment under protest of a disputed amount in order to avoid, or lift, suspension of Attachment Licenses shall not prejudice the rights of Licensee to continue the payment dispute. A suspension of Attachment Licenses under this paragraph shall not prevent Licensee from operating, maintaining, repairing or removing its existing Attachments, but Licensee shall not install any new or additional Attachments or make any changes to existing Attachments (except for removal or routine repair or maintenance necessary to continue to provide services to then-existing Licensee customers) during the period of suspension, except as otherwise agreed to by the Parties.

**13.3 Termination of Agreement by CITY** If Licensee fails either to pay any undisputed payment required under this Agreement, or timely perform any obligation under this Agreement, and if such default

has not been cured within three months of Licensee's receipt of written notice of default, or if such cure cannot reasonably be completed in three months, cure has commenced and has been continuously and diligently pursued, CITY may terminate this Agreement and all Attachment Licenses upon written notice to Licensee. Upon receipt of a notice of termination, Licensee shall promptly begin the process of removing all Attachments from specified Poles. All such Attachments shall be removed within 90 days after the date of the notice of termination, or within such time as CITY may agree. Until all of Licensee's Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Such payment by Licensee or acceptance by CITY of Annual Usage Charges shall not act to cure the default that triggered the termination nor shall it reinstate this Agreement or Licensee's Attachment Licenses hereunder.

**13.4 Failure to Remove Attachments** If Licensee has not removed all its Attachments within the period of time specified in the preceding paragraph, or such additional period of time granted by CITY in writing, then CITY may remove Licensee's Attachments at Licensee's sole Cost and risk. CITY will invoice Licensee for such Cost. Additionally, CITY may, in its reasonable discretion and upon written notice to Licensee, deem the Attachments to have been abandoned and assume ownership thereof.

**13.5 Termination of Agreement by Licensee** Licensee may terminate this Agreement upon 60 days written notice to CITY, in which event all Attachments shall be removed within 120 days after the date of the notice of termination or within such other time as CITY agrees. Until all of Licensee's Pole Attachments are removed, Licensee shall continue to comply with all of the terms of this Agreement and perform all of its duties and obligations hereunder, including without limitation the obligation to pay Annual Usage Charges for its Attachments. Termination by Licensee during a Contract Year shall not relieve Licensee from payment for the full Annual Usage Charge for that Contract Year or any other sums that it owes CITY.

**13.6 Survival** Licensee's obligations under this Article 13 shall survive termination of this Agreement.

## **ARTICLE 14 ASSIGNMENTS**

**14.1 Written Consent Required** The rights granted by this License Agreement inure to the benefit of Licensee and shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise by force or involuntary sale, without the express prior written consent of the CITY, which consent shall not be unreasonable withheld, delayed or conditioned.

**14.2 Transfer of License Agreement** Notwithstanding the provisions of Section 14.1, a transfer of this License Agreement may occur without CITY approval in the following circumstance: (i) an assignment or transfer to entities that control, are controlled by, or are under common control with Licensee, or (ii) the acquisition of all or substantially all of Licensee's assets in the Denton, Texas market by reason of a merger, acquisition or other business reorganization. In order to effect an assignment of this License Agreement as listed in (i) and (ii) above without CITY approval, the Licensee must provide the CITY a Notice of Assumption at least thirty (30) days prior to the assignment which contractually binds the purchasing or acquiring party to meet all the obligations of this License Agreement.

**14.3 Institutional Mortgages or Lenders** Licensee may also assign this License Agreement, without

CITY's consent and without prior notice to CITY, to an institutional mortgagee or lender providing financing to Licensee with respect to Licensee's Attachments in the event such institutional mortgagee or lender exercises its foreclosure right against Licensee and operates the Attachments; provided such institutional mortgagee or lender is capable of assuming all of the obligations of the Licensee under this License Agreement and further provided that any assignment will not be effective against CITY unless and until written notice of such assignment and exercise of rights is provided to CITY.

**14.4 Assignment by CITY** CITY may assign this Agreement in whole or in part without the consent of Licensee. CITY shall give Licensee written notice of the transaction within ten days after closing.

## **ARTICLE 15 SURETY**

**15.1 Performance Bond** Within 30 days of the Effective Date of this Agreement, Licensee shall provide a Performance Bond in the amount of \$100,000 to guarantee the performance of Licensee's obligations under this Agreement, including, but not limited to, the removal of Licensee's Attachments upon termination of this Agreement. Licensee agrees to maintain the performance bond in full force and effect during the entire term of this Agreement and until CITY is reimbursed for all Costs incurred as a result of removing Licensee's Attachments upon termination of this Agreement. The performance bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by the City pursuant to applicable law. The amount of the bond or financial security does not operate as a limitation upon obligations of the Licensee under this Agreement.

## **ARTICLE 16 LIABILITY AND INDEMNITY**

**16.1 CITY Liability** CITY reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its own service requirements. CITY shall not be liable for any damages incurred by Licensee for damage or interruption to its Attachments except for actual repair costs caused by the gross negligence or intentional misconduct of CITY; provided, however, that CITY shall not be liable to Licensee for material or financial loss resulting from any interruption of Licensee's Attachments. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, ANY THIRD PARTY, OR ANY CUSTOMER OF THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THE USE OF OR DAMAGE TO, LICENSEE'S FACILITIES, OR THIS AGREEMENT.**

**16.2 No Warranties by CITY** Licensee is expected to inspect the Poles on which its Attachments will be placed and shall rely solely on such inspection to determine the suitability of the Poles for its purposes. **CITY DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING ANY POLE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACCEPTS THE USE OF ALL POLES AS IS-WHERE IS, AND WITH ALL FAULTS, EXCEPT AS OTHERWISE PROVIDED HEREIN.**

**16.3 Unsafe Poles** Licensee acknowledges and agrees CITY does not warrant the condition or safety of CITY's Poles, or the premises surrounding the Poles LICENSEE HEREBY ASSUMES ALL RISKS OF , AND INDEMNIFIES CITY FROM, ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY LICENSEE'S, OR LICENSEE'S CONTRACTORS' OR SUBCONTRACTORS' USE OF THE POLES AND ASSOCIATED FACILITIES AND EQUIPMENT ON, WITHIN, OR SURROUNDING THE POLES. Licensee expressly agrees it will undertake responsibility for inspecting and evaluating the condition of any Pole before allowing any employees, whether those of Licensee or Licensee's Contractors or Subcontractors, to climb or otherwise work on such Pole. If Licensee discovers any Poles that are rotten or otherwise unsafe for climbing or for Attachment installation, Licensee shall report any unsafe condition to CITY within one (1) day. Licensee further acknowledges CITY does not warrant all Poles are properly labeled, and agrees CITY is not liable for any injuries or damages caused by or in connection with missing labels or otherwise improperly labeled Poles. Licensee further agrees to notify CITY immediately if labels or tags are missing or otherwise improper.

**16.4 Dangerous Nature of the Work** Licensee acknowledges in performing the work contemplated by this Agreement, Licensee and its agents, servants, employees, Contractors and Subcontractors will work near electrically energized lines, transformers, and other electrical equipment, and it is the intention the power flowing through such facilities will not be interrupted except by CITY. Licensee shall ensure its employees, servants, agents, Contractors and Subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, employees of CITY, and the general public, from harm or injury while performing work permitted by this Agreement. In addition, Licensee shall furnish its employees, and shall require its agents, Contractors and Subcontractors to furnish their employees, with competent supervision and sufficient and adequate personal protective equipment, tools and other equipment for their work to be performed in a safe manner. Licensee further warrants it is apprised of, conscious of, and understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION OR FALLS) inherent in the work necessary to make installations on CITY's Poles by Licensee's employees, servants, agents, Contractors and Subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, and to require its agents, Contractors and Subcontractors to inform their employees of such dangers and to keep them informed regarding same.

**16.5 Disclaimer of Liability** CITY shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Licensee's negligent construction, reconstruction, maintenance, repair, use, operation, condition or dismantling of Licensee's system or Licensee's provision of service.

**16.6 Indemnification** SUBJECT ONLY TO PARAGRAPH 16.9 LICENSEE SHALL, AT ITS SOLE COST AND EXPENSE, FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND ALL ASSOCIATED, AFFILIATED, ALLIED AND SUBSIDIARY ENTITIES OF CITY, WHETHER EXISTING NOW OR IN THE FUTURE, AND EACH OF THEIR RESPECTIVE OFFICIALS, OFFICERS, DEPARTMENTS, AGENCIES, COUNTIES, BOARDS, REPRESENTATIVES, EMPLOYEES, AGENTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS AND ATTORNEYS (CITY AND SUCH OTHER PERSONS AND ENTITIES BEING COLLECTIVELY REFERRED TO HEREIN AS "INDEMNITEES"), FROM AND AGAINST:

**A. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND**

EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS) , WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF LICENSEE, ITS PERSONNEL, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS OR AFFILIATES, RESULTING IN ECONOMIC HARM, PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, LIBEL, SLANDER, INVASION OF PRIVACY AND UNAUTHORIZED USE OF ANY TRADEMARK, TRADE NAME, COPYRIGHT, PATENT, SERVICE MARK OR ANY OTHER RIGHT OF ANY PERSON, FIRM OR CORPORATION, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THE CONSTRUCTION, RECONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE OR CONDITION OF LICENSEE'S ATTACHMENTS OR OTHER PROPERTY OF LICENSEE OR ITS AFFILIATES AND ANY OTHER FACILITIES AUTHORIZED BY OR PERMITTED UNDER THIS AGREEMENT; THE RELEASE OF HAZARDOUS SUBSTANCES, OR; THE FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, LAW, CODE, ORDINANCE OR REGULATION.

**B. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS), WHICH ARE IMPOSED UPON, INCURRED BY OR ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY CLAIM OR LIEN ARISING OUT OF WORK, LABOR, MATERIALS OR SUPPLIES PROVIDED OR SUPPLIED TO LICENSEE, ITS CONTRACTORS OR SUBCONTRACTORS, FOR THE INSTALLATION, CONSTRUCTION, RECONSTRUCTION, OPERATION OR MAINTENANCE OF LICENSEE'S FACILITIES (AND ANY OTHER FACILITIES AUTHORIZED BY OR PERMITTED UNDER THIS AGREEMENT OR PROVISION OF COMMUNICATIONS SERVICES OR OTHER SERVICES AUTHORIZED BY OR PERMITTED UNDER THIS AGREEMENT), AND, UPON THE WRITTEN REQUEST OF CITY, LICENSEE SHALL CAUSE SUCH CLAIM OR LIEN COVERING CITY'S PROPERTY TO BE DISCHARGED OR BONDED WITHIN THIRTY (30) DAYS FOLLOWING SUCH REQUEST.**

**C. ANY AND ALL LIABILITIES, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY FINANCING OR SECURITIES OFFERING BY LICENSEE OR ITS AFFILIATES FOR VIOLATIONS OF THE COMMON LAW OR ANY LAWS, STATUTES, OR REGULATIONS OF THE STATE OF TEXAS OR THE UNITED STATES, INCLUDING THOSE OF THE FEDERAL SECURITIES AND EXCHANGE COMMISSION, WHETHER BY LICENSEE OR OTHERWISE.**

**D. ALL ACTS OR OMISSIONS BY LICENSEE OR ITS CONTRACTORS DONE IN THE COURSE OF INSTALLATION CONSTRUCTION OR IN THE MAINTENANCE, USE, OR OPERATION OF LICENSEE'S ATTACHMENTS.**

**E. ANY WORK PERFORMED BY CITY THAT WAS NECESSITATED PRIMARILY BY THE INSTALLATION, MAINTENANCE, PRESENCE, USE OR REMOVAL OF LICENSEE'S ATTACHMENTS OR FROM ANY WORK THIS AGREEMENT AUTHORIZES CITY TO PERFORM ON LICENSEE'S BEHALF.**

**F. ALL CLAIMS OR CAUSES OF ACTION FOR DAMAGE TO PROPERTY OR INJURY TO OR DEATH OF ANY PERSONS, INCLUDING PAYMENTS MADE BY CITY UNDER ANY WORKER'S COMPENSATION LAWS OR UNDER ANY PLAN FOR EMPLOYEES' DISABILITY AND DEATH BENEFITS, ARISING OUT OF THE**

**ERECTION, MAINTENANCE, REPAIR, PRESENCE, USE, RELOCATION, TRANSFER OR REMOVAL OF LICENSEE'S ATTACHMENTS OR THE PROXIMITY OF LICENSEE'S ATTACHMENTS TO CITY'S FACILITIES OR THE PROPERTY OF ANY OTHER THIRD PARTY USER, OR BY ANY ACT OR OMISSION OF LICENSEE ON OR IN THE VICINITY OF CITY'S POLES.**

**G. ALL CLAIMS OR CAUSES OF ACTION FOR PROPERTY DAMAGE, BODILY INJURY OR DEATH CAUSED BY LICENSEE'S ACTS OR OMISSION DURING THE PERFORMANCE OR NONPERFORMANCE OF ANY WORK OR OBLIGATION UNDERTAKEN BY LICENSEE PURSUANT TO THIS AGREEMENT, EXCEPT TO THE EXTENT OF CITY'S NEGLIGENCE OR INTENTIONAL MISCONDUCT.**

**H. ANY OCCURRENCE RELATED TO LICENSEE'S ERECTION, MAINTENANCE, REPAIR, PRESENCE, USE, RELOCATION, TRANSFER OR REMOVAL OF LICENSEE'S ATTACHMENTS, INCLUDING LIABILITIES INCURRED AS A RESULT OF VIOLATION OF ANY LAW, RULE, OR REGULATION OF THE UNITED STATES, STATE OF TEXAS OR ANY OTHER GOVERNMENTAL ENTITY OR ADMINISTRATIVE AGENCY.**

**I. A VIOLATION OF ANY STATE OR FEDERAL LAW ARISING OUT OF LICENSEE'S ERECTION, MAINTENANCE, REPAIR, PRESENCE OR USE, RELOCATION, TRANSFER OR REMOVAL OF LICENSEE'S ATTACHMENTS OR THE PROXIMITY OF LICENSEE'S ATTACHMENTS TO CITY'S FACILITIES OR THE PROPERTY OF ANY ATTACHING ENTITY, OR BY ANY ACT OR OMISSION OF LICENSEE ON OR IN THE VICINITY OF CITY'S POLES, WHETHER SUCH VIOLATION IS THE RESULT OF A VIOLATION OF A STATUTE BY CITY OR THE LICENSEE SOLELY OR ANY JOINT VIOLATION THEREOF.**

**J. CLAIMS OF GOVERNMENTAL BODIES, PROPERTY OWNERS OR OTHERS ALLEGING THAT LICENSEE DOES NOT HAVE A SUFFICIENT RIGHT OR AUTHORITY FOR PLACING AND MAINTAINING LICENSEE'S FACILITIES AT THE LOCATIONS OF POLES OWNED BY CITY OR JOINT USERS.**

**K. CLAIMS FOR TAXES OR SPECIAL CHARGES BY OTHERS THAT ARISE DIRECTLY OR INDIRECTLY FROM THE CONSTRUCTION, MAINTENANCE OR OPERATION OF LICENSEE'S FACILITIES.**

**L. CLAIMS OR CAUSES OF ACTION CAUSED BY OR RELATING IN ANY MANNER TO A BREACH OF THIS AGREEMENT OR A FAILURE TO FOLLOW THE TERMS OF THIS AGREEMENT BY LICENSEE OR ITS AGENTS AND EMPLOYEES OR BY LICENSEE'S CONTRACTORS OR THEIR AGENTS AND EMPLOYEES.**

**M. ALL CLAIMS OR CAUSES OF ACTION OF THIRD PARTY USERS ALLEGING INTERFERENCE FROM LICENSEE'S ATTACHMENTS OR DAMAGE TO THIRD PARTY USER ATTACHMENTS OR FACILITIES.**

**N. ALL CLAIMS OR CAUSES OF ACTION RELATING TO LICENSEE'S USE OF ITS ATTACHMENTS, INCLUDING WITHOUT LIMITATION CLAIMS OF LIBEL AND SLANDER AND CLAIMS BASED UPON INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

**O. LICENSEE'S OBLIGATIONS TO INDEMNIFY INDEMNITEES UNDER THIS AGREEMENT SHALL NOT EXTEND TO CLAIMS, LOSSES, AND OTHER MATTERS COVERED HEREUNDER THAT ARE CAUSED OR CONTRIBUTED TO BY THE NEGLIGENCE OF ONE OR MORE INDEMNITEES. IN SUCH CASE THE OBLIGATION TO INDEMNIFY SHALL BE REDUCED IN PROPORTION TO THE NEGLIGENCE OF THE INDEMNITEES. BY ENTERING INTO THIS AGREEMENT, CITY DOES NOT CONSENT TO SUIT, WAIVE ITS GOVERNMENTAL IMMUNITY OR THE LIMITATIONS AS TO DAMAGES CONTAINED IN THE TEXAS TORT CLAIMS ACT.**

**P. THIS SECTION 16.6 SURVIVES THE TERMINATION OF THIS LICENSE AGREEMENT.**

**16.7 Assumption of Risk** Licensee undertakes and assumes for its officers, agents, Contractors and subcontractors and employees (collectively "Licensee" for the purpose of this Section), all risk of dangerous conditions, if any, on or about any CITY-owned or controlled property, the streets and public ways, and Licensee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitees' gross negligence) arising out of Licensee's work while installing , operating, or maintaining the Communication Facilities or other Licensee facilities or Licensee's failure to comply with any Federal, State or local statute, law, code, ordinance or regulation.

**16.8 Defense of Indemnitees** In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Licensee shall, upon notice from any of the Indemnitees, at Licensee's sole cost and expense, resist and defend the same with legal counsel selected by Licensee and consented to by CITY, such consent not to be unreasonably withheld; provided, however, that Licensee shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Licensee.

**16.9 Joint Liability** The indemnity obligations set forth in paragraphs 16.5 and 16.6 shall apply to fully protect and indemnify CITY from all such claimed damages regardless of whether CITY is a joint tortfeasor unless (1) the indemnified liability was the result of gross negligence, or intentional or reckless misconduct on the part of CITY, or their agents, servants, employees, or contractors, or (2) by virtue of a final judgment, a finder of fact determines CITY'S percentage of responsibility for the indemnified liability to be 51% or greater, in which case each party shall then be liable for its found percentage of damages in accordance with Texas law.

**16.10 Governmental Immunity** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by CITY of the provisions of the Texas Tort Claims Act or any other law limiting municipal liability.

**16.11 City Fault. SUBJECT ONLY TO PARAGRAPH 16.6, 16.7 AND 16.9, IT IS THE EXPRESS INTENT OF THE PARTIES THAT THE FOREGOING INDEMNITY IS TO PROTECT AND INDEMNIFY CITY AGAINST THE CONSEQUENCES OF ITS OWN FAULT WHERE THE CITY'S FAULT IS A CONCURRENT CAUSE OF THE INDEMNIFIED CLAIM.**

**16.12 Notice, Cooperation and Expenses** The Indemnitees shall give Licensee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Article 16. Nothing herein shall be deemed to prevent the Indemnitees at their own expense from cooperating with Licensee and participating in the defense of any litigation by their own counsel.

**16.13 Other Indemnification Provisions** No indemnification provision contained in this Article shall be construed in any way to limit any other indemnification provision contained in this Agreement.

**16.14 Survival** This Article 16 shall survive the termination of this License Agreement.

## **ARTICLE 17 INSURANCE**

17.1 Licensee shall purchase and maintain in force and effect, at its own expense, the following minimum insurance coverages and limits:

17.2 Statutory Worker's Compensation and Employer's Liability Insurance with minimum limits of not less than indicated below. The policy must be in the name of the Licensee.

Required Limits – Statutory limits, with Employer's Liability Coverage as follows:

Bodily Injury by Accident	\$1,000,000.00
Bodily Injury by Disease Each Employee	\$1,000,000.00
Bodily Injury by Disease Policy Limit	\$1,000,000.00

17.3 Commercial General Liability Insurance, including the coverages identified below, with minimum limits indicated below.

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00

The Commercial General Liability Policy will include the following coverage's where applicable:

1. Bodily injury & Property damage on an "Occurrence" basis
2. Premises & Operations
3. Products/Completed Operations
4. Personal & Advertising Injury Liability
5. Contractual Liability
6. Explosion, Collapse, and Underground (XCU)

17.4 Commercial Automobile Insurance for all owned, non-owned, and hired vehicles.

Combined Single Limit BI & PD \$500,000.00

17.5 Umbrella/Excess Liability Coverage, following form, over Employers' Liability, Commercial General Liability, and Commercial Automobile Liability Policies, with the limits shown below.

Excess Liability Coverage \$8,000,000.00 per occurrence/claim

17.6 Each of Licensee's liability insurance policies required herein shall be primary to and non-contributing with, any other insurance carried by, or for the benefit of the CITY. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage.

17.7 Licensee's workers' compensation, employers' liability, commercial automobile liability, commercial general liability, and umbrella/excess liability insurance policies shall, through policy language or endorsement, waive all rights of subrogation in favor of CITY and its affiliates, and their shareholders, directors, officers, members, employees and agents.

17.8 CITY and its employees, officers, directors, shareholders, members, and agents shall be included as additional insureds on all policies (except workers' compensation and employer's liability). Commercial general liability policy shall include ISO endorsement forms "CG 20 10" and "CG 20 37," or their

equivalent. Further:

(a) In the event of cancellation of the required policies, Licensee or its insurer(s) shall provide thirty (30) days' prior written notice of cancellation to CITY.

(b) Upon request by CITY, Licensee shall provide copies of policy endorsements as required in this Section 17 from issuing insurance company(s).

17.9 All Licensee's insurance shall be issued by insurance carriers authorized or licensed to do business in Texas at the time the policy is issued and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates listing CITY's name and address as a Certificate Holder, and list the name of Project as described in this Agreement and the name and phone number of the broker who prepared the certificate. Certificates of insurance shall be prepared on an Acord form 25.

17.10 With respect to any coverage maintained on a "claims-made" policy form, Licensee shall maintain such coverage, either through policy renewals or the purchase of an extended discovery period (if such extended coverage is available), for two (2) years following termination of this Agreement; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the effective date of this Agreement.

17.11 Licensee shall not commence the installation of Attachments under this Agreement until Licensee has obtained all required insurance and until such insurance certificates and endorsements/policy language have been received and approved by CITY. CITY's approval of Licensee's insurance shall not relieve or decrease the liability of Licensee hereunder.

17.12 If Licensee fails to obtain or renew the above required insurance and furnish to the CITY acceptable evidence thereof, CITY shall have the right, but not the obligation, to deem as material breach of this Agreement the Licensee's failure to do so. City retains any and all rights to pursue damages related to this breach notwithstanding any limitations of liability herein.

17.13 Nothing herein shall reduce or alter any obligation Licensee has to indemnify, defend or hold harmless the Indemnified Parties identified in the Agreement.

17.14 In the event Licensee enters into a subcontract with an independent contractor, the Licensee will require the independent contractor to procure insurance that is appropriate for the type and level of services being provided.

17.15 Licensee shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitation inadequacy and/or absence of coverage, whether such policies are purchased by Licensee and/or CITY.

## **ARTICLE 18 MISCELLANEOUS PROVISIONS**

**18.1 Integration** This Agreement constitutes the entire understanding of the parties relating to the use of CITY'S Poles hereunder; and there shall be no modification or waiver hereof except by writing, signed by the parties. There are no oral representations or agreements between the parties. All previous agreements, correspondence, statements, and negotiations are superseded by this Agreement.

**18.2 No Waiver** The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in duly force and effect.

**18.3 Applicable Law and Venue** The parties hereto agree and intend that all disputes that may arise from, out of, under or respecting the terms and conditions of this Agreement, or concerning the rights or obligations of the parties hereunder, or respecting any performance or failure of performance by either party hereunder, shall be governed by the laws of the State of Texas, without application of its Conflict of Laws provisions.

Except as provided in Article 3, Paragraph 3.2 of this Agreement, the parties further agree and intend that venue shall be proper and shall lie exclusively in state or federal court with jurisdiction in Denton County, Texas, except where otherwise provided herein and except where the Texas Public Utility Commission lawfully has jurisdiction.

**18.4 Severability** If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants and provisions of this Agreement shall remain in full force and effect.

**18.5 Payments & Interest** All monetary payments under this Agreement shall be due and payable within 45 days after receipt of invoice. All overdue balances shall accrue interest at the rate of 0.5% per month from the due date until paid, or the maximum rate allowed by law, whichever is less.

**18.6 Amending Agreement** Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed, or altered except in writing signed by authorized representatives of both Parties.

**18.7 Dispute Resolution** This procedure shall govern any dispute resolution process between CITY and Licensee arising from or related to the subject matter of this Agreement that is not resolved by agreement between their respective personnel responsible for day-to-day administration and performance of this Agreement. Upon mutual agreement of the Parties, prior to the filing of any suit with respect to such a dispute, other than a suit seeking injunctive relief with respect to intellectual property rights, the Party believing itself aggrieved ("the Invoking Party") will call for progressive management involvement in the dispute negotiation by giving written notice to the other Party. Such a notice will be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement. CITY and Licensee will use their best efforts to arrange personal meetings and telephone conferences as needed, at mutually convenient times and places, between their negotiators. If a resolution is not achieved by negotiators at the final management level within allotted reasonable amount of time, then either Party may within ten (10) business days thereafter request non-binding mediation to resolve the dispute. The mediation shall take place in Denton County or in a location mutually agreed to by the Parties. The allotted period for completion of the mediation shall be thirty (30) calendar days. Notwithstanding the foregoing, either Party may file an action in a court of competent jurisdiction within the State of Texas to resolve the dispute at any time unless otherwise agreed.

**18.8 Receivership, Foreclosure, or Bankruptcy** Licensee shall notify CITY not later than thirty (30) days of the filing of a receivership, reorganization, bankruptcy or other such action or proceeding by or against Licensee. Except as otherwise prevented by a court of law, the rights granted to Licensee hereunder, at the option of CITY shall cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Licensee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such

receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- A. to the extent permitted by law, within one hundred twenty (120) days after their election or appointment, such receivers or trustees shall have complied fully with all the terms and provisions of this Agreement granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Agreement, if any; and
- B. to the extent permitted by law, within said one hundred twenty (120) days, such receivers or trustees shall execute an agreement duly approved by CITY having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.
- C. In the case of foreclosure or other judicial sale of the plant, property and equipment of Licensee, or any part thereof, including or excluding this Agreement, CITY may serve notice of termination upon Licensee and the successful bidder at such sale, in which event the Agreement herein granted and all rights and privileges of the Agreement hereunder shall cease and terminate thirty (30) days after service of such notice, unless:
- D. CITY shall have approved the transfer of this Agreement, as and in the manner in this Agreement provided; and
- E. Unless such successful bidder shall have agreed with CITY to assume and be bound by all the terms and conditions to this Agreement.

**18.9 Incorporation of Recitals and Appendices** The Recitals stated above and all appendices, attachments, and exhibits to this Agreement are incorporated into and constitute part of this Agreement.

**18.10 Contractors and Agents Bound** Licensee shall be fully liable for any Contractor or subcontractor retained by Licensee to perform work or services for Licensee under this Agreement, as a condition of being granted access to Poles and City property.

**18.11 No Third Party Beneficiaries** The terms and provisions of this Agreement are intended to be for the benefit of CITY and Licensee except as otherwise provided in this Agreement, and nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties to this Agreement, any benefits, rights or remedies under or by reason of this Agreement.

**18.12 Emergency Contact** Each Party shall maintain a staffed 24-hour emergency telephone number where a Party can contact the other Party to report damage to the other Party's Facilities or other situations requiring immediate communications between the Parties. Failure to maintain an emergency contact shall subject the Licensee to a charge equal to the actual costs incurred by CITY per incident and shall eliminate CITY's liability, to Licensee for any actions that CITY deems reasonably necessary given the specific circumstances. The CITY's Electric Utility Dispatch Center emergency phone number is (940) 349-7644.

**18.13 Direct Billing** Notwithstanding any provision to the contrary contained herein, to the extent that Licensee has a separate applicable contractual agreement with CITY's Contractor, CITY's Contractor shall directly bill Licensee for its work conducted under this Agreement pursuant to the terms of

Contractor's agreement with Licensee, and all payments to CITY's Contractor (and any billing disputes arising thereunder) shall be pursuant to the separate applicable contractual agreement with Licensee.

**18.14 Notices** When notice is required to be given under this Agreement by either party, it shall be in writing mailed or delivered to the other party at the following address or to such other address as either party may from time to time designate in writing for that purpose. All notices shall be effective upon receipt.

**City:**

**Office of the City Attorney**

City of Denton  
215 E. McKinney St.  
Denton, Texas  
76201

**Licensee:**

**Charter Communications**

**Construction Manager**  
**1565 Chenault**  
**Dallas, TX 75228**

**Legal Notice**

**Charter Communications**  
**Legal Operations**  
**12405 Powerscourt Drive**  
**St. Louis, MO 63131**

**Pole Rent:**

Charter Communications, c/o TEOCO  
Attn: Ms-CCF  
12150 Monument Drive, Ste. 700  
Fairfax, VA 22033  
Email: [charter.xtrak@teoco.com](mailto:charter.xtrak@teoco.com)

IN WITNESS WHEREOF, the undersigned have executed this Agreement at Denton, Denton County, Texas through their duly authorized representatives.

**AGREED:**

**CITY OF DENTON**

\_\_\_\_\_  
City Manager

Signed on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Approved as to legal form

\_\_\_\_\_  
City Attorney

**LICENSEE**

*Jimmy McCullough, Asst. Vice President*

Spectrum Gulf Coast, LLC

By Charter Communications, Inc., its manager

  
\_\_\_\_\_  
Signature of Authorized Person for Licensee Entity

*Jimmy McCullough*  
Printed Name of Authorized Person

Signed on the 31 day of December, 20 25.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON ADOPTING AND APPROVING A POLE ATTACHMENT LICENSE AGREEMENT WITH SPECTRUM GULF COAST, LLC (“CHARTER”) FOR ALL POLE ATTACHMENTS INVOLVING POLES AND CONDUITS OWNED BY THE CITY OF DENTON (“CITY”); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENTS; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City, operates or controls certain utility poles in the public rights of way managed and controlled by City throughout Denton; and

WHEREAS, Spectrum Gulf Coast LLC (“Charter” or “Licensee”) desires to provide voice, video, internet, or data transmission and other lawful communications services within City’s service area; and

WHEREAS, to provide voice, video, internet, or data transmission and other lawful communications services, Licensee seeks to place and maintain cables, equipment, facilities, within City’s service area and desires to place such cables, equipment, and facilities on various poles and easements owned by City; and

WHEREAS, City is willing to grant Licensee a revocable, non-exclusive license to use certain poles on the strict terms and conditions set forth in this Pole Attachment License Agreement and subject to the City Code of Ordinances, Electrical Code, and Distribution Construction Standards, and applicable law, as they may be amended from time to time.

WHEREAS, the City Council finds that this Pole Attachment License Agreement is in the best interest of the City; NOW THEREFORE

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council hereby approves the attached Pole Attachment License Agreement with Licensee.

SECTION 2. The City Manager is hereby authorized to execute and deliver on behalf of the City the Pole Attachment Agreement attached hereto and incorporated herein by reference.

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 City Council hereby authorizes the expenditure of funds therefor in the attached Pole Attachment License Agreement.

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 [ \_\_\_ - \_\_\_ ]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2026.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
INGRID REX, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



# City of Denton

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

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** March 23, 2026

### 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 Schweitzer Engineering Laboratories, Inc., for the purchase of protective relay panels for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8965 – awarded to Schweitzer Engineering Laboratories, Inc., in the not-to-exceed amount of \$110,583.00).

### STRATEGIC ALIGNMENT

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

### INFORMATION/BACKGROUND

Denton Municipal Electric (DME) has projects in its five (5) year Capital Improvement Plan that require the purchase of protective relay panels that house microprocessor-based protective relays, control switches, test switches, and other devices necessary to operate and protect transmission lines, distribution lines, and substation equipment. The projects are as follows:

- **Masch Branch T2 Addition** – Project to extend existing bus and install (1) 25kV substation power transformer, switchgear building, and associated equipment to serve new load, increase reliability, and add redundancy.
- **Jim Christal T3 Addition** – Project to extend existing bus and install (1) 25kV substation power transformer, switchgear building, and associated equipment to serve new load, increase reliability, and add redundancy.

Protective relays are the “brains” of the protection systems that continuously monitor currents, voltages, and other inputs, and initiate actions, including opening circuit breakers when abnormal conditions are sensed, and perform other protective actions. Relays also provide metering functions, remote terminal unit functions (RTU), and control output functions. Relay panels are fabricated from steel to provide a sturdy framework for mounting protective relays and other equipment required for protection and control inside the substation. Relay panel construction includes installation of wiring, mounting of all hardware, testing, and delivery to Denton Municipal Electric.

The contract estimate is based on the quantities of panels needed for the CIP projects listed below. A 10% contingency was added for any unforeseen design changes.

<b>Project Description</b>	<b>Contract Estimate</b>
Masch Branch T2 Addition (Qty. 4)	\$50,265
Jim Christal T3 Addition (Qty. 4)	50,265
Contingency – 10%	10,053
<b>Total</b>	<b>\$110,583</b>

Requests for Proposals were sent to 290 prospective suppliers of this item, including six (6) Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Three (3) bids were received and evaluated based upon published criteria, including delivery, compliance with specifications, probable performance, and price. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Schweitzer Engineering Laboratories, Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	287 – Electronic Equipment, Components, Parts, and Accessories (See Class 730 for Testing or Analyzing Type)
Notifications sent for Solicitation sent in IonWave:	290
Number of Suppliers that viewed Solicitation in IonWave:	23
HUB-Historically Underutilized Business Invitations sent out:	33
SBE-Small Business Enterprise Invitations sent out:	119
Responses from Solicitation:	3

### **RECOMMENDATION**

Award a contract with Schweitzer Engineering Laboratories, Inc., for the purchase of protective relay panels for Denton Municipal Electric, in a not-to-exceed amount of \$110,583.

### **PRINCIPAL PLACE OF BUSINESS**

Schweitzer Engineering Laboratories, Inc.  
Charlotte, NC

### **ESTIMATED SCHEDULE OF PROJECT**

Delivery of the items will occur 14 weeks after receipt of the order.

### **FISCAL INFORMATION**

These items will be funded from a combination of the accounts listed below.

Masch Branch T2 Addition	605598500	\$50,265
Jim Christal T3 Addition	605585500	\$50,265

Requisition #174189 has been entered into the Purchasing software system in the amount of \$110,583. The budgeted amount for this item is \$110,583.

## **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: Mark Zimmerer, 940-349-7169.

Legal point of contact: Leah Bush at 940-349-8333.

**Exhibit 2**

**RFP 8965 - Pricing Evaluation for Protective Relay Panels**

				<b>Schweitzer Engineering Laboratories, Inc.</b>	Texas Electric Cooperatives	United Electric Systems Inc
Respondent's Business Name:				<b>Leonard, TX</b>	Georgetown, TX	Allentown, PA
Principal Place of Business (City and State):						
Line #	Description	QTY	UOM	Unit	Unit	Unit
<b>Masch Branch Substation Relay Panels</b>						
1	BREAKER MB410	1	EA	<b>\$11,250.00</b>	\$12,229.00	\$19,500.00
2	TRANSFORMER #2 METERING	1	EA	<b>\$12,310.00</b>	\$13,381.00	\$19,500.00
3	TRANSFORMER #2 DIFFERENTIAL	1	EA	<b>\$19,510.00</b>	\$21,207.00	\$24,500.00
4	TRANSFORMER #2 HMI	1	EA	<b>\$7,195.00</b>	\$7,821.00	\$16,500.00
<b>Jim Christal Substation Relay Panels</b>						
5	BREAKER JC4240	1	EA	<b>\$11,250.00</b>	\$12,229.00	\$19,500.00
6	TRANSFORMER #3 METERING	1	EA	<b>\$12,310.00</b>	\$13,381.00	\$19,500.00
7	TRANSFORMER #3 DIFFERENTIAL	1	EA	<b>\$19,510.00</b>	\$21,207.00	\$24,500.00
8	TRANSFORMER #3 HMI	1	EA	<b>\$7,195.00</b>	\$7,821.00	\$16,500.00
<b>Total:</b>				<b>\$100,530.00</b>	<b>\$109,276.00</b>	<b>\$160,000.00</b>

<b>Evaluation</b>				
Item #	Standard Criteria	Schweitzer Engineering Laboratories, Inc.	Texas Electric Cooperatives	United Electric Systems Inc
1	Delivery/Project Schedule - 15%	<b>10.00</b>	7.00	10.00
2	Compliance with Specifications - 25%	<b>15.00</b>	15.00	15.00
3	Probable Performance - 10%	<b>8.00</b>	8.00	5.33
4	Price, Total Cost of Ownership - 50%	<b>50.00</b>	46.00	31.00
<b>Total Score:</b>		<b>83.00</b>	76.00	61.33

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH SCHWEITZER ENGINEERING LABORATORIES, INC., FOR THE PURCHASE OF PROTECTIVE RELAY PANELS FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8965 – AWARDED TO SCHWEITZER ENGINEERING LABORATORIES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$110,583.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the purchase of protective relay panels 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</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8965	Schweitzer Engineering Laboratories, Inc.	\$110,583.00

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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2026.

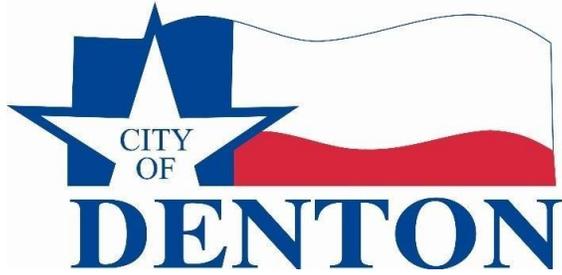
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
INGRID REX, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush



## DocuSign City Council Transmittal Coversheet

RFP	8965
File Name	Protective Relay Panels
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND SCHWEITZER ENGINEERING LABORATORIES,  
INC.  
(Contract # 8965)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between **Schweitzer Engineering Laboratories, Inc.** a Washington corporation, whose address 2350 NE Hopkins Court, Pullman, WA 99163 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 in accordance with the City’s **RFP 8965 Protective Relay Panels** 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 8965** (the “Solicitation”) (**Exhibit “B” on file at the office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit “C”**);
- (d) Software License Agreement (**Exhibit “D”**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit “E”**);
- (f) Contractor’s Proposal (“Contractor’s Offer”) (**Exhibit “F”**);
- (g) Form CIQ – Conflict of Interest Questionnaire (**Exhibit “G”**)

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 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 2275, 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.

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

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

DME General Manager  
TITLE  
Electric  
DEPARTMENT

ATTEST:  
INGRID REX, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush  
2A936B08B5D7485...

CONTRACTOR  
BY: Christy Mikulencak  
AUTHORIZED SIGNATURE

Printed Name: Christy Mikulencak

Title: Senior Business Manager

509-334-5742

PHONE NUMBER

christy\_mikulencak@selinc.com

EMAIL ADDRESS

2025-1396455

TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_

SARA HENSLEY  
CITY MANAGER

## **Exhibit A** **Special Terms and Conditions**

### **1. The Quantities**

The quantities indicated on Exhibit F are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

### **2. Product Changes During Contract Term**

The Contractor shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com), with the above file number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the contractor's expense. Products that have been installed will be replaced at the contractor's expense.

### **3. Authorized Distributor**

The Contractor shall be the manufacturer or authorized distributor of the proposed products. The distributor shall be authorized to sell to the City of Denton, and make available the manufacturer's representative as needed by the City.

### **4. Contract Terms**

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

### **5. 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. The 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. Respondent 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 of Denton 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 of Denton 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 of Denton approval and/or cancellation.

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

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

**6. Total Contract Amount**

The contract total shall not exceed \$110,583.00. Pricing shall be per Exhibit F attached.

**7. Delivery Lead Time**

Product or services shall be delivered to the City per the days/weeks noted in Exhibit F after receipt of the order.

**Exhibit B**  
**City of Denton's RFP 8965 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 the Seller or respondent 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 seller'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 Contractor 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 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. The City must unpack and examine the Products immediately, and if damage is discovered, notify the Contractor within three (3) business days of delivery. In any event, acceptance shall be deemed to have occurred no later than fifteen (15) days after shipment. The City may not return any Product without prior written consent of the Contractor.

**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 have the right to correct with a conforming tender; provided, 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 actual and substantiated 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: INTENTIONALLY OMITTED.**

**10. WORKFORCE INTENTIONALLY OMITTED**

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: INTENTIONALLY OMITTED.**

**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 Vendor'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 execution of the Contract

### 13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable – [accountspayable@cityofdenton.com](mailto: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 under this agreement 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 electronic transfer of funds. In the event of payment by credit card the Contractor shall be able to charge a transaction fee. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by 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. The City will be responsible for payment of all completed services subject to the terms and conditions of this Contract.

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 (15<sup>th</sup>) 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 of Denton if the vendor 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 of Denton. 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. In no event shall the City have access to Contractor or its subcontractor's composition of fixed rates or lump sums, the financial make up of payroll burdens or to any costs expressed as a percentage of direct labor costs. Audit information will be limited to time and material expense for the project in question.

**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 and for similar quantities 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.

**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. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF PERFORMANCE OR DEALING OR USAGE OF TRADE, EXCEPT WARRANTY OF TITLE AND AGAINST PATENT INFRINGEMENT.

C. Unless otherwise specified in the Contract or required by the Solicitation, the warranty period shall be ten (10) years for all Contractor products from the date of shipment. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of written demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at no additional cost to the City. The City shall endeavor to give the Contractor written notice of the breach of warranty within ten (10) business 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 any Product fails to conform to this warranty, the City properly notifies Contractor of such failure and the City returns the Product to Contractor's factory for diagnosis (and pays for all expenses for such return), Contractor shall correct any such failure by, at its sole discretion, either repairing any defective or damaged Product part(s) or making available any necessary replacement part(s) or Product(s). Contractor will pay the freight to return the Product to the City (Carriage Paid To (CPT) customer's place of business). If Contractor is unable or unwilling to repair or replace, Contractor and the City shall negotiate an equitable resolution such as a prorated refund or credit to the City's account. Any Product repair or upgrade shall be covered by this warranty for the longer of one (1) year from date of repair or the remainder of the original warranty period.

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. The sole and exclusive warranties for any software are set forth in the Contractor's Software License Agreement. This warranty is conditioned upon proper storage and shall be void in its entirety if the City modifies Products without prior written consent to and subsequent approval of any such modifications by Contractor or uses Products for any applications that require product listing or qualification not specifically included in the Contractor written quotation or proposal.

## **22. WARRANTY – SERVICES: INTENTIONALLY OMITTED**

**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 25, (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 under the Order 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 ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or commences to cure such default and the cure cannot be accomplished in the ten (10) day period provided Contractor diligently pursues such cure until the default is remedied, 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 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:** Either Party 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 from the City, 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, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof, provided such payment amount is not disputed by City. 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. **RETURN OF CONTRACTOR'S EQUIPMENT:** The City may return standard products, with Contractor's written approval, up to one year after the original invoice date ("Purchase Date") if they are new, in their original packaging, were properly stored, and have never been installed. A restocking fee of 25% of the product price shall apply if the product is returned less than six (6) months after the Purchase Date; 50% if returned after six (6) months from the Purchase Date. After one year, products may not be returned.

30. **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.

31. **RETURN OF CONTRACTOR'S EQUIPMENT:** The City may return standard products, with Contractor's written approval, up to one year after the original invoice date ("Purchase Date") if they are new, in their original packaging, were properly stored, and have never been installed. A restocking fee of 25% of the product price shall apply if the product is returned less than six (6) months after the Purchase Date; 50% if returned after six (6) months from the Purchase Date. After one year, products may not be returned.

31. **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, provided such delay is communicated at least seven (7) business days prior to the original delivery date. Such delay in delivery shall not exceed thirty (30) days from the original delivery date. 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 53. 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.

**32. 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 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 of one half of one percent (0.05%) of the Contract price for each and every week or a pro-rated part thereof for each day of delay from the delivery due date provided in the contract, but not to exceed five percent (5%) of the price in total. 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.

**33. INDEMNITY:**

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits and causes of action brought by a third-party and any resulting 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 arising from such third-party claims to the extent such third-party claims and damages result from (1) damage to or loss of the property of any); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person), 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, 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.**

C. Assumption of Defense. Regarding Contractor's defense obligation: (a) Contractor shall assume the defense of an Indemnified Claim through counsel chosen by Contractor; and (b) City shall: (i) give prompt written notice of the Indemnified Claim to Contractor; (ii) provide reasonable assistance to Contractor in the defense of the Indemnified Claim; (iii) mitigate damages related to the Indemnified Claim; and (iv) give Contractor full control of all aspects of defense of the Indemnified Claim, including settlement, except as otherwise provided herein. Contractor shall obtain written consent from the City before settling the Indemnified Claim and acknowledges that City Council might have to approve a settlement. The City may, at its sole option and expense, participate in the defense of such third-party claim with counsel chosen by the City.

D. Exclusive Remedy. The indemnity provided by Contractor herein shall be City's exclusive remedy for Indemnified Claims and resulting damages.

E. Survival. Contractor's defense and indemnity obligations shall survive the expiration or termination of this Agreement only to the extent that the applicable statute of limitations for any Indemnified Claim for which Contractor has a defense or indemnity obligation extends beyond the expiration or termination of this Agreement.

34. **LIMITATION OF LIABILITY:** Contractor and its affiliates' aggregate liability to City, collectively, shall be limited to the amount of this Agreement for all claims and damages related to this Agreement; provided, however, no limitation of liability in regard to amount shall apply to claims and damages arising from Contractor's gross negligence or willful misconduct.. Notwithstanding anything in this Agreement to the contrary, the City of Denton and Contractor and its affiliates shall not be liable for any special, consequential, incidental, indirect, exemplary, or punitive damages, including, without limitation, any loss of profit or revenues, even if the other Party has been advised of the possibility of such damages. **Except as otherwise provided in this Section, the above damage waiver shall: (a) apply to all claims and Damages related to this Agreement, whether such arise in contract, tort (including negligence), or otherwise; (b) survive the expiration or termination of this Agreement**

35. **INSURANCE:** Intentionally Omitted.

36. **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.

37. **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 address specified in the Contractor's Offer, 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.

**38. 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.

**39. 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 FROM THIRD-PARTY CLAIMS OF INFRINGEMENT TO THE EXTENT SUCH THIRD-PARTY CLAIMS ARISE OUT OF: (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 AND EXPENSE 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. IF A GOOD OR SERVICE BECOMES, OR IN CONTRACTOR'S REASONABLE OPINION IS LIKELY TO BECOME, THE SUBJECT OF A THIRD-PARTY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF AN INTELLECTUAL PROPERTY RIGHT, THEN CONTRACTOR SHALL, AT ITS SOLE EXPENSE AND DISCRETION: (A) EXCHANGE THE GOOD OR SERVICE WITH A NON-INFRINGING GOOD OR SERVICE; (B) PROMPTLY PROCURE FOR INDEMNITEE THE RIGHT TO CONTINUE TO USE THE GOOD OR SERVICE; (C) MODIFY THE GOOD**

**OR SERVICE TO MAKE IT NON-INFRINGEMENT, PROVIDED THAT THE MODIFIED GOOD OR SERVICE MEETS THE SPECIFICATIONS AND ALL OTHER APPLICABLE REQUIREMENTS UNDER THIS AGREEMENT; OR (D) REPURCHASE THE GOOD OR SERVICE FROM INDEMNITEE FOR A FAIR PORTION OF THIS ORIGINAL PRICE. CONTRACTOR SHALL NOT BE LIABLE FOR DAMAGES THAT ARISE AFTER CONTRACTOR OFFERS ONE OR MORE OF THE FOREGOING REMEDIES IN GOOD FAITH.**

**40. 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.

**41. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests in and to the items listed in Exhibit F except for software (including firmware) which is licensed to the City. The City acknowledges that the Contractor's intellectual property is the sole property of the Contractor. By sale of Products or Services to the City, the Contractor does not transfer any of the Contractor's intellectual property rights (including, without limitation, rights to design or other work product). The City shall not remove or alter any trademarks, service marks or trade dress that identify the Contractor, nor use any trademarks, service marks, trade dress or any other intellectual property that, in the sole discretion of the Contractor, is confusingly similar to those of the Contractor. Any software (including firmware) included with the Products is owned by the Contractor (or its licensors) and is licensed, not sold, to the City. The City may use such software only with Products and only as intended by the Contractor. All software shall be provided subject to the then-current Contractor Software License Agreement.

**42. 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.

**43. 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,  
Contract 8965

State, or local government.

44. **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.

45. **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 of Denton 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.

46. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** The Contractor agrees to comply with the conflict of interest provisions of the City of Denton 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.

47. **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.

48. **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.

49. **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 of Denton, Texas 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 of Denton, Texas, 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.

**50 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 Vendor shall notify the City's Purchasing Manager, in writing, of a company name, 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.

**51 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.

**52. 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.

**53. 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.

**54. 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.

D. Suspension during Dispute: If a dispute arises between the Parties, Contractor shall proceed with the performance of the Work unless: (a) the dispute must be resolved to properly proceed with the Work, including, but not limited to, a dispute regarding the scope of Contractor's work; or (b) the City fails to make timely payment of undisputed amounts. If Contractor suspends performance pursuant to this section, Contractor shall have no liability for any damages due to such suspension, including, but not limited to, delay damages.

**55. 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.

56. **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.

57. **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 City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or their authorized designee.

58. **SURVIVABILITY OF OBLIGATIONS:** To the extent provided herein, 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.

59. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton 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 Vendor 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 of Denton.

60. **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.

**61. 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”.

62. **RIGHT TO INFORMATION:** The City of Denton 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.

63. **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 respondent.

64. **PREVAILING WAGE RATES:** INTENTIONALL OMITTED

65. **COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The Contractor or supplier 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.

66. **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 coverage and standard Workers' Compensation insurance coverage. Contractor shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton 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 of Denton and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

67. **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.

68. **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.

69. **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 of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

70. **FORCE MAJEURE:** The City of Denton, 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 of Denton or Contractor. 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 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.

71. **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.

72. **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 Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

73. **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. The City shall not have access to Contractor's composition of fixed rates or lump sums, the financial makeup of payroll burdens or to any costs expressed as a percentage of direct labor costs.

74. **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.

75. **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

Contract 8965

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

**SOFTWARE LICENSE AGREEMENT**

**PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE INSTALLING SOFTWARE. SCHWEITZER ENGINEERING LABORATORIES, INC. OR ITS AFFILIATE ("SEL") IS WILLING TO LICENSE SOFTWARE TO YOU AND/OR YOUR COMPANY ("LICENSEE") ONLY ON THE CONDITION THAT LICENSEE ACCEPTS THE TERMS OF THIS AGREEMENT. BY INSTALLING SOFTWARE OR OPENING THE PACKAGE (OR, IF THIS AGREEMENT IS DISPLAYED ELECTRONICALLY, CLICKING "I ACCEPT" OR "I AGREE"), LICENSEE AGREES TO THE TERMS OF THIS AGREEMENT. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL SOFTWARE OR OPEN THE PACKAGE (OR, IF THIS AGREEMENT IS DISPLAYED ELECTRONICALLY, CLICK "NO" OR "CANCEL") AND PROMPTLY RETURN SOFTWARE TO SEL WITHIN TWENTY (20) DAYS OF PURCHASE FOR A FULL REFUND OF ANY LICENSE FEE PAID. THE TERMS OF THIS AGREEMENT SHALL APPLY TO ANY SOFTWARE PROVIDED BY SEL TO LICENSEE, WHETHER OR NOT EMBEDDED IN SEL PRODUCTS.**

- 1. License to Use.** "Software" means proprietary computer software licensed by SEL, whether or not embedded as firmware in SEL products, and includes all copyright, trade secret, patent and other property rights in and to Software, any upgrades, updates, modifications, enhancements to, and derivative works of Software, any associated media (including without limitation user manuals, training guides, other written documentation, executable files, help files and other files) and any copies of Software. SEL grants to Licensee a perpetual, worldwide, non-exclusive, non-transferable, personal, revocable, and limited license to use the current version of Software. SEL licenses (and not sells) Software to Licensee and no title or ownership interest in Software is transferred to Licensee.
- 2. Limitations on Use.** Software is copyrighted and possibly patented and contains proprietary information and trade secrets belonging to SEL or its affiliates and subsidiaries. Licensee shall not modify, decompile, disassemble, decrypt, extract or otherwise reverse-engineer Software, or create derivative works based upon all or part of Software. Licensee shall not sublicense, transfer, loan, rent, lease or assign Software or this Agreement to any other person without the prior written consent of an authorized employee of SEL. Licensee shall not remove or obscure any copyright or other intellectual property notices on Software. Licensee shall not, in whole or in part, disclose Software to any third party nor use Software for any purpose other than its own internal business purposes. Licensee shall take all reasonably appropriate actions, whether by instruction, contract or otherwise, to ensure that Licensee's employees comply with this Agreement. Licensee shall not use Software until Licensee has paid SEL the Software license fee (if applicable) or the product price (which includes the firmware license fee for embedded software). Licensee is not granted a license to any Software upgrade, update, modification, or enhancement offered by SEL, unless i) Licensee acknowledges that use of such upgrade, update, modification, or enhancement is subject to the terms of this Agreement and subsequent amendment(s), and ii) Licensee has paid any applicable Annual Upgrade Subscription License fee. SEL 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 SEL 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*.
- 3. Limitations on Copying.** All copies of Software shall conspicuously display any copyright and other intellectual property notices found on the original Software. Licensee shall not copy written documentation provided with Software. If Licensee holds a Single-Seat License, Software may be installed on only one (1) computer during the term of the license, and Licensee shall not copy Software, except as reasonably necessary to run Software or to interconnect Software with other programs, or for backup purposes. If Licensee holds a Corporate License, Licensee may make a limited number of copies (not to exceed fifty (50) seats) to fulfill its needs within the corporation and for backup purposes.

4. **Termination.** Licensee's rights to Software shall terminate upon any violation or termination of this Agreement. Licensee's obligations pursuant to this Agreement shall survive any termination of this Agreement. Licensee shall return to SEL any media containing, and delete any electronic copies of, Software immediately upon termination of this Agreement and certify same in writing to SEL.
5. **Warranty.** Software embedded as SEL firmware shall be covered under the SEL Standard Product Warranty for the respective product. Software not embedded as product firmware shall, at the time of delivery, substantially conform to SEL's then-current published specifications for ninety (90) days after delivery. Licensee acknowledges that Software is of such complexity that it may have inherent defects. SEL shall attempt to correct documented errors that SEL's diagnosis indicates are caused by a defect in Software, provided that Licensee notifies SEL of any such defect within ninety (90) days after delivery. SEL does not provide any warranty if Software's nonconformance is a result of Licensee's abuse, improper use, or modification of Software. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF PERFORMANCE OR DEALING OR USAGE OF TRADE), EXCEPT TITLE AND PATENT INFRINGEMENT, AND IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF SEL FOR DAMAGES ARISING FROM OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF SOFTWARE. SEL MAKES NO WARRANTY THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE OR WITHOUT INTERRUPTION. SEL shall not be held liable for any damages whatsoever (including without limitation any incidental, direct, indirect, special, consequential, and punitive damages) arising from or in connection with the delivery, use, or performance of Software, even if SEL has been advised of the possibility of such damages. This paragraph sets forth Licensee's sole remedy and SEL's sole liability.
6. **Third Party Software.** Certain SEL products contain software licensed by SEL from one or more third party software licensors, including Microsoft Licensing, Inc. or its affiliates ("Third Party Software"). SEL does not warrant Third Party Software. Third Party Software shall be subject to the standard warranties and terms of use provided by Third Party Software suppliers (copies of which may be obtained from an SEL customer service representative).
7. **U.S. Government Restricted Rights.** Software (including documentation and embedded software) is provided as commercial and restricted computer software. Use, duplication or disclosure by the U.S. Government or any U.S. Government contractor or subcontractor is subject to the restrictions set forth in 48CFR12.212, 48CFR52.227-14, 48CFR52.227-19, or 48CFR227.7202, as applicable.
8. **Governing Law and Dispute Resolution.** Intentionally Omitted.
9. **Miscellaneous.** Any modification of these Terms must be in a writing signed by an authorized officer of SEL. Licensee shall comply with all applicable laws, regulations, and orders of the United States or any other jurisdiction, including without limitation all applicable export laws, regulations, and orders. Any notice pursuant to this Agreement shall be deemed given when sent by registered or certified mail (return receipt requested), overnight delivery or fax (confirmed receipt and sent by mail) to an authorized officer at the address or fax number provided on the SEL sales order acknowledgment if to SEL or, if no such address or fax number is provided, at the registered headquarters of the other party. All rights and duties hereunder shall be for the sole and exclusive benefit of Licensee and SEL and not

for the benefit of any other party. The assignment or transfer by Licensee of any rights or duties hereunder without prior written consent of SEL shall not relieve Licensee of any obligations to SEL. No failure or delay by either party in exercising any right or remedy, or insisting upon strict compliance by the other party with any obligation in this Agreement, shall constitute a waiver of any right thereafter to demand exact compliance with this Agreement. The invalidity, in whole or part, of any provision in this Agreement shall not affect the remainder of such provision or any other provision and, where possible, shall be replaced by a valid provision that effects as close as possible the intent of the invalid provision. Neither party shall be liable for failure to perform or delay in performance of any obligation under this Agreement (except payment of amounts already due and owing) where such failure or delay results from any event beyond its reasonable control.

**Exhibit E**  
**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/filinginfo/1295/](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](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: **Contract 8965** – 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.

## Bid Lines

<b>1</b>	<b><u>Masch Branch Substation Relay Panels</u></b> <b>Unit Pricing - PRICING SHALL BE QUOTED TO INCLUDE ALL COSTS, WITH SHIPPING FOB DESTINATION</b>
Item Notes: Costs for Fully Assembled Standard Relay Panels (with wiring verification). The owner will supply SEL protective relays and other SEL devices.	
<b>2</b>	<b>BREAKER MB410</b> Quantity: <u>  1  </u> UOM: <u>  EA  </u> Price: <input type="text" value="\$11,250.00"/> Total: <input type="text" value="\$11,250.00"/> Item Notes: Drawing Number Series - MB-MB410 <b>Item Attributes</b> <b>1. Delivery (Weeks ARO)</b> <input type="text" value="14"/>
<b>3</b>	<b>TRANSFORMER #2 METERING</b> Quantity: <u>  1  </u> UOM: <u>  EA  </u> Price: <input type="text" value="\$12,310.00"/> Total: <input type="text" value="\$12,310.00"/> Item Notes: Drawing Number Series - MB-T2M <b>Item Attributes</b> <b>1. Delivery (Weeks ARO)</b> <input type="text" value="14"/>
<b>4</b>	<b>TRANSFORMER #2 DIFFERENTIAL</b> Quantity: <u>  1  </u> UOM: <u>  EA  </u> Price: <input type="text" value="\$19,510.00"/> Total: <input type="text" value="\$19,510.00"/> Item Notes: Drawing Number Series - MB-T2S <b>Item Attributes</b> <b>1. Delivery (Weeks ARO)</b> <input type="text" value="14"/>
<b>5</b>	<b>TRANSFORMER #2 HMI</b> Quantity: <u>  1  </u> UOM: <u>  EA  </u> Price: <input type="text" value="\$7,195.00"/> Total: <input type="text" value="\$7,195.00"/> Item Notes: Drawing Number Series - MB-T2HMI <b>Item Attributes</b> <b>1. Delivery (Weeks ARO)</b> <input type="text" value="14"/>
<b>6</b>	<b><u>Jim Christal Substation Relay Panels</u></b>
<b>7</b>	<b>BREAKER JC4240</b> Quantity: <u>  1  </u> UOM: <u>  EA  </u> Price: <input type="text" value="\$11,250.00"/> Total: <input type="text" value="\$11,250.00"/> Item Notes: Drawing Number Series - JC-JC4240

**Item Attributes**

**1. Delivery (Weeks ARO)**

**8 TRANSFORMER #3 METERING**

Quantity:   1   UOM:  EA  Price:  Total:

Item Notes: Drawing Number Series - JC-T3M

**Item Attributes**

**1. Delivery (Weeks ARO)**

**9 TRANSFORMER #3 DIFFERENTIAL**

Quantity:   1   UOM:  EA  Price:  Total:

Item Notes: Drawing Number Series - JC-T3S

**Item Attributes**

**1. Delivery (Weeks ARO)**

**10 TRANSFORMER #3 HMI**

Quantity:   1   UOM:  EA  Price:  Total:

Item Notes: Drawing Number Series - JC-T3HMI

**Item Attributes**

**1. Delivery (Weeks ARO)**

**Response Total: \$100,530.00**

Exhibit G -  
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.**  
Schweitzer Engineering Laboratories, 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 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

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

\_\_\_\_\_  
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:  
Christy Mikulencak  
F199307504A44CB...  
Signature of vendor doing business with the governmental entity

12/4/2025  
Date

## Certificate Of Completion

Envelope Id: BD2EAA3F-4C34-4925-8104-B231A4E83302

Status: Sent

Subject: Please DocuSign: City Council Contract 8965 Protective Relay Panels

Source Envelope:

Document Pages: 35

Signatures: 3

Envelope Originator:

Certificate Pages: 7

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: 198.49.140.10

## Record Tracking

Status: Original

Holder: Christa Christian

Location: DocuSign

2/6/2026 10:35:22 AM

Christa.Christian@cityofdenton.com

## Signer Events

## Signature

## Timestamp

Christa Christian

**Completed**

Sent: 2/6/2026 10:51:35 AM

Christa.Christian@cityofdenton.com

Viewed: 2/6/2026 10:51:47 AM

Purchasing Supervisor

Signed: 2/6/2026 10:52:20 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

Initial

Sent: 2/6/2026 10:52:23 AM

lori.hewell@cityofdenton.com

Viewed: 2/6/2026 12:50:47 PM

Purchasing Manager

Signed: 2/9/2026 8:20:03 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

Leah Bush

Signed by:  
  
2A936B08B5D7485...

Sent: 2/9/2026 9:03:38 AM

leah.bush@cityofdenton.com

Viewed: 2/9/2026 10:57:57 AM

Security Level: Email, Account Authentication (None)

Signed: 2/9/2026 1:40:00 PM

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Accepted: 2/9/2026 10:57:57 AM

ID: db5288f8-37a8-4a03-81e3-e45fcef342a6

Christa Christian

**Completed**

Sent: 2/10/2026 7:24:21 AM

christa.christian@cityofdenton.com

Viewed: 2/10/2026 7:24:45 AM

Purchasing Supervisor

Using IP Address: 198.49.140.104

Signed: 2/10/2026 7:24:52 AM

City of Denton

Security Level: Email, Account Authentication (None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Signer Events	Signature	Timestamp
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Christy Mikulencak  
 christy\_mikulencak@selinc.com  
 Senior Business Manager  
 Schweitzer Engineering Laboratories Inc.  
 Security Level: Email, Account Authentication (None)

Signed by:  
  
 D39420098D35429...  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 165.225.216.180

Sent: 2/10/2026 8:51:38 AM  
 Resent: 2/17/2026 4:36:08 PM  
 Resent: 2/20/2026 3:52:25 PM  
 Viewed: 2/20/2026 5:00:32 PM  
 Signed: 2/20/2026 5:01:02 PM

**Electronic Record and Signature Disclosure:**  
 Accepted: 2/20/2026 5:00:32 PM  
 ID: 56c85f89-d269-4686-a5a6-5bb249d9707f

Antonio Puente, Jr.  
 Antonio.Puente@cityofdenton.com  
 DME General Manager  
 Denton Municipal Electric  
 Security Level: Email, Account Authentication (None)

Signed by:  
  
 E3780944C2BF4B5...  
 Signature Adoption: Pre-selected Style  
 Using IP Address:  
 2600:100c:b2a8:d5c4:cc70:a9f:4386:fa81  
 Signed using mobile

Sent: 2/20/2026 5:01:06 PM  
 Viewed: 2/20/2026 9:57:33 PM  
 Signed: 2/20/2026 9:58:04 PM

**Electronic Record and Signature Disclosure:**  
 Accepted: 2/20/2026 9:57:33 PM  
 ID: 9c506917-e74f-426e-9acb-941202566024

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

Sent: 2/20/2026 9:58:08 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

Ingrid Rex  
 Ingrid.Rex@cityofdenton.com  
 Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee  cheyenne.defee@cityofdenton.com  Procurement Administration Supervisor  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 2/6/2026 10:52:23 AM
<p>Marcella Lunn  marcella.lunn@cityofdenton.com  Senior Deputy City Attorney  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 2/9/2026 9:03:40 AM
<p>Jeremy Nickels  dita_wexler@selinc.com  VP of Finance, SEL Inc  SEL, ES  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Accepted: 2/10/2026 8:50:58 AM  ID: 04a989c4-ff62-422e-a20b-5093525e5552</p>	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 2/10/2026 8:51:42 AM Viewed: 2/10/2026 8:52:00 AM
<p>Gretna Jones  gretna.jones@cityofdenton.com  Legal Secretary  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 2/20/2026 9:58:07 PM Viewed: 2/25/2026 12:02:35 PM
<p>City Secretary Office  citysecretary@cityofdenton.com  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>		
<p>Mark Zimmerer  mark.zimmerer@cityofdenton.com  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Accepted: 2/10/2026 12:54:54 PM  ID: 2a2aaaa2-6c1d-467d-bcac-39e2802f930e</p>		

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/6/2026 10:51:35 AM
Envelope Updated	Security Checked	2/10/2026 7:20:37 AM
Envelope Updated	Security Checked	2/10/2026 7:20:37 AM

<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Updated	Security Checked	2/10/2026 7:24:21 AM
Envelope Updated	Security Checked	2/10/2026 7:24:21 AM
Envelope Updated	Security Checked	2/10/2026 7:24:21 AM
Envelope Updated	Security Checked	2/10/2026 7:24:21 AM

<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>
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**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](mailto:purchasing@cityofdenton.com)

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

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

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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

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

\*\* 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.



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**AGENDA INFORMATION SHEET**

**DEPARTMENT:** Capital Projects

**ACM:** Frank Dixon

**DATE:** March 23, 2026

**SUBJECT**

Consider recommending adoption of an ordinance authorizing the City Manager to execute and deliver Supplemental Agreement No. 1 to the Standard Utility Agreement (“Agreement”) by and between the City of Denton and the Texas Department of Transportation (“TxDOT”), for the reimbursement of design, property acquisition and related services, construction, inspection, project management, and other direct costs associated with the adjustment, removal, and/or relocation of wastewater utilities along I-35E from Mayhill to Loop 288 more specifically called the I-35E/Mayhill Utility Relocations Project (Utility ID No. U00011546) for wastewater relocation efforts, within the County and City of Denton, Texas; providing for the expenditure of funds not to exceed an increase of One Hundred Sixty-Two Thousand, Eight Hundred Fifteen and 90/100 dollars (\$162,815.90) therefore; and providing an effective date.

**STRATEGIC ALIGNMENT**

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

**BACKGROUND**

In preparation of the I-35E widening project, the City is responsible for relocating the city owned utilities outside of the newly acquired TxDOT right-of-way. In November 2022, the City and TxDOT entered into an agreement for the water and wastewater utilities to be relocated for the section I-35E/Mayhill section of the project.

Upon completion of the project and an accounting of all costs associated with the relocation efforts, a supplemental agreement is needed by TxDOT to increase the estimated reimbursement amount from \$1,624,824.40 to \$1,787,640.30.

**RECOMMENDATION**

Staff recommends approval of the Ordinance.

**ESTIMATED SCHEDULE OF PROJECT**

The City’s I-35/Mayhill Utility Relocation Project was completed in March 2024.

**PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

Nov. 15, 2022, the City authorized the Standard Utility Agreement with TxDOT approving reimbursements in the amount of \$1,624,824.40 (Ordinance No. 22-2391).

## **FISCAL INFORMATION**

The City's financial obligation of \$1,787,640.30 for the construction of I35/Mayhill Utilities Relocation Project was approved on November 1, 2022 (Ordinance 22-2194). The funding was provided from account 640420541.1365.40100 (WW Project Funding). Reimbursements will be deposited into account 4440.4642.

## **EXHIBITS**

- Exhibit 1 – Agenda Information Sheet
- Exhibit 2 – Ordinance and Agreement
- Exhibit 3 – Original Standard Utility Agreement

Respectfully submitted:  
Seth Garcia, PMP  
Director of Capital Projects

For information regarding this ordinance, contact: Kristine Stewart, PMP at 940-349-8537.

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

**ORDINANCE NO. 26-**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER SUPPLEMENTAL AGREEMENT NO. 1 TO THE STANDARD UTILITY AGREEMENT (“AGREEMENT”) BY AND BETWEEN THE CITY OF DENTON AND THE TEXAS DEPARTMENT OF TRANSPORTATION (“TXDOT”), FOR THE REIMBURSEMENT OF DESIGN, PROPERTY ACQUISITION AND RELATED SERVICES, CONSTRUCTION, INSPECTION, PROJECT MANAGEMENT, AND OTHER DIRECT COSTS ASSOCIATED WITH THE ADJUSTMENT, REMOVAL, AND/OR RELOCATION OF WASTEWATER UTILITIES ALONG I-35E FROM MAYHILL TO LOOP 288 MORE SPECIFICALLY CALLED THE I-35E/MAYHILL UTILITY RELOCATIONS PROJECT (UTILITY ID NO. U00011546) FOR WASTEWATER RELOCATION EFFORTS, WITHIN THE COUNTY AND CITY OF DENTON, TEXAS; PROVIDING FOR THE EXPENDITURE OF FUNDS NOT TO EXCEED AN INCREASE OF ONE HUNDRED SIXTY-TWO THOUSAND, EIGHT HUNDRED FIFTEEN AND 90/100 DOLLARS (\$ 162,815.90) THEREFORE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on November 15, 2022 City Council authorized Ordinance No. 22-2391 for the approval and execution of the Standard Utility Agreement for wastewater utility relocations on project U00011546 in the amount of \$1,624,824.40 and executed the related agreement on January 18, 2023; and

**WHEREAS**, the Agreement will increase the reimbursement available to the City by an additional \$162,815.90 for all eligible costs associated with the City’s I-35E/Mayhill Utility Relocation Project between Mayhill and Loop 288 (the “Project”) for a total reimbursement of \$1,787,640.30; and

**WHEREAS**, the City Council having considered the importance of the Project to the citizens of Denton and finding that it is in the public's health and safety interest, is of the opinion that it should approve the Agreement;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:**

**SECTION 1.** The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference as true and as if fully set forth in the body of this ordinance.

**SECTION 2.** The City Manager, or designee, is hereby authorized to execute on behalf of the City; Supplemental Agreement No. 1 to the Standard Utility Agreement No. U00011546 for wastewater utilities relocations, a copy of which is attached hereto as Exhibit "A" and made a part hereof for all purposes.

**SECTION 3.** The City Manager, or designee, is hereby authorized to expend funds in an amount not to exceed ONE HUNDRED SIXTY-TWO THOUSAND, EIGHT HUNDRED FIFTEEN AND 90/100 DOLLARS (\$162,815.90) for Utility ID No. U00011546

**SECTION 4.** The City Manager is further authorized to carry out all duties and agreements to be performed by the City under the Agreement.

**SECTION 5.** The City Manager, or designee, is the City’s designated, authorized official, with the power to authorize, accept, reject, alter or terminate the Agreement on behalf of the City and act on behalf of the City of Denton in all matters related to the Agreement and any subsequent agreements that may result.

**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 [\_\_\_ - \_\_\_]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
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 \_\_\_\_\_, 2026.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
INGRID REX, CITY SECRETARY

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: Marcella Lunn



## Standard Utility Agreement Supplemental Agreement No. 1 to U Number N/A Utility ID U00011546

District: Dallas  
ROW Project ID: R00006793  
ROW CSJ: 0196-01-114  
Construction CSJ: 0196-01-106  
Proposed Highway Project Letting Date: 09/01/2023

County: Denton  
Highway: IH 35E  
From: South of Mayhill  
To: South of SL 288

**THIS SUPPLEMENTAL AGREEMENT** by and between the State of Texas ("**State**") and City of Denton ("**Utility**") shall be effective upon the date of acceptance and execution by and on behalf of the **State**.

**WHEREAS**, the **State** and **Utility** executed a Standard Utility Agreement on January 18, 2023 concerning the adjustment, relocation, or removal of certain of the **Utility's** facilities;

**WHEREAS**, said Standard Utility Agreement limits the required scope of work and/or the amount of eligible reimbursement;

**WHEREAS**, due to newly discovered information by the **Utility** deemed sufficient by the **State**, the **State** and **Utility** agree that supplementation to the Standard Utility Agreement is necessary; and

**WHEREAS**, the statement of work contained in the Standard Utility Agreement shall be supplemented to include the reason the supplemental is needed and the change in cost: update city labor rates, update easement costs, and add temporary project signage, mobilization, site preparation, storm water pollution prevention devices and removal (cost estimate lines 1 through 5), which is more specifically shown in **Utility's** plans, specifications, estimated costs, and schedule, which are attached to this supplemental agreement as Attachment "A."

**NOW, THEREFORE, BE IT AGREED:**

The statement of work contained in the Standard Utility Agreement is supplemented to include the additional adjustment, relocation, or removal found in Attachment "A."

The estimated cost of the adjustment, relocation, or removal is  increased or  decreased to a total of \$1,787,640.30 , or  no change to the Total Cost Estimate. The parties agree that the approval of estimated costs in no way indicates the eligibility of said costs for reimbursement.

All conditions and agreements contained in the Standard Utility Agreement, except those specifically included in this document, remain in effect.

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

**UTILITY**

Utility: City of Denton

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXECUTION RECOMMENDED:**

\_\_\_\_\_  
Director of TP&D (or designee), Dallas District

<p style="text-align: center;"><b>THE STATE OF TEXAS</b></p> <p>Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.</p> <p>By: _____ District Engineer (or designee)</p> <p>Date: _____</p>
---

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

# Attachment "A" Plans, Specifications, and Estimated Costs

Not Applicable

All material items within the cost estimate that must meet Buy America or Steel and Iron Preference Provision requirements must be indicated with an asterisk (\*).

- Currently, **this project does not plan to use** iron and steel subject to Buy America requirements. In the event that Buy America regulated materials are used during the construction of this project, compliance documentation will be provided.
- There are non-domestic iron and steel materials in this project that fall under the De Minimis equation. Calculations showing the total cost does not exceed one-tenth of one percent (0.1 %) of the individual utility agreement amount or \$2,500.00, whichever is greater is required.
- We understand the Buy America Compliance Requirements for iron and steel and will supply the required documentation to TxDOT indicating compliance with this provision. The following documents will be supplied prior to the installation of the materials:
  - 1) Form 1818 - Material Statement
  - 2) Material Test Reports or Certifications

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

# Attachment “A” (Continued) Plans, Specifications, and Estimated Costs

Not Applicable

All construction material and manufactured items within the cost estimate that must meet Build America, Buy America (BABA) compliance must be indicated with a double asterisk ( \*\* ).

This is to acknowledge that the material(s) listed/marked in the cost estimate will be in conformance with the governing specification(s) and that at least the final manufacturing processes and the immediately preceding manufacturing stage for the manufactured and construction material occurred in the United States of America. Alterations to this document by any agency other than the Utility Company/Supplier will void the certification.

Per 2 CFR 184.3, manufactured products means:

*(1) Articles, materials, or supplies that have been:*

*(i) Processed into a specific form and shape; or*

*(ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.*

*(2) If an item is classified as an iron or steel product, a construction material, or a section 70917(c) material under § 184.4(e) and the definitions set forth in this section, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under § 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.*

Per 2 CFR 184.3 and 2 CFR 184.6, construction material includes:

- *Non-ferrous metals*
- *Glass (including optic glass)*
- *Optical fiber*
- *Lumber*
- *Engineered wood*
- *Drywall*
- *Fiber optic cable (including drop cable)*
- *Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)*

**Authorized Utility Owner Representative:**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Title*

Initial \_\_\_\_\_ Date \_\_\_\_\_  
TxDOT

Initial \_\_\_\_\_ Date \_\_\_\_\_  
Utility

**PROJECT COST SUMMARY - SUA U00011546**

WASTEWATER CONSTRUCTION - SUA					SA#1				
BID ITEM	Description of work	BID QTY	UOM	Unit Price	Extended Price	QTY	Unit Price	Extended Price	Cost Difference
1	TEMPORARY PROJECT SIGN (12% OF 8K)					12%	\$ 8,000.00	\$ 960.00	\$ 960.00
2	MOBILIZATION (12% OF 1M)					12%	\$ 1,000,000.00	\$ 120,000.00	\$ 120,000.00
3	SITE PREPARATION (12% OF 90k)					12%	\$ 90,000.00	\$ 10,800.00	\$ 10,800.00
4	STORM WATER POLLUTION PREVENTION DEVICE (12% OF 50K)					12%	\$ 50,000.00	\$ 6,000.00	\$ 6,000.00
5	REMOVE STORM WATER POLLUTION PREVENTION DEVICE (12% OF 7K)					12%	\$ 7,000.00	\$ 840.00	\$ 840.00
73	3314.222 - 20" HDPE Pressure Pipe, Water (Purple in Color)	331	LF	\$ 540.00	\$ 178,740.00	331	\$ 540.00	\$ 178,740.00	\$ -
74	3305.110 - 20" HDPE Water Carrier Pipe	595	LF	\$ 180.00	\$ 107,100.00	595	\$ 180.00	\$ 107,100.00	\$ -
75	3305.040 - 48" Casing or Tunnel Liner Plate by Other Than Open Cut*	595	LF	\$ 1,600.00	\$ 952,000.00	595	\$ 1,600.00	\$ 952,000.00	\$ -
76	3314.3xx - 18" Gate Valve*	1	EA	\$ 75,000.00	\$ 75,000.00	1	\$ 75,000.00	\$ 75,000.00	\$ -
77	3314.395 - 18" Water Main Connection with Shutdown	2	EA	\$ 20,000.00	\$ 40,000.00	2	\$ 20,000.00	\$ 40,000.00	\$ -
78	3305.021 - Trench Safety	331	LF	\$ 1.00	\$ 331.00	331	\$ 1.00	\$ 331.00	\$ -
79	3293.016 - Seeding	519	SY	\$ 1.00	\$ 519.00	519	\$ 1.00	\$ 519.00	\$ -
80	3216.005 - 4" Concrete Sidewalk*	161	SY	\$ 130.00	\$ 20,930.00	161	\$ 130.00	\$ 20,930.00	\$ -
81	3201.013 - Concrete Paving Repair for Utility Trench*	93	SY	\$ 200.00	\$ 18,600.00	93	\$ 200.00	\$ 18,600.00	\$ -
82	3301.059 - Manhole Adjustment, Major	1	EA	\$ 4,000.00	\$ 4,000.00	1	\$ 4,000.00	\$ 4,000.00	\$ -
83	3305.145 - Concrete Collar*	1	EA	\$ 2,000.00	\$ 2,000.00	1	\$ 2,000.00	\$ 2,000.00	\$ -
84	3305.126 - 4' Concrete Manhole*	1	EA	\$ 30,000.00	\$ 30,000.00	1	\$ 30,000.00	\$ 30,000.00	\$ -
<b>CONSTRUCTION TOTAL</b>					<b>\$ 1,429,220.00</b>			<b>\$ 1,567,820.00</b>	
85	0241.036 - Remove 18" Utility Line	238	LF	\$ 110.00	\$ 26,180.00	238	\$ 110.00	\$ 26,180.00	\$ -
86	0241.017 - Grout Fill 18" Utility Line	637	LF	\$ 37.00	\$ 23,569.00	637	\$ 37.00	\$ 23,569.00	\$ -
87	0241.062 - Remove 18" Water Valve	1	EA	\$ 1,000.00	\$ 1,000.00	1	\$ 1,000.00	\$ 1,000.00	\$ -
88	0241.053 - Utility Line Plugging (Sanitary Sewer)	3	EA	\$ 4,000.00	\$ 12,000.00	3	\$ 4,000.00	\$ 12,000.00	\$ -
89	0241.011 - Grout Fill 8" Utility Line (Sanitary Sewer)	554	EA	\$ 17.00	\$ 9,418.00	554	\$ 17.00	\$ 9,418.00	\$ -
90	0241.013 - Grout Fill 12" Utility Line (Sanitary Sewer)	151	EA	\$ 20.00	\$ 3,020.00	151	\$ 20.00	\$ 3,020.00	\$ -
91	0241.050 - Remove 4' Utility Manhole	2	EA	\$ 2,800.00	\$ 5,600.00	2	\$ 2,800.00	\$ 5,600.00	\$ -
<b>ABANDONMENT TOTAL</b>					<b>\$ 80,787.00</b>			<b>\$ 80,787.00</b>	
92	<b>Materials On Hand:</b>				<b>\$ -</b>	<b>0</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>TOTAL CONSTRUCTION AND ABANDONMENT</b>					<b>\$ 1,510,007.00</b>	<b>TOTAL CONSTRUCTION AND ABANDONMENT</b>		<b>\$ 1,648,607.00</b>	<b>\$ -</b>
<b>ENGINEERING AND ROW ACQUISITION SERVICES</b>									
Engineering Contract					\$ 61,000.00			\$ 61,000.00	\$ -
<b>TOTAL ENGINEERING AND ROW ACQUISITION SERVICES</b>					<b>\$ 61,000.00</b>	<b>TOTAL ENGINEERING</b>		<b>\$ 61,000.00</b>	<b>\$ -</b>
<b>EASEMENT COSTS</b>								<b>SA#1</b>	
Easement Costs (Parcel #85)					\$ 17,102.40			\$ 27,500.00	\$ 10,397.60
Closing Costs and Title Fees					\$ -			\$ 1,043.40	\$ 1,043.40
Property Acquisition Consultant Services					\$ 27,700.00			\$ 27,700.00	\$ -
<b>TOTAL EASEMENT COSTS</b>					<b>\$ 44,802.40</b>	<b>TOTAL EASEMENT COSTS</b>		<b>\$ 56,243.40</b>	<b>\$ 11,441.00</b>
<b>CITY STAFF LABOR</b>									
City Staff Labor		Quantity	Unit	Unit Cost	Estimated Costs	Hours	Rate	Extended Price	
Engineer		40	HRS	\$ 50.00	\$ 2,000.00	0	\$ 50.00	\$ -	\$ (2,000.00)
Admin		15	HRS	\$ 35.00	\$ 525.00	55	\$ 47.00	\$ 2,585.00	\$ 2,060.00
Inspector		200	HRS	\$ 30.00	\$ 6,000.00	0	\$ 30.00	\$ -	\$ (6,000.00)
Supervisor		7	HRS	\$ 70.00	\$ 490.00	220	\$ 58.00	\$ 12,760.00	\$ 12,270.00
Labor Burden (42%)					\$ -		42%	\$ 6,444.90	\$ 6,444.90
<b>TOTAL CITY STAFF LABOR</b>					<b>\$ 9,015.00</b>	<b>TOTAL CITY STAFF LABOR</b>		<b>\$ 21,789.90</b>	<b>\$ 12,774.90</b>
<b>TOTAL ESTIMATED PROJECT COSTS</b>					<b>\$ 1,624,824.40</b>			<b>\$ 1,787,640.30</b>	<b>\$ 162,815.90</b>
BETTERMENT RATIO OF 0%					\$ -				
ESTIMATED UTILITY REIMBURSEMENT					\$ 1,624,824.40				
REIMBURSEMENT REQUESTED TO DATE:					\$ 1,444,056.84				
ESTIMATED AMOUNT REMAINING:					\$ 180,767.56				

# Attachment “B” Accounting Method

Not Applicable

**Actual Cost Method of Accounting**

The Utility accumulates cost under a work order accounting procedure prescribed by the Federal or State regulatory body and proposes to request reimbursement for actual direct and related indirect costs.

**Lump Sum Method of Accounting**

The Utility proposed to request reimbursement based on an agreed lump sum amount supported by a detailed cost analysis.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment "C" Schedule of Work

Not Applicable

Estimated Start Date (mm/dd/yyyy): \_\_\_\_\_, subject to physical work restrictions prior to the issuance of environmental clearance as required by the provisions of this agreement. (If construction will be joint bid and included in the highway contract, enter the project let date.)

Estimated Duration (number of days): \_\_\_\_\_

Estimated Completion Date (mm/dd/yyyy): \_\_\_\_\_

\_\_\_\_\_  
Initial Date  
TxDOT

\_\_\_\_\_  
Initial Date  
Utility

# Attachment "D" Statement Covering Contract Work

Not Applicable

**Construction Contract:** Complete form ROW-U-48 and ROW-U-48-1 if applicable.

- The Utility will use its own personnel (supporting documentation will be required at the time of billing, See ROW Utilities Manual, Chapter 11).
- The Utility will use third party contractors to perform the adjustment and complete the attached ROW-U-48 with ROW-U-48-1 (joint bid), if appropriate. (verification of continuing contract rate sheets or copy of bid tabulation will be required at the time of billing)

## Engineering Contract:

- The Utility will use its own personnel (supporting documentation will be required at the time of billing, See ROW Utilities Manual, Chapter 11).
- The Utility will use a consultant contract (verification of fee schedule is required).
- TxDOT will procure a utility engineering consultant.

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

# Attachment “E” Utility Joint Use Agreement – (ROW-U-JUA) and/or RULIS Permit

Not Applicable

- Utility Joint Use Agreement (ROW-U-JUA)
  - Plans with joint use area highlighted are included.
- RULIS Permit Number:  
The utility should obtain an approved permit before the start of construction inside of the highway right of way.
- Quitclaim will be submitted at the Final Billing

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “F” Eligibility Ratio

Not Applicable

Eligibility Ratio established: \_\_\_\_\_ %

- Non-interstate Highway (Calculations attached)
- Interstate Highway
- Toll Road (Minimum of 50%)
- SP2125 Approved Application (100%)  
Minute Order #: \_\_\_\_\_
- Master Utility Agreement

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

# Attachment "G" Betterment Calculation and Estimate

Not Applicable

- Elective Betterment Ratio established: \_\_\_\_\_ %
  - Calculation is attached and the justification is included below
  - A betterment and an in-kind estimate are included
  
- Forced Betterment
  - To comply with regulated industry standards, laws, and regulations. (Supporting documentation required)
  - To comply with published current design practice followed by the utility in its own work. (Supporting documentation required)
  - Due to proposed roadway design. (Provide explanation below)
  
- Not Applicable

A statement explaining Elective and/or Forced Betterment:

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility

## Attachment “H” Proof of Property Interest

Not Applicable

Supporting documentation of compensable property interest that establishes reimbursement eligibility as referenced in Texas Transportation Code §203.092.

Property interest is documented through applicable affidavits and required attachments.

ROW-U-Affidavit (See ROW Utilities Manual, Chapter 9, Section 3)

The roadway improvement project is designated as an Interstate Highway project; therefore, no supporting documentation for compensable interest is required. Supporting documentation for existing easements is required for easement replacement.

Toll Road (Supporting documentation of compensable property interest required if more than 50% eligibility ratio is applied)

SP2125

Master Utility Agreement

\_\_\_\_\_  
Initial      Date  
TxDOT

\_\_\_\_\_  
Initial      Date  
Utility



4777 US HIGHWAY 80 EAST, MESQUITE, TX 75150-6643 | 214.320.6100 | WWW.TXDOT.GOV

January 13, 2023

Mrs. Sara Hensley, City Manager  
City of Denton  
216 E. McKinney St  
Denton, TX 76201

RE: Approved Standard Utility Agreement – UID: U00011546  
City of Denton  
IH 35E From: South of Mayhill to: South of SL 288  
RCSJ: 0196-01-114 / CCSJ: 0196-01-106  
Federal Project Number: N/A  
Denton County

Dear Mr. Hull,

The Texas Department of Transportation is pleased to forward a fully executed copy of the approved Standard Utility Agreement for the above referenced utility relocation project. The Agreement assembly consists of the following:

1. Standard Utility Agreement (Form ROW-U-35)
2. Plans, Specifications, and Estimated Costs (Attachment "A")
3. Accounting Method (Attachment "B")
4. Schedule of Work (Attachment "C")
5. Statement Covering Contract Work (Attachment "D")
6. Utility Joint Use Agreement (Form ROW-U-JUA) (Attachment "E")
7. Eligibility Ratio (Attachment "F")
8. Betterment Calculation and Estimate (Attachment "G")
9. Proof of Property Interest (Attachment "H")

Also attached are the specifications for utility construction including: General Utility Installations, Aerial Installations, Underground Power Line Installations, Trench Excavation and Pit Location, Construction of Highway Crossing by Bore, Construction of Highway Crossing by Tunnel, Backfill Specifications, "Buy America" guidelines, and a copy of Form 1818.

Planned construction on the above project requires that utilities, "In Conflict", be relocated or adjusted. Install 1 manhole at Brinker Road at IH 35 Sta 1804+13. Reclaimed Water Line: Install approximately 31 LF of 20" HDPE water line, and 595 LF of 48" steel casing with carrier pipe crossing IH 35 at IH 35 Sta 1760+93. Approximately 238 LF of 18" reclaimed water line to be removed. Approximately 637 LF of 18" reclaimed water line and 554 LF of 8" sanitary sewer and 151 of 12" sanitary sewer to be abandoned by grout fill. Facilities will be uniformly aligned and installed in accordance with the Utility Accommodation Rules.

City of Denton has submitted a calculated total estimated cost for this adjustment of \$1,510,007.00. There is no elective betterment associated with this plan of adjustment. There is no elective betterment or declared salvage credit associated with this plan of adjustment.

This adjustment is eligible for state cost participation in accordance with the provisions of 23 CFR 645 A. The eligibility ratio is 100% of eligible costs for the relocation of Utilities on Federal Aid Interstate projects. "Buy America" items have been identified within this agreement.

All quantities in the estimate portion of the agreement are preliminary. Final quantities and participation will be based on the costs of actual work performed.

Subject to Texas Transportation Code Section 203.094, TxDOT may reduce reimbursement to the utility by 10 percent for each 30-day period or portion of a 30-day period by which the relocation exceeds the limit specified in the agreement.

Billing submittals to TxDOT must have a cover letter that includes the following information to facilitate expeditious processing of payments due:

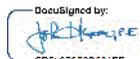
1. Highway Name – RCSJ XXXX XX XXX – Utility Name (U# and/or Utility ID#)
2. Starting and Ending Dates of Construction
3. If applicable, "Buy America" Certification must be notarized and submitted on Material Statement (Form 1818).
4. The Street Address where all records pertaining to this job can be accessed for audit. These records must be maintained for a 3-year minimum from the date of completion.
5. The Utility's 11 Digit Texas Taxpayer Number and 3 Digit Mail Code
6. If applicable, a copy of all Bid Tabulations received.
7. Final or partial invoices must include a detailed itemized billing submittal consistent with the same format as the original estimate. Supporting documentation is also required. If billing submittal deviates significantly from the approved estimate, an explanation will be needed.

The TxDOT Area Engineer (AE) is Travis Campbell, P.E., at the Denton County Area Office. The Area Engineer will be certifying that work was done in accordance with these plans and specifications, and that materials specified, or equivalent have been used. Attention should be paid to backfill, cleanup requirements, and erosion control. These must be accomplished to the satisfaction of the Project Engineer.

The Area Office Utility Coordinator must be notified to arrange a pre-construction meeting 5 working days prior to starting construction. The agenda for this meeting shall include the following: a) Construction Safety, b) Traffic Control Plan, c) Scheduled Project Starting and Completion Dates, and d) Prior to installation, all "Buy America" compliant items must be shown on the Material Statement (Form 1818) with each item's supporting documentation included. The Utility Coordinator for this Area Office is Len Chapman (940) 383-1414.

Questions regarding this adjustment may be directed to Jason Lloyd at (214) 320-6623.

Sincerely,

DocuSigned by:  


John Hudspeth, P.E.

Deputy District Engineer, Dallas District

Attachments

cc: Jeremy Miller 

Darla Payberah, P.E. 

Luis G. Nieto, M.B.A., M.S.C.E., P.E., C.F.M. 

Travis Campbell, P.E.   
 Area Office Engineer



Form ROW-U-35  
(Rev. 10/20)  
Page 1

### STANDARD UTILITY AGREEMENT

U Number: N/A Utility ID: U00011546

District: Dallas  
Federal Project No.: TBD  
ROW CSJ: 0196-01-114  
Highway Project Letting Date: 09/01/2023

County: Denton  
Highway: IH 35E  
From: South of Mayhill  
To: South of SL 288

This Agreement by and between the State of Texas, acting by and through the Texas Transportation Commission, ("**State**"), and City of Denton, ("**Utility**"), acting by and through its duly authorized representative, shall be effective on the date of approval and execution by and on behalf of the **State**.

**WHEREAS**, the **State** has deemed it necessary to make certain highway improvements as designated by the **State** and approved by the Federal Highway Administration within the limits of the highway as indicated above (the "**Highway Project**");

**WHEREAS**, the proposed Highway Project will necessitate the adjustment, removal, and/or relocation of certain facilities of the **Utility** as indicated in the following statement of work:

- Sanitary Sewer Line: Install 1 manhole at Brinker Road at IH 35 Sta 1804+13.
- Reclaimed Water Line: Install approximately 331 LF of 20" HDPE water line, and 595 LF of 48" steel casing with carrier pipe crossing IH 35 at IH 35 Sta 1760+93.
- Approximately 238 LF of 18" reclaimed water line to be removed.
- Approximately 637 LF of 18" reclaimed water line and 554 LF of 8" sanitary sewer and 151 of 12" sanitary sewer to be abandoned by grout fill; and more specifically as shown in the **Utility's** plans, specifications and estimated costs, which are attached hereto as Attachment "A".

**WHEREAS**, the **State** will participate in the costs of the adjustment, removal, and relocation of certain facilities to the extent as may be eligible for State and/or Federal participation.

**WHEREAS**, the **State**, upon receipt of evidence it deems sufficient, acknowledges the **Utility's** interest in certain lands and facilities that entitle it to reimbursement for the adjustment, removal, and relocation of certain of its facilities located upon the lands as indicated in the statement of work above.

**NOW, THEREFORE, BE IT AGREED:**

The **State** will pay to the **Utility** the costs incurred in adjustment, removal, and relocation of the **Utility's** facilities up to the amount said costs may be eligible for **State** participation.

All conduct under this agreement, including but not limited to the adjustment, removal, and relocation of the facility, the development and reimbursement of costs, any environmental requirements, and retention of records will be in accordance with all applicable federal and state laws, rules and regulations, including, without limitation, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601, et seq., the National Environmental Policy Act, 42 U.S.C. §§ 4321, et seq., the Buy America provisions of 23 U.S.C. § 313 and 23 CFR 635.410, as amended, Texas Transportation Code § 223.045, the Utility Relocations, Adjustments, and Reimbursements provisions of 23 CFR 645, Subpart A, and the Utility Accommodation provisions of 23 CFR 645, Subpart B.

The **Utility** shall supply, upon request by the **State**, proof of compliance with the aforementioned laws, rules, regulations, and guidelines prior to the commencement of the adjustment, removal, and relocation of the facility.

 1/17/2023  
Date  
TxDOT

   
Initial Date  
Utility

The Utility shall not commence any physical work, including without limitation site preparation, on the State's right of way or future right of way, until TxDOT provides the Utility with written authorization to proceed with the physical work upon TxDOT's completion and clearance of its environmental review of the Highway Project. Any such work by the Utility prior to TxDOT's written authorization to proceed will not be eligible for reimbursement and the Utility is responsible for entering any property within the proposed limits of the Highway Project that has not yet been acquired by TxDOT. This written authorization to proceed with the physical work is in addition to the authorization to commence work outlined below. Notwithstanding the foregoing, the provisions of this paragraph are required only when TxDOT has not obtained completion and clearance of its environmental review of the Highway Project prior to the execution of this Agreement by the State and the Utility.

The Utility shall comply with the Buy America provisions of 23 U.S.C. § 313, 23 CFR 635.410, as amended, and the Steel and Iron Preference provisions of Texas Transportation Code § 223.045 and, when products that are composed predominately of steel and/or iron are incorporated into the permanent installation of the utility facility, use domestically manufactured products. TxDOT Form 1818 (Material Statement), along with all required attachments, must be submitted, prior to the commencement of the adjustment, removal, and relocation of the facility, as evidence of compliance with the aforementioned provisions. Failure to submit the required documentation or to comply with the Buy America, and Steel and Iron Preference requirements shall result in: (1) the Utility becoming ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991; (2) the State withholding reimbursement for the costs incurred by the Utility in the adjustment, removal, and relocation of the Utility's facilities; and (3) removal and replacement of the non-compliant products.

The Utility agrees to develop relocation or adjustment costs by accumulating actual direct and related indirect costs in accordance with a work order accounting procedure prescribed by the State, or may, with the State's approval, accumulate actual direct and related indirect costs in accordance with an established accounting procedure developed by the Utility. Bills for work hereunder are to be submitted to the State not later than one (1) year after completion of the work. Failure to submit the request for final payment, in addition to all supporting documentation, within one (1) year after completion of the work may result in forfeiture of payment for said work.

When requested, the State will make intermediate payments at not less than monthly intervals to the Utility when properly billed. Such payments will not exceed 90 percent (90%) of the eligible cost as shown in each such billing. Intermediate payments shall not be construed as final payment for any items included in the intermediate payment.

The State will, upon satisfactory completion of the adjustment, removal, and/or relocation and upon receipt of final billing prepared in an approved form and manner and accounting for any intermediate payments, make payment in the amount of 90 percent (90%) of the eligible costs as shown in the final billing prior to audit and after such audit shall make an additional final payment totaling the reimbursement amount found eligible for State reimbursement.

Alternatively, the State agrees to pay the Utility an agreed lump sum of \$ N/A as supported by the attached estimated costs. The State will, upon satisfactory completion of the adjustments, removals, and relocations and upon receipt of a final billing, make payment to the Utility in the agreed amount.

Upon execution of this agreement by both parties hereto, the State will, by written notice, authorize the Utility to perform such work diligently and to conclude said adjustment, removal, and relocation by the stated completion date which is attached hereto in Attachment "C". The completion date shall be extended for delays caused by events outside the Utility's control, including an event of Force Majeure, which shall include a strike, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, sabotage, or other events, interference by the State or any other party with the Utility's ability to proceed with the work, or any other event in which the Utility has exercised all due care in the prevention thereof so that the causes of other events are beyond the control and without the fault or negligence of the Utility.

This agreement in its entirety consists of the following elements:

Standard Utility Agreement – ROW-U-35;

- Plans, Specifications, and Estimated Costs (Attachment "A");
- Accounting Method (Attachment "B");


  
 Date 1/17/2023
  
 TxDOT


  
 Initial           
  
 Date 12/7/22
  
 Utility

- Schedule of Work (Attachment "C");
- Statement Covering Contract Work – ROW-U-48 (Attachment "D");
- Utility Joint Use Agreement – ROW-U-JUA and/or Utility Installation Request – Form 1082 (Attachment "E");
- Eligibility Ratio (Attachment "F");
- Betterment Calculation and Estimate (Attachment "G"); and
- Proof of Property Interest – ROW-U-Affidavit (Attachment "H").

All attachments are included herein as if fully set forth. In the event it is determined that a substantial change from the statement of work contained in this agreement is required, reimbursement therefore shall be limited to costs covered by a modification or amendment of this agreement or a written change or extra work order approved by the **State** and the **Utility**.

This agreement is subject to cancellation by the **State** at any time up to the date that work under this agreement has been authorized, and such cancellation will not create any liability on the part of the **State**. However, the **State** will review and reimburse the **Utility** for eligible costs incurred by the **Utility** in preparation of this Agreement.

The State Auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

The **Utility** by execution of this agreement does not waive any of the rights that the **Utility** may have within the limits of the law.

It is expressly understood that the **Utility** conducts the adjustment, removal, and relocation at its own risk, and that the **State** makes no warranties or representations regarding the existence or location of utilities currently within its right of way.

  
 DP  
 Initial \_\_\_\_\_  
 1/17/2023  
 Date \_\_\_\_\_  
 TxDOT

  
 Initial \_\_\_\_\_  
 12/7/22  
 Date \_\_\_\_\_  
 Utility

Form ROW-U-35  
(Rev. 10/20)  
Page 4

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

**UTILITY**

Utility: City of Denton Wastewater  
*Name of Utility*

By:   
*Authorized Signature*

Sara Hensley  
*Print or Type Name*

Title: City Manager

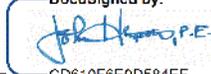
Date: 12/7/22

**EXECUTION RECOMMENDED:**

DocuSigned by:  
 12/7/2023  
04C4FD5FAADC42F...  
*Director of TP&D (or designee), Dallas District*

**THE STATE OF TEXAS**

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By:  P.E.  
CD610F6E0D584EF...  
*District Engineer (or designee)*

Date: 1/18/2023

 1/17/2023  
*Date*  
TxDOT

 12/7/22  
*Initial Date*  
Utility

## Attachment "A" Plans, Specifications, and Estimated Costs

All material items within cost estimate that must meet Buy America or Steel and Iron Preference Provision requirements must be indicated with an asterisk (\*).

- Currently, **we do not have** Buy America required materials planned for this project. In the event that Buy America compliant materials are used during construction on this project, compliance documentation will be provided.
- There are non-domestic iron and steel materials in this project that fall under the De Minimus equation. Calculation showing the total cost does not exceed one-tenth of one percent (0.1 %) of the individual utility agreement amount or \$2,500.00, whichever is greater is required.
- We understand the Buy America Compliance Requirements and will supply the required documentation to TxDOT indicating compliance with this provision. The following documents will be supplied prior to installation of the materials:
- 1) Form 1818 - Material Statement
  - 2) Material Test Reports or Certifications

 1/17/2023  
Initial Date  
TxDOT

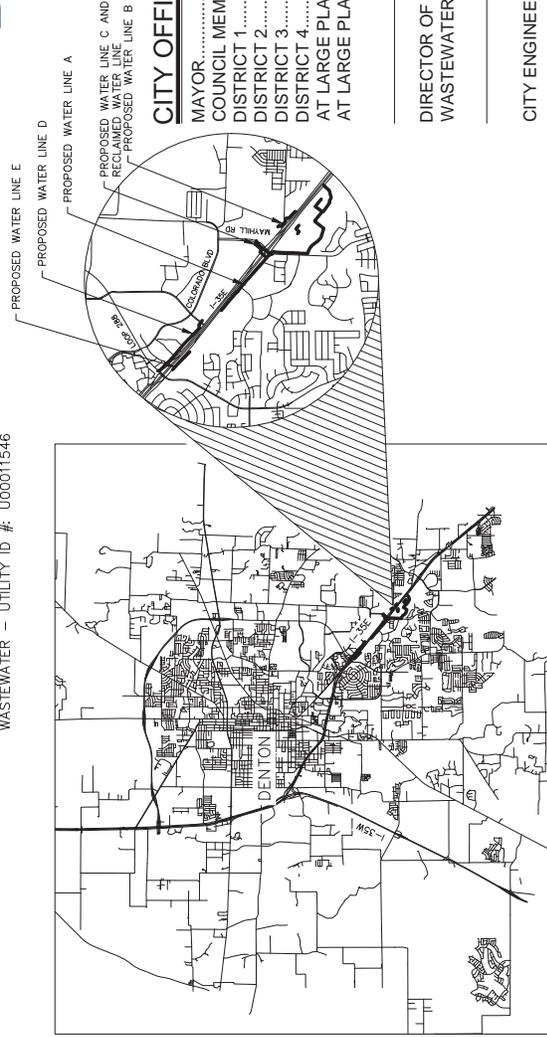
 12/7/22  
Initial Date  
Utility

# THE CITY OF DENTON, TEXAS PLANS FOR THE:

## IH-35E MAYHILL UTILITY RELOCATIONS

IFB #7968-001

TxDOT Project CCSJ 0196-01-109 & ROW CSJ 0196-01-114  
WATER - UTILITY ID #: U00008008  
WASTEWATER - UTILITY ID #: U00011546



Location Map  
N.T.S.

### SHEET INDEX:

- 2 - GENERAL NOTES
- 3 - PROJECT CONTROL AND BENCHMARKS (SHEET 1 OF 2)
- 4 - PROPOSED UTILITY ALIGNMENT (SHEET 1 OF 2)
- 5 - PROPOSED UTILITY ALIGNMENT (SHEET 2 OF 2)
- 6 - PROPOSED 24-INCH WATER LINE A STA 0+00 TO 1+00
- 7 - PROPOSED 24 & 20-INCH WATER LINE A STA 1+00 TO 2+00
- 8 - PROPOSED 24 & 20-INCH WATER LINE A STA 2+00 TO 3+00
- 9 - PROPOSED 20-INCH WATER LINE A STA 3+00 TO 4+00
- 10 - PROPOSED 20-INCH WATER LINE A STA 4+00 TO 5+00
- 11 - PROPOSED 20-INCH WATER LINE A STA 5+00 TO 6+00
- 12 - PROPOSED 20-INCH WATER LINE A STA 6+00 TO 7+00
- 13 - PROPOSED 20-INCH WATER LINE A STA 7+00 TO 8+00
- 14 - PROPOSED 20-INCH WATER LINE A STA 8+00 TO 9+00
- 15 - PROPOSED 20-INCH WATER LINE A STA 9+00 TO 10+00
- 16 - PROPOSED 20-INCH WATER LINE A STA 10+00 TO 11+00
- 17 - PROPOSED 6 & 8-INCH WATER LINE A2&3
- 18 - PROPOSED 8-INCH WATER LINE B STA 0+00 TO 9+00
- 19 - PROPOSED 8-INCH WATER LINE B STA 9+00 TO 10+00
- 20 - PROPOSED WATER LINE B1 WATER SERVICE RECONNECTION
- 21 - PROPOSED 12-INCH WATER LINE C STA 6+00 TO 10+00
- 22 - PROPOSED 8 & 12-INCH WATER LINE D STA 0+00 TO 10+00
- 23 - PROPOSED 8-INCH WATER LINE D STA 10+00 TO 20+00
- 24 - PROPOSED 24-INCH WATER LINE E STA 0+00 TO 10+00
- 25 - PROPOSED 24-INCH WATER LINE E STA 10+00 TO 20+00
- 26 - PROPOSED 24-INCH RECLAIMED WATER LINE STA 0+00 TO 10+00
- 27 - PROPOSED 24-INCH RECLAIMED WATER LINE STA 10+00 TO 20+00
- 28 - CITY STANDARD DETAILS 2
- 29 - CITY STANDARD DETAILS 3
- 30 - CITY STANDARD DETAILS 4
- 31 - CITY STANDARD DETAILS 5
- 32 - CITY STANDARD DETAILS 6
- 33 - CITY STANDARD DETAILS 1
- 34 - CONSTRUCTION DETAILS 1
- 35 - CONSTRUCTION DETAILS 2
- 36 - EROSION CONTROL PLAN 1
- 37 - EROSION CONTROL PLAN 2
- 38 - EROSION CONTROL DETAILS
- 39 - PROPOSED SURFACE REPAIR (SHEET 1 OF 3)
- 40 - PROPOSED SURFACE REPAIR (SHEET 2 OF 3)
- 41 - PROPOSED SURFACE REPAIR (SHEET 3 OF 3)
- 42 - TOP (1-1)-18 TRAFFIC CONTROL PLAN CONVENTIONAL ROAD SHOULDER WORK
- 43 - TOP (1-1)-18 TRAFFIC CONTROL PLAN ONE-LANE TWO-WAY TRAFFIC CONTROL

### TxDOT GENERAL NOTES:

1. BY SEALING AND SIGNING THESE PERMIT PLANS AS A PROFESSIONAL CIVIL ENGINEER LICENSED TO PRACTICE IN THE STATE OF TEXAS, I CERTIFY THAT THE PROPOSED DRIVEWAY OR PUBLIC STREET CONNECTION TO THE STATE ROADWAY MEETS OR EXCEEDS THE MINIMUM STOPPING SIGHT DISTANCE REQUIRED FOR A POSTED SPEED OF 45 MILES PER HOUR, BASED ON THE MOST RECENT TxDOT DESIGN MANUAL REQUIREMENTS.
2. ALL CONSTRUCTION WITHIN THE STATE RIGHT OF WAY WILL REQUIRE COMPLIANCE TO TxDOT STANDARD SPECIFICATIONS, STANDARD PLANS, AND TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

*Uriz*

(CHRISTOPHER IGO, P.E. #120045)  
\*THE STANDARD TxDOT SHEETS, SPECIFICALLY IDENTIFIED IN THIS SHEET INDEX, HAVE BEEN SELECTED BY ME OR UNDER MY RESPONSIBLE SUPERVISION AS BEING APPLICABLE TO THIS PROJECT.

### CITY OFFICIALS:

- MAYOR..... GERARD HUDSPETH  
COUNCIL MEMBERS:  
DISTRICT 1..... VICKI BYRD  
DISTRICT 2..... BRIAN BECK  
DISTRICT 3..... JESSE DAVIS  
DISTRICT 4..... ALLISON MAGUIRE  
AT LARGE PLACE 5..... BRANDON MCGEE  
AT LARGE PLACE 6..... CHRIS WATTS

DIRECTOR OF WATER AND  
WASTEWATER UTILITIES  
STEPHEN GAY

CITY ENGINEER  
REBECCA DIVINEY, P.E.

PROGRAM MANAGER  
CAPITAL PROJECTS  
ENGINEERING  
KYLE PEDIGO



No.	Revision	By	Date
1A	FOR THE WORK TO BE PERFORMED	CAJ	10/12/2022

# Kimley»Horn

801 Cherry St, Suite 1300 Ft. Worth, TX 76102 P. 817-335-6511  
TBPE No. 928 F. 817-335-6070

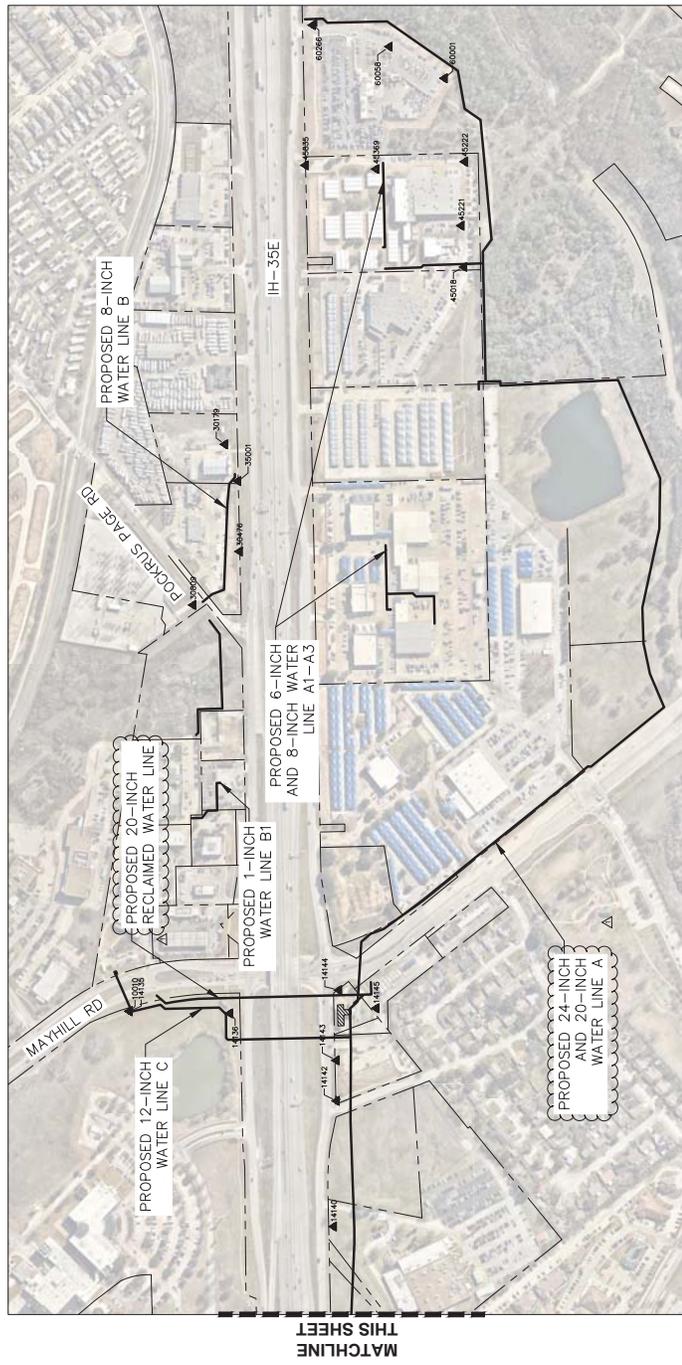
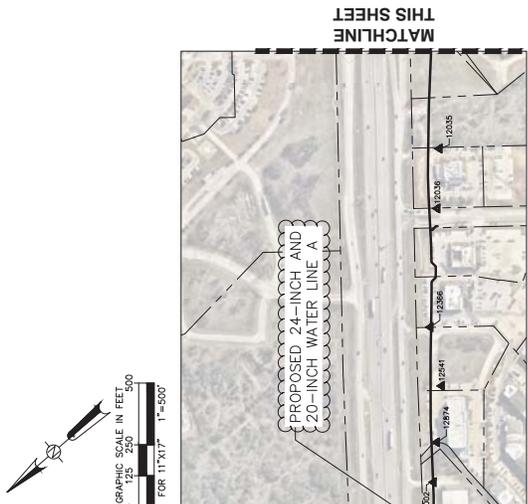
OCTOBER 2022





Point #	Northing	Easting	Elevation	Description
1	7116278.54	2395342.59	678.89	CP SR 12
1071	7116955.14	2394611.86	666.43	CP NLS
1526	7117033.78	2394370.85	665.50	CP NLS
1625	7117140.87	2394347.86	660.73	CP NLS
2133	7117291.16	2394127.11	667.85	CP NLS
4267	7116897.10	2394469.18	663.29	CP XS
10010	7113316.04	2402323.03	626.82	CP XS
11593	7114765.99	2397124.21	636.82	CP XS
11692	7114702.28	2397398.11	630.94	CP XS
11983	7117254.18	2394743.92	659.67	CP XS
11983	7117254.40	2394761.72	671.35	CP XS
12035	7113968.20	2394403.37	646.94	CP XS
12036	7113933.59	2398225.91	646.83	CP XS
12366	7114669.25	2397881.13	640.37	CP XS
12541	7114689.97	2397871.39	631.04	CP XS
12874	7114453.56	2397511.26	630.54	CP XS
14101	7117034.41	2395079.09	686.62	CP XS
14102	7117446.40	2394617.33	662.66	CP XS
14103	7117330.53	2394626.10	673.54	CP XS
14106	7117176.48	2394766.99	672.18	CP XS
14107	7116714.21	2395418.17	687.07	CP XS
14110	7116433.91	2395641.92	674.87	CP XS
14111	7116278.20	2395626.89	682.31	CP XS
14113	7116154.86	2395988.13	683.52	CP XS
14114	7116914.95	2396150.15	674.64	CP XS
14115	7115971.36	2396327.20	660.70	CP XS
14117	7115933.03	2396483.55	656.24	CP XS
14118	7115906.63	2396306.16	652.28	CP XS
14123	7115894.80	2396111.76	641.25	CP XS
14125	7115316.84	2402323.03	626.98	CP XS
14126	7115015.62	2399959.85	619.57	CP XS
14140	7113922.64	2399032.67	638.85	CP XS
14142	7112920.90	2399409.98	623.91	CP XS
14143	7112814.70	2399524.38	622.08	CP XS
14144	7112620.76	2399742.38	621.30	CP XS
14145	7112554.48	2399588.15	621.27	CP XS
15854	7116951.08	2395236.03	692.55	CP XS
30779	7111523.91	240714.86	616.10	CP XS
30478	7111622.66	2401347.91	612.73	CP XS
30809	7112046.70	2401507.32	607.02	CP XS
45018	7110322.60	2401024.42	603.66	CP XS
45221	7110221.52	2401758.33	603.09	CP XS
45222	7110041.89	2401945.03	602.70	CP XS
45369	7110332.27	2402167.35	603.36	CP XS
45835	7110538.47	2402355.53	599.62	CP XS
60001	7109882.70	2402554.14	596.74	CP XS
60568	7109873.35	2402566.56	596.87	CP XS
60286	71104513.1	2402768.28	593.84	CP XS

**SHEET NOTES:**  
 1. HORIZONTAL COORDINATES SHOWN HEREON ARE IN U.S. FEET AND DECIMALS THEREOF, BASED ON THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83). ALL DIMENSIONS ARE TO THE CENTERLINE UNLESS NOTED OTHERWISE WITH THE DENTON COUNTY SCALE FACTOR 0.999849393 APPLIED (SURFACE) 0.999849393 = GRID VALUE.



THIS SHEET

THIS SHEET



Date

07/13/2022

Mr. Mohamed Bur, P.E.  
Dallas District Engineer  
4777 E. Highway 80  
Mesquite, TX 75150-6643

**RE: Abandonment Request**

**Installation Request No. (Permit):** DAL20220504165610 (WW)

**County:** Denton

*If checking this box, please provide project information below.*  TxDOT Construction Project

*Example:*  
IH/US/SH/FM/LP ##: From: To:  
CSJ/RCSJ  
Utility ID # (for reimbursable relocations)

IH-35E Mayhill  
From: South of Mayhill Road To: South of SL 288  
RCSJ: 0196-01-100 CCSJ: 0196-02-109  
Federal Project Number: n/a  
U00011546 (WW)

Dear Mr. Bur:

The City of Denton

hereby requests portions/portion of the existing utility facility adjustments and/or relocations shown in the attached exhibits to address items outlined in 43 TAC §21.39 to be abandoned in place. With these exhibits, we have taken the following into consideration:

- 1. Areas of abandonment will not have negative impacts on TxDOT's facilities and/or construction. Areas proposed for abandonment have exhibits included such as Plan/Profile(s), Plan/Cross Section(s), etc.
- 2. The need for abandonment will benefit TxDOT in the following manner:

It will allow for the City of Denton to clear proposed TXDOT roadway construction in a more timely manner with minimal disruption to the traffic flow along the IH-35E. The city recommends removing all above ground appurtenances, and pipelines under future roadway and TxDOT ROW. The city is proposing to abandon in place all utilities under major roadways(State School, Mayhill, Brinker, Pockrus Page, and Wind River) as seen in the exhibit below. Abandonment in place will allow for the city's contractor to be out of the way of other utilities attempting to relocate.

3. This abandonment will not impede future installations of other facilities in TxDOT ROW.

The existing 8" sanitary sewer and 18" reclaimed water lines to be abandoned will be adjusted and/or relocated in compliance with TXDOT's UAR.

The existing type of utility facility to be abandoned within TxDOT ROW consist of:

The existing type of utility facility to be abandoned by removal or grout fill is identified as approximately: 554 LF of 8" sanitary sewer line, 151 LF of 12" sanitary sewer line, and 875 LF of 18" non potable/reclaimed water line, as described further on the attached exhibits. The existing lines consist of clay and PVC, with average bury depths of 8-feet, but varying from 6-ft to 10-ft.

These facilities will be adjusted and/or relocated in compliance with TxDOT's UAR.

During the utility adjustment/relocation the vacated facilities\*, shown in the attached exhibits as abandoned in place, will be :

cut, purged, grout filled, and capped. All other facilities conflicting with IH-35E & Mayhill will be removed during construction during excavation stages as indicated in detail within the enclosed plans and supporting documentation.

All other facilities conflicting with above TxDOT Construction Project, if applicable, will be removed during construction during excavation stages as indicated in detail within the enclosed plans and supporting documentation.

The enclosed plans and supporting documentation includes:

1. UIR Installation Request (Permit)
2. Relocation plans in the form of Plan/Profile(s), Plan/Cross Section(s), etc. that includes:
  - Age, condition, size, current status, type (material composition) and length of the utility facility to be abandoned.
  - The approximate depth of the existing pipeline or conduit to be abandoned.
  - Existing pipeline or conduit operating condition (Optimal/Compromised).
  - Existing pipeline or conduit is not in conflict with other existing utilities.
  - Abandonment will not cause conflict with either the proposed construction and/or other utilities.
  - The removal of abandoned facilities as shown will be coordinated in advance with the designated TxDOT Contractor and/or Utility Coordinator in the Area Office.

This abandonment WILL NOT be construed as a change in ownership of the facility.

1. Assumes all financial responsibility and property ownership of the abandoned facility referenced above.
2. Will be responsible for maintaining abandoned facility records, in accordance with 43 TAC §21.39 and all current federal, state, local laws, codes and industry standards
3. Attests the utility facility associated with this abandonment does not contain, or is not composed of, hazardous or contaminated materials.

If you have any questions, please contact,

Utility Owner Contact:

David Brown Project Manager Denton Water Utility

Address:

901 -A Texas Street  
Denton, Texas 76209

Phone Number:

940-349-8480

Email Address:

David.Brown@cityofdenton.com

Your consideration to this matter is greatly appreciated.

Sincerely,



Please sign above and include name and title below

David Brown  
Project Manager

Attachments: Permit, Plans, Exhibits and Supporting Documentation

**UTILITY OWNER:**  
APPROVED REQUESTS MUST BE UPLOADED TO TXDOT'S UIR SYSTEM WITH UTILITY INSTALLATION REQUEST (PERMIT). PERMITS INCLUDING ABANDONMENT OF FACILITIES MAY NOT BE APPROVED WITHOUT DALLAS DISTRICT APPROVAL.

\* All abandoned conduit shall be free of wires and cables. Pipes/Conduit 3" or greater shall be purged free of hydro-carbons, capped and grout filled.

**DALLAS DISTRICT APPROVAL**

DS  
MKB  
DISTRICT ENGINEER

CC  
DEPUTY DISTRICT ENGINEER

DS  
DIRECTOR OF TP&D

DS  
DP  
UTILITIES SUPERVISOR

DS  
JTC  
AREA ENGINEER

DS  
DVP  
Design PM











<p><b>TYPICAL UTILITY PLACEMENTS</b></p>	<p><b>TYPICAL SAW-CUT</b></p>	<p><b>PROPOSED PAVEMENT TRENCH</b></p>	<p><b>CONCRETE ENCASMENT FOR UTILITY LINES</b></p>
<p><b>UNPAVED TRENCH</b></p>	<p><b>EXISTING PAVEMENT TRENCH AND REPAIR ASPHALT</b></p> <p>• MODIFIED</p> <p>• FOR WATER LINES 16-INCH AND LARGER EMBEDMENT SHALL BE CRUSHED ROCK PER SECTION 33 05 65</p>	<p><b>EXISTING PAVEMENT TRENCH AND REPAIR CONCRETE</b></p> <p>• MODIFIED</p> <p>• FOR WATER LINES 16-INCH AND LARGER EMBEDMENT SHALL BE CRUSHED ROCK PER SECTION 33 05 65</p>	<p><b>STANDARD DETAILS</b>          WATER/WASTEWATER SHARED DETAILS</p> <p>DATE: JAN. 2022          SHEET No. 7 OF 24</p>
<p><b>PROJECT #</b> _____</p> <p><b>DATE</b> _____</p> <p><b>REVISION</b> _____</p> <p><b>ENTERED BY</b> _____</p> <p><b>DESIGNED BY</b> _____</p> <p><b>CHECKED BY</b> _____</p> <p><b>PROJ. ENGR.</b> _____</p> <p>PATH: S:\Water_Engineering\Eng\Design\Projects\Standard_Details\Water-Wastewater_Split-2.dwg</p>			



**TYPICAL SERVICE LINE LAYOUT**

NOTE: SERVICE LINE SHALL BE INSTALLED AS SHOWN IN PLAN AND SECTION. SERVICE LINE SHALL BE INSTALLED AT A MINIMUM OF 18" FROM THE EXISTING CURB OR SIDEWALK.

**INSTALLATION IN STEEL CASING OR LINER PLATE FOR PIPE AND DIP**

NOTE:  
 1. PIPE AND CASING SHALL BE INSTALLED AS SHOWN IN SECTION AND PLAN. THE CASING SHALL BE INSTALLED AS SHOWN IN SECTION AND PLAN.  
 2. FOR PRECASTED PIPE, ALL JOINTS SHALL BE PROPERLY JOINTED AND THE JOINT SHALL BE PROTECTED WITH JOINT PROTECTION.  
 3. JOINT PROTECTION SHALL BE INSTALLED AS SHOWN IN SECTION AND PLAN.  
 4. CASING PIPE INSTALLATION SHALL BE IN ACCORDANCE WITH SECTION 211-2.01, 211-2.02, 211-2.03, 211-2.04, 211-2.05, 211-2.06, 211-2.07, 211-2.08, 211-2.09, 211-2.10, 211-2.11, 211-2.12, 211-2.13, 211-2.14, 211-2.15, 211-2.16, 211-2.17, 211-2.18, 211-2.19, 211-2.20, 211-2.21, 211-2.22, 211-2.23, 211-2.24, 211-2.25, 211-2.26, 211-2.27, 211-2.28, 211-2.29, 211-2.30, 211-2.31, 211-2.32, 211-2.33, 211-2.34, 211-2.35, 211-2.36, 211-2.37, 211-2.38, 211-2.39, 211-2.40, 211-2.41, 211-2.42, 211-2.43, 211-2.44, 211-2.45, 211-2.46, 211-2.47, 211-2.48, 211-2.49, 211-2.50, 211-2.51, 211-2.52, 211-2.53, 211-2.54, 211-2.55, 211-2.56, 211-2.57, 211-2.58, 211-2.59, 211-2.60, 211-2.61, 211-2.62, 211-2.63, 211-2.64, 211-2.65, 211-2.66, 211-2.67, 211-2.68, 211-2.69, 211-2.70, 211-2.71, 211-2.72, 211-2.73, 211-2.74, 211-2.75, 211-2.76, 211-2.77, 211-2.78, 211-2.79, 211-2.80, 211-2.81, 211-2.82, 211-2.83, 211-2.84, 211-2.85, 211-2.86, 211-2.87, 211-2.88, 211-2.89, 211-2.90, 211-2.91, 211-2.92, 211-2.93, 211-2.94, 211-2.95, 211-2.96, 211-2.97, 211-2.98, 211-2.99, 211-3.00.

**ALTERNATE SERVICE LINE LAYOUT (FOR LOTS LESS THAN 60' WIDE)**

NOTE: SERVICE LINE SHALL BE INSTALLED AS SHOWN IN PLAN AND SECTION. SERVICE LINE SHALL BE INSTALLED AT A MINIMUM OF 18" FROM THE EXISTING CURB OR SIDEWALK.

**INSTALLATION IN STEEL CASING FOR PRECASTED PIPE AND BAR-WRAPPED STEEL CYLINDER TYPE**

NOTE:  
 1. PRECASTED PIPE SHALL BE INSTALLED AS SHOWN IN SECTION AND PLAN. THE BAR-WRAPPED STEEL CYLINDER SHALL BE INSTALLED AS SHOWN IN SECTION AND PLAN.  
 2. JOINT PROTECTION SHALL BE INSTALLED AS SHOWN IN SECTION AND PLAN.  
 3. CASING PIPE INSTALLATION SHALL BE IN ACCORDANCE WITH SECTION 211-2.01, 211-2.02, 211-2.03, 211-2.04, 211-2.05, 211-2.06, 211-2.07, 211-2.08, 211-2.09, 211-2.10, 211-2.11, 211-2.12, 211-2.13, 211-2.14, 211-2.15, 211-2.16, 211-2.17, 211-2.18, 211-2.19, 211-2.20, 211-2.21, 211-2.22, 211-2.23, 211-2.24, 211-2.25, 211-2.26, 211-2.27, 211-2.28, 211-2.29, 211-2.30, 211-2.31, 211-2.32, 211-2.33, 211-2.34, 211-2.35, 211-2.36, 211-2.37, 211-2.38, 211-2.39, 211-2.40, 211-2.41, 211-2.42, 211-2.43, 211-2.44, 211-2.45, 211-2.46, 211-2.47, 211-2.48, 211-2.49, 211-2.50, 211-2.51, 211-2.52, 211-2.53, 211-2.54, 211-2.55, 211-2.56, 211-2.57, 211-2.58, 211-2.59, 211-2.60, 211-2.61, 211-2.62, 211-2.63, 211-2.64, 211-2.65, 211-2.66, 211-2.67, 211-2.68, 211-2.69, 211-2.70, 211-2.71, 211-2.72, 211-2.73, 211-2.74, 211-2.75, 211-2.76, 211-2.77, 211-2.78, 211-2.79, 211-2.80, 211-2.81, 211-2.82, 211-2.83, 211-2.84, 211-2.85, 211-2.86, 211-2.87, 211-2.88, 211-2.89, 211-2.90, 211-2.91, 211-2.92, 211-2.93, 211-2.94, 211-2.95, 211-2.96, 211-2.97, 211-2.98, 211-2.99, 211-3.00.

**TRENCH DAM**

NOTE: TRENCH DAM SHALL BE INSTALLED AS SHOWN IN SECTION AND PLAN. THE TRENCH DAM SHALL BE INSTALLED AT A MINIMUM OF 18" FROM THE EXISTING CURB OR SIDEWALK.

**STANDARD DETAILS**  
 WATER/WASTEWATER SHARED DETAILS

DATE: JAN. 2022  
 SHEET No. 8 OF 24

SCALE: HOR 1" = N.T.S., VER 1" = N/A

INSTALLATION IN STEEL CASING FOR PRECASTED PIPE AND BAR-WRAPPED STEEL CYLINDER TYPE



DATE:	JULY 2022
DESIGN:	CFM
DRAWN:	NDCH
CHECKED:	JFA
KHA NO.:	061024039

EROSION CONTROL PLAN 1

CITY OF DENTON  
IH-35E MAYHILL  
UTILITY RELOCATIONS



No.	Revision	By	Date
1	07/27/2022		

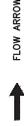
Kimley-Horn  
7801 Cherry St., Suite 1300 Ft. Worth, TX 76102  
Tel: 817-752-6511



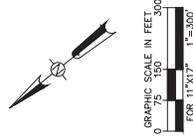
GRAPHIC SCALE IN FEET  
FOR 11'X17' 1"=300'

LEGEND

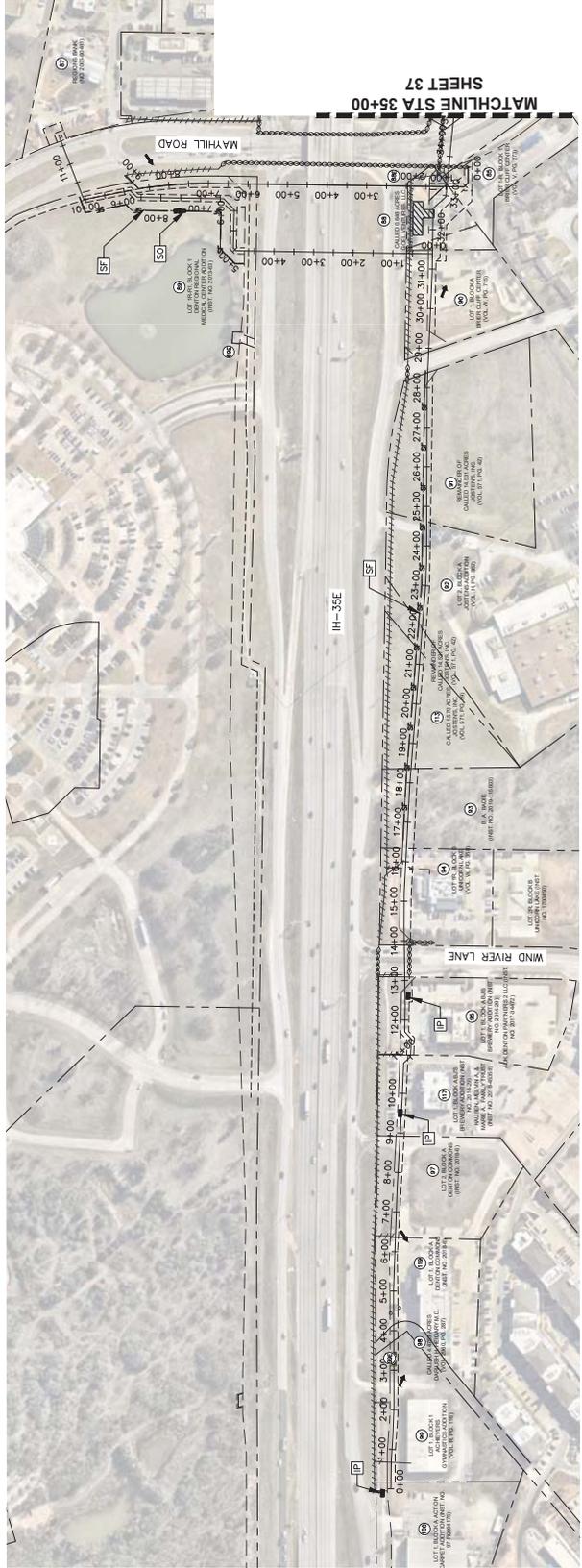
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- SO — STONE OVERFLOW STRUCTURE RE: B/28
- IP — INLET PROTECTION RE: C/28



FLOW ARROW



GRAPHIC SCALE IN FEET  
FOR 11'X17' 1"=300'



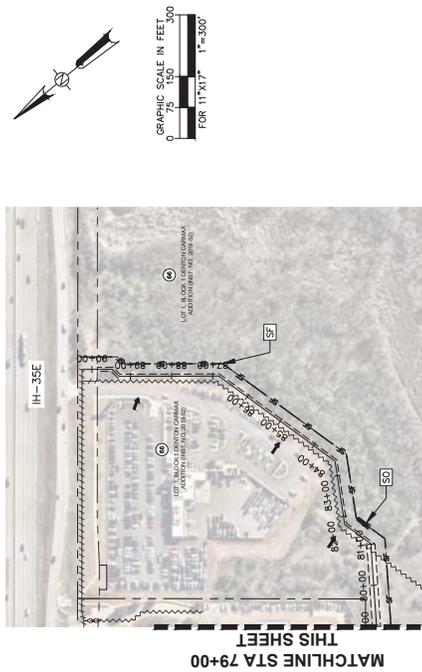
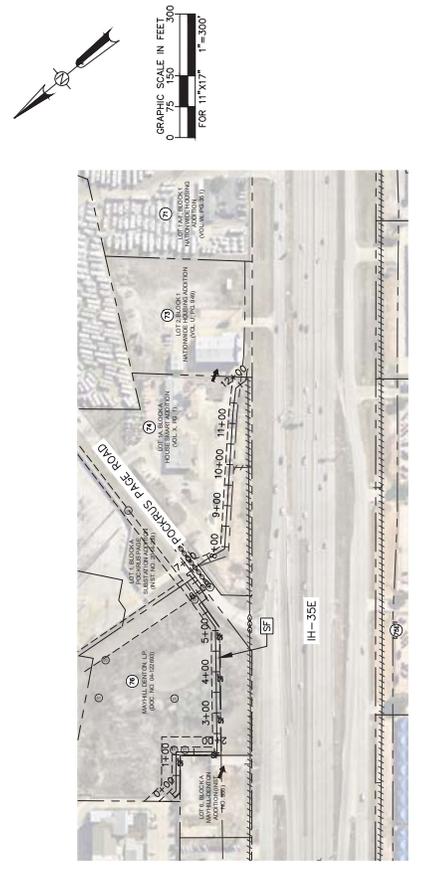
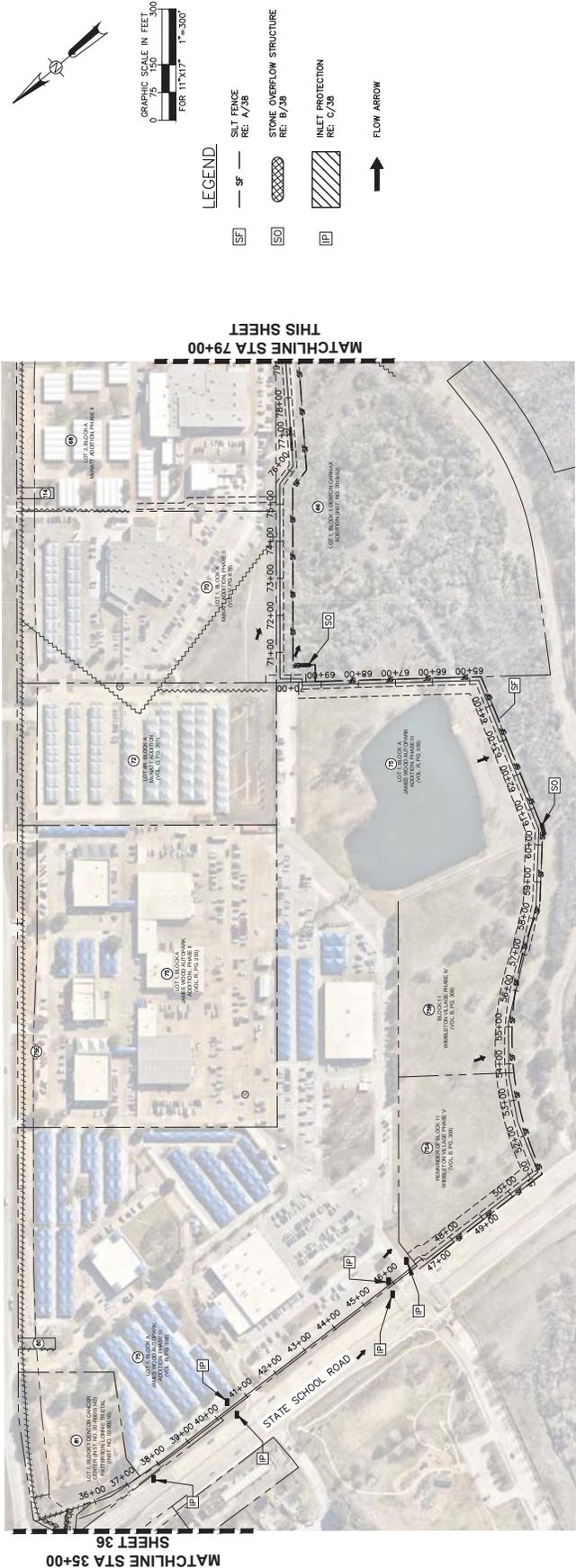
DATE:	JULY 2022
DESIGN:	CRJ
DRAWN:	NDCH
CHECKED:	JRA
KHA NO.:	061024039

EROSION CONTROL PLAN 2

CITY OF DENTON  
IH-35E MAYHILL  
UTILITY RELOCATIONS



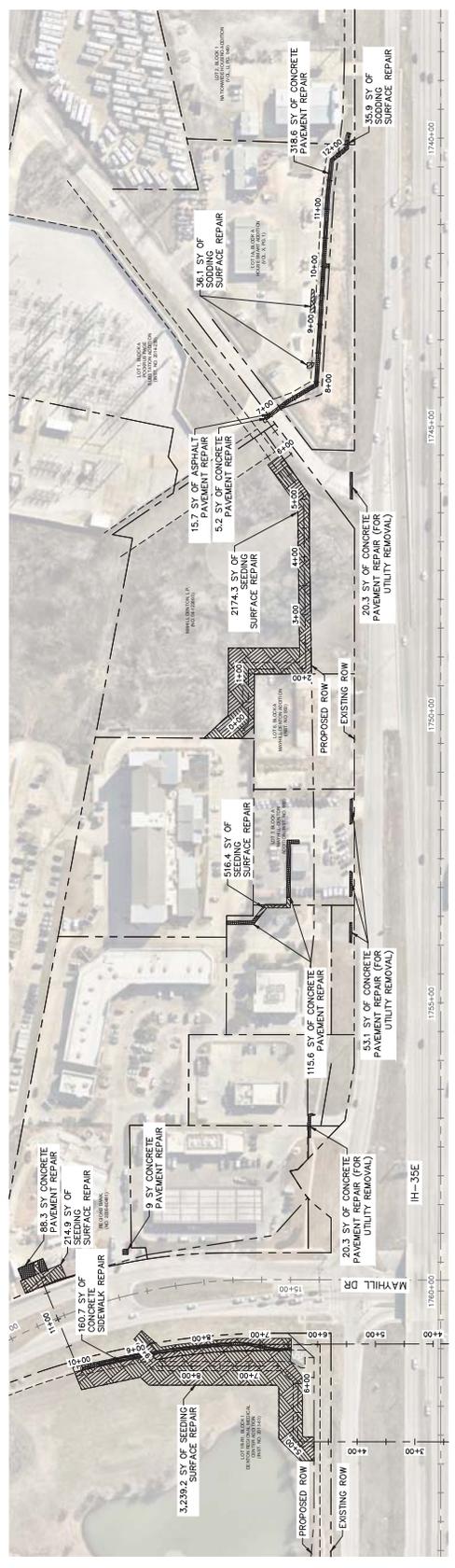
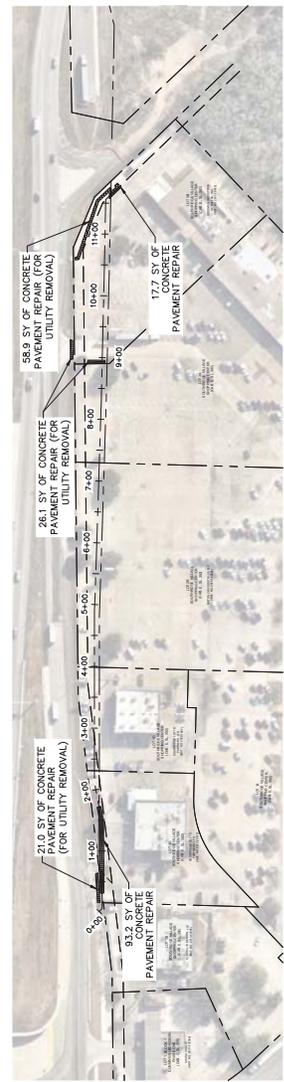
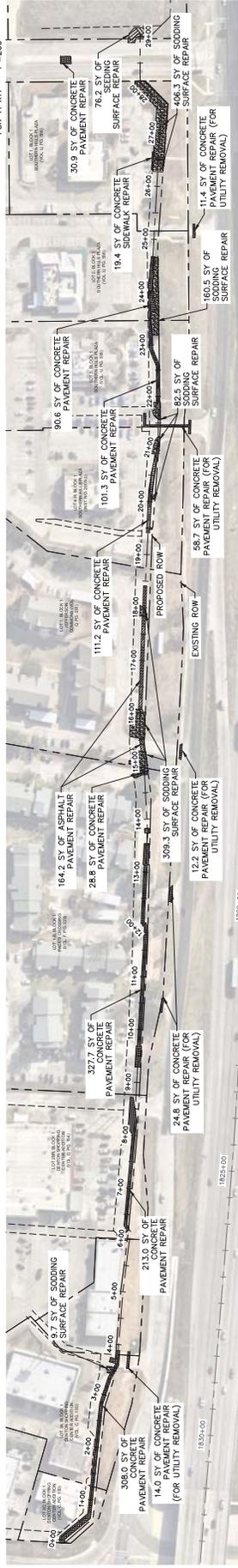
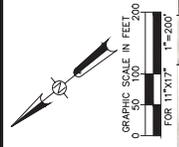
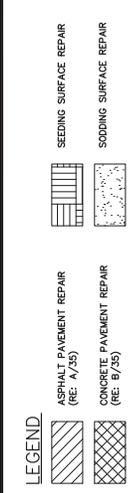
Kimley-Horn  
 801 Cherry St., Suite 1300  
 Fort Worth, TX 76102  
 Tel: 817-335-9311  
 Fax: 817-335-9311  
 No. \_\_\_\_\_  
 Revision \_\_\_\_\_  
 By: DDE





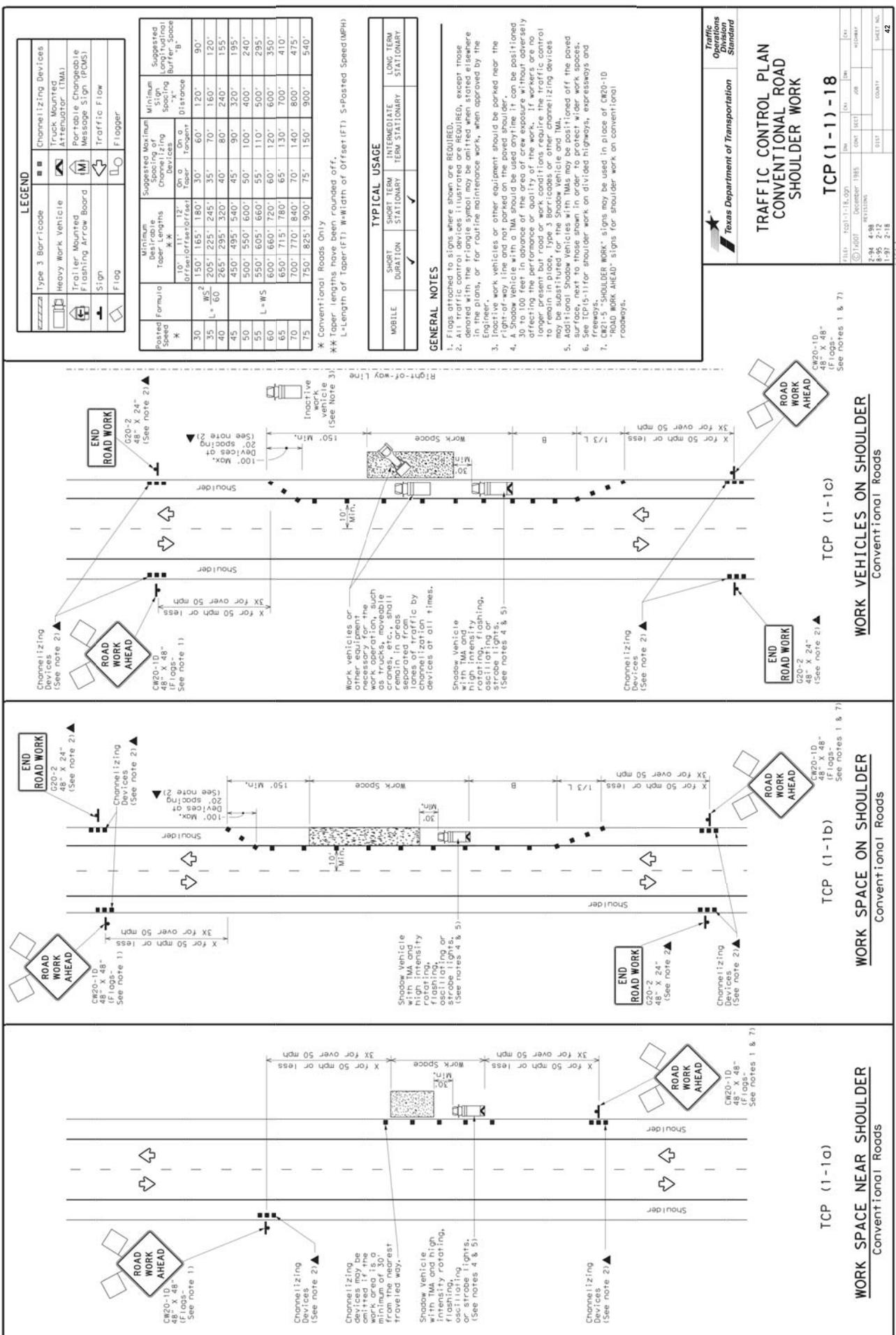


- SHEET NOTES**
1. CONTRACTOR TO REPAIR ANY DAMAGE TO AND RESTORE PRIVATE IRRIGATION SYSTEMS
  2. CONTRACTOR IS RESPONSIBLE FOR RESTORING LANDSCAPED AREAS TO EXISTING CONDITION









**LEGEND**

Channelizing Device	Type 3 Barricade	Channelizing Devices
Heavy Work Vehicle	Truck Mounted Attenuator (TMA)	Truck Mounted Attenuator (TMA)
Trailer Mounted Flashing Arrow Board	Portable Changeable Message Sign (PCMS)	Portable Changeable Message Sign (PCMS)
Sign	Traffic Flow	Traffic Flow
Flag	Flagger	Flagger

Posted Speed	Formula	Minimum Disturbance Lengths	Suggested Maximum Spacing of Channelizing Devices	Minimum Spacing of Channelizing Devices	Suggested Longitudinal Buffer Space
30	$L = WS$	150' - 165'	180'	30'	120'
35	$L = WS$	205' - 225'	240'	35'	160'
40	$L = WS$	265' - 295'	320'	40'	240'
45	$L = WS$	450' - 495'	540'	45'	320'
50	$L = WS$	500' - 550'	600'	50'	400'
55	$L = WS$	600' - 660'	660'	55'	500'
60	$L = WS$	650' - 720'	720'	60'	600'
65	$L = WS$	750' - 840'	840'	70'	700'
70	$L = WS$	850' - 960'	960'	75'	800'
75	$L = WS$	1000' - 1125'	1125'	80'	900'

\* Conventional Roads Only  
 \*\* Taper lengths have been rounded off.  
 \*\*\* Length of Taper (FT) W-Width of Offset (FT) S-Posted Speed (MPH)  
 L-Length of Taper (FT) W-Width of Offset (FT) S-Posted Speed (MPH)

**TYPICAL USAGE**

MOBILE	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY
✓	✓		

**GENERAL NOTES**

- Flags attached to signs where shown are REQUIRED.
- Channelizing devices shall be used in accordance with the Manual of Uniform Traffic Control Devices, except those in the plans, or for routine maintenance work, when approved by the Engineer.
- Inactive work vehicles or other equipment should be parked near the work area. Work vehicles with TMA should be used anytime it can be positioned in advance of the area of crew exposure without adversely affecting the performance or quality of the work. If workers are no longer present but road or work conditions require the traffic control devices, the work vehicles with TMA should be positioned on the paved surface, next to those shown in order to protect wider work spaces.
- Freeway SHOULDER work: signs may be used in place of CD-2-10 "ROAD WORK AHEAD" signs for shoulder work on conventional roadways.

Texas Department of Transportation  
 Traffic Operations Division  
 Standard

**TRAFFIC CONTROL PLAN  
 CONVENTIONAL ROAD  
 SHOULDER WORK**

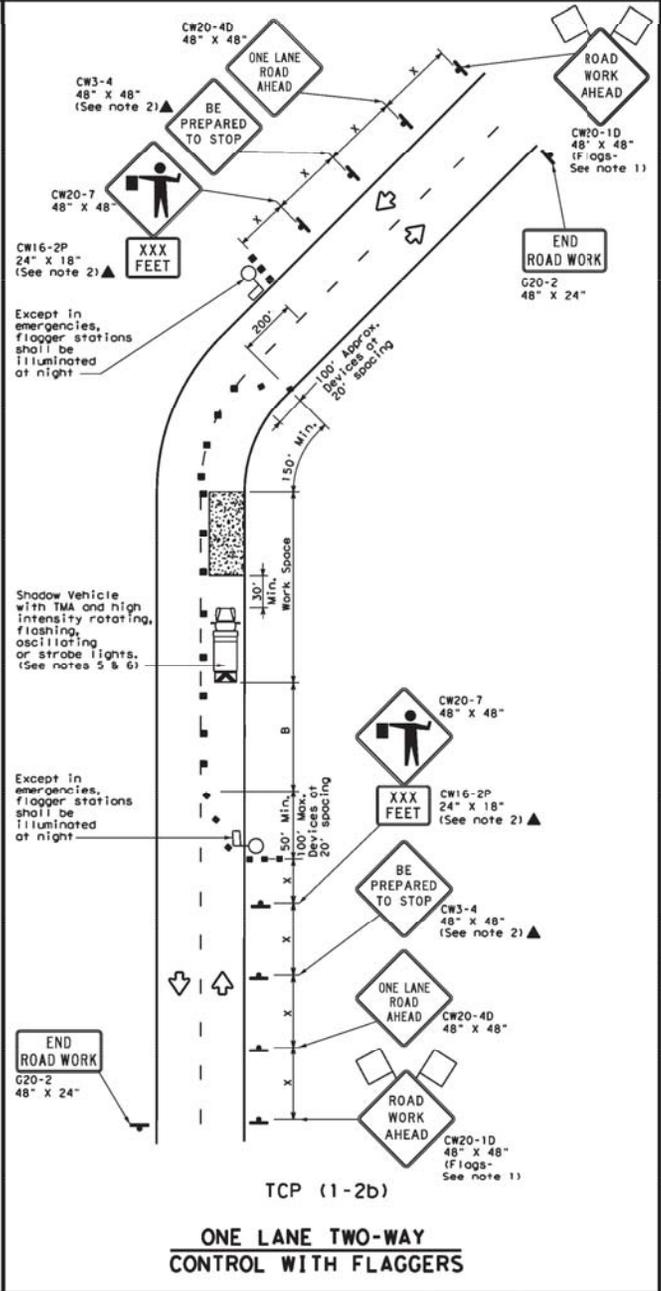
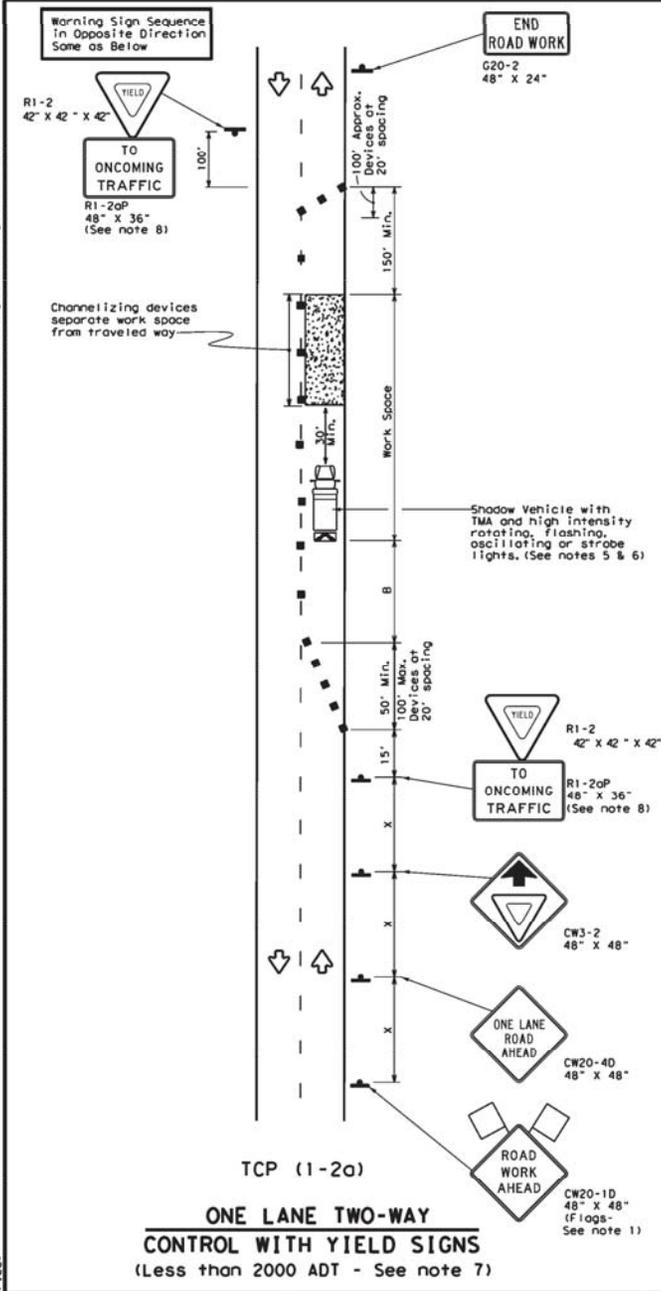
**TCP (1-1) - 18**

FILED	PROJECT	DATE	BY	CHKD	DATE
11-18-18	11-18-18	11-18-18	11-18-18	11-18-18	11-18-18

DATE: 11-18-18  
 SHEET NO. 42

DISCLAIMER: This standard is governed by the "Texas Engineering Practice Act". No warranty of any kind is made by TxDOT for any purpose whatsoever. TxDOT assumes no responsibility for the conversion of this standard to other formats or for incorrect results or damages resulting from its use.

DATE: FILE:



LEGEND			
	Type 3 Barricade		Channelizing Devices
	Heavy Work Vehicle		Truck Mounted Attenuator (TMA)
	Trailer Mounted Flashing Arrow Board		Portable Changeable Message Sign (PCMS)
	Sign		Traffic Flow
	Flagger		

Posted Speed #	Formula	Minimum Desirable Taper Lengths # x #			Suggested Maximum Spacing of Channelizing Devices		Minimum Sign Spacing "A" Distance	Suggested Longitudinal Buffer Space "B"	Stopping Distance
		10' Offset	11' Offset	12' Offset	On a Taper	On a Tangent			
30	L = WS/2	150'	165'	180'	30'	60'	120'	90'	200'
35	L = WS/2	205'	225'	245'	35'	70'	160'	120'	250'
40	L = WS/2	265'	295'	320'	40'	80'	240'	155'	305'
45	L = WS/2	450'	495'	540'	45'	90'	320'	195'	360'
50	L = WS/2	500'	550'	600'	50'	100'	400'	240'	425'
55	L = WS/2	550'	605'	660'	55'	110'	500'	295'	495'
60	L = WS/2	600'	660'	720'	60'	120'	600'	350'	570'
65	L = WS/2	650'	715'	780'	65'	130'	700'	410'	645'
70	L = WS/2	700'	770'	840'	70'	140'	800'	475'	730'
75	L = WS/2	750'	825'	900'	75'	150'	900'	540'	820'

\* Conventional Roads Only  
 \*\* Taper lengths have been rounded off.  
 L=Length of Taper (FT) W=Width of Offset (FT) S=Posted Speed (MPH)

MOBILE	TYPICAL USAGE			
	SHORT DURATION	SHORT TERM STATIONARY	INTERMEDIATE TERM STATIONARY	LONG TERM STATIONARY
	✓	✓		

- GENERAL NOTES**
- Flags attached to signs where shown are REQUIRED.
  - All traffic control devices illustrated are REQUIRED, except those denoted with the triangle symbol may be omitted when stated elsewhere in the plans, or for routine maintenance work, when approved by the Engineer.
  - The CW3-4 "BE PREPARED TO STOP" sign may be installed after the CW20-4D "ONE LANE ROAD AHEAD" sign, but proper sign spacing shall be maintained.
  - Sign spacing may be increased or an additional CW20-1D "ROAD WORK AHEAD" sign may be used if advance warning ahead of the flagger or R1-2 "YIELD" sign is less than 1500 feet.
  - A Shadow Vehicle with a TMA should be used anytime it can be positioned 30 to 100 feet in advance of the area of crew exposure without adversely affecting the performance or quality of the work. If workers are no longer present but road or work conditions require the traffic control to remain in place, Type 3 Barricades or other channelizing devices may be substituted for the Shadow Vehicle and TMA.
  - Additional Shadow Vehicles with TMAs may be positioned off the paved surface, next to those shown in order to protect wider work spaces.
- TCP (1-2a)**
- R1-2 "YIELD" sign traffic control may be used on projects with approaches that have adequate sight distance. For projects in urban areas, work spaces should be no longer than one half city block. In rural areas on roadways with less than 2000 ADT, work spaces should be no longer than 400 feet.
  - R1-2 "YIELD" sign with R1-2aP "TO ONCOMING TRAFFIC" plaque shall be placed on a support at a 7 foot minimum mounting height.
- TCP (1-2b)**
- Flaggers should use two-way radios or other methods of communication to control traffic.
  - Length of work space should be based on the ability of flaggers to communicate.
  - If the work space is located near a horizontal or vertical curve, the buffer distances should be increased in order to maintain adequate stopping sight distance to the flagger and a queue of stopped vehicles (see table above).
  - Channelizing devices on the center-line may be omitted when a pilot car is leading traffic and approved by the Engineer.
  - Flaggers should use 24" STOP/SLOW paddles to control traffic. Flags should be limited to emergency situations.

		Traffic Operations Division Standard	
<b>TRAFFIC CONTROL PLAN</b> <b>ONE-LANE TWO-WAY</b> <b>TRAFFIC CONTROL</b>			
<b>TCP (1-2) - 18</b>			
FILE: tcp1-2-18.dgn	DATE: December 1985	DESIGNER: [ ]	CHECKED: [ ]
REVISIONS:	NO. 1	DATE	BY
4-90	4-98		
2-94	2-12		
1-97	2-18		
		COUNTY:	SHEET NO. 43

## City of Denton

## Reimbursable Cost Estimate

<b>Client:</b> City of Denton	<b>Date:</b> 10/21/2022
<b>Project:</b> IH35E Mayhill from Loop 288 to Post Oak - Utility Relocations	<b>Prepared By:</b> CPI
<b>KHA No.:</b> 061024039	<b>Checked By:</b> JRA

<b>Title:</b> Wastewater Cost Projection Summary
--

Project Description			Total
Wastewater Relocations	1	EA	\$36,000
Reclaimed Water Line Relocations (Drawing Sheets 27)	926	LF	\$1,393,220
Utility Abandonments	1,429	LF	\$80,787
<b><u>Construction Total</u></b>			<b>\$1,510,007</b>
Property Acquisition for Proposed Easements	1	parcel	\$17,102.40
Property Acquisition Consultant Services (Task 11 in Kimley-Horn Contract Attached)			\$27,700.00
Engineering (Contract Attached) (includes design, survey, CA, permitting, geotech and SUE))			\$61,000.00
City Staff Time (backup estimate provided)			\$9,015
<b><u>Combined Total</u></b>			<b>\$1,624,824.40</b>
<b><u>Total Reimbursable Amount:</u></b>			<b>\$1,624,824.40</b>

**Basis for Cost Projection:**

- No Design Completed  
 Preliminary Design  
 Final Design

**ACTUAL BID TABULATION PROVIDED AS BACKUP**

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

**SECTION 00 42 43 - UNIT PRICE BID FORM**PROJ.: **IH-35E - Mayhill Utility Relocations**IFB: **7968-001**

City of Denton Capital Projects  
901-B Texas Street  
Denton, TX 76209  
Attn: Cori Power/Purchasing Dept.

From: Mountain Cascade of Texas, LLC  
5340 East US Highway 67  
Alvarado, TX 76009  
Andrew L. McCulloch  
817-783-3094  
[amcculloch@mountaincascade.com](mailto:amcculloch@mountaincascade.com)

**BIDDERS APPLICATION - UNIT PRICE BID**

Item No.	COD SPEC	Description of work	BID QTY	UOM	Unit Price	Extended Price
<b>Unit II - WASTEWATER IMPROVEMENTS</b>						
73a	33 14 14	3314.222 - 20" HDPE Pressure Pipe, Water (Purple in Color)	331	LF	\$ 540.00	\$ 178,740.00
74a	33 05 15,33 14 14	3305.110 - 20" HDPE Water Carrier Pipe	595	LF	\$ 180.00	\$ 107,100.00
75	33 05 07	3305.040 - 48" Casing or Tunnel Liner Plate by Other Than Open Cut*	595	LF	\$ 1,600.00	\$ 952,000.00
76	33 14 20	3314.3xx - 18" Gate Valve*	1	EA	\$ 75,000.00	\$ 75,000.00
77	33 14 25	3314.395 - 18" Water Main Connection with Shutdown	2	EA	\$ 20,000.00	\$ 40,000.00
78	33 05 05	3305.021 - Trench Safety	331	LF	\$ 1.00	\$ 331.00
79	32 93 00	3293.016 - Seeding	519	SY	\$ 1.00	\$ 519.00
80	32 12 16	3216.005 - 4" Concrete Sidewalk*	161	SY	\$ 130.00	\$ 20,930.00
81	32 01 29	3201.013 - Concrete Paving Repair for Utility Trench*	93	SY	\$ 200.00	\$ 18,600.00
82	33 01 12	3301.059 - Manhole Adjustment, Major	1	EA	\$ 4,000.00	\$ 4,000.00
83	32 01 29	3305.145 - Concrete Collar*	1	EA	\$ 2,000.00	\$ 2,000.00
84	33 01 12	3305.126 - 4' Concrete Manhole*	1	EA	\$ 30,000.00	\$ 30,000.00
85	02 41 14	0241.036 - Remove 18" Utility Line	238	LF	\$ 110.00	\$ 26,180.00
86	02 41 14	0241.017 - Grout Fill 18" Utility Line	637	LF	\$ 37.00	\$ 23,569.00
87	02 41 14	0241.062 - Remove 18" Water Valve	1	EA	\$ 1,000.00	\$ 1,000.00
88	02 41 14	0241.053 - Utility Line Plugging (Sanitary Sewer)	3	EA	\$ 4,000.00	\$ 12,000.00
89	02 41 14	0241.011 - Grout Fill 8" Utility Line (Sanitary Sewer)	554	EA	\$ 17.00	\$ 9,418.00
90	02 41 14	0241.013 - Grout Fill 12" Utility Line (Sanitary Sewer)	151	EA	\$ 20.00	\$ 3,020.00
91	02 41 14	0241.050 - Remove 4' Utility Manhole	2	EA	\$ 2,800.00	\$ 5,600.00
<b>TOTAL BID AMOUNT (Unit II): \$</b>						<b>1,510,007.00</b>

\*All materials shall use domestically manufactured products that are composed predominately of steel and/or iron to incorporate into the permanent installation of the utility facility – in compliance with the Buy America provisions of 23 CFR 635.410 as amended.

END BID ITEMS

**IH-35E - Mayhill Utility Relocations**  
IFB: **7968-001**

**Mountain Cascade of Texas, LLC**

### City of Denton Utility Easements Appraisals

Denton CAD No.	TxDOT Parcel No.	Property Owner	LF of Easement Acquisition		Total (SF)	Anticipated Fee Price/SF		Total Easement Value		LF of Easement Acquisition		Total (SF)	Anticipated Fee Price/SF		Total Easement Value		Title Policy Fee	Appraised Value	Total Cost to City
			Permanent	Temporary Construction Easement		Permanent	Temporary Construction Easement	Permanent	Temporary Construction Easement	Permanent	Temporary Construction Easement		Permanent	Temporary Construction Easement					
259376	85	CB Green Investments, L.L.C., a Texas limited liability company	55.00	20	1,770.00	\$9.00	\$15,930.00	\$9.00	\$15,930.00	25	249.00	\$3.60	\$896.40	\$276.00	\$16,826.40	\$17,102.40			
<b>Total</b>			55.00	20	1,770.00	\$9.00	\$15,930.00	\$9.00	\$15,930.00	25	249.00	\$3.60	\$896.40	\$276.00	\$16,826.40	\$17,102.40			

Total with Permanent, Temporary Easements and Title:

\$17,102.40

# Kimley»Horn

## Project Fee Calculation

## Budget Summary

Date: Jul 1, 2019

### General Project Information

Client: **City of Denton**  
 Project: **IH-35E-Mayhill-Utility Relocations**  
 KHA No. **0610240xx**  
 PM: **Chris Igo**

### Task Budget Summary

No.	Task Name	Hours	Labor	Task 700	Task 888	Subtotal
				Expenses	Office Exp.	
100	Design Mgmt	18	\$ 4,400		\$ 300	\$ 4,700
200	Align Routing-Esmt ID	22	\$ 4,900		\$ 300	\$ 5,200
201	Prelim Design	72	\$ 16,300		\$ 800	\$ 17,100
202	Final Design	35	\$ 7,600		\$ 400	\$ 8,000
203	Contract Docs	6	\$ 1,300		\$ 100	\$ 1,400
204	Bidding Services	8	\$ 1,700		\$ 100	\$ 1,800
205	CCA	27	\$ 5,800		\$ 300	\$ 6,100
206	Record Drawings	5	\$ 900		\$ 100	\$ 1,000
207	Permitting	12	\$ 2,500		\$ 200	\$ 2,700
208	Survey and Easements	75	\$ 12,400		\$ 600	\$ 13,000
209	Easement Acquisition			\$ 27,700		\$ 27,700
210	Conflict Analysis					
777	Contingency				\$ -	
<b>TOTALS:</b>		<b>280</b>	<b>\$ 57,800</b>	<b>\$ 27,700</b>	<b>\$ 3,200</b>	<b>\$ 88,700</b>

### Subconsultant Summary

Task No.	Task Name	Cost	Multiplier	Subtotal
<b>TOTALS:</b>		<b>\$ -</b>		<b>\$ -</b>

Project Budget Summary		
Labor:	\$	57,800
Expenses:	\$	30,900
<b>TOTAL:</b>	<b>\$</b>	<b>88,700</b>



## I-35E Project - City Staff Estimate (wastewater)

Employee Name	Title	Hours	Hourly Rate	Total
	Engineer(s)	40	\$ 50.00	\$ 2,000.00
	Admin(s)	15	\$ 35.00	\$ 525.00
	Inspector(s)	200	\$ 30.00	\$ 6,000.00
	Supervisor(s)	7	\$ 70.00	\$ 490.00
Sum Total				\$  9,015.00

## Attachment "B" Accounting Method

**Actual Cost Method of Accounting**

The utility accumulates cost under a work order accounting procedure prescribed by the Federal or State regulatory body and proposes to request reimbursement for actual direct and related indirect costs.

**Lump Sum Method of Accounting**

Utility proposed to request reimbursement based on an agreed lump sum amount supported by a detailed cost analysis.

 <sup>DS</sup>  
*DP*  
1/17/2023  
\_\_\_\_\_  
Date  
TxDOT

  
\_\_\_\_\_  
Initial  
12/7/22  
\_\_\_\_\_  
Date  
Utility

## Attachment "C" Schedule of Work

Estimated Start Date: 01/16/23, (subject to physical work restrictions prior to the issuance of environmental clearance as required by the provisions of this agreement)

Estimated Duration (days): 240

Estimated Completion Date: 09/13/23

 <sup>DS</sup>  
*DP*  
\_\_\_\_\_  
Date  
TxDOT

  
\_\_\_\_\_  
Initial  
Date  
Utility

# Attachment "D" Statement Covering Contract Work

(ROW-U-48)  
(ROW-U-48-1, if applicable)

## Construction Contract:

- Utility performing with their own forces (timesheets will be required at the time of billing).
- Utility will use outside forces to perform the adjustment, complete attached ROW-U-48 or ROW-U-48-1 (joint bid).

## Engineering Contract:

- Utility performing with their own forces (timesheets will be required at the time of billing).
- Utility will use consultant contract (continuing contract rate sheets or fee schedule will be required).
- TxDOT will procure utility consultant.

 DP 1/17/2023  
Initial Date  
TxDOT

 12/7/22  
Initial Date  
Utility



## DocuSign City Council Transmittal Coversheet

PSA	6590-084
File Name	Mayhill I35E Utility Location
Purchasing Contact	Jane Rogers
City Council Target Date	January 14, 2020
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	20-040

## **CITY OF DENTON, TEXAS**

### **STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES #6590-084**

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Kimley-Horn and Associates, Inc., with its corporate office at 801 Cherry Street, Unit 11 Suite 950, Fort Worth, Texas 76102 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: engineering services for the design and construction phase services for the IH-35E-MAYHILL – UTILTIY-RELOCATIONS (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 \$922,800 in the manner and in accordance with the fee schedule as set forth in Attachment B. 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 D 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 D 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 D.

### **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 2270 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

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, ENGINEER certifies that ENGINEER'S signature provides written verification to the CITY that ENGINEER, 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.

## N. 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](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](mailto:purchasing@cityofdenton.com) with the contract number in the subject line. (EX: Contract 1234 – 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. 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 - Scope of Services
- Attachment B – Compensation
- Attachment C – Changes and Amendments to Standard Agreement
- Attachment D – Project Schedule
- Attachment E – Project Location Map

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.

Duly executed by each party's designated representative to be effective on the date subscribed by the City Manager.

BY:  
CITY OF DENTON, TEXAS

BY:  
ENGINEER  
KIMLEY-HORN AND ASSOCIATES, INC.

DocuSigned by:  
Todd Hileman  
TODD HILEMAN, CITY MANAGER

DocuSigned by:  
Glenn Gary  
GLENN GARY  
SR. VICE PRESIDENT

Date: 1/15/2020

Date: 12/10/2019

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

2019-565945  
TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

DocuSigned by:  
Frank Pugzley  
Signature

Water and Wastewater Utilities Director

Title

Water Utilities

Department

Date Signed: 12/10/2019

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

By: Mack Reinward

ATTEST:  
ROSA RIOS, CITY SECRETARY

By: Rosa Rios

## ATTACHMENT "A"

Scope for Engineering Design Related Services for:

### **IH-35E-MAYHILL - UTILITY-RELOCATIONS**

The ENGINEER will perform its services pursuant to the requirements delineated below. Services under this attachment include engineering services for the design and construction phase services for the IH-35E-MAYHILL - UTILITY-RELOCATIONS.

#### **Project Understanding**

ENGINEER will provide engineering design services for the following tasks:

The relocations of approximately 14,000 linear feet of 20-inch through 8-inch water main, 1,500 linear feet of 18-inch reclaimed water line, and 500 feet of gravity sewer line from Loop 288 to Post Oak Road along the north and south frontage roads of IH-35E. The relocations are necessary due to the CSJ 0196-01-109 Mayhill Bridge and frontage road expansion planned by TxDOT. All proposed relocations will be placed back in easement, except for lines that cross IH-35E or Mayhill Road. There are approximately 1,000 linear feet of proposed trenchless bores/tunneling.

ENGINEER's scope of services is as follows:

#### **IH-35E-MAYHILL - UTILITY-RELOCATIONS**

- Task 1 – Design Management
- Task 2 – Alignment Study
- Task 3 – Preliminary Design
- Task 4 – Final Design
- Task 5 – Construction Contract Documents
- Task 6 – Bid Phase Services
- Task 7 – Construction Phase Services
- Task 8 – Record Drawings Preparation
- Task 9 – Permitting
- Task 10 – Survey and Easements
- Task 11 – Easement Acquisition Services

#### **IH-35 - UTILITY-RELOCATIONS**

- Task 12 – Conflict Analysis

## **Task 1      DESIGN MANAGEMENT**

### **A. Project Management**

1. Develop project communication plan.
  - a. Develop project contact list.
  - b. Prepare and e-mail progress reports to the project team once a month to be included with invoices. 24 months is assumed.
  - c. Prepare project schedule and provide schedule updates if the schedule changes.
2. Meetings
  - a. Prepare for and attend kickoff meeting.
  - b. Prepare meeting notes and distribute to the City.
3. Sub-consultant Agreement Preparation
  - a. Prepare and execute up to five (5) subconsultant agreements.

## **Task 2 – ALIGNMENT STUDY**

### **A. Preliminary Investigation**

1. Data Collection and Record Research
  - b. Gather existing survey and topographic data
  - c. Gather existing aerial photographs.
  - d. Gather existing water, sanitary sewer, and storm sewer record drawings.
  - e. Gather existing paving plans.
  - f. Gather existing development plans.
  - g. Gather existing plat information.
  - h. Collect property owner and record information
  - i. Gather existing right-of-way and easement information.
  - j. Gather existing franchise utility record information.
2. Site Investigation
  - a. Walk general alignment.
  - b. Document alignment corridor with photographs.
  - c. Identify potential alignment, conflicts and issues.
3. Data Review with City
  - a. Meet with City to review accuracy of record information.
  - b. Interview City staff concerning historical, existing and future City plans along the alignment.

**B. Prepare Alternate Alignment Technical Memorandum.**

1. Analysis of alternate alignments indicating merits and challenges for each, and including the following considerations:
  - a. Easement acquisition schedule and cost impacts.
  - b. Existing development impacts.
  - c. Existing potential horizontal and vertical conflicts.
  - d. Accessibility for maintenance.
  - e. Prepare opinions of probable construction cost for each alignment. The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

**C. Deliverables**

1. Digital .PDF copy of draft and final technical memorandum.

**D. Meetings**

1. Conduct one (1) review meeting with City.
2. Revise memorandum based on City comments.

**Task 3 – PRELIMINARY DESIGN****A. Design Survey**

1. Utility and Property Owner Coordination
  - a. Coordinate with DIG TESS and City of Denton to locate and mark existing franchise and public utilities prior to performing the field survey.
2. Design Survey
  - a. The limits of the survey shall be a 100-foot wide alignment generally along IH-35E, and along Mayhill Road as shown on the Project Location Map. There are two location of offsite alignment that will require easement along the backside of properties adjacent to IH-35E. The topographic survey will be approximately 15,000 linear feet.
  - b. Establish up to ten (10) horizontal control points based on the City of Denton Coordinate System using ½-inch rebar with identifiable plastic cap, specific for this project.
  - c. Establish a vertical control benchmark circuit tied to the City of Denton benchmark system, specific for this project, as well as tie into the TxDOT control.

- d. Perform a field survey to identify and locate all existing topographic elements within the alignment corridor including, but not limited to, the following:
  - i. Property pins
  - ii. Existing pavement, curbs, sidewalks, barrier free ramps, etc.
  - iii. Lane Striping (where applicable)
  - iv. Driveways
  - v. Existing storm sewer inlets, manholes, junction boxes, outfalls, and erosion control
  - vi. Culverts and bridges
  - vii. Guardrail
  - viii. Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities
  - ix. Traffic signal poles, cabinets, and other signal equipment
  - x. Signs (excluding temporary signs)
  - xi. Trees, 6-inch caliper and up (center of trunk as well as dripline)
  - xii. Buildings
  - xiii. Retaining walls
  - xiv. Fence limits and material types
  - xv. Other applicable physical features that could impact design:
    - a) Field ties to the existing edge of pavement on Mayhill Road and Interstate Hwy 35.
    - b) Field sketches of utility manholes and structures.
    - c) Prepare a final topographic drawings in a digital format (including one-foot contours and breaklines) showing the features located in the field as well as right-of-way strip map information, an ASCII coordinate file of the points located in the field, and a hard copy of the coordinates and feature descriptions.

## **B. Geotechnical Engineering**

1. Perform a geotechnical analysis of the alignment utilizing a qualified geotechnical laboratory to determine subsurface conditions and make recommendations regarding design parameters. The analysis shall include the following:
  - a. Subsurface exploration including up to ten (10) sample bores varying 30 feet depending upon location.
  - b. Laboratory tests for classification purposes and strength characteristics.
  - c. Engineering services that address the following:

- i. soil and groundwater conditions
  - ii. Comments on general excavatability of soils and shale encountered
  - iii. Recommendations for pipe installation, including bedding and backfill
  - iv. Recommendations for tunneling operations
2. A geotechnical report will be furnished by the geotechnical engineer to present the results of the field and laboratory data as well as analyses and recommendations. Three (3) copies of the report will be provided by the geotechnical engineer, with one (1) copy going to the City. The data contained in the geotechnical report will be made available to contractors during the bidding process for informational purposes.

### **C. Subsurface Utility Engineering (SUE)**

1. Level A investigation of existing water line connection point, and potential crossing utilities. The Level A investigation shall consist of performing up to four (4) level A testholes or "locates" of existing utilities. The Level A investigation will be conducted in accordance with ASCE publication CI/ASCE 38-02 and include the location of said utility in three dimensions obtained through non-destructive geophysical methods.

### **D. Preliminary Water Line Design**

1. Visit the site to perform field verification of the survey.
2. Preliminary plan and profile drawings preparation for approximately 8,000 linear feet of 20-inch water line, 1,500 linear feet of 12-inch water line, 3,800 linear feet of 8-inch water line, 500 feet of gravity sanitary sewer, and 1,500 linear feet of 18-inch reclaimed water line.
  - a. Prepare (22"x34") plan and profile drawings at 1"=20' horizontal and 1"=8' vertical scale.
  - b. Plan view of the base map shall have all above ground features shown and clearly labeled along with existing utilities based on field ties and record information.
  - c. Plan view shall include design notes for stationing, size, slope, pipe material, embedment, length and construction method.
  - d. Profile view shall include design notes for stationing, size, slope, flow-line of pipe, pipe material, embedment, length and construction method.
  - e. Prepare preliminary water line details, including connection details.
  - f. Design tunnels/bores including casing/tunnel liner plate minimum thickness and inside diameter, shafts, allowable methods, control of ground water, and appropriate tolerances with the chosen method.
  - g. Perform one (1) site visit to verify preliminary design.
3. Preliminary Traffic Control and Detour Plan Preparation.

- a. City and TxDOT typical traffic control details will be included as required.
4. Franchise Utility Coordination
  - a. Provide one set of drawings to each franchise utility encountered for their review. Request each franchise to mark up the drawings to show the size, type, and location of their utilities.
  - b. Coordinate with franchise utilities if any relocations are required. Notify City if any relocations will be required.
5. Prepare preliminary general notes and details, including City Standard Details where applicable.
6. Prepare preliminary technical specifications utilizing City Standard Specifications, and any special specifications.
7. Compile and prepare an updated opinion of probable construction cost for the entire project using recent average unit bid prices which are representative of similar types of construction in the local area.
  - a. The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

#### **E. Deliverables**

1. Preliminary design submittal (60%)
  - a. Submit four (4) copies to City for review and comment.
  - b. Submittal shall include the following:
    - i. Preliminary design plans (22"x34")
    - ii. Preliminary technical specifications
    - iii. Opinion of probable construction cost

#### **F. Meetings**

1. Attend one (1) meeting with City to kick-off preliminary design.
2. Attend one (1) meeting with City on-site prior to submittal of preliminary plans, if required.
3. Attend one (1) meeting with City to present and review the preliminary design submittal

## Task 4 – FINAL DESIGN

### A. Easement Preparation

1. Upon receiving approval of 60% design drawings, ENGINEER will prepare up to thirty-five (35) permanent water line easements and up to thirty-five (35) temporary construction easements (which may be shown on the permanent easement document).
2. Easement instruments will consist of metes and bounds descriptions and exhibits.

### B. Final Design

1. Incorporate the preliminary design submittal review comments (one (1) round of comments is anticipated in proposed effort).
2. Prepare updated opinion of probable construction cost.
  - a. The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
3. Incorporate franchise utility investigation information
4. Incorporate details and technical specifications.
5. Prepare surface repair sheets and details as necessary.
6. Prepare final abandonment layout sheet and letter for TxDOT submittal.
7. Prepare Project Manual using City Standard Construction Contract Documents.

### C. Deliverables:

1. Final Design Submittal (95%)
  - a. Submit four (4) copies to the City for review and comment.
  - b. Submittal shall include the following:
    - i. Final design drawings
    - ii. Final design project manual
    - iii. Opinion of probable construction cost

### D. Meetings

1. One (1) meeting with City to review Final Design Submittal.

## **Task 5 – CONSTRUCTION CONTRACT DOCUMENTS**

### **A. Bidding Construction Contract Documents**

1. Incorporate City comments from 95% design submittal and prepare construction contract documents, bid plans, and opinion of probable construction cost.
2. Construction contract documents will consist of the final plans and project manual, both signed and sealed by a licensed professional engineer in the State of Texas and in accordance with comments provided by the City during final design.

### **B. Deliverables:**

1. Construction Contract Documents Submittal
  - a. Submit four (4) copies to the City for bidding.
  - b. Submittal shall include the following:
    - i. Bid drawings
    - ii. Bid project manual
    - iii. Opinion of probable construction cost

## **Task 6 – BID PHASE SERVICES**

### **A. Bid Phase Services**

1. Provide electronic bid documents to the City purchasing department for bidding.
2. Provide the Notice to Bidders to the City for publication. The City will be responsible for publication of the notice. The City will be responsible for distribution of the bidding documents to prospective contractors, suppliers and plan rooms.
3. The following assistance will be provided to the City during the bidding phase:
  - a. Preparation of addenda and delivery to City for distribution to plans holders.
  - b. Responses to questions submitted by plans holders.
  - c. Attend bid opening facilitated by City.
  - d. Preparation of bid tabulation.
  - e. Preparation of recommendation of award letter.
4. Conformance plans and specifications
  - a. Based on potential questions and addenda from the bidding phase, prepare conformance set of plans and specifications to be used during construction.
    - i. Provide up to four (4) sets to City for execution.

## Task 7 – CONSTRUCTION PHASE SERVICES

### A. Construction Phase Services

1. Pre-Construction Conference
  - a. Prepare for and attend a pre-construction conference prior to commencement of Work at the Site
2. Site Visits
  - a. Visit the construction site up to twelve (12) times during construction to perform construction observation. 12 months construction time is assumed.
  - b. Site Visits are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgement.
  - c. Based on information obtained during site visits, ENGINEER will determine if Contractor's work is generally proceeding in accordance with the Contract Documents, and ENGINEER will keep CITY informed of the general progress of the work.
3. Recommendations with Respect to Defective Work
  - a. Provide recommendations to City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of site visit evaluations, ENGINEER believes such work will not produce a completed Project that conforms generally to Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Notwithstanding the foregoing, the City reserves the right to disapprove or reject Contractor's work without a recommendation from the ENGINEER.
4. Clarifications and Interpretations
  - a. Issue necessary clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field orders authorizing variations from the requirements of the Contract Documents will be made by City.
5. Change Orders
  - a. Recommend change orders to City, as appropriate.
  - b. Review and make recommendations related to Change Orders submitted or proposed by the Contractor.
6. Shop Drawings and Samples
  - a. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to

submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

7. Substitutes and “or-equal”

- a. Evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- b. Provide recommendations to City

8. Inspections and Tests

- a. Review certificates of inspections and tests within ENGINEER’s area of responsibility for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER will be entitled to rely on the results of such tests and facts being certified. The scope of services assumes the pumps and motors will go through a non-witnessed factory test. Attending testing will be considered additional services.

9. Disagreements between City and Contractor

- a. As necessary, ENGINEER will, with reasonable promptness, render initial written decision on all claims of City and Contractor relating to the acceptability of Contractor’s work or the interpretation of the requirements of the Contract Documents pertaining to the progress of the Contractor’s work. In rendering such decisions, ENGINEER will be fair and not show partiality to City or Contractor and will not be liable in connection with any decision rendered in good faith in such capacity. The initial decision of the ENGINEER shall be required as a condition precedent to mediation or litigation of any claim arising prior to the date final payment is due to the Contractor, unless thirty (30) days have passed after a claim has been referred to the ENGINEER with no decision having been rendered.

10. Final Walkthrough and Punchlist Preparation

- a. Attend final walkthrough with Contractor and City to determine if the completed work of Contractor is generally in accordance with the Contract Documents.
  - i. Limitation of Responsibilities: The ENGINEER will not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual entity performing or furnishing the work. ENGINEER will not have the authority or responsibility to stop the work of any Contractor.

- b. Compile punch list from information gathered during final walkthrough with City and Contractor.

## **Task 8 – RECORD DRAWINGS**

### **A. Record Drawings**

1. Obtain and review comments and field changes on the construction plans from City and Contractor.
2. Prepare record drawings based on comments and field changes. The ENGINEER will not be providing resident engineering services and will not be observing on a full-time basis, and will therefore not seal the record drawings. The record drawings will be provided in the following format:
  - a. (1) Mylar hardcopy full-size (22"x34")
  - b. PDF electronic copy

## **Task 9 – PERMITTING**

### **A. Permitting**

1. The City will be responsible for administration of TxDOT UIR permits. The ENGINEER will prepare exhibits for permit submittal.
2. The ENGINEER will aid the City in coordinating the Utility Agreement (U-35) with TxDOT and prepare reimbursement invoices as necessary. This also includes providing betterment calculations and coordination efforts with TxDOT, and their designated Utility Coordinator.

## **Task 10 – SURVEY AND EASEMENTS**

### **A. Survey and Easements**

1. See components of Task 3 and Task 4.

## **Task 11 – EASEMENT ACQUISITION SERVICES**

### **A. Easement Acquisition Services**

ENGINEER will perform the following services for this task:

1. Provide appraisals for proposed easements on up to twenty-five (25) parcels for the proposed lines. Appraisals will be approved by the City prior to beginning negotiations with property owners. The appraisals will be prepared by State Certified Appraisers in accordance with the Uniform Standards of Professional Appraisal Practice Act (USPAP). The appraisals will be suitable for use in condemnation proceedings, if necessary.

2. Provide property negotiation services for up to twenty-five (25) parcels for the proposed line as follows:
3. The offer to purchase the properties will be based on the appraisals as indicated above. The City will establish the value to be used in negotiation and the range of negotiating authority to be given to the right-of-way agent. ENGINEER's Real Estate Agent will provide the services of qualified right-of-way agents to secure the required right-of-way for the project. The right-of-way agents will provide each property owner a copy of The Texas Landowner Bill of Rights, but will NOT be required to provide negotiation services under the Uniform Relocation and Acquisition Act (Uniform Act).
4. ENGINEER's Real Estate Agent will negotiate on behalf of the City and utilize conveyance documents and other necessary forms as prescribed by the City. ENGINEER's Real Estate Agent will provide a good faith effort to acquire the rights-of-way through a negotiation process, which will generally consist of three (3) contacts with the property owner, or his authorized representative. A maximum of five (5) total contacts will be provided to reach an agreement with the property owner, or to determine that further negotiations will be non-productive and that eminent domain actions will be necessary to acquire the property. If absentee owners are involved, the negotiations may be conducted via telephone, fax, or by mail. If the schedule for acquisition of the right-of-way or other factors arise, which make it expedient, travel outside the project area to meet with the absentee owners may be desirable. If such events arise, the travel must be specifically authorized by the City. If such travel is authorized, the expenses involved, including the agent's services, will be considered additional services.
5. The initial offer made to the property owner will be based on the value authorized by the City. All counter-offers by the property owner, along with ENGINEER's Real Estate Agent recommendations will be presented to the City for consideration. The City must establish and recommend such counter offers before ENGINEER's Real Estate Agent will be authorized to agree to the requested changes. All monetary offers made to the property owners will be within the limits authorized by the City in the various stages of the negotiation.
6. After reaching an agreement with the landowner on the consideration and all other terms of the transaction, ENGINEER's Real Estate Agent will forward to the City a Memorandum of Agreement (M/A) executed by the property owner to be ratified by the City. This M/A sets forth the compensation and any other terms and conditions agreed upon. The City will be responsible for obtaining the City's ratification and for returning the ratified M/A to ENGINEER's Real Estate Agent. ENGINEER's Real Estate Agent will then inform the Title Company that the parcel is ready for closing.
7. ENGINEER's Real Estate Agent will coordinate contacts with the CITY to deliver any payments to the Title Company prior to closing.
8. This Scope of Services assumes that costs for Title Commitments, Title Policies and recording fees will be purchased by the City through the assistance of the Real Estate Agent. The amount paid for the Title Policies will not exceed premium amounts set by the Texas Department of Insurance and agreed upon in advance between the City and the Title Company. Any additional Title Company services such as recording fees shall be agreed upon in advance

between the City and the Title Company. ENGINEER's Real Estate Agent will review liens or other exceptions reported in the Title Commitment. ENGINEER will coordinate the location and the effect of any utility easements. ENGINEER will report the results of the Title Commitment to the City, recommending the disposition of the exceptions. The decision whether the reported exceptions are acceptable or must be eliminated will be the responsibility of the City. Any action required to clear title is not included in the Scope of Work for this project, and if required, will be considered Additional Services.

9. ENGINEER's Real Estate Agent will coordinate and attend all closings at the Title Company.
10. ENGINEER's Real Estate Agent will confirm that the Title Company records all documents at the Denton County Courthouse after closing.
11. ENGINEER's Real Estate Agent will confirm that the Title Company forwards copies of all recorded documents to the City.

## **Task 12 – CONFLICT ANALYSIS**

### **A. Conflict Analysis**

- a. I-35 (from I-35E/I-35W split to Denton County Line) Schematic Review: Review proposed TxDOT ROW maps and proposed roadway alignment schematics as compared to the existing CITY water and sanitary sewer maps. Identify potential conflicts between proposed TxDOT ROW, proposed roadway, water and sanitary sewer utilities.
- b. Site Visits to Conflict Areas: After conflict identification, perform site visit to obtain additional information not shown on maps and schematics.
- c. Coordination with CITY regarding conflicts between the future roadway infrastructure and the CITY's water and sanitary sewer infrastructure that creates a service interruption that the CITY deems not in their best interest therefore warranting a potential realignment of the roadway to avoid the conflict with the water and/or sanitary sewer infrastructure.
- d. Coordination with TxDOT regarding conflicts between the future roadway infrastructure and the CITY's water and sanitary sewer infrastructure that creates a service interruption that the CITY deems not in their best interest therefore warranting a potential realignment of the roadway to avoid the conflict with the water and/or sanitary sewer infrastructure.

### **B. Deliverables:**

- a. Meeting notes and action items for each attending party from the coordination efforts.
- b. Conceptual map identifying conflicts and conceptual OPCC.

## ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

City and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the City's written request. Any additional amounts paid to ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include, but are not limited to the following:

- Redesign to reflect project scope changes requested by the CITY or TxDOT, required to address changed conditions or change in direction previously approved by the CITY, mandated by changing governmental laws, or necessitated by the CITY's acceptance of substitutions proposed by the contractor.
- Additional Construction Site Visits
- Additional Construction Shop Drawing and Sample Review and Comment
- Additional Traffic Control Plan Details
- Traffic signal design
- Sidewalk design
- Design of any offsite drainage improvements beyond the improvements identified in the scope
- Preparation for and attendance at public meetings
- Furnish additional copies of review documents and/or bid documents in excess of the number of the same identified above.
- Negotiation of temporary right-of-entries.
- Services related to disputes over bid protests, bid rejection, and re-bidding of the contract for construction.
- Construction management and inspection services.
- Performance of materials or specialty testing services.
- Services necessary due to default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement, and inspection after final completion.
- Services related to Survey Construction Staking.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
- Retaining wall design
- "Value engineering" after bidding
- Traffic studies or reports
- SWPPP inspections / coordination
- Any services not listed in the Scope of Services

**ATTACHMENT "B"**

Compensation for Engineering Design Related Services for:

**IH-35E-MAYHILL - UTILITY-RELOCATIONS**

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$922,800** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

For Tasks 1-12 the total compensation shall be on a reimbursable (hourly) basis and not to exceed **\$922,800**.

Progress payments for shall be paid monthly based on the actual work satisfactorily completed per month in each phase, with the following amounts of the total compensation for each phase of the Project:

• Task 1 – Design Management	\$46,700
• Task 2 – Alignment Study	\$51,400
• Task 3 – Preliminary Design	\$171,000
• Task 4 – Final Design	\$79,500
• Task 5 – Construction Contract Documents	\$14,500
• Task 6 – Bid Phase Services	\$18,700
• Task 7 – Construction Phase Services	\$61,900
• Task 8 – Record Drawings Preparation	\$10,100
• Task 9 – Permitting	\$26,600
• Task 10 – Survey and Easements	\$130,200
• Task 11 – Easement Acquisition Services	\$277,200
• Task 12 – Conflict Analysis	\$35,000

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**Grand Total**                      **\$922,800** 

ENGINEER will not exceed the total maximum labor fee shown without authorization from the CITY. Individual task amounts are provided for budgeting purposes only. ENGINEER reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.10 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the CITY.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

**ATTACHMENT “C”**

**CHANGES AND AMENDMENTS TO STANDARD AGREEMENT**

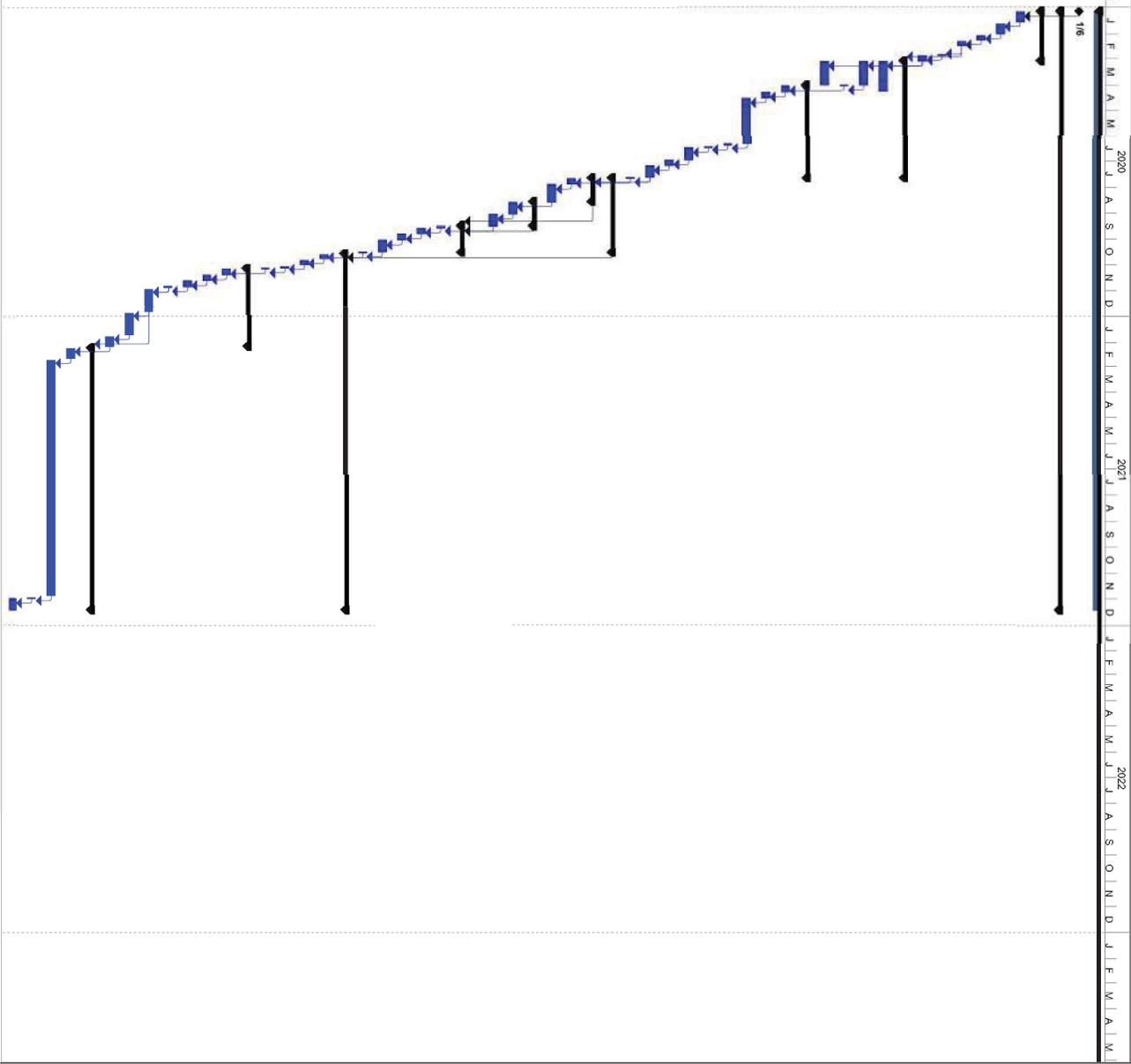
Design Services for

**IH-35E-MAYHILL - UTILITY-RELOCATIONS**

No modifications to the Standard Agreement are necessary for this project.

ATTACHMENT D - NIH-3SE-MAYHILL - UTILITY-RELOCATIONS  
- PROJECT SCHEDULE

ID	Task Name	Duration	Start	Finish	Predecessors
1	H3SE-4/4/Mill - Utility Relocations	3177 days	Mon 1/6/20	Tue 12/16/31	
2	Notice to Proceed	0 days	Mon 1/6/20	Mon 1/6/20	5
3	H3SE-MAYHILL-UTILITY-RELOCATIONS	596 days	Mon 1/6/20	Mon 12/13/21	
4	Alignment Study	42 days	Mon 1/6/20	Tue 3/3/20	
5	Data Collection	2 wks	Mon 1/6/20	Fri 1/17/20	6
6	Alignment Study Memorandum	2 wks	Mon 1/20/20	Fri 1/31/20	7
7	QA/QC	1 wk	Mon 2/3/20	Fri 2/17/20	8
8	City Review	1 wk	Mon 2/7/20	Fri 2/14/20	11,9
9	Review Meeting	1 day	Tue 2/25/20	Tue 2/25/20	10
10	Revise Memorandum	1 wk	Wed 2/26/20	Tue 3/2/20	13,12,15
11	Preliminary Design	100 days	Wed 3/4/20	Tue 4/7/20	
12	Geotechnical Investigation	5 wks	Wed 3/4/20	Tue 4/7/20	14
13	Survey	4 wks	Wed 3/4/20	Tue 3/31/20	14
14	Primary Site Visit	1 day	Wed 4/1/20	Wed 4/1/20	17
15	Subsurface Utility Engineering (SUE)	4 wks	Wed 3/4/20	Tue 3/31/20	10
16	Preliminary Plans	79 days	Thu 4/2/20	Tue 7/21/20	
17	Breakdown Survey	1 wk	Thu 4/2/20	Wed 4/8/20	18
18	General Sheets	1 wk	Thu 4/9/20	Wed 4/15/20	19
19	Call Sheets	8 wks	Thu 4/16/20	Wed 6/10/20	20
20	Prepare OHCC	2 days	Thu 6/11/20	Fri 6/12/20	21
21	Site Visit	1 day	Mon 6/15/20	Mon 6/15/20	22
22	QA/QC	2 wks	Tue 6/16/20	Mon 6/29/20	23
23	Revisions	1 wk	Tue 6/30/20	Mon 7/6/20	24
24	City Review	2 wks	Tue 7/7/20	Mon 7/20/20	27,25
25	Review Meeting	1 day	Tue 7/21/20	Tue 7/21/20	28
26	Final Design	63 days	Wed 7/22/20	Fri 10/16/20	39
27	Prepare Plans	20 days	Wed 7/22/20	Tue 8/18/20	33
28	General Sheets	1 wk	Wed 7/22/20	Tue 7/28/20	29
29	Call Sheets	3 wks	Wed 7/29/20	Tue 8/18/20	31
30	Project Manual	20 days	Wed 8/19/20	Tue 9/15/20	33
31	City Standard Specifications	2 wks	Wed 8/19/20	Tue 9/1/20	32
32	Non-Standard Technical Specifications	2 wks	Wed 9/2/20	Tue 9/15/20	34
33	90% Submittal	23 days	Wed 9/16/20	Fri 10/16/20	27,30
34	OHCC	2 days	Wed 9/16/20	Thu 9/17/20	35
35	QA/QC	1 wk	Fri 9/18/20	Thu 9/24/20	36
36	Revisions	1 wk	Fri 9/25/20	Thu 10/1/20	37
37	City Review	2 wks	Fri 10/2/20	Thu 10/15/20	38
38	Review Meeting	1 day	Fri 10/16/20	Fri 10/16/20	40
39	Construction Doc Preparation	301 days	Mon 10/19/20	Mon 12/13/21	28
40	Plan Revisions	1 wk	Mon 10/19/20	Fri 10/23/20	41
41	Project Manual Revisions	1 wk	Mon 10/26/20	Fri 10/30/20	42
42	Final OHCC	2 days	Mon 11/2/20	Tue 11/3/20	43
43	Construction Doc Submittal	1 day	Wed 11/4/20	Wed 11/4/20	45
44	Bidding	67 days	Thu 11/5/20	Fri 2/5/21	
45	Advertisement 1	1 wk	Thu 11/5/20	Wed 11/11/20	46
46	Pre-Bid Meeting	1 wk	Thu 11/12/20	Wed 11/18/20	47
47	Advertisement 2	1 wk	Thu 11/19/20	Wed 11/25/20	48
48	Big Opening/Reduction/Award Rec	2 days	Thu 11/26/20	Fri 11/27/20	49
49	PUB Recommendation	4 wks	Mon 11/30/20	Fri 12/25/20	52,50
50	Council Award	4 wks	Mon 12/28/20	Fri 1/22/21	51
51	Contract Doc Execution	2 wks	Mon 1/25/21	Fri 2/6/21	53
52	Construction Meeting	221 days	Mon 2/8/21	Mon 12/13/21	49
53	Preconstruction Meeting	2 wks	Mon 2/8/21	Fri 2/19/21	54
54	Construction	10 mos	Mon 2/22/21	Fri 11/28/21	55
55	Final Walk Through	1 day	Mon 11/29/21	Mon 11/29/21	56
56	Record Drawings	2 wks	Tue 11/30/21	Mon 12/13/21	55

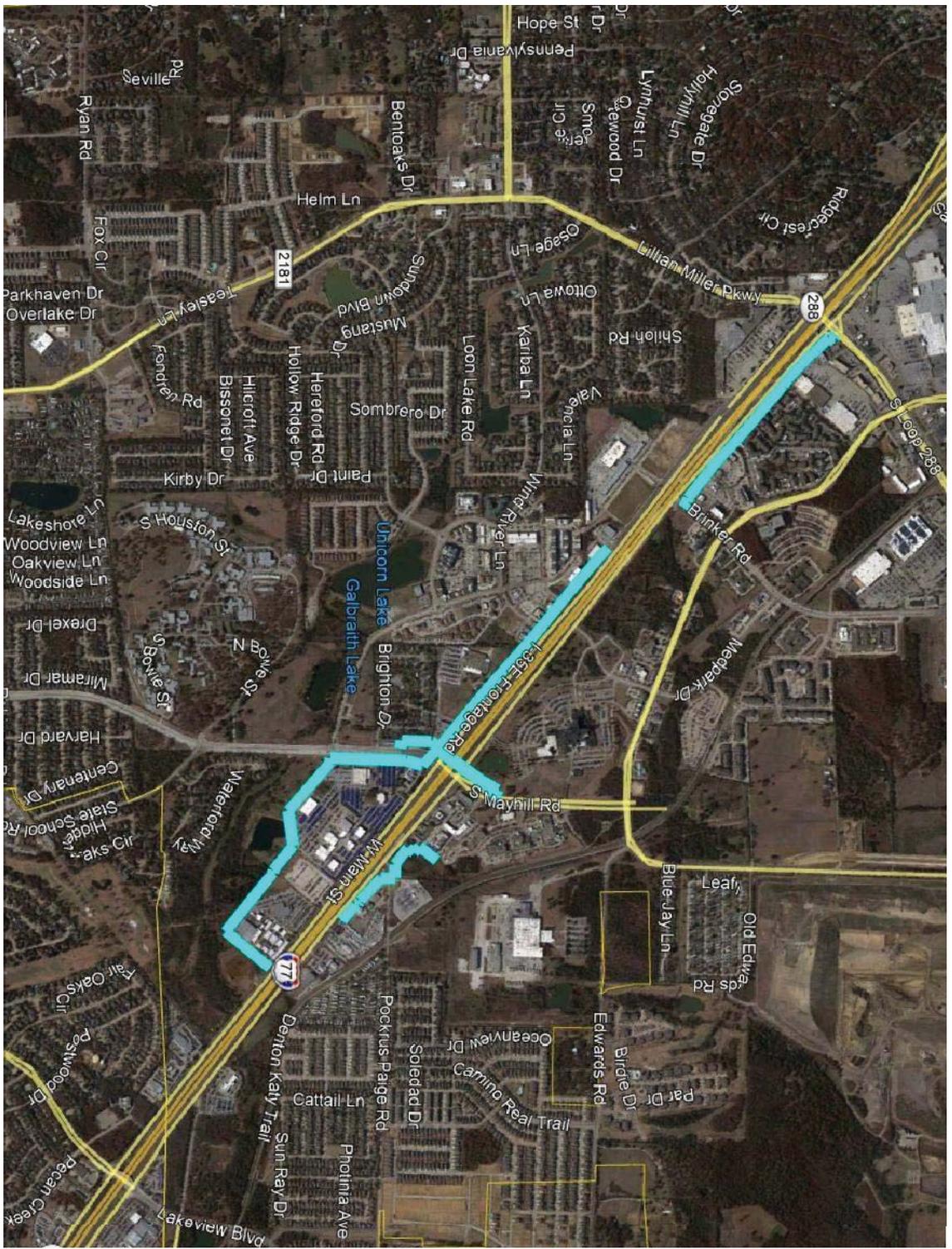


Project: 2019-2021 - 009396-Clear-Fork-US  
Date: Fri 10/25/19

Task Summary:  External Milestone  Inactive Task  Inactive Milestone  Manual Task  Manual Summary  Manual Summary Rollup  Finish-only  Progress  Deadline

Milestone:  External Tasks  Duration-only  Start-only  C

**ATTACHMENT "E"**  
**PROJECT LOCATION MAP**  
for  
**IH-35E-MAYHILL - UTILITY-RELOCATIONS**



# Kimley»Horn

## Project Fee Calculation

## Budget Summary

Date: Jul 1, 2019

### General Project Information

Client: **City of Denton**  
 Project: **IH-35E-Mayhill-Utility Relocations**  
 KHA No. **0610240xx**  
 PM: **Chris Igo**

### Task Budget Summary

No.	Task Name	Hours	Labor	Task 700		Task 888	Subtotal
				Expenses	Office Exp.		
100	Design Mgmt	141	\$ 29,600	\$ 11,000		\$ 1,400	\$ 42,000
200	Align Routing-Esmt ID	201	\$ 44,100			\$ 2,100	\$ 46,200
201	Prelim Design	529	\$ 118,700	\$ 29,700		\$ 5,500	\$ 153,900
202	Final Design	307	\$ 68,300			\$ 3,200	\$ 71,500
203	Contract Docs	60	\$ 12,500			\$ 600	\$ 13,100
204	Bidding Services	73	\$ 16,100			\$ 800	\$ 16,900
205	CCA	237	\$ 53,300			\$ 2,500	\$ 55,800
206	Record Drawings	42	\$ 8,700			\$ 400	\$ 9,100
207	Permitting	103	\$ 22,800			\$ 1,100	\$ 23,900
208	Survey and Easements	311	\$ 56,700	\$ 57,800		\$ 2,700	\$ 117,200
209	Easement Acquisition			\$ 249,500			\$ 249,500
210	Conflict Analysis	151	\$ 33,000	\$ 400		\$ 1,600	\$ 35,000
777	Contingency					\$ -	
<b>TOTALS:</b>		<b>2,155</b>	<b>\$ 463,800</b>	<b>\$ 348,400</b>		<b>\$ 21,900</b>	<b>\$ 834,100</b>

### Subconsultant Summary

Task No.	Task Name	Cost	Multiplier	Subtotal
<b>TOTALS:</b>		<b>\$ -</b>		<b>\$ -</b>

### Project Budget Summary

<b>Labor:</b>	<b>\$ 463,800</b>
<b>Expenses:</b>	<b>\$ 370,300</b>
<b>TOTAL:</b>	<b>\$ 834,100</b>

Note: This portion is for water only, the rest of the contract hourly breakdown is shown in the wastewater agreement



**Task Fee Calculation**

Date: July 1, 2019

**General Project Information**

Client: **City of Denton**  
 Project: **IH-35E-Mayhill-Utility Relocation**  
 KHA No: **0610240xx**  
 PM: **Chris Igo**

**Task Effort Summary**

Labor: \$ **29,600**  
 Expenses: \$ **11,000**  
 Allocation: \$ **1,400**  
**TOTAL: \$ 42,000**

**Task Information**

Number: **100**  
 Name: **Design Mgmt**  
 Task Mgr:  

**Task Description and Budgeting**

Task Descriptions:	GLC:	Resource Allocation										(Hrs)	Expenses (\$)		
		P8	P7	P5	P1	B5	Senior Professional II	Senior Professional I	Senior Professional I	Analyst	Professional				
A. Kickoff Meeting			1	25										26	
Pepare for Kickoff Meeting			4	4										8	
Attend Kickoff Meeting			1	2										3	
Kick-off Meeting Notes			1	2										3	
B. Data Collection					5									5	
Record Drawings					4									4	
GIS Data (including aerials/LiDAR)															
Projects in Progress															
D. Monthly Reporting						22								22	
Invoicing						22								22	
Reporting (Status/Schedule)				24	22									46	
Invoice to TxDOT				12	12									24	
Direct Expenses															\$ 10,000
Subtotals:			7	69	43	22								141	\$ 10,000



# Kimley»Horn

## Task Fee Calculation

Date: July 1, 2019

### General Project Information

Client: **City of Denton**  
 Project: **IH-35E-Mayhill-Utility Relocation**  
 KHA No: **0610240xx**  
 PM: **Chris Igo**

### Task Effort Summary

Labor: \$ **118,700**  
 Expenses: \$ **29,700**  
 Allocation: \$ **5,500**  
**TOTAL: \$ 153,900** ✓

### Task Information

Number: **201**  
 Name: **Prelim Design**  
 Task Mgr:  

### Task Description and Budgeting

Task Descriptions:	GLC:	Senior Professional II										(Hrs)	Expenses (\$)		
		P8	P7	P5	P3	B5									Subtotal
a) Preliminary Design															
i) Field Verification			8	8	8									24	
ii) Prelim WL/SS/RC Layout				4	4									8	
iii) Prelim WL/SS/RC Plans															
Cover Sheet				1	2									3	
Control Sheets (2)				2	4									6	
Overall WL Layout Sheet				1	2									3	
Overall SS Layout Sheet				1	2									3	
P&P (WL/RC) ~ 32 sheets (.5/2/3/6)	16	40	64	120										240	
P&P (SS) ~ 3 sheets (.5/2/4/6)	2	6	12	20										40	
iv) TCP			8	2	12									22	
v) Franchise Utility Coord				8	8									16	
vi) Gen Notes/Index/Legend				2	4									6	
vii) City Std Dtls				1	3									4	
viii) WL Connection Dtls				4	8									12	
ix) Prelim Tech Specs				4	8									12	
x) OPCC		2	4	8										14	
xi) deliverables		4	4	4										12	
xii) Meetings															
(1) Kickoff Meeting		4	4	4										12	
(2) On-Site Meeting		8	8	8										24	
(3) Prelim Plan Review Meeting		4	4	4										12	
b) design survey		see survey & easements task													
c) geotechnical engineering			2	4	8									14	\$ 17,000
d) Subsurface Utility Engineering				2	4									6	\$ 10,000
e) easement instruments (35)		See survey & easements task													
f) Tunnel/Bore Design			8	20	8									36	
Subtotals:		18	94	164	253									529	\$ 27,000













**Task Fee Calculation**

Date: July 1, 2019

**General Project Information**

Client: **City of Denton**  
 Project: **IH-35E-Mayhill-Utility Relocation**  
 KHA No: **0610240xx**  
 PM: **Chris Igo**

**Task Effort Summary**

Labor: \$ **22,800**  
 Expenses: \$ **-**  
 Allocation: \$ **1,100**  
**TOTAL: \$ 23,900** ✓

**Task Information**

Number: **207**  
 Name: **Permitting**  
 Task Mgr:

**Task Description and Budgeting**

Task Descriptions:	GLC:	<div style="display: flex; justify-content: space-between;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Senior Professional II</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Senior Professional I</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Senior Professional I</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Professional</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Professional</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);"></div> </div>										(Hrs)	Expenses (\$)										
		P8	P7	P5	P3	B5																	
a) TxDOT UIR Permit			2	8	8																	18	
b) Coordinate Utility Agreement w/TxDOT			4	20	24																	48	
c) Franchise Utility Coordination			4	20	13																	37	
Subtotals:			10	48	45																	103	\$ -

# Kimley»Horn

## Task Fee Calculation

Date: July 1, 2019

### General Project Information

Client: **City of Denton**  
 Project: **IH-35E-Mayhill-Utility Relocation**  
 KHA No: **0610240xx**  
 PM: **Chris Igo**

### Task Effort Summary

Labor: \$ **56,700**  
 Expenses: \$ **57,800**  
 Allocation: \$ **2,700**  
**TOTAL: \$ 117,200**

### Task Information

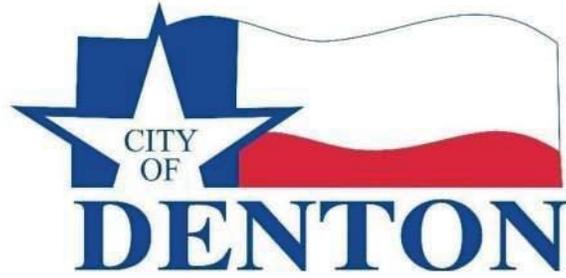
Number: **208**  
 Name: **Survey and Easements**  
 Task Mgr:

### Task Description and Budgeting

Task Descriptions:	GLC:	Senior Professional II										(Hrs)	Expenses (\$)
		P8	P7	P5	CO4	B5	Senior Professional I	Senior Professional I	Senior Tech Support	Professional	Subtotal		
Schematic Property Research				6	20							26	
Topographic Survey				20	60							80	\$ 52,500
Easements (35)				62	143							205	
Subtotals:												311	\$ 52,500







## DocuSign City Council Transmittal Coversheet

PSA	6590-084
File Name	MAYHILL I35E UTILITY LOCATION
Purchasing Contact	Crystal Westbrook
City Council Target Date	January 12, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-019

**FIRST AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND KIMLEY-HORN AND ASSOCIATES, INC.  
Contract #6590-084**

THE STATE OF TEXAS                   §

COUNTY OF DENTON                   §

THIS FIRST AMENDMENT TO CONTRACT 6590-084 (“Amendment”) by and between the City of Denton, Texas (“City”) and Kimley-Horn and Associates, Inc., (“Engineer”); to that certain contract executed on January 15, 2020, in the original not-to-exceed amount of \$922,800 (the “Agreement”); for services related to the IH-35E-Mayhill-Utility Relocations.

WHEREAS, the City deems it necessary to further expand the services provided by Consultant to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$165,000 with this Amendment for an aggregate not-to-exceed amount of \$1,087,800; and

FURTHERMORE, the City deems it necessary to further expand the goods/services provided by Engineer to the City;

NOW THEREFORE, the City and Engineer (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for professional services related to the IH-35E-Mayhill-Utility Relocations, are hereby authorized to be performed by Engineer. For and in consideration of the additional services to be performed by Engineer, the City agrees to pay, based on the cost estimate detail attached as Exhibit “A”, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$165,000.
2. This Amendment modifies the Agreement amount to provide an additional \$165,000 for the additional services with a revised aggregate not to exceed total of \$1,087,800.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the Consultant, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date 01/12/2021.

“CITY”

“Engineer”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

KIMLEY-HORN AND ASSOCIATES,  
INC.

By: DocuSigned by:  
Todd Hileman  
TODD HILEMAN, CITY MANAGER

By: DocuSigned by:  
Alana Kelly Sr. Vice President  
AUTHORIZED SIGNATURE, TITLE

ATTEST:  
ROSA RIOS, CITY SECRETARY

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

By: DocuSigned by:  
Rosa Rios

By: DocuSigned by:  
Marcella Lunn

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

DocuSigned by:  
Terrance Naulty Terrance Naulty  
SIGNATURE PRINTED NAME

Interim Director Water/Wastewater  
TITLE

Water/Wastewater Utilities  
DEPARTMENT

**EXHIBIT A****AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT  
ADDITIONAL SERVICES****Professional Services Agreement:  
IH-35E-MAYHILL - UTILITY-RELOCATIONS  
Amendment Scope of Services****Scope of Services**

The CITY has requested that the ENGINEER perform additional services including additional property acquisition services.

**Task 11 – Easement Acquisition Services**

ENGINEER will provide technical assistance to the Real Estate Agent during property negotiations for up to thirty (30) hours.

ENGINEER's Real Estate Agent will provide the following additional services in accordance with the Original Contract:

- Provide property negotiation services, title closing services, and appraisal services for an additional (10) parcels for the proposed line in accordance with the previously agreed to scope under Task 11.A.
- Engage an independent Appraisal Reviewer to submit an Appraisal Review to accompany any appraisal completed for up thirty-five (35) parcels according to Task 11.A.1.

**Compensation****Previous Task 11 Amount:**

Real Estate Agent Service Items	Anticipated Units/Parcels	Unit/Parcel Rate	Fee Amount
Right-of-Entries	25	\$880.00	\$22,000.00
Title and Closing Services	25	\$550.00	\$13,750.00
Negotiation Services	25	\$4,950.00	\$123,750.00
Appraisal Service (Land Only)	20	\$4,180.00	\$83,600.00
Appraisal Service (Improved Property)	5	\$6,820.00	\$34,100.00
<b>TOTAL FEE</b>			<b>\$277,200.00</b>

**Revised Task 11 Amount:**

Real Estate Agent Service Items	Anticipated Units/Parcels	Unit/Parcel Rate	Fee Amount
Right-of-Entries	25	\$880.00	\$22,000.00
Title and Closing Services	35	\$550.00	\$19,250.00
Negotiation Services	35	\$4,950.00	\$173,250.00
Appraisal Service (Land Only)	30	\$4,180.00	\$125,400.00

Appraisal Service (Improved Property)	5	\$6,820.00	\$34,100.00
Appraisal Service (Independent Review)	35	\$1,760.00	\$61,600.00
Engineer Assistance	30	\$220.00	\$6,600.00
<b>Revised TOTAL FEE</b>			<b>\$442,200.00</b>



The additional services described above will be accommodated by increasing the contract amount by \$165,00. The following table summarizes the revised contract amount:

Task	Original Contract	Amendment No. 1	Revised Contract
Task 1 – Design Management	\$46,700	-	\$46,700
Task 2 – Alignment Study	\$51,400	-	\$51,400
Task 3 – Preliminary Design	\$171,000	-	\$171,000
Task 4 – Final Design	\$79,500	-	\$79,500
Task 5 – Construction Contract Documents	\$14,500	-	\$14,500
Task 6 – Bid Phase Services	\$18,700	-	\$18,700
Task 7 – Construction Phase Services	\$61,900	-	\$61,900
Task 8 – Record Drawings Preparation	\$10,100	-	\$10,100
Task 9 – Permitting	\$26,600	-	\$26,600
Task 10 – Survey and Easements	\$130,200	-	\$130,200
Task 11 – Easement Acquisition Services	\$277,200	\$165,000	\$442,200
Task 12 – Conflict Analysis	\$35,000	-	\$35,000

<b>Totals:</b>	<b>\$922,800</b>	<b>\$165,000</b>	<b>\$1,087,800</b>
----------------	------------------	------------------	--------------------



Duly executed by each party's designated representative to be effective on the date subscribed by the CITY.

BY:  
CITY OF DENTON, TEXAS

DocuSigned by:  
*Terrance Naulty*  
B0F331381089478...

Interim Director Water/Wastewater  
TITLE

Date: 10-8-2020

BY:  
ENGINEER  
Kimley-Horn and Associates, Inc

Title: Glenn Gary, Senior Vice President

Date: 10-8-2020

## Total Task 11

<b>Real Estate Agent Service Items</b>	<b>Anticipated Units/Parcels</b>	<b>Unit/Parcel Rate</b>	<b>Fee Amount</b>
Right-of-Entries	25	\$880.00	\$22,000.00
Title and Closing Services	35	\$550.00	\$19,250.00
Negotiation Services	35	\$4,950.00	\$173,250.00
Appraisal Service (Land Only)	30	\$4,180.00	\$125,400.00
Appraisal Service (Improved Property)	5	\$6,820.00	\$34,100.00
Appraisal Service (Independent Review)	35	\$1,760.00	\$61,600.00
Engineer Assistance	30	\$220.00	\$6,600.00
<b>TOTAL SERVICES FEE</b>			<b>\$442,200.00</b>



## Amendment 1

<b>Real Estate Agent Service Items</b>	<b>Anticipated Units/Parcels</b>	<b>Unit/Parcel Rate</b>	<b>Fee Amount</b>
Right-of-Entries	0	\$880.00	\$0.00
Title and Closing Services	10	\$550.00	\$5,500.00
Negotiation Services	10	\$4,950.00	\$49,500.00
Appraisal Service (Land Only)	10	\$4,180.00	\$41,800.00
Appraisal Service (Improved Property)	0	\$6,820.00	\$0.00
Appraisal Service (Independent Review)	35	\$1,760.00	\$61,600.00
Engineer Assistance	30	\$220.00	\$6,600.00
<b>TOTAL SERVICES FEE</b>			<b>\$165,000.00</b>



**SECOND AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND KIMLEY-HORN AND ASSOCIATES, INC.  
Contract #6590-084**

THE STATE OF TEXAS                   §

COUNTY OF DENTON                   §

THIS SECOND AMENDMENT TO CONTRACT 6590-084 (“Amendment”) by and between the City of Denton, Texas (“City”) and Kimley-Horn and Associates, Inc., (“Engineer”); to that certain contract executed on January 14, 2020, in the original not-to-exceed amount of \$922,800 (the “Original Agreement”); amended on January 12, 2021 in the additional amount of \$165,000 aggregating a not-to-exceed amount of \$1,087,800 (the “First Amendment”) (collectively, the Original Agreement, the First Amendment are the “Agreement”) for services related to the IH-35E-Mayhill-Utility Relocations.

WHEREAS, the City deems it necessary to further expand the services provided by Consultant to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$217,500 with this Amendment for an aggregate not-to-exceed amount of \$1,305,300; and

FURTHERMORE, the City deems it necessary to further expand the goods/services provided by Engineer to the City;

NOW THEREFORE, the City and Engineer (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following Amendment, which amends the following terms and conditions of the said Agreement, to wit:

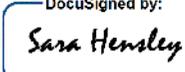
1. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for professional services related to the IH-35E-Mayhill-Utility Relocations, are hereby authorized to be performed by Engineer. For and in consideration of the additional services to be performed by Engineer, the City agrees to pay, based on the cost estimate detail attached as Exhibit “A”, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$217,500.
2. This Amendment modifies the Agreement amount to provide an additional \$217,500 for the additional services with a revised aggregate not to exceed total of \$1,305,300.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

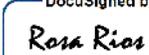
IN WITNESS WHEREOF, the City and the Consultant, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date 08/03/2021.

“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation  
SARA HENSLEY, INTERIM CITY MANAGER

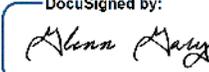
By:    
5236DB296270423...

ATTEST:  
ROSA RIOS, CITY SECRETARY

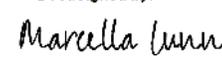
By:    
1C5CA8C5E175493...

“Engineer”

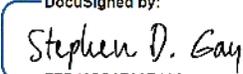
KIMLEY-HORN AND ASSOCIATES,  
INC.

By:  Sr. Vice President  
EDB15720A1C6421...  
AUTHORIZED SIGNATURE, TITLE

APPROVED AS TO LEGAL FORM:  
CATHERINE CLIFTON, INTERIM CITY  
ATTORNEY

By:    
02051D0D427E4E5...

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

 Stephen D. Gay  
FEB48BB9728E4A9...  
SIGNATURE PRINTED NAME

Director, Water Utilities

TITLE

Water Utilities

DEPARTMENT

## EXHIBIT A

**AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT  
ADDITIONAL SERVICES****Professional Services Agreement:  
IH-35E-MAYHILL - UTILITY-RELOCATIONS  
Amendment Scope of Services****Scope of Services**

TxDOT has redesigned a portion of the roadway project that necessitates additional waterline relocation. The CITY has requested that the ENGINEER perform additional services including topographic survey, design, easement acquisition, and additional TxDOT coordination for approximately 1,700 linear feet of 20-inch water line.

**Task 1 Design Management**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Project Management**

1. Continued development of progress reporting and updates to project schedule.
2. Attend up to one additional meeting with City.
3. Prepare and execute up to two (2) additional subconsultant amendments.

**Task 3 Preliminary Design**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Preliminary Water Line Design**

1. Perform one additional site visit to perform field verification of the survey.
2. Prepare preliminary water line plan and profile drawings for approximately 1,700 linear feet of 20-inch water line.
3. Compile and prepare an updated opinion of probable construction cost (OPCC) for the additional infrastructure to be incorporated into the preliminary design OPCC.

**B. Deliverables**

1. Supplemental Preliminary design submittal (60%)
  - a. Submit four (4) copies to City for review and comment.
  - b. Submittal shall include the following:
    - i. Supplemental preliminary design plans (22"x34")
    - ii. Opinion of probable construction cost incorporated into overall cost of proposed Mayhill Utility Relocations

**C. Meetings**

1. Attend one (1) additional meeting with City to present and review the supplemental preliminary design submittal.

**Task 4 Final Design**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Final Design**

1. Prepare final design water line plan and profile drawings, surface repair, erosion control, and details for approximately 1,700 linear feet of 20-inch water line.

**B. Deliverables:**

1. Final Design Submittal will be incorporated into the Final Design Deliverables indicated in the Original Contract.

**Task 9 Permitting**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Permitting**

1. The ENGINEER will aid the City in coordinating the additional design into the Utility Agreement (U-35) with TxDOT and prepare reimbursement invoices as necessary. This also includes providing betterment calculations and coordination efforts with TxDOT, and their designated Utility Coordinator.

**Task 10 Survey and Easements**

ENGINEER will provide the following additional services in accordance with the Original Contract:

**A. Design Survey**

1. Additional design survey with the following limits:
  - a. A 100-foot wide alignment generally along Interstate Hwy 35 continuing south/east from the Lillian Miller/Loop 288 intersection approximately 1,700 linear feet.

**B. Easement Preparation**

1. Upon receiving approval of 60% design drawings, ENGINEER will prepare up to eight (8) permanent water line easements and up to one (1) temporary construction easements.
2. Revise up to twelve (12) previously submitted signed and sealed easement documents due to coordination with Denton Municipal Electric and City Real Estate requests.

### **Task 11 – Easement Acquisition Services**

ENGINEER will provide technical assistance to the Real Estate Agent during property negotiations for up to twenty (20) hours.

ENGINEER's Real Estate Agent will provide the following additional services in accordance with the Original Contract:

- Provide property negotiation services, title closing services, and appraisal services, including appraisal review for an additional eight (8) parcels for the proposed line in accordance with the previously agreed to scope under Task 11.A.
- Revise up to four (4) previously submitted appraisal packets due to coordination with Denton Municipal Electric and City Real Estate requests.

## Compensation

The additional services described above will be accommodated by increasing the contract amount by \$217,500. The following table summarizes the revised contract amount:

Task	Original Contract	Amd. No. 1	Amd. No. 2	Revised Contract
Task 1 – Design Management	\$46,700	-	\$2,900	\$49,600
Task 2 – Alignment Study	\$51,400		-	\$51,400
Task 3 – Preliminary Design	\$171,000	-	\$23,900	\$194,900
Task 4 – Final Design	\$79,500	-	\$11,100	\$90,600
Task 5 – Construction Contract Documents	\$14,500	-	-	\$14,500
Task 6 – Bid Phase Services	\$18,700	-	-	\$18,700
Task 7 – Construction Phase Services	\$61,900	-	-	\$61,900
Task 8 – Record Drawings Preparation	\$10,100	-	-	\$10,100
Task 9 – Permitting	\$26,600	-	\$7,600	\$34,200
Task 10 – Survey and Easements	\$130,200	-	\$35,000	\$165,200
Task 11 – Easement Acquisition Services	\$277,200	\$165,000	\$137,000	\$579,200
Task 12 – Conflict Analysis	\$35,000	-	-	\$35,000

<b>Totals:</b>	<b>\$922,800</b>	<b>\$165,000</b>	<b>\$217,500</b>	<b>\$1,305,300</b>
----------------	------------------	------------------	------------------	--------------------



Duly executed by each party's designated representative to be effective on the date subscribed by the CITY.

BY:  
CITY OF DENTON, TEXAS

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

BY:  
ENGINEER  
Kimley-Horn and Associates, Inc

*John R. Atkins, P.E.*  
\_\_\_\_\_

Title: John Atkins, Vice President

Date: \_\_\_\_\_















**Task Fee Calculation**

Date: September 1, 2020

**General Project Information**

Client: **City of Denton**  
 Project: **IH-35E-Mayhill-Utility Relocation**  
 KHA No: **061024039**  
 PM: **Chris Igo**

**Task Effort Summary**

Labor: \$ **3,900**  
 Expenses: \$ **132,900**  
 Allocation: \$ **200**  
**TOTAL: \$ 137,000** ✓

**Task Information**

Number: **209**  
 Name: **Easement Acquisition**  
 Task Mgr:

**Task Description and Budgeting**

Task Descriptions:	GLC:	Senior Professional II										(Hrs)	Expenses (\$)																																				
		P8	P7	p5	P3									Subtotal																																			
Property Acquisition Subconsultant																																																	
Right of Entries (8)														\$ 6,400																																			
Title and Closing Services (8)														\$ 4,000																																			
Negotiation Services (8)														\$ 36,000																																			
Appraisal Service (Land Only) (4)														\$ 30,400																																			
Appraisal Service (Improved Property) (4)														\$ 24,800																																			
Appraisal Review (8)														\$ 19,200																																			
Engineer Assistance				16									16																																				
<table border="1"> <thead> <tr> <th>Real Estate Agent Service Items</th> <th>Anticipated Units/Parcels</th> <th>Unit/Parcel Rate</th> <th>Fee Amount</th> </tr> </thead> <tbody> <tr> <td>Right-of-Entries</td> <td>8</td> <td>\$880.00</td> <td>\$7,040.00</td> </tr> <tr> <td>Title and Closing Services</td> <td>8</td> <td>\$550.00</td> <td>\$4,400.00</td> </tr> <tr> <td>Negotiation Services</td> <td>8</td> <td>\$4,950.00</td> <td>\$39,600.00</td> </tr> <tr> <td>Appraisal Service (Land Only)</td> <td>8</td> <td>\$4,180.00</td> <td>\$33,440.00</td> </tr> <tr> <td>Appraisal Service (Improved Property)</td> <td>4</td> <td>\$6,820.00</td> <td>\$27,280.00</td> </tr> <tr> <td>Appraisal Service (Independent Review)</td> <td>12</td> <td>\$1,760.00</td> <td>\$21,120.00</td> </tr> <tr> <td>Engineer Assistance</td> <td>16</td> <td>\$257.50</td> <td>\$4,120.00</td> </tr> <tr> <td colspan="3" style="text-align: right;"><b>TOTAL SERVICES FEE</b></td> <td><b>\$137,000.00</b> ✓</td> </tr> </tbody> </table>														Real Estate Agent Service Items	Anticipated Units/Parcels	Unit/Parcel Rate	Fee Amount	Right-of-Entries	8	\$880.00	\$7,040.00	Title and Closing Services	8	\$550.00	\$4,400.00	Negotiation Services	8	\$4,950.00	\$39,600.00	Appraisal Service (Land Only)	8	\$4,180.00	\$33,440.00	Appraisal Service (Improved Property)	4	\$6,820.00	\$27,280.00	Appraisal Service (Independent Review)	12	\$1,760.00	\$21,120.00	Engineer Assistance	16	\$257.50	\$4,120.00	<b>TOTAL SERVICES FEE</b>			<b>\$137,000.00</b> ✓
Real Estate Agent Service Items	Anticipated Units/Parcels	Unit/Parcel Rate	Fee Amount																																														
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<b>TOTAL SERVICES FEE</b>			<b>\$137,000.00</b> ✓																																														
Subtotals:				16									16	\$ 120,800																																			

Task Subtotals (\$000's)													Lbr	Expenses (\$)
Cost:				0.8									0.8	\$ 120,800
Effort:				3.9									3.9	\$ 132,900

## Hourly Fee Schedule

**Kimley-Horn and Associates, Inc.****Standard Rate Schedule**

(Hourly Rate)

B	ANALYST	115.00
B1	ANALYST	120.00
B2	ANALYST	130.00
B3	ANALYST	140.00
B4	PROFESSIONAL	170.00
B5	PROFESSIONAL	190.00
B6	SENIOR PROFESSIONAL I	210.00
B7	SENIOR PROFESSIONAL I	230.00
B8	SENIOR PROFESSIONAL II	250.00
CO3	SENIOR TECHNICAL SUPPORT	150.00
CO4	SENIOR TECHNICAL SUPPORT	160.00
CO5	SENIOR TECHNICAL SUPPORT	170.00
CO6	SENIOR TECHNICAL SUPPORT	180.00
D7	SENIOR TECHNICAL SUPPORT	190.00
D8	SENIOR TECHNICAL SUPPORT	200.00
E1	SENIOR PROFESSIONAL II	270.00
E2	SENIOR PROFESSIONAL II	270.00
E3	SENIOR PROFESSIONAL II	270.00
E4	SENIOR PROFESSIONAL II	270.00
N1	SUPPORT STAFF	85.00
N2	SUPPORT STAFF	90.00
N3	SUPPORT STAFF	100.00
N4	SUPPORT STAFF	115.00
N5	SUPPORT STAFF	120.00
N6	SUPPORT STAFF	125.00
P	ANALYST	160.00
P1	ANALYST	170.00
P2	ANALYST	185.00
P3	PROFESSIONAL	195.00
P4	PROFESSIONAL	215.00
P5	SENIOR PROFESSIONAL I	230.00
P6	SENIOR PROFESSIONAL I	250.00
P7	SENIOR PROFESSIONAL I	260.00
P8	SENIOR PROFESSIONAL II	275.00
T1	TECHNICAL SUPPORT	90.00
T2	TECHNICAL SUPPORT	95.00
T3	TECHNICAL SUPPORT	100.00
T4	TECHNICAL SUPPORT	105.00
T5	SENIOR TECHNICAL SUPPORT	120.00
T6	SENIOR TECHNICAL SUPPORT	130.00
T7	SENIOR TECHNICAL SUPPORT	145.00
TS1	TECHNICAL SUPPORT	75.00
TS2	TECHNICAL SUPPORT	90.00
TS3	TECHNICAL SUPPORT	95.00
TS4	TECHNICAL SUPPORT	100.00
TS5	TECHNICAL SUPPORT	105.00
X5	ANALYST	125.00
X6	ANALYST	135.00
X7	PROFESSIONAL	165.00
X8	SENIOR PROFESSIONAL I	185.00

Effective September 2020 and subject to revision.



STATEMENT COVERING UTILITY CONSTRUCTION CONTRACT WORK (AS APPEARING IN ESTIMATE)

U-Number: N/A Utility ID: U00011546
ROW CSJ Number: 0196-01-114 District: Dallas
County: Denton Highway No.: IH-35E
Federal Project No.: N/A

I, Sara Hensley, a duly authorized and qualified representative of City of Denton, hereinafter referred to as Owner, am fully cognizant of the facts and make the following statements in respect to work which will or may be done on a contract basis as it appears in the estimate to which this statement is attached.

It is more economical and/or expedient for Owner to contract this adjustment, or Owner is not adequately staffed or equipped to perform the necessary work on this project with its own forces to the extent as indicated on the estimate.

Procedure to be Used in Contracting Work

- A. Solicitation for bids is to be accomplished through open advertising and contract is to be awarded to the lowest qualified bidder...
B. Solicitation for bids is to be accomplished by circulating to a list of pre-qualified contractors...
C. The work is to be performed under an existing continuing contract...
D. The utility proposes to contract outside the foregoing requirements...
E. The utility plans and specifications, with the consent of the State, will be included in the construction contract...



Signature: [Handwritten Signature]
City Manager
Title

Date: 12/7/22

Contact/Help

Form ROW-U-35  
(Rev. 10/20)  
Page 9

## Attachment "E" Utility Joint Use Agreement – (ROW-U-JUA) and/or Utility Installation Request – (Form 1082)

- Utility Joint Use Agreement (ROW-U-JUA)
- Utility Installation Review/Permit Number: DAL20220504165610

 1/17/2023  
Date  
TxDOT

 12/7/22  
Initial Date  
Utility

atale

### Utility Installation Request



<b>PERMIT NUMBER</b>	DAL20220504165610	
<b>GLOBAL POSITIONING SYSTEM COORDINATES (GPS)</b> NORTH AMERICAN DATUM 1983, (1993 ADJUSTMENT) IN DECIMAL DEGREES(DD)		
	LATITUDE (DD)	LONGITUDE (DD)
<b>BEGIN</b>	33.186	97.107
<b>END</b>	33.166	97.08

To the Texas Transportation Commission  
c/o District Engineer Texas Department of Transportation

Date 05/25/22

Denton, Texas

Formal notice is hereby given that City of Denton  
 proposes to place a 1 LF of 8-inch sewer line and 926 FL of reclaimed waterline  
 line within the right of way of IH 35, RM \_\_\_\_\_, Displ. \_\_\_\_\_, to RM \_\_\_\_\_ Displ. \_\_\_\_\_ in  
 \_\_\_\_\_ County Texas, MNT Sec. No. \_\_\_\_\_ as follows: (give location, length, general design, etc.  
 Use additional sheet as needed)

See additional page

We will construct and maintain the line on the highway right of way as shown on the attached drawing and in accordance with the rules, regulations and policies of the Texas Department of Transportation (TxDOT), and all governing laws, including, but not limited to, the "Texas Engineering Practice Act," "Federal Clean Water Act," the "National Endangered Species Act," "Americans with Disabilities Act," and the "Federal Historic Preservation Act." Upon request by TxDOT at any time, we will submit to TxDOT proof of compliance with all governing laws, rules and regulations before commencement of construction. Plans shall include the design, proposed location, vertical elevations, and horizontal alignments of the facility based on the department's survey datum, the relationship to existing highway facilities and the right of way line, traffic safety and access procedures, and location of existing utilities that may be affected by the proposed utility facility. The location and description of the proposed line and appurtenances is more fully shown by a complete set of drawings attached to this Utility Installation Request (Request). We will give plans to TxDOT for each future proposed modification or expansion to our facility and TxDOT will have 30 days to review and approve the plans prior to commencement of the work. A new Request may be required as a condition of approval.

Our organization will use Best Management Practices to minimize erosion and sedimentation resulting from the proposed installation, and we will revegetate the project area as indicated under "Revegetation Special Provisions." We will also ensure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained for the duration of this installation.

When installing, modifying or maintaining our utility on controlled access facilities, we shall conform to the Texas Transportation Code, Title 6 Roadways, Chapter 203, Subchapter C, Control of Access, §203.031 (<http://www.statutes.legis.state.tx.us/>). We shall limit access for servicing this installation to access via (a) frontage roads where provided, (b) nearby or adjacent public roads or streets, (c) trails along or near the highway right of way lines, connecting only to an intersecting road; from any one or all of which entry may be made to the outer portion of the highway right of way for normal service and maintenance operations. Our rights of access to the through traffic roadways and ramps shall be subject to the same rules and regulations that apply to the general public.

It is expressly understood that TxDOT does not purport hereby to grant any right, claim, title or easement in or upon highway right of way. TxDOT may require us to relocate this line, subject to the provisions of governing laws, by giving us at least 30 days written notice. We understand a new Request will be required for the relocation. We will notify TxDOT prior to commencement of any operation which requires pruning of trees so that TxDOT may provide specifications to govern performance of work, including trimming, topping, tree balance, type of cuts, painting cuts and clean up. We understand that these specifications are intended to preserve TxDOT's considerable investment in highway beautification plantings and by reducing damage due to trimming and to protect known endangered species.

Our installation shall not damage any part of the roadway structure or associated appurtenances. We will make adequate provisions to cause minimum inconveniences to the traveling public and adjacent property owners. We will not open-cut driveways or intersecting roadways without specific written permission from the owner.

Following approval, we will begin construction on or after

09/01/22

Month/Day/Year

We understand TxDOT may place additional provisions and requirements as listed below, based upon, but not limited to, the type of utility being installed, local site conditions, soil types and traffic.

<b>Additional Provisions and Requirements (for TxDOT input only)</b>
<p>● <b>General Special Provisions:</b></p> <p><input type="checkbox"/> Are attached.</p> <p><input type="checkbox"/> Are not attached.</p>
<p>● <b>As-built Plans/Certifications of Construction:</b></p> <p><input type="checkbox"/> Are required and shall be certified as accurate by an authorized representative of the company.</p> <p><input type="checkbox"/> Are required and shall be signed and sealed by a State of Texas Licensed Professional Engineer.</p> <p><input type="checkbox"/> Are not required</p> <p><input type="checkbox"/> Certification that utility was installed as approved</p>
<p>● <b>Re-vegetation Special Provisions:</b> In order to minimize erosion and sedimentation resulting from the proposed installation, the project area will be re-vegetated:</p> <p><input type="checkbox"/> in accordance with TxDOT's Standard Specification Item 164 which specifies the appropriate grass seed mix to be used, or:</p> <p><input type="checkbox"/> as indicated on the attachment.</p>
<p>TxDOT Representative to be notified 48 hours prior to beginning construction:</p>

If approved, we understand we will assume all risks associated with this installation within the TxDOT right of way. These risks include injuries to our workers, damage to contiguous utility lines that may be in the area and injuries or damage resulting from our failure to properly install and maintain the line.

If the character, use or function of our installation is materially changed from that approved under this Request, we will notify TxDOT within 30 days after the change. In the event of a voluntary or involuntary loss of public utility status, or other legal authority for longitudinal placement of the utility facility in the highway, or there is an abandonment of the facility without the approval of TxDOT, we will at our expense remove the unauthorized portion of the facility from the right of way.

If installation of the line is not begun prior to the 91st calendar day from date of issuance, we acknowledge that, unless otherwise extended, TxDOT's approval of this Request will automatically **expire**, and we will be required to resubmit our Request. All Request submissions, whether due to expiration of approval under this paragraph or new Requests for modifications and relocations shall be in accordance with the governing laws, rules, regulations and policies existing at the time of submission. In the event we fail to comply with any or all of the requirements as set forth in this Request, the State may take such action as it deems appropriate to compel our compliance.

By signing as/for the requestor below, I certify that I am authorized to represent the requestor, that I agree to the provisions and requirements included in this Utility Installation Request, and our commencement of construction will further attest to our review and acceptance of said additional provisions and requirements.

<b>REQUESTOR</b>	<b>APPROVED BY TxDOT</b>
<b>Date:</b>	<b>Date:</b>
<b>By:</b>	<b>By:</b>
<b>Signature:</b>	<b>Signature:</b>
<b>Title:</b>	<b>Title:</b>
<b>Address:</b>	<b>Address:</b>
Denton TX	
<b>City State Zip Code</b>	<b>City State Zip Code</b>
( )	( )
<b>Area Code Telephone Number</b>	<b>Area Code Telephone Number</b>



## Attachment "F" Eligibility Ratio

Eligibility Ratio established: 100 %

- Non-interstate Highway (Calculations attached)
- Interstate Highway

**ROW Utility Manual Chapter 8, Section 2**

In developing the ratio, line length or number of poles is restricted to facilities located within the existing and proposed highway right of way. Facilities located outside the existing and proposed right of way limits will not be used in developing the ratio.

Please see example of eligibility ratio calculations below.

Plan Sheet or Page#	In Easement (Eligible) Existing # of Poles or LF	In Public ROW (Ineligible) Existing # of Poles or LF
1	0	0
2	84	22
3	90	385
4	238	96
<b>Totals</b>	<b>412</b>	<b>503</b>

Total Existing # of Poles or LF (Eligible)	412
Total Existing # of Poles or LF (Ineligible)	503
Total Existing # of Poles or LF	915
Total Existing # of Poles or LF (Eligible) divided by the Total Existing # of Poles or LF	45.03%


1/17/2023  
Date  
 TxDOT


02/7/22  
Initial
Date  
 Utility

## Attachment "G" Betterment Calculation and Estimate

- Elective Betterment Ratio established: 0 %  
(Calculation attached and justification below)
- Forced Betterment  
(Provide supporting documentation)
- Not Applicable

**Elective betterment justification statement:**

Due to long lead times for PVC of this non-standard size, the City offered HDPE as an alternate bid item to PVC. To achieve the comparable inner pipe diameter of the 18-inch PVC, a 20-inch HDPE pipe is required. Therefore, this is also considered a forced betterment as this is a direct benefit to the highway project, so there is no betterment ratio provided.

 1/17/2023  
Date  
TxDOT

 12/7/22  
Initial Date  
Utility

# Attachment G: Forced Betterment

## Wastewater Comparison HDPE to PVC

Similarly, there is an existing 18-inch PVC pressurized reclaimed/reuse wastewater line that is in conflict and proposed to be replaced with same material type. Due to long lead times for PVC of this non-standard size, the City offered HDPE as an alternate bid item to PVC. To achieve the comparable inner pipe diameter of the 18-inch PVC, a 20-inch HDPE pipe is required. Therefore, this is also considered a forced betterment as this is a direct benefit to the highway project, so there is no betterment ratio provided.

## HDPE Water/Sewer | DIPS

PRESSURE-RATED HDPE PIPE



### SUBMITTAL AND DATA SHEET

#### HDPE DUCTILE IRON OUTSIDE DIAMETER PRESSURE PIPE

PIPE SIZE (IN)	AVG O.D. (IN)	MIN. T. (IN)	AVG I.D. (IN)	WGT (LBS/FT)	MIN. T. (IN)	AVG I.D. (IN)	WGT (LBS/FT)	MIN. T. (IN)	AVG I.D. (IN)	WGT (LBS/FT)
		DR 7 (335 psi)			DR 9 (250 psi)			DR 11 (200 psi)		
4	4.800	0.686	3.346	3.87	0.533	3.670	3.13	0.436	3.876	2.62
6	6.900	0.986	4.868	7.99	0.767	5.274	6.46	0.627	5.571	5.41
8	9.050	1.293	6.309	13.75	1.006	6.917	11.12	0.823	7.305	9.32
10	11.100	1.586	7.738	20.68	1.233	8.486	16.72	1.009	8.961	14.01
12	13.200	1.886	9.202	29.25	1.467	10.090	23.65	1.200	10.656	19.82
14	15.300	2.186	10.666	39.29	1.700	11.696	31.77	1.391	12.351	26.63
16	17.400	2.486	12.130	50.82	1.933	13.302	41.08	1.582	14.046	34.44
18	19.500	2.786	13.594	63.82	2.167	14.906	51.61	1.773	15.741	43.25
20	21.600	3.086	15.058	78.31	2.400	16.512	63.32	1.964	17.436	53.07
24	25.800	N/A	N/A	N/A	2.867	19.722	90.35	2.345	20.829	75.69
30	32.000	N/A	N/A	N/A	N/A	N/A	N/A	2.909	25.833	116.46
36	38.300	N/A	N/A	N/A	N/A	N/A	N/A	3.482	30.918	166.84

**Product Standard:** ANSI/AWWA C906  
ASTM F714, ASTM D3035  
**Pipe Compound:** PPI TR-4 PE 4710,  
ASTM D3350 Cell Class 445574 C/E  
**Certification:** ANSI/NSF 61, ANSI/NSF 14\*  
**Additional Option:** Perforated (4" - 8")\*  
**Nominal Laying Length:** 40/50 feet  
(Laying length tolerances are in accordance with  
AWWA and ASTM standards)  
Coil option available upon request for size 6" and below.  
**Installation:** JM Eagle™ HDPE Water/Sewer  
Installation Guide  
Manning Coefficient (n) = 0.009  
Hazen-Williams Coefficient (c) = 150  
\*Supply may vary based on plant location.  
Please call regarding availability.

## Blue Brute | C900

PRESSURE-RATED PVC PIPE



### SUBMITTAL AND DATA SHEET

PIPE SIZE (IN)	AVERAGE O.D. (IN)	NOM. I.D. (IN)	MIN. T. (IN)	APPROX. E <sub>1</sub> (IN)	APPROX. E <sub>2</sub> (IN)	APPROX. D <sup>1</sup> (IN)	APPROX. WGT (LBS/FT)
PRESSURE CLASS 235 psi (DR 18)							
PIPE STIFFNESS: 364 psi							
4	4.80	4.23	0.267	4.5	5.5	6.204	2.6
6	6.90	6.09	0.383	5.25	6.25	8.654	5.3
8	9.05	7.98	0.503	6.25	7.25	11.195	9.2
10	11.10	9.79	0.617	7.25	8.25	13.699	13.9
12	13.20	11.65	0.733	8.25	9.25	16.125	19.7
14	15.30	13.50	0.850	6.5	8	18.603	26.75
16	17.40	15.35	0.967	7.25	8.75	21.135	34.86
18	19.50	17.20	1.083	7.75	9.25	23.832	48.95
20	21.60	19.06	1.200	8.75	10.25	26.107	54.22
24	25.80	22.76	1.433	9.75	11.25	31.089	77.97
30	32.00	28.23	1.778	11.5	13.5	38.264	117.82

**Product Standard:** ANSI/AWWA C900-16  
CSA B137.3\* (DR 18, 25, 4"-18"; DR 14, 4"-12")  
**Pipe Compound:** ASTM D1784 Cell Class 12454  
**Gasket:** ASTM F477  
**Integral Bell Joint:** ASTM D3139  
**Certifications:** ANSI/NSF 61, ANSI/NSF 14\*  
UL 1285 (DR 14, 18, 25, up to 24"), FM 1612\* (DR 14 / DR 18; 4-12"), CSA B137.3\*  
**Note:** FM Approvals Pressure Class 185 psi for DR 18 and 250 psi for DR 14.  
**Nominal Laying Length:** 20 feet  
(Laying length tolerances with AWWA and/or CSA standards)  
**Installation:** JM Eagle™ Blue Brute Installation Guide  
Manning Coefficient (n) = 0.009 • Hazen-Williams Coefficient (c) = 150  
\*Please call regarding availability.

## Attachment "H" Proof of Property Interest

Supporting documentation of compensable property interest that establishes reimbursement eligibility as referenced in Texas Transportation Code §203.092.

Property interest documented through applicable affidavits and required attachments.

ROW-U-Affidavit

The roadway improvement project is designated as an Interstate Highway project; therefore, no supporting documentation of compensable interest is required.



1/17/2023

Date  
TxDOT

SA

Initial

12/7/22

Date  
Utility

## 35.21.4. - Easement Requirements.

All utilities in a development shall be provided in street rights-of-way except for special circumstances approved by the Development Review Committee. In such cases, the following standards shall prevail:

- A. All utility easements shall be a minimum of sixteen (16) feet unless special circumstances warrant additional or reduced easements which can be approved by the Development Review Committee. The general criteria to define minimum easement widths are listed below:

Type of Development	Easement Size
Individual water or sewer lines up to 24" in diameter	16 ft
Individual water or sewer lines greater than 24"	20 ft
Water and sewer lines up to 24" in the same easement	20 ft
Water and sewer lines greater than 24" in the same easement	25 ft
Easements along TxDOT rights-of-way	20 ft

- B. Lot lines will not split easements.
- C. Dead-end easements are not acceptable unless approved for special circumstances by the Development Review Committee.
- D. Fences within utility easements are prohibited.
1. No fences will be allowed to be built that cross dedicated utility easements.
  2. Any existing fence that crosses dedicated utility easements that conflict with the purpose and intent of the easement may be removed by the City at any time.
  3. The City is under no obligation to repair or replace any fence that is damaged or removed that encroaches within a dedicated easement for the purposes of operating, maintaining, replacing or installing water or sewer facilities within the dedicated easement.
- E. Employees of the City shall have the authority to enter premises at any reasonable time in the regular line of duty for the purpose of inspecting, repairing or constructing any water, electric or sewer line or any water or electric meter, etc. The landowner and occupant are responsible for any construction activities occurring over

or within any on-site utility in a utility easement. If utility inspection or repair or reconstruction is necessary, any pavement, structure or improvement damaged within a dedicated utility easement, shall not be the responsibility of the City for any repairs, but shall be the sole responsibility of the owner. The landowner assumes responsibility for any and all improvements placed within a utility easement at their own risk. Additionally, the provisions of this section do not permit or supercede the limits and restrictions prescribed by the conditions of any existing utility easement for allowing improvements to be place within utility easements.

VERSION: NOV 14, 2013 (ARCHIVE) -

Standards

- 35.21.1. - Basic Policy.
- 35.21.2. - Extensions of Water and Sewer Mains.
- 35.21.3. - Basic Design Standards.
- 35.21.4. - Easement Requirements.**
- 35.21.5. - Water Capacity Requirements.
- 35.21.6. - Sewer Capacity Requirements.
- 35.21.7. - Impact Fees.
- 35.21.8. - Tapping Fees.
- 35.21.9. - Oversize Participation by the City.
- 35.21.10. - Pro-Rata Agreements.

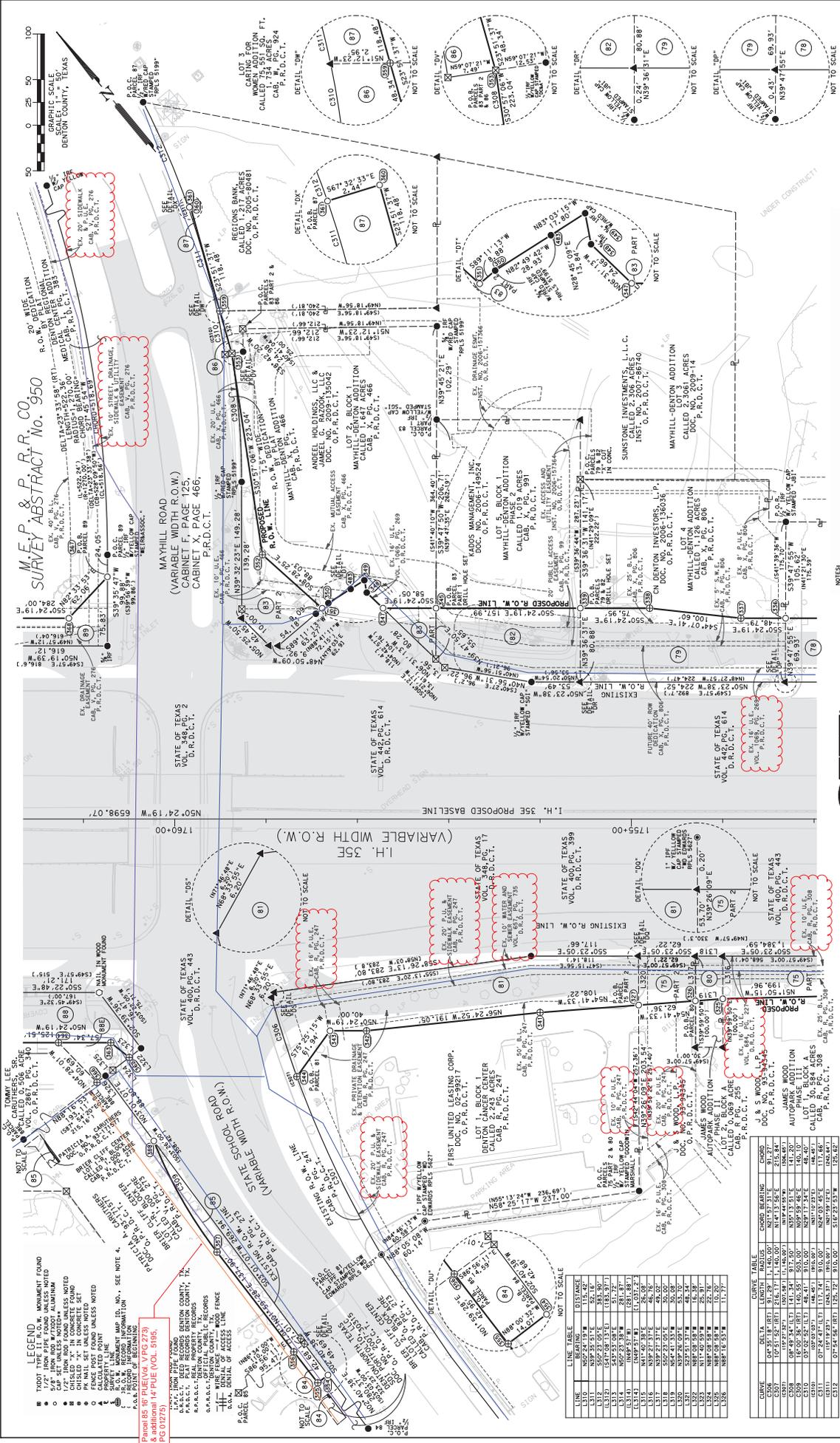
### 35.21.4. - Easement Requirements.

All utilities in a development shall be provided in street rights-of-way except for special circumstances approved by the Development Review Committee. In such cases, the following standards shall prevail:

A. All utility easements shall be a minimum of sixteen (16) feet unless special circumstances warrant additional or reduced easements which can be approved by the Development Review Committee. The general criteria to define minimum easement widths are listed below:

Type of Development	Easement Size
Individual water or sewer lines up to 24" in diameter	16 ft.
Individual water or sewer lines greater than 24"	20 ft.
Water and sewer lines up to 24" in the same easement	20 ft.
Water and sewer lines greater than 24" in the same easement	25 ft.
<u>Easements along TxDOT rights-of-way</u>	<u>20 ft.</u>

EXPAND



**LEGEND**

- TRADITIONAL R.O.W. MONUMENT FOUND
- 5/8" IRON ROD WITH ALUMINUM CAP
- 1/2" IRON ROD WITHOUT ALUMINUM CAP
- CHISELED "X" IN CONCRETE FOUND
- CHISELED "X" IN BRICK FOUND
- PK NAIL SET UNLESS NOTED
- CALCULATED POINT UNLESS NOTED
- SHOULDER LINE
- PROPERTY LINE
- R.O.W. RECORD INFORMATION
- P.A.B. RECORD INFORMATION

**Parcel 85 16 PUE (Vol. VFG 2739) & additional 14 PUE (Vol. 5195) TO 01/17/2012**

**LINE TABLE**

CURVE	BEARING	DISTANCE
L306	N59°55'18"E	31.29
L307	S89°55'18"W	31.29
L308	N59°55'18"E	31.29
L309	S89°55'18"W	31.29
L310	N59°55'18"E	31.29
L311	S89°55'18"W	31.29
L312	N59°55'18"E	31.29
L313	S89°55'18"W	31.29
L314	N59°55'18"E	31.29
L315	S89°55'18"W	31.29
L316	N59°55'18"E	31.29
L317	S89°55'18"W	31.29
L318	N59°55'18"E	31.29
L319	S89°55'18"W	31.29
L320	N59°55'18"E	31.29
L321	S89°55'18"W	31.29
L322	N59°55'18"E	31.29
L323	S89°55'18"W	31.29
L324	N59°55'18"E	31.29
L325	S89°55'18"W	31.29
L326	N59°55'18"E	31.29

**CORNER BEARING TABLE**

CORNER	BEARING	DISTANCE
C306	N59°55'18"E	31.29
C307	S89°55'18"W	31.29
C308	N59°55'18"E	31.29
C309	S89°55'18"W	31.29
C310	N59°55'18"E	31.29
C311	S89°55'18"W	31.29
C312	N59°55'18"E	31.29
C313	S89°55'18"W	31.29
C314	N59°55'18"E	31.29
C315	S89°55'18"W	31.29
C316	N59°55'18"E	31.29
C317	S89°55'18"W	31.29
C318	N59°55'18"E	31.29
C319	S89°55'18"W	31.29
C320	N59°55'18"E	31.29
C321	S89°55'18"W	31.29
C322	N59°55'18"E	31.29
C323	S89°55'18"W	31.29
C324	N59°55'18"E	31.29
C325	S89°55'18"W	31.29
C326	N59°55'18"E	31.29

**PROPERTY OWNER TYPE OF CONVEYANCE**

PARCEL NO.	PROPERTY OWNER	TYPE OF CONVEYANCE	ACQUIRED DATE	ACQUIRED AREA (SQ. FT.)	ACQUIRED AREA (ACRES)	APPROXIMATE REMAINDER	RIGHT
81	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
82	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
83	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
84	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
85	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
86	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
87	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
88	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
89	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
90	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT

**APPROXIMATE CALCULATED FROM APPRAISAL RECORDS**

PARCEL NO.	PROPERTY OWNER	TYPE OF CONVEYANCE	ACQUIRED DATE	ACQUIRED AREA (SQ. FT.)	ACQUIRED AREA (ACRES)	APPROXIMATE REMAINDER	RIGHT
81	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
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85	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
86	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
87	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
88	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
89	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
90	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT

**REVISIONS**

NO.	DATE	REVISION
01	07/18/2012	REVISED D.O.A. LINES
02		
03		
04		
05		
06		
07		
08		
09		
10		

**NOTES**

- ALL BEARINGS AND COORDINATES ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NORTH CENTRAL ZONE, NAD 83 (1983), EPOCH 2002.0. ALL DISTANCES AND COORDINATES SHOWN ARE SURFACE DISTANCES AND COORDINATES.
- THE BEARING AND DISTANCE OF THE BOUNDARY LINE BETWEEN PARCELS 85 AND 86 IS AS SHOWN REPORTED BY ON-THE-GROUND SURVEY BY S&M, INC. ADDITIONAL IMPROVEMENTS NOT SHOWN HEREON MAY EXIST.
- UTILITIES EXIST HEREON AS BASED ON VISIBLE EVIDENCE FOUND ON THE GROUND. ADDITIONAL UTILITIES NOT SHOWN MAY EXIST.
- SEE SHEET 28 FOR R.O.W. MONUMENT DATA.

**PROPERTY OWNER TYPE OF CONVEYANCE**

PARCEL NO.	PROPERTY OWNER	TYPE OF CONVEYANCE	ACQUIRED DATE	ACQUIRED AREA (SQ. FT.)	ACQUIRED AREA (ACRES)	APPROXIMATE REMAINDER	RIGHT
81	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
82	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
83	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
84	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
85	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
86	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
87	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
88	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
89	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
90	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT

**PROPERTY OWNER TYPE OF CONVEYANCE**

PARCEL NO.	PROPERTY OWNER	TYPE OF CONVEYANCE	ACQUIRED DATE	ACQUIRED AREA (SQ. FT.)	ACQUIRED AREA (ACRES)	APPROXIMATE REMAINDER	RIGHT
81	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
82	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
83	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
84	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
85	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
86	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
87	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
88	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
89	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
90	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT

**PROPERTY OWNER TYPE OF CONVEYANCE**

PARCEL NO.	PROPERTY OWNER	TYPE OF CONVEYANCE	ACQUIRED DATE	ACQUIRED AREA (SQ. FT.)	ACQUIRED AREA (ACRES)	APPROXIMATE REMAINDER	RIGHT
81	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
82	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
83	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
84	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT
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87	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
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89	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
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89	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
90	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	RIGHT

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85	STATE OF TEXAS	RESERVE	12/22/00	1,760.00	0.040	1,760.00	LEFT
86	STATE OF TEXAS	RESERVE	12/22/00</				

**TxDOT Highway Project Number:  
0196-02-109  
TxDOT Parcel 85**

RCSJ 0196-01-114  
From: South of Mayhill  
To: South of SL 288

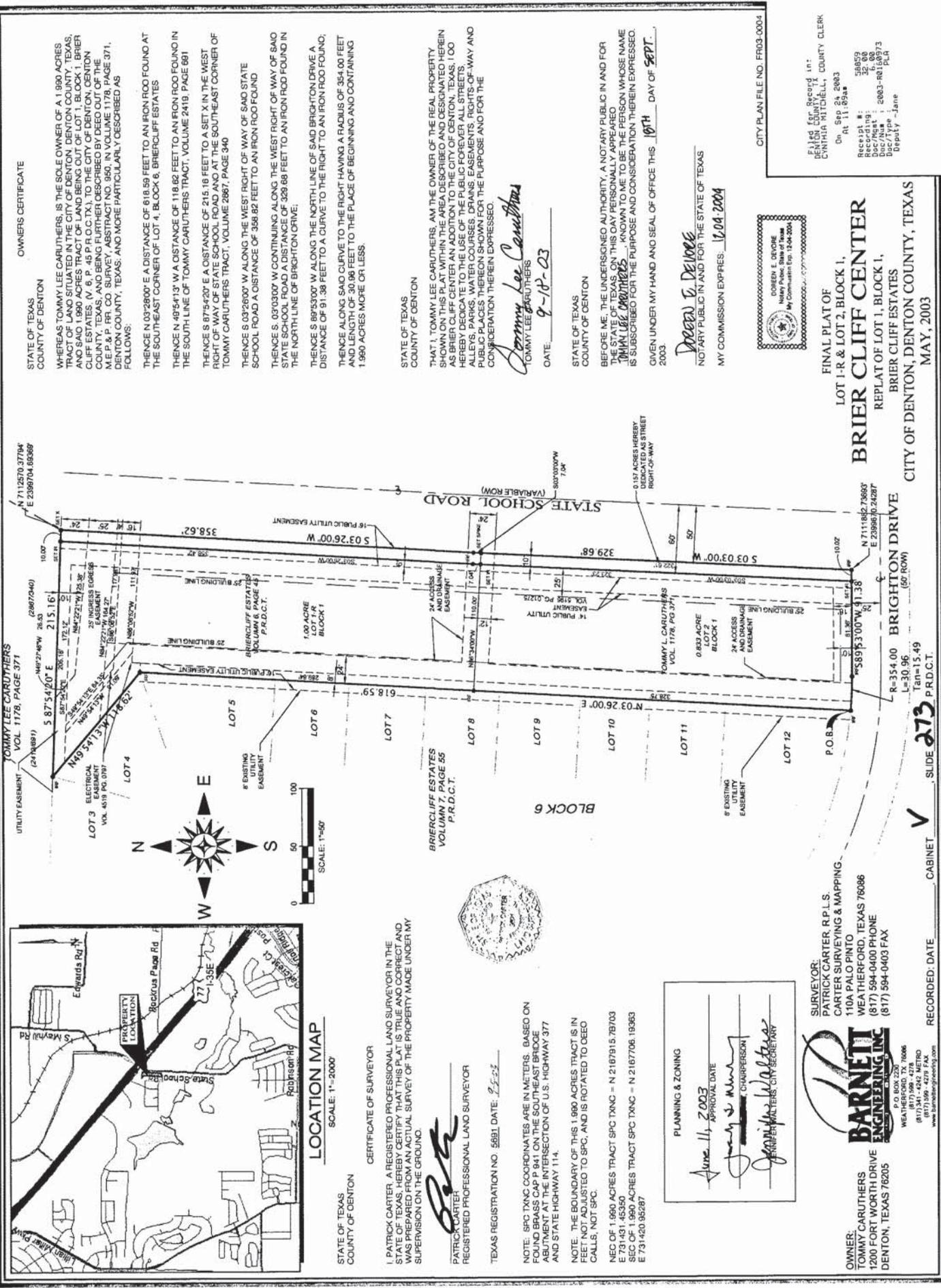
Utility Longitudinal Stations:  
Sta 1760+21 LT to Sta 1761+16 LT

Existing Easement

Instrument No. 2012-144892

Volume V, Page 273

PART OF LOT 1-R, BLOCK 1, BRIER CLIFF CENTER  
MEMPHIS, EL PASO AND PACIFIC RAILROAD COMPANY  
SURVEY, ABSTRACT NO. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS



STATE OF TEXAS  
COUNTY OF DENTON

OWNERS CERTIFICATE  
WHEREAS TOMMY LEE CARUTHERS, IS THE SOLE OWNER OF A 1.990 ACRES TRACT OF LAND SITUATED IN THE CITY OF DENTON, DENTON COUNTY, TEXAS, AND SAID 1.990 ACRES TRACT OF LAND BEING OUT OF LOT 1, BLOCK 1, BRIER CLIFF ESTATES, (V. 6, P. 48 P.O.C.T.X.), TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, AND BEING FURTHER DESCRIBED BY DEED OF DONOR, CENTON & P.R.O. SURVEY, 1, 488 ACRES, S.W. 1/4, SEC. 10, T. 17N, R. 10E, PAGE 371, OF THIS COUNTY, TEXAS; AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THENCE N 03°28'00" E A DISTANCE OF 618.59 FEET TO AN IRON ROD FOUND AT THE SOUTH-EAST CORNER OF LOT 4, BLOCK 6, BRIERCLIFF ESTATES  
THENCE N 48°54'13" W A DISTANCE OF 118.62 FEET TO AN IRON ROD FOUND IN THE SOUTH-LINE OF TOMMY CARUTHERS TRACT, VOLUME 2419, PAGE 691  
THENCE S 87°54'02" E A DISTANCE OF 215.16 FEET TO A SET X IN THE WEST RIGHT-OF-WAY OF STATE SCHOOL ROAD AND AT THE SOUTHEAST CORNER OF TOMMY CARUTHERS TRACT, VOLUME 2867, PAGE 340  
THENCE S 03°26'00" W ALONG THE WEST RIGHT OF WAY OF SAO STATE SCHOOL ROAD A DISTANCE OF 358.82 FEET TO AN IRON ROD FOUND  
THENCE S. 03°03'00" W CONTINUING ALONG THE WEST RIGHT OF WAY OF SAO STATE SCHOOL ROAD A DISTANCE OF 329.88 FEET TO AN IRON ROD FOUND IN THE NORTH-LINE OF BRIGHTON DRIVE;  
THENCE S 89°51'00" W ALONG THE NORTH-LINE OF SAO BRIGHTON DRIVE A DISTANCE OF 91.38 FEET TO A CURVE TO THE RIGHT TO AN IRON ROD FOUND;  
THENCE ALONG SAO CURVE TO THE RIGHT HAVING A RADIUS OF 354.00 FEET AND LENGTH OF 30.96 FEET TO THE PLACE OF BEGINNING AND CONTAINING 1.990 ACRES MORE OR LESS.

STATE OF TEXAS  
COUNTY OF DENTON

THAT I, TOMMY LEE CARUTHERS, AM THE OWNER OF THE REAL PROPERTY SHOWN ON THIS PLAT WITHIN THE AREA DESCRIBED AND DESIGNATED HEREIN AS BRIER CLIFF CENTER AN ADDITION TO THE CITY OF DENTON, TEXAS, 1.00 HERBY DECIDE TO THE USE OF THE PUBLIC FOR ALL STREETS, ALLEYS, PARKS, WATER COURSES, DRAINS, EASEMENTS, RIGHTS-OF-WAY AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND FOR THE CONSIDERATION THEREIN EXPRESSED.

*Tommy Lee Caruthers*  
TOMMY LEE CARUTHERS  
DATE: 9-14-03

STATE OF TEXAS  
COUNTY OF DENTON

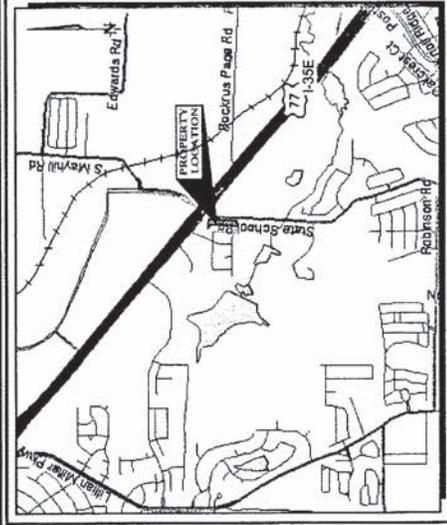
BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED TOMMY LEE CARUTHERS, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED. GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 10<sup>TH</sup> DAY OF SEPT. 2003.

*Doreen E. DeLoake*  
DOREEN E. DELOAKE  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS  
MY COMMISSION EXPIRES: 12-04-2004



CITY PLAN FILE NO. FR03-0004  
Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK  
On: Sep 24 2003  
9:58:59  
Doc/Sheet: 6, 08  
Doc/Book: 2003-RO-10073  
Deputy - Jane

FINAL PLAT OF  
LOT 1-R & LOT 2, BLOCK 1,  
BRIER CLIFF CENTER  
REPLAT OF LOT 1, BLOCK 1,  
BRIER CLIFF ESTATES  
CITY OF DENTON, DENTON COUNTY, TEXAS  
MAY, 2003



LOCATION MAP  
SCALE: 1"=2000'

STATE OF TEXAS  
COUNTY OF DENTON

CERTIFICATE OF SURVEYOR

I, PATRICK CARTER, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

*Patrick Carter*  
PATRICK CARTER  
REGISTERED PROFESSIONAL LAND SURVEYOR  
TEXAS REGISTRATION NO. 5691 DATE: 9-2-03

NOTE: SPC TXNC COORDINATES ARE IN METERS. BASED ON FOUND BRASS CAP P 941 ON THE SOUTH-EAST BRIDGE ABUTMENT AT THE INTERSECTION OF U.S. HIGHWAY 377 AND STATE HIGHWAY 114.  
NOTE: THE BOUNDARY OF THIS 1.990 ACRES TRACT IS IN FEET NOT ADJUSTED TO SPC, AND IS ROTATED TO CEED CALLS, NOT SPC.  
NEC OF 1.990 ACRES TRACT SPC TXNC - N 2167815.78703  
E 731431.45350  
SEC OF 1.990 ACRES TRACT SPC TXNC - N 2167706.19363  
E 731420.95287

PLANNING & ZONING  
APPROVAL DATE  
*June 11, 2003*  
*John W. ...*  
*Janice ...*

SURVEYOR:  
PATRICK CARTER, R.P.L.S.  
CARTER SURVEYING & MAPPING  
110A PALO PINTO  
WEATHERFORD, TEXAS 75086  
(817) 594-0400 PHONE  
(817) 594-0403 FAX



OWNER:  
TOMMY CARUTHERS  
1200 FORT WORTH DRIVE  
DENTON, TEXAS 76205

RECORDED: DATE \_\_\_\_\_  
CABINET \_\_\_\_\_  
SLIDE 273

5195 01273

use of the easement for the purposes granted.

7. Grantor's Rights. Grantor shall have the right to make use of the easement for any purpose that does not interfere with the City's rights in the easement for the purposes granted, subject to the restrictions contained herein.

8. Neither party has made any representations or promises outside the written provisions of this easement document relating to the subject matter of this easement document.

9. Successors and Assigns. This grant shall run with the land and shall be binding upon the parties and their heirs, successors and assigns.

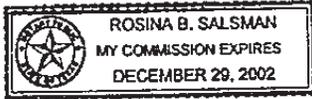
Witness my hand, this the 8 day of OCTOBER, 2002.

By: Tommy Caruthers  
Tommy Lee Caruthers

ACKNOWLEDGMENT

THE STATE OF Texas §  
COUNTY OF Denton §

This instrument was acknowledged before me on 10-8, 2002 by Tommy Lee Caruthers, of Tommy Lee Caruthers.



Rosina B. Salsman  
Notary Public, in and for the State of TEXAS  
My Commission Expires: 12-29-02

Accepted this 8 day of October, 2002 for the City of Denton, Texas (Resolution No. 91-073).

By: Pamela England for Paul Williamson  
Paul Williamson

AFTER RECORDING RETURN TO:

City of Denton  
Engineering Department  
601 East Hickory  
Suite B  
Denton, Texas 76205  
ATTN: Paul Williamson

EXHIBIT A

**LEGAL DESCRIPTION  
M.E.P. & P.R.R. SURVEY, ABS. No. 950  
CITY OF DENTON, DENTON COUNTY, TEXAS**

**SITUATED** in the City of Denton, Denton County, Texas and being a strip of land out of a tract of land conveyed to **TOMMY LEE CARUTHERS** by deed recorded in Volume 1178, Page 371 of the Deed Records of Denton County, Texas (D.R.D.C.T.), said tract also being Lot 1, Block 1 of Briarcliff Subdivision according to the plat recorded in Cabinet 6, Page 45 of the Plat Records of Denton County, Texas (P.R.D.C.T.), said strip of land being herein described as a proposed 14.00 feet wide Permanent Public Utility Easement and being herein more particularly described by metes and bounds as follows:

**BEGINNING** at a point on the south property line of the said Lot 1 and on the existing northerly right-of-way of Brighton Drive, said beginning point being located South 89 degrees 38 minutes 14 seconds West 16.02 feet from the southeast property corner of the said Lot 1.

**THENCE**, South 89 degrees 38 minutes 14 seconds West, along the said property line and said right-of-way, 14.02 feet to a point;

**THENCE**, North 2 degrees 48 minutes 14 seconds East 331.00 feet to a point;

**THENCE**, North 1 degree 29 minutes 36 seconds East 358.47 feet to a point on the north property line of the said Lot 1;

**THENCE**, South 88 degrees 05 minutes 21 seconds East, along the said property line, 14.00 feet to a point;

**THENCE**, South 1 degree 29 minutes 36 seconds West 358.71 feet to a point;

**THENCE**, South 2 degrees 48 minutes 14 seconds West 330.57 feet to the **POINT OF BEGINNING**;

The proposed Permanent Public Utility Easement being herein described contains 0.2215 acres (9,649 square feet) of land.

I DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION WAS PREPARED FROM PUBLIC RECORDS AND FROM AN ACTUAL AND ACCURATE SURVEY UPON THE GROUND AND THAT SAME IS TRUE AND CORRECT.

Company Name: Spooner and Associates, Inc.

By: Shaun Spooner  
Shaun Spooner



Registered Professional Land Surveyor,  
Texas No. 4183  
Date of Survey: 3-28-02  
Revised 4-22-02

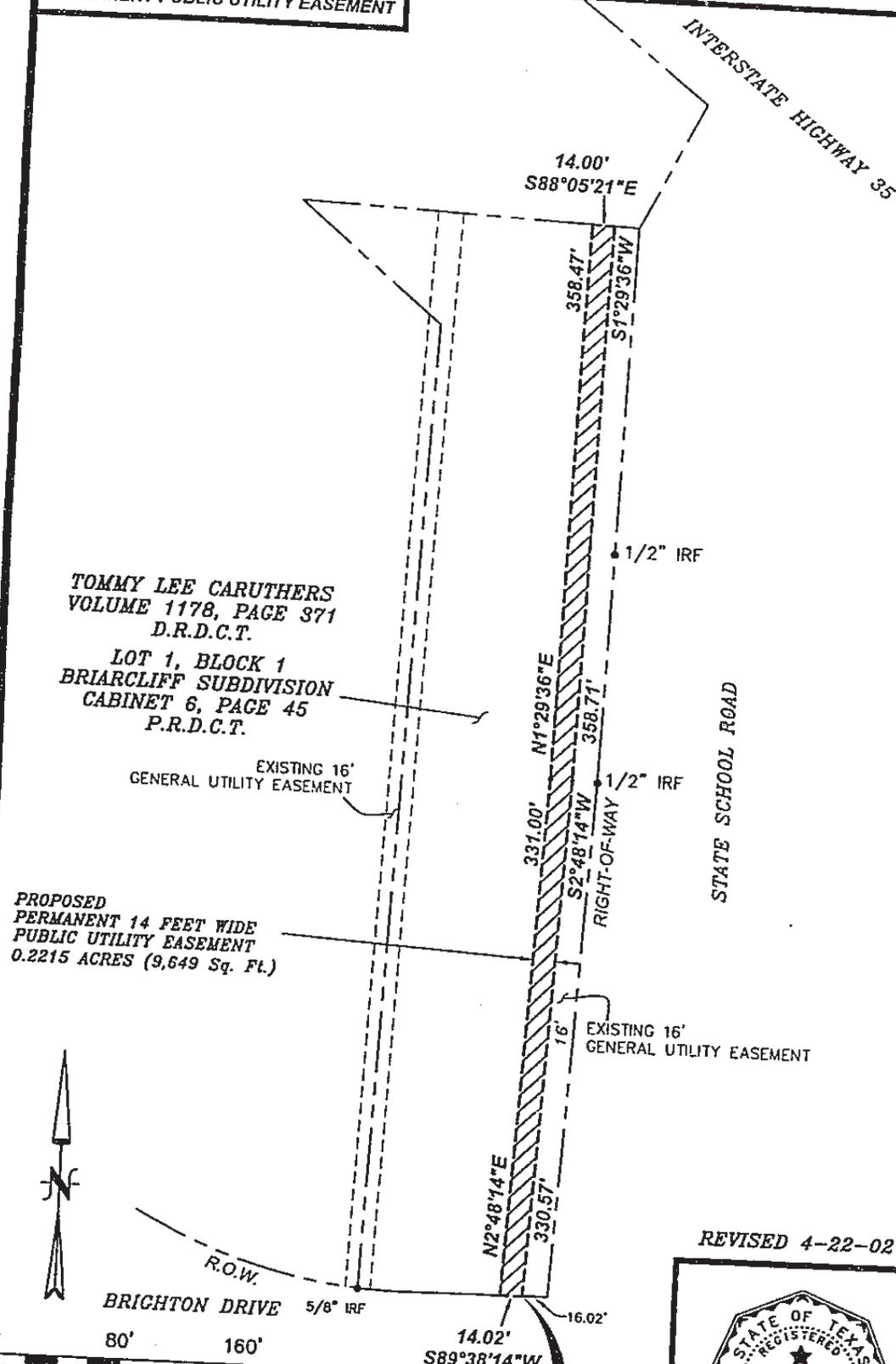
EXHIBIT B

SURVEY: MEP & PRR SURVEY, ABS NO. 950  
LOCATION: CITY OF DENTON, DENTON COUNTY, TEXAS

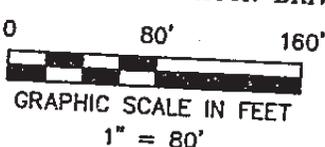
PROPERTY LOCATION: STATE SCHOOL & I-35E  
PERM. PUBLIC UTILITY EASEMENT: 0.2215 AC.

PERMANENT PUBLIC UTILITY EASEMENT

5195 01275



TOMMY LEE CARUTHERS  
VOLUME 1178, PAGE 371  
D.R.D.C.T.  
LOT 1, BLOCK 1  
BRIARCLIFF SUBDIVISION  
CABINET 6, PAGE 45  
P.R.D.C.T.



REVISED 4-22-02



**SPOONER & ASSOC.**  
REGISTERED PROFESSIONAL  
LAND SURVEYORS

7417 CONTINENTAL TRAIL  
No. RICHLAND HILLS, TX 76180  
817-281-2355

DATE 3-28-02  
JOB NO. 1053-7-01  
ACAD FILE 1053-EASE-9

5195 01276

PLEASE RETURN TO:  
City of Denton  
Engineering Department  
City Hall East  
601 E. Hickory, Suite B  
Denton, Texas 76205  
Attention: Paul Williamson

Filed for Record in:  
DENTON COUNTY, TX  
CYNTHIA MITCHELL, COUNTY CLERK

On Oct 18 2002  
At 10:51am

Receipt #: 59522  
Recording: 11.00  
Doc/Hgmt: 6.00  
Doc/Num: 2002-R0132732  
Doc/Type: EAS  
Deputy -ALVIN

ABSTRACT OF JUDGMENT  
CAUSE NO. GC-99-00537

5108 N

CLERK OF THE COURT  
Cynthia Mitchell  
1450 E. McKinney, Suite 2412  
Denton, Texas 76209

ATTORNEY FOR PLAINTIFF  
BICKLEY, NEIL A.  
301 S. Sherman Street, Suite 103  
Richardson, Texas 75081

132733

THE STATE OF TEXAS §  
COUNTY OF DENTON §

I, Cynthia Mitchell, CLERK of the County Courts of Denton County, Texas, do hereby certify that in the County Court at Law No. 2 of Denton County, Texas, in a certain suit heard in said court, wherein:

LORIE MEDLEY AND JIM FLETCHER, Plaintiff(s)  
vs.  
ROBERT FOWLER, JR., Defendant(s)

Plaintiff recovered judgment against the following Defendant(s):

FOWLER, ROBERT JR.  
1795 BOWIE ST.  
  
Sanger, Texas 76266

DRIVER'S LICENSE: TX- 12273807  
BIRTH DATE: 1-31-67  
S.S # UNKNOWN

5195 01277

On 31st day of august , 1999, for:

\$8,759.00 ; as the principle amount due;  
Interest on said sums at the rate of ten percent (10%) from the date of judgment, until paid ; and  
\$150.00 ; as costs of court :

If a Defendant's address is not shown, the nature of citation and the date and place citation was served is/are NOT APPLICABLE

Said judgment is entitled to the following credits to-wit: NONE

GIVEN UNDER MY HAND AND SEAL OF OFFICE, at Denton, Texas, Friday, September 27, 2002.

CYNTHIA MITCHELL, COUNTY CLERK,  
DENTON COUNTY, TEXAS

BY: Zahra Kadkhoda Deputy Clerk  
ZAHRA KADKHODA



THE STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

I, \_\_\_\_\_, County Clerk of \_\_\_\_\_ County, do hereby certify that this Abstract of Judgment was filed for record in my office the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ .M., and was immediately recorded the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ .M., in the Judgment Records of said County in Volume \_\_\_\_\_, Page \_\_\_\_\_, and was also at the same time entered upon the Index to said Judgment Records, showing the names of each Plaintiff(s) and each Defendant(s) in said Judgment, and the numbers of the pages of the Book upon which said abstract is recorded.

WITNESSES MY HAND AND SEAL OF OFFICE, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
County Clerk  
County, Texas  
BY: \_\_\_\_\_  
Deputy Clerk

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 1-R, Block 1, Brier Cliff Center, an addition to the City of Denton, Texas according to the plat recorded in Volume V, Page 273 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at a point in the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way), and being the northeast corner of Lot 1, Block 1, Brier Cliff Center Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume West, Page 715 of the Plat Records of Denton, Texas; from said point a 1/2-inch iron rod found bears North 50°22'36" West, a distance of 277.87 feet;

**THENCE** South 50°22'36" East, along the said southwest right-of-way line of Interstate Highway No. 35, a distance of 171.28 feet to a point at the intersection of the said southwest right-of-way line of Interstate Highway No. 35 and the northwest right-of-way line of State School Road (a variable width right-of-way);

**THENCE** South 29°40'54" West, along the said northwest right-of-way line of said State School Road, a distance of 87.08 feet to the northeast corner of said Lot 1-R;

**THENCE** continuing along the said northwest right-of-way line of State School Road, South 3°02'50" West, a distance of 26.67 feet to the southeast corner of a called 0.077 acre tract of land described in Special Warranty Deed with Vendor's Lien to Goel Ventures, LLC recorded in Instrument No. 2012-144892 of said Official Public Records;

**THENCE** departing the said northwest right-of-way line of State School Road, North 86°49'47" West, along the south line of said 0.077 acre tract, a distance of 30.00 feet to the **POINT OF BEGINNING**;

**THENCE** departing the said south line of the 0.077 acre tract, South 3°02'50" West, a distance of 22.60 feet to a point for corner;

**THENCE** the following five (5) calls:

- South 50°12'22" East, a distance of 24.96 feet to a point for corner;
- South 3°02'50" West, a distance of 24.69 feet to a point for corner;
- South 17°59'36" West, a distance of 0.23 feet to a point for corner;
- North 50°12'22" West, a distance of 78.68 feet to a point for corner;
- North 39°27'46" East, a distance of 19.19 feet to a point for corner in the said south line of the 0.077 acre tract;

**THENCE** South 86°49'47" East, along the said south line of the 0.077 acre tract, a distance of 31.71 feet to the **POINT OF BEGINNING** and containing 1,770 square feet or 0.0406 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).  
 A survey plat of even survey date herewith accompanies this metes and bounds description.  
 The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

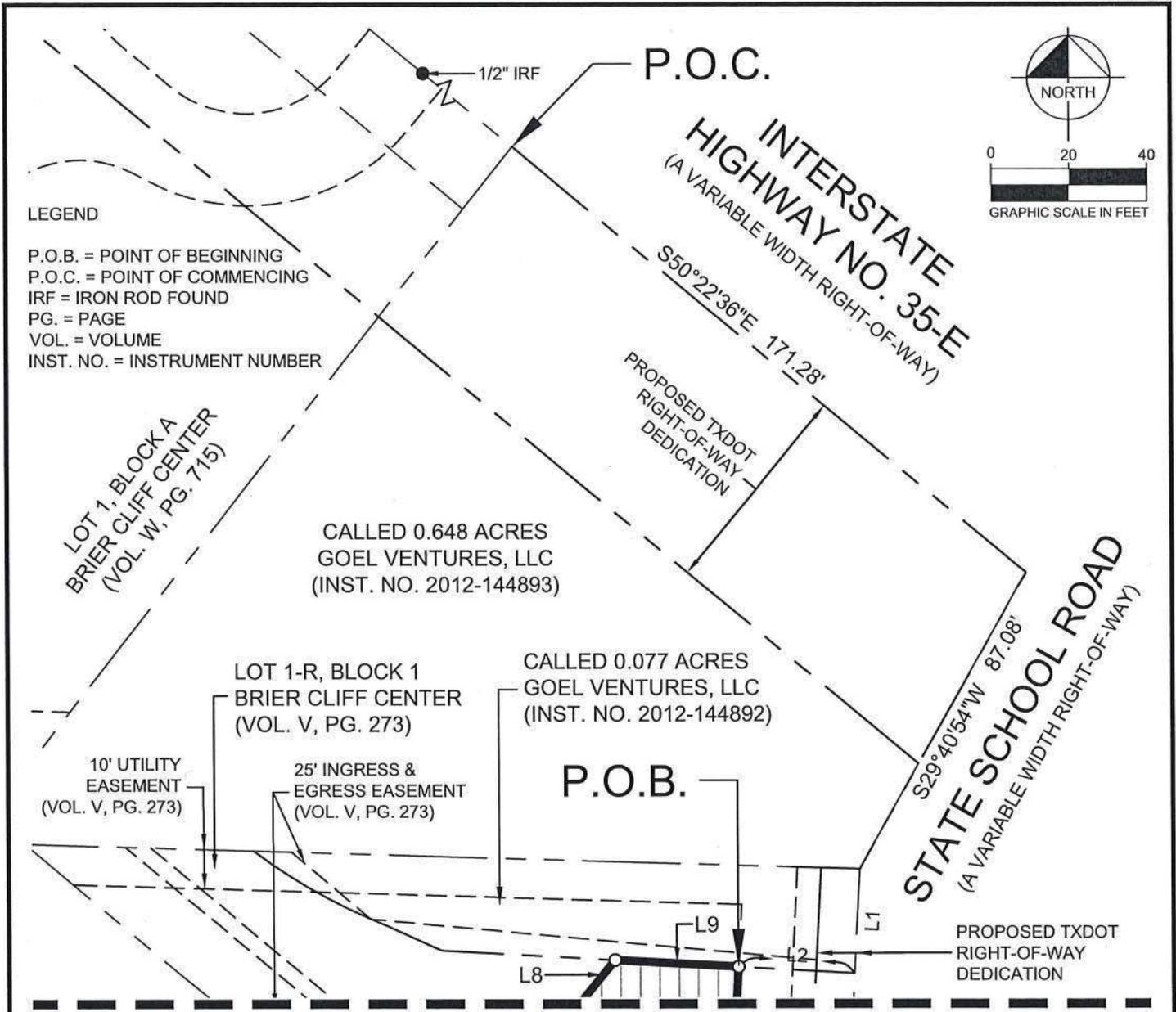
*[Signature]* 12/7/21  
 MICHAEL C. BILLINGSLEY  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
 801 CHERRY STREET,  
 UNIT 11 SUITE 1300  
 FORT WORTH, TEXAS 76102  
 PH. 817-335-6511  
 michael.billingsley@kimley-horn.com



WATER AND WASTEWATER EASEMENT  
 PART OF LOT 1-R, BLOCK 1, BRIER CLIFF CENTER  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

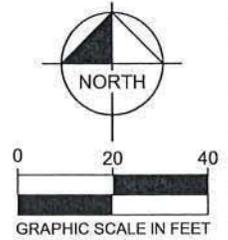
**Kimley»Horn**  
 801 Cherry Street, Unit 11, # 1300 Fort Worth, Texas 76102 FIRM # 10194040 Tel. No. (817) 335-6511 www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	CRG/JBH	MCB	12/7/2021	061024039	1 OF 3



**LEGEND**

P.O.B. = POINT OF BEGINNING  
 P.O.C. = POINT OF COMMENCING  
 IRF = IRON ROD FOUND  
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 INST. NO. = INSTRUMENT NUMBER



**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A metes and bounds description of even survey date herewith accompanies this survey plat.

The undersigned, Registered Professional Land Surveyor, hereby certifies that this survey plat accurately sets out the metes and bounds of the easement tract.

*[Signature]*  
 12/7/21  
**MICHAEL C. BILLINGSLEY**  
 REGISTERED PROFESSIONAL  
 LAND SURVEYOR NO. 6558  
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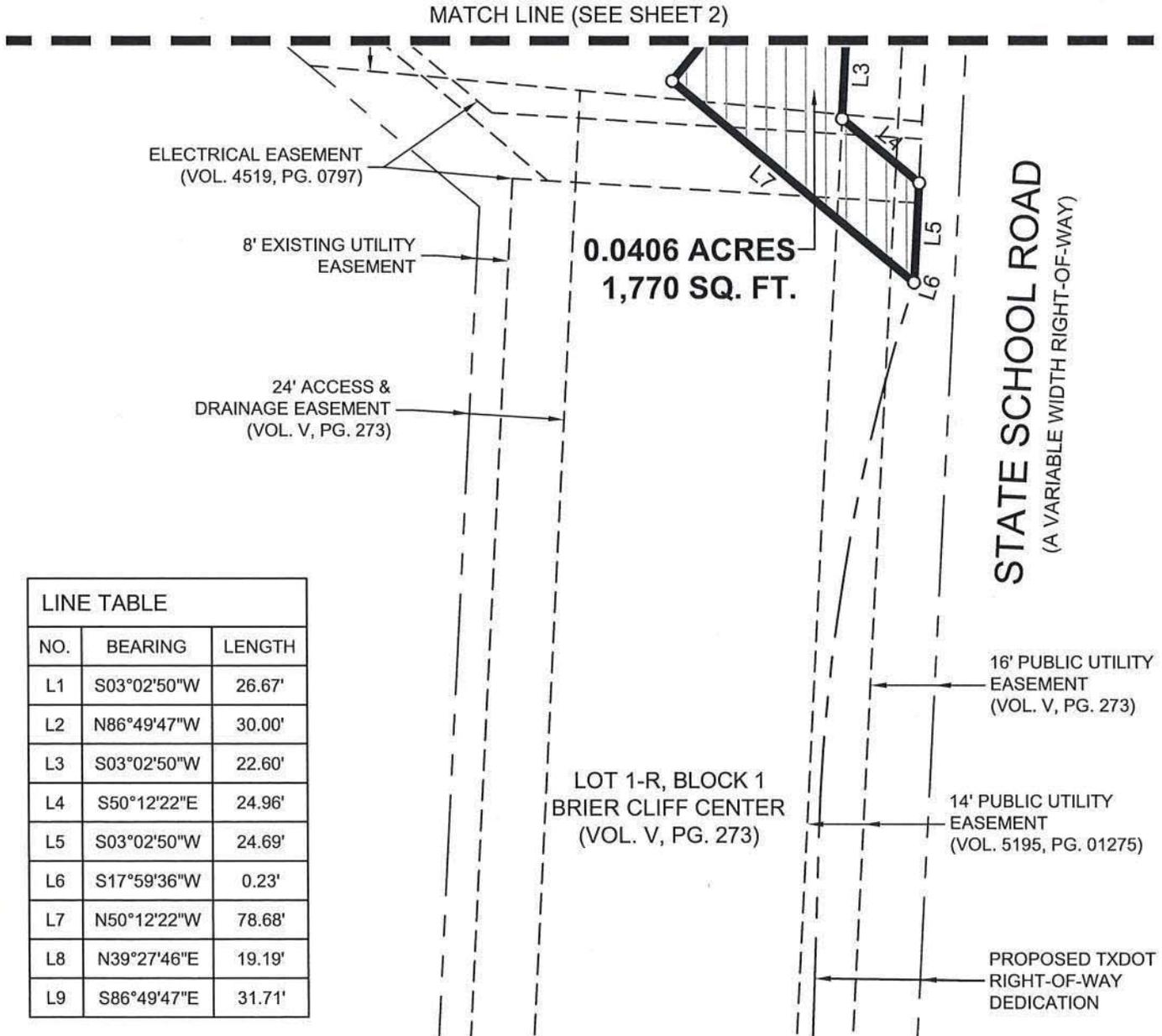
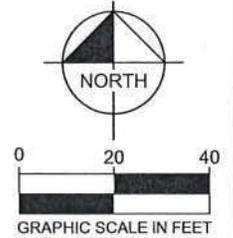
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Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 40'	CRG/JBH	MCB	12/7/2021	061024039	2 OF 3

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LINE TABLE		
NO.	BEARING	LENGTH
L1	S03°02'50"W	26.67'
L2	N86°49'47"W	30.00'
L3	S03°02'50"W	22.60'
L4	S50°12'22"E	24.96'
L5	S03°02'50"W	24.69'
L6	S17°59'36"W	0.23'
L7	N50°12'22"W	78.68'
L8	N39°27'46"E	19.19'
L9	S86°49'47"E	31.71'

LOT 1-R, BLOCK 1  
 BRIER CLIFF CENTER  
 (VOL. V, PG. 273)

**STATE SCHOOL ROAD**  
 (A VARIABLE WIDTH RIGHT-OF-WAY)

**WATER AND WASTEWATER EASEMENT**  
 PART OF LOT 1-R, BLOCK 1, BRIER CLIFF CENTER  
 MEMPHIS, EL PASO AND PACIFIC RAILROAD  
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1" = 40'	CRG/JBH	MCB	12/7/2021	061024039	3 OF 3

**LEGAL DESCRIPTION**

**BEING** a tract of land situated in the Memphis, El Paso and Pacific Railroad Company Survey, Abstract No. 950, City of Denton, Denton County, Texas, and being part of Lot 1-R, Block 1, Brier Cliff Center, an addition to the City of Denton, Texas according to the plat recorded in Volume V, Page 273 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at a point in the southwest right-of-way line of Interstate Highway No. 35 (a variable width right-of-way), and being the northeast corner of Lot 1, Block 1, Brier Cliff Center Addition, an addition to the City of Denton, Texas according to the plat recorded in Volume West, Page 715 of the Plat Records of Denton, Texas; from said point a 1/2-inch iron rod found bears North 50°22'36" West, a distance of 277.87 feet;

**THENCE** South 50°22'36" East, along the said southwest right-of-way line of Interstate Highway No. 35, a distance of 171.28 feet to a point at the intersection of the said southwest right-of-way line of Interstate Highway No. 35 and the northwest right-of-way line of State School Road (a variable width right-of-way);

**THENCE** South 29°40'54" West, along the said northwest right-of-way line of said State School Road, a distance of 87.08 feet to the northeast corner of said Lot 1-R;

**THENCE** continuing along the said northwest right-of-way line of State School Road, South 3°02'50" West, a distance of 26.67 feet to the southeast corner of a called 0.077 acre tract of land described in Special Warranty Deed with Vendor's Lien to Goel Ventures, LLC recorded in Instrument No. 2012-144892 of said Official Public Records;

**THENCE** departing the said northwest right-of-way line of State School Road, North 86°49'47" West, along the south line of said 0.077 acre tract, a distance of 61.71 feet to the **POINT OF BEGINNING**;

**THENCE** departing the said south line of the 0.077 acre tract, South 39°27'46" West, a distance of 19.19 feet to a point for corner;

**THENCE** North 50°12'22" West, a distance of 25.93 feet to a point for corner in the said south line of the 0.077 acre tract;

**THENCE** South 86°49'47" East, along the said south line of the 0.077 acre tract, a distance of 32.18 feet to the **POINT OF BEGINNING** and containing 249 square feet or 0.0057 acres of land, more or less.

**NOTES:**

Bearing system based on the Texas Coordinate System of 1983 (2011 adjustment), North Central Zone (4202).

A survey plat of even survey date herewith accompanies this metes and bounds description.

The undersigned, Registered Professional Land Surveyor, hereby certifies that foregoing description accurately sets out the metes and bounds of the easement tract.

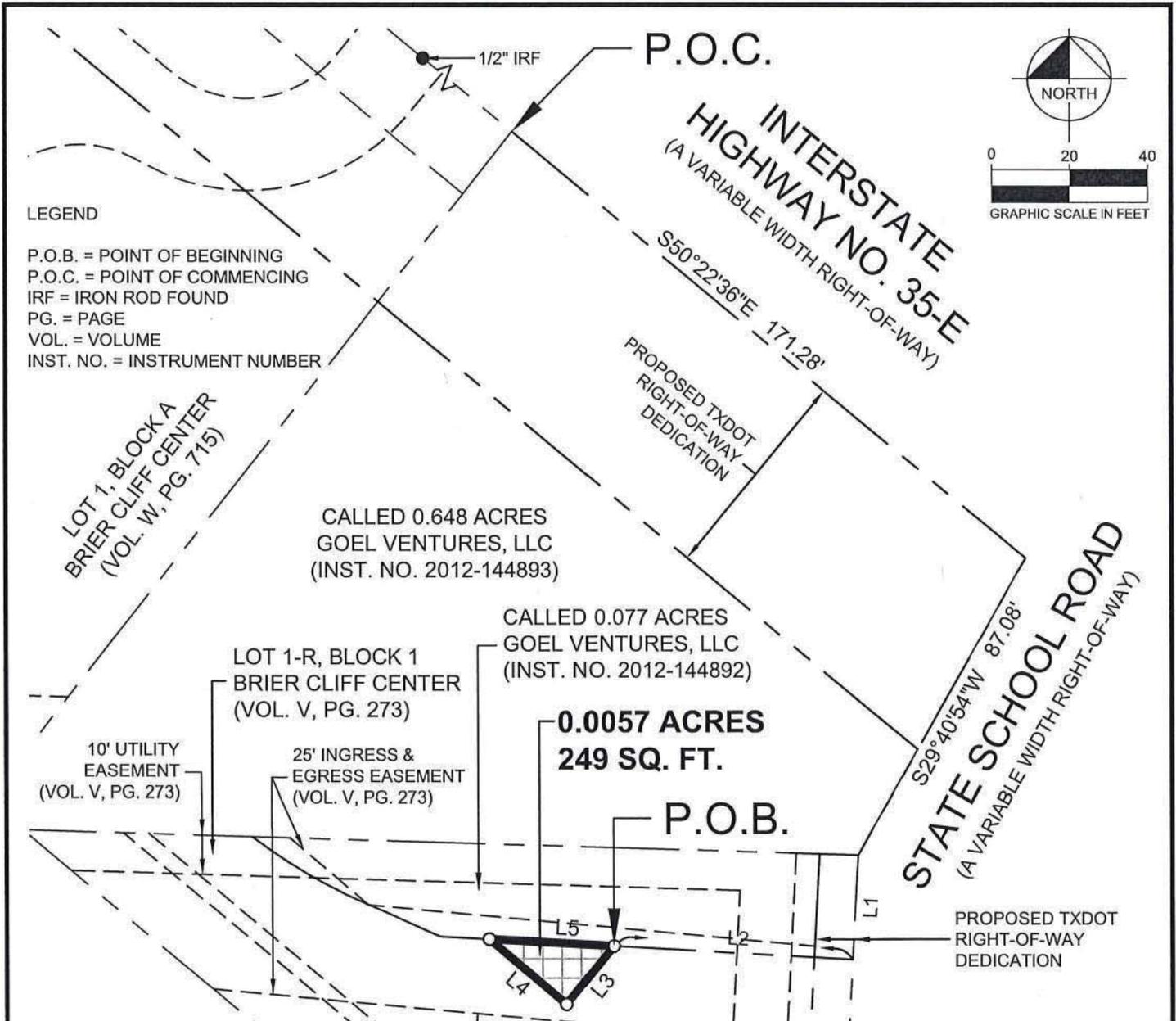
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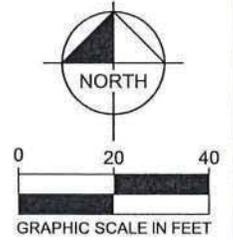
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N/A	CRG/JBH	MCB	12/7/2021	061024039	1 OF 3



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*[Signature]* 12/7/21

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TEMPORARY CONSTRUCTION EASEMENT  
 PART OF LOT 1-R, BLOCK 1, BRIER CLIFF CENTER  
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 COMPANY SURVEY, ABSTRACT NO. 950  
 CITY OF DENTON, DENTON COUNTY, TEXAS

		801 Cherry Street, Unit 11, # 1300 Fort Worth, Texas 76102		FIRM # 10194040		Tel. No. (817) 335-6511 www.kimley-horn.com	
		Scale N/A	Drawn by CRG/JBH	Checked by MCB	Date 12/7/2021	Project No. 061024039	Sheet No. 3 OF 3



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** March 23, 2026

### **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 Closner Equipment Co., Inc., for the acquisition, rental, maintenance, and repairs of various medium-duty and heavy-duty construction equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8987 – awarded to Closner Equipment Co., Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$4,168,500.00).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The City of Denton Fleet Services Department is establishing a contract for the acquisition, rental, repairs, and maintenance of various medium-duty and heavy-duty construction equipment. Current assets are utilized by various departments, including Streets, Electric, Water, and Wastewater, to maintain City operations such as maintenance of streets, water and sewer mains, electrical underground and overhead power, mowing, and landfill waste management. Existing construction equipment includes, but is not limited to, asphalt milling machines and pavers, road graders and rollers, and road sweepers. Reliable equipment is essential for both citizen safety and uninterrupted City services, as any downtime caused by vehicle malfunctions or acquisition delays can disrupt these services. Having contracts in place will assist in continued timely repairs and maintenance, allowing for minimized vehicle downtime.

Closner Equipment plays a central role in the existing fleet strategy and is a firm specializing exclusively in asphalt and concrete paving machinery, offering a large selection of road construction equipment, alongside comprehensive repair and onsite training services. Leveraging the vendor's regional presence also reduces downtime through specialized mobile field service, specialized parts availability, warranty administration, and technical support for the heavy-duty equipment in the City's fleet.

Additionally, the proposed contract streamlines the procurement of vehicles and parts, allowing the City to address both current needs and future growth. The contract supports scalable operations, enabling the City to adapt to evolving requirements while maintaining high service standards, ensuring public services remain reliable and efficient. Fleet Services strategizes asset management, including planning for new acquisitions and asset replacement, integrated within the City's annual budget process. Additions are based on projected

department growth, service expansions, or new operational requirements that necessitate increased fleet capacity. The contract value is based on historical spending levels and includes estimates for future assets and services.

**Estimated Contract Expenses**

<b>Category</b>	<b>FY 25/26</b>	<b>FY26/27</b>	<b>FY 27/28</b>	<b>FY28/29</b>	<b>FY 29/30</b>	<b>Total</b>
Asset Additions	\$ -	\$210,000	\$ -	\$230,000	\$ -	\$440,000
Asset Replacements	-	210,000	440,000	450,000	230,000	1,330,000
Repair Services	420,000	440,000	440,000	450,000	450,000	2,200,000
<b>Sub Total</b>	<b>\$420,000</b>	<b>\$860,000</b>	<b>\$880,000</b>	<b>\$1,130,000</b>	<b>\$680,000</b>	<b>\$3,970,000</b>
Contingency	21,000	43,000	44,000	56,500	34,000	198,500
<b>Total</b>	<b>\$441,000</b>	<b>\$903,000</b>	<b>\$924,000</b>	<b>\$1,186,500</b>	<b>\$714,000</b>	<b>\$4,168,500</b>

Request for Proposals was sent to 801 prospective suppliers, including 47 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. One (1) proposal was received, and references were checked to ensure the vendor can provide the services requested in the Scope of Work. The proposal was evaluated based upon published criteria including compliance with specifications, probable performance, and price. Best and Final Offer (BAFO) was requested from the firm. The department is awarding the contract to Closner Equipment Co., Inc.

NIGP Code Used for Solicitation:	913 - (Service Only) - Construction Services, Heavy (Incl. Maintenance and Repair Services)
Notifications sent for Solicitation sent in IonWave:	801
Number of Suppliers that viewed Solicitation in IonWave:	17
HUB-Historically Underutilized Business Invitations sent out:	90
SBE-Small Business Enterprise Invitations sent out:	247
Responses from Solicitation:	1

**RECOMMENDATION**

Award a contract with Closner Equipment Co., Inc., for the acquisition, rental, maintenance, and repairs of various medium-duty and heavy-duty construction equipment for the Fleet Services Department, in a three (3) year, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$4,168,500.

**PRINCIPAL PLACE OF BUSINESS**

Closner Equipment Co., Inc.  
Schertz, TX

**ESTIMATED SCHEDULE OF PROJECT**

This is an initial three (3) year contract with options to extend the contract for two (2) additional one (1) year periods, with all terms and conditions remaining the same.

## **FISCAL INFORMATION**

These products and services will be funded through Operating and Capital Fund accounts. The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$4,168,500.

## **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: Tom Gramer, 940-349-7467.

Legal point of contact: Leah Bush 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 CLOSNER EQUIPMENT CO., INC., FOR THE ACQUISITION, RENTAL, MAINTENANCE, AND REPAIRS OF VARIOUS MEDIUM-DUTY AND HEAVY-DUTY CONSTRUCTION EQUIPMENT FOR THE FLEET SERVICES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8987 – AWARDED TO CLOSNER EQUIPMENT CO., INC., FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$4,168,500.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the acquisition, rental, maintenance, and repairs of various medium-duty and heavy-duty construction equipment for the Fleet Services Department; 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>
8987	Closner Equipment Co., Inc.	\$4,168,500.00

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 [ \_\_\_ - \_\_\_ ]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2026.

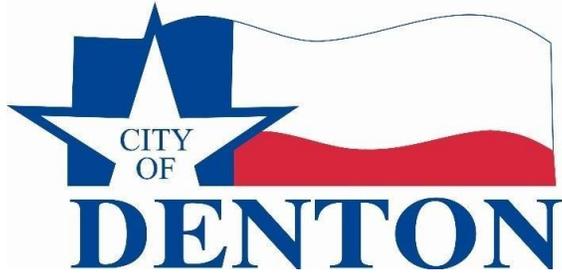
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
INGRID REX, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush



## DocuSign City Council Transmittal Coversheet

RFP	8987
File Name	Heavy Duty Road Construction equipment
Purchasing Contact	kayla clark
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND CLOSNER EQUIPMENT CO., INC.  
(Contract #8987 )**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between CLOSNER EQUIPMENT CO., INC. a Texas corporation, whose address PO BOX 917 SCHERTZ, TX 78154, 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 services in accordance with the City’s #8987 - Heavy Duty Road Construction equipment, 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 8987 (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) Form CIQ – Conflict of Interest Questionnaire (**Exhibit “G”**)

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 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 2275, 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.

**BY:**  
**CONTRACTOR**  
CLOSNER EQUIPMENT CO., INC.

Signed by:  
  
48C7BD94E7AF48E...  
Authorized Signature

Printed Name: Collin Nunnelee

Title: North Texas Sales Manager

Email Address: collin.n@CLOSNER.COM

collin.n@closner.com

TEXAS ETHICS COMMISSION CERTIFICATE NUMBER

**BY:**  
**CITY OF DENTON, TEXAS**

Sara Hensley, City Manager

ATTEST:  
INGRID REX, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

Signed by:  
BY: Leah Bush  
3A6254145BDA469...

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

DocuSigned by:  
Tom Gramer  
7B58DABCE5F49C...  
SIGNATURE

Director

TITLE

Fleet

DEPARTMENT

Contract 8987

## **Exhibit A** **Special Terms and Conditions**

### **1. Total Contract Amount**

The contract total for services shall not exceed \$4,168,500. Pricing shall be per Exhibit F attached.

### **2. The Quantities**

The quantities indicated on Exhibit F are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

### **3. Contract Terms**

The contract term will be three (3) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

### **4. Price Escalation and De-escalation**

On Supplier'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. The supplier 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. Respondent 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.

Contract 8987

Upon receipt of such request, the City of Denton 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 of Denton 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 of Denton approval and/or cancellation.

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

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

#### **5. Performance Liquidated Damages**

The Contractor shall incur contractual payment losses, as initiated by the City for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times
- Performance below contracted levels (services only)

The Contractor shall be assessed a one (1%) percent fee each month when any one of the performance standards outlined above are not met in full. The Contractor shall be assessed a two (2%) percent profit fee each month when any two (2) or more performance standards outlined above are not met in full. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor's monthly profit margin.

#### **6. Cooperative Purchasing**

It is the intent of the City that any contract resulting from this solicitation be made available for use by other governmental entities, to the maximum extent permitted under applicable federal, state, and local laws, including, but not limited to, the *Texas Government Code Chapter 791*. The Contractor agrees to make the same pricing, terms, and conditions available to any eligible public agency, political subdivision, or governmental entity that elects to purchase under this Contract, provided that such entity issues its own purchase order or agreement referencing the City's contract. Each such participating entity shall be responsible solely for its own obligations, including issuance of purchase orders, receipt of goods or services, and payment of invoices. The City shall not be responsible for the performance or payment of any obligations incurred by such participating entities.

**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 the Seller or respondent 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 seller'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.

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 of Denton 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 Vendor'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.

F. Contractor must submit invoices no later than thirty (30) calendar days after termination or expiration of the Contract. Any invoices sent after that date will be considered noncompliant and will not be approved for payment.

### 13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable – [accountspayable@cityofdenton.com](mailto: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 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 (15<sup>th</sup>) 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 of Denton if the vendor 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 of Denton. 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 25, (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 ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such

ten (10) 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 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, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof, provided such payment amount is not disputed by City. 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 53. 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 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 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 of Denton 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  
Contract 8987

Texas and satisfactory to the City of Denton. The City of Denton 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 address specified in the Contractor's Offer, 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** Contract 8987

**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.

**40. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 41 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-

for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 41 A., B., and C. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 40 above.

41. **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.

42. **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.

43. **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.

44. **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 of Denton 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.

45. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** The Contractor agrees to comply with the conflict of interest provisions of the City of Denton Code of Ordinances Contract 8987

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.

**46. 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.

**47. 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.

**48. 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 of Denton, Texas 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 of Denton, Texas, 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.

**49. 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 Vendor shall notify the City's Purchasing Manager, in writing, of a company name, 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.

50. **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.

51. **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.

52. **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.

53. **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.

**54. 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.

**55. 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.

**56. 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 City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or their authorized designee.

**57. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose Contract 8987

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.

**58. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton 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 Vendor 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 of Denton.

**59. 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.

**60. 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".

**61. RIGHT TO INFORMATION:** The City of Denton 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 or rejection of the submittal does not affect this right.

**62. 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 respondent.

**63. 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](http://www.wdol.gov) for Denton County, Texas (WD-2509).

**64. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The Contractor or supplier 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.

**65. 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 coverage and standard Workers' Compensation insurance coverage. Contractor shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton 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 of Denton and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

**66. 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.

**67. 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.

**68. 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 of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

**69. FORCE MAJEURE:** The City of Denton, 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 of Denton. 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 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.

**70. 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.

**71. 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 Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

**72. 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 Contact; (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.

73. **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.

74. **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/filinginfo/1295/](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](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: Contract 1234 – 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. GARAGE LIABILITY**

Garage Liability Insurance including, but not limited to, Premises/Operations, Automobile, 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 other than Auto-each

accident, \$2,000,000 Other than Auto-aggregate, \$1,000,000 Auto-each accident.

The policy shall include:

- a) Garage Keepers on a direct primary basis to include coverage for Comprehensive and Collision for a limit equal to the Actual Cash Value of the CITY'S vehicle(s) in the CONTRACTOR'S care, custody, or control.

**B. 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.

**C. 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.

**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.

**Bid Lines**

**Exhibit F**

<b>1</b>	Shop Labor Quantity: <u>200</u> UOM: <u>Per hour</u> Price: <input type="text" value="\$190.00"/> Total: <input type="text" value="\$38,000.00"/> Item Notes: Hours (Mon.-Fri., 6am-4:30pm)
<b>2</b>	Field Labor Quantity: <u>300</u> UOM: <u>Per hour</u> Price: <input type="text" value="\$210.00"/> Total: <input type="text" value="\$63,000.00"/>
<b>3</b>	After hours Labor Rates Quantity: <u>100</u> UOM: <u>Per hour</u> Price: <input type="text" value="\$270.00"/> Total: <input type="text" value="\$27,000.00"/> Item Notes: (Weekdays after 4:30pm, weekends and holidays)
<b>4</b>	Parts <i>(Line excluded from response total)</i> Total: <input type="text" value="0%"/> Item Notes: Please specify % discount or % markup
<b>5</b>	<b>Additional Fees</b> <i>(Line excluded from response total)</i> Item Notes: Please define % discount or % markup
<b>6</b>	Shop supplies <i>(Line excluded from response total)</i> Total: <input type="text" value="8%"/> Supplier Notes: <input type="text" value="8% of labor"/>
<b>7</b>	OEM options <i>(Line excluded from response total)</i> Total: <input type="text" value="0%"/>
<b>8</b>	Non-OEM options <i>(Line excluded from response total)</i> Total: <input type="text" value="0%"/>
<b>9</b>	Environmental fee Quantity: <u>50</u> UOM: <u>EA</u> Price: <input type="text" value="\$0.00"/> Total: <input type="text" value="\$0.00"/> Supplier Notes: <input type="text" value="Included in shop supplies"/>
<b>10</b>	Diagnosis fee Quantity: <u>40</u> UOM: <u>Per hour</u> Price: <input type="text" value="\$190.00"/> Total: <input type="text" value="\$7,600.00"/>
<b>11</b>	Mileage Quantity: <u>1</u> UOM: <u>Per Mile</u> Price: <input type="text" value="\$4.50"/> Total: <input type="text" value="\$4.50"/>
<b>12</b>	Trip Fee Quantity: <u>1</u> UOM: <u>EA</u> Price: <input type="text" value="\$100.00"/> Total: <input type="text" value="\$100.00"/>

<b>1</b> <b>3</b>	<b>Equipment Costs</b> <i>(Line excluded from response total)</i>  Item Notes: Please define % discount or % markup
----------------------	--

<b>1</b> <b>4</b>	<b>Track Asphalt Pavers</b> <i>(Line excluded from response total)</i>  Total: <input type="text" value="5%"/>
Supplier Notes: <input type="text" value="5% discount"/>	

<b>1</b> <b>5</b>	<b>Pneumatic Compactors</b> <i>(Line excluded from response total)</i>  Total: <input type="text" value="25%"/>
Supplier Notes: <input type="text" value="25% discount"/>	

<b>1</b> <b>6</b>	<b>Sweepers/Broom Equipment</b> <i>(Line excluded from response total)</i>  Total: <input type="text" value="5%"/>
Supplier Notes: <input type="text" value="5% discount"/>	

<b>1</b> <b>7</b>	<b>Smooth Drum Compactors</b> <i>(Line excluded from response total)</i>  Total: <input type="text" value="25%"/>
Supplier Notes: <input type="text" value="25% discount"/>	

<b>1</b> <b>8</b>	<b>Track Curb &amp; Gutter Machines</b> <i>(Line excluded from response total)</i>  Total: <input type="text" value="0%"/>
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<b>1</b> <b>9</b>	<b>All other road construction equipment</b> <i>(Line excluded from response total)</i>  Total: <input type="text" value="0%"/>
Supplier Notes: <input type="text" value="Machine specific discounts apply"/>	

<b>20</b>	<b>Equipment Rentals</b> <i>(Line excluded from response total)</i>  Total: <input type="text" value="1%"/>
Supplier Notes: <input type="text" value="discount- Rentals only when Machines need repairs"/>	

**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.**

CLOSNER EQUIPMENT CO., 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

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** Signed by:



3/2/2026

Signature of Vendor doing business with the governmental entity

Date

48C7BD94E7AF48E

## **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/hm/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 3<sup>rd</sup> 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: 890E08CA-8D4C-491A-96A3-E289801DE2EC

Status: Sent

Subject: Please DocuSign: City Council Contract 8987 - Heavy Duty Road Construction equipment

Source Envelope:

Document Pages: 36

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Kayla Clark

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

kayla.clark@cityofdenton.com

IP Address: 198.49.140.10

## Record Tracking

Status: Original

Holder: Kayla Clark

Location: DocuSign

2/27/2026 6:03:09 AM

kayla.clark@cityofdenton.com

## Signer Events

## Signature

## Timestamp

Kayla Clark

**Completed**

Sent: 2/27/2026 6:04:20 AM

kayla.clark@cityofdenton.com

Viewed: 2/27/2026 6:04:30 AM

Buyer

Signed: 2/27/2026 6:05:03 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

Initial

Sent: 2/27/2026 6:05:05 AM

lori.hewell@cityofdenton.com

Viewed: 2/27/2026 8:47:34 AM

Purchasing Manager

Signed: 2/27/2026 8:48:22 AM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.104

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Leah Bush

Signed by:  
  
3A6254145BDA469...

Sent: 2/27/2026 8:48:25 AM

leah.bush@cityofdenton.com

Viewed: 2/27/2026 2:37:35 PM

Assistant City Attorney

Signed: 2/27/2026 2:40:21 PM

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 63.196.246.33

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Collin Nunnelee

Signed by:  
  
48C7BD94E7AF48E...

Sent: 2/27/2026 2:40:25 PM

collin.n@CLOSNER.COM

Viewed: 3/2/2026 2:17:10 PM

North Texas Sales Manager

Signed: 3/2/2026 2:22:45 PM

Security Level: Email, Account Authentication (None)

Signature Adoption: Drawn on Device

Using IP Address: 2a02:26f7:d15e:fff0:e000::26

Signed using mobile

### Electronic Record and Signature Disclosure:

Accepted: 3/2/2026 2:17:10 PM

ID: 476d72f4-f5cd-4254-bf5f-c4d10383319b

**Signer Events**

Tom Gramer  
Tom.Gramer@cityofdenton.com  
Director  
Security Level: Email, Account Authentication (None)

**Signature**

DocuSigned by:  
*Tom Gramer*  
7B58DA8FCE5F49C...  
Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.140.10

**Timestamp**

Sent: 3/2/2026 2:22:49 PM  
Viewed: 3/2/2026 2:32:11 PM  
Signed: 3/2/2026 2:32:28 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: 3/2/2026 2:32:32 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

Ingrid Rex  
Ingrid.Rex@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)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**COPIED**

Sent: 2/27/2026 6:05:05 AM

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citysecretary@cityofdenton.com

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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](mailto:purchasing@cityofdenton.com)

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

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

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

**Required hardware and software**

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

\*\* 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.

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

**CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES**  
**March 9, 2026**

After determining that a quorum was present of the Public Utilities Board of the City of Denton, convened in a Regular Meeting on Monday, March 9, 2026, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Chair Devin Taylor, Lee Riback, Aaron Newquist, Robert Rayner, Thomas Plock

Also present: General Manager Antonio Puente, Jr. and First Assistant City Attorney Marcella Lunn

Absent: Billy Cheek, Susan Parker

**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-C.

**Board Member Plock moved to recommend adoption of agenda items 2 A-C. Motion seconded by Board Member Riback; motion carried.**

**YES (5): Chair Devin Taylor, Lee Riback, Aaron Newquist, Robert Rayner, Thomas Plock**  
**NO (0):**

- A. PUB26-023** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Freese and Nichols, Inc., for the Lake Lewisville Water Treatment Plant Ozone Building Air Conditioning Installation Support for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8213-016 - Professional Services Agreement for support services awarded to Freese and Nichols, Inc., in the not-to-exceed amount of \$114,984.00).
- B. PUB26-024** 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 4X Construction Group, LLC, for the Cell 6 Construction Project at the Landfill for the Solid Waste and Recycling Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8907 - awarded to 4X Construction Group, LLC, in the not-to-exceed amount of \$4,872,755.00).
- C. PUB26-025** Consider recommending adoption of an ordinance of the City of Denton amending Chapter 26 of the Code of Ordinances to update section 26-23(4) amending utility billing adjustment period provisions; and providing a severability clause; providing a savings clause; providing for codification; and an effective date.

### **3. ITEMS FOR INDIVIDUAL CONSIDERATION**

**A. PUB26-027** Consider approval of the February 23, 2026 minutes.

**Board Member Riback moved to recommend adoption of agenda items 3 A. Motion seconded by Board Member Plock; motion carried.**

**YES (5): Chair Devin Taylor, Lee Riback, Aaron Newquist, Robert Rayner, Thomas Plock  
NO (0):**

**B. PUB26-026** Consider recommending adoption of an ordinance of the City of Denton, Texas, establishing the schedule of rates for Electric Service; providing for a repealer; providing for a severability clause; and providing for an effective date.

Melissa Cuevas gave a presentation and answered question from the Board members. Tony Puente answered questions from the Board members.

**Board Member Newquist moved to recommend adoption of agenda item 2 A. Motion seconded by Board Member Riback; motion carried.**

**YES (5): Chair Devin Taylor, Lee Riback, Aaron Newquist, Robert Rayner, Thomas Plock  
NO (0):**

**C. PUB26-028** Management Reports

1. PCWRP Project 4 Memo
2. Future Agenda Items
3. New Business Action Items

### **WORK SESSION**

**A. PUB26-029** Receive a report, hold a discussion, and give staff direction regarding online card processing and cost recovery options.

Matt Hamilton gave a presentation and answered questions from Board members. Board members favored the Service fee of 1.55% for all card members both commercial and residential.

**Board Member Taylor moved to recommend adoption of agenda item 2 A. Motion seconded by Board Member Rayner; motion carried.**

**YES (5): Chair Devin Taylor, Lee Riback, Aaron Newquist, Robert Rayner, Thomas Plock  
NO (0):**

### **CLOSED SESSION**

**A. PUB26-032** 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. This agenda item is related to Individual Consideration Agenda item ID PUB26-026 and will be a placeholder if Public Utilities Board members have questions requiring confidential discussion as allowed by law.

#### **4. CONCLUDING ITEMS**

With no further business, the meeting was adjourned at 9:44 AM.

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**DEVIN TAYLOR**  
**CHAIR**  
**CITY OF DENTON, TEXAS**

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**CASSIE BLACKBURN**  
**ADMINISTRATION MANAGER**  
**CITY OF DENTON, TEXAS**

Minutes approved on: 3/23/26



# City of Denton

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

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Christine Taylor  
**DATE:** March 23, 2026

### 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 Accelleron US Inc., for turbo replacement, parts, and service for the Denton Energy Center; providing for the expenditure of funds therefor; and providing an effective date (RFP 8816 – awarded to Accelleron US Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$9,520,000.00).

### STRATEGIC ALIGNMENT

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

### INFORMATION/BACKGROUND

To maintain high availability and reliability of the Denton Energy Center (DEC) generating units, all 12 units, equipped with a total of 24 turbochargers, require routine scheduled maintenance and timely repairs to minimize unplanned downtime and ensure continued operational readiness.

These maintenance activities involve the inspection, servicing, and replacement of critical components that experience normal or premature wear. Work is performed as preventive, predictive, or corrective maintenance. Preventive and predictive maintenance is scheduled based on operating hours or calendar intervals. Corrective maintenance addresses unexpected component failures that often result in forced outages. Completing both planned and unplanned maintenance is essential to sustaining unit reliability and performance.

Estimated costs for parts on each turbo for each unit, along with overhaul and service cost are as follows. There are a total of 24 turbos installed on 12 units. A completely new turbocharger is \$400,000. DEC is expecting to purchase 10 over the term of the contract, totaling \$4,000,000. The estimated overhaul and repair cost is \$125,000, and expecting all 24 turbos to be overhauled during the term of the contract, totaling \$3,000,000. Critical components, parts, and services for normal maintenance and hour-based intervals average a cost of \$105,000 on all units, totaling \$2,520,000. Total cost estimate of \$9,520,000.

Description	Cost
Turbo Charger Purchase	\$4,000,000.00
Overhaul and Repair	3,000,000.00
Maintenance/Parts	2,520,000.00
<b>Total</b>	<b>\$9,520,000.00</b>

Request for Proposals was sent to 41 prospective suppliers. 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, references were checked, and proposals were evaluated based upon published criteria, including price, schedule, compliance with specifications, and probable performance. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Accelleron US Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	120 - Boats, Motors, and Marine Equipment
Notifications sent for Solicitation sent in IonWave:	41
Number of Suppliers that viewed Solicitation in IonWave:	11
HUB-Historically Underutilized Business Invitations sent out:	5
SBE-Small Business Enterprise Invitations sent out:	21
Responses from Solicitation:	2

### **RECOMMENDATION**

Award a contract with Accelleron US Inc., for turbo replacement, parts, and service for the Denton Energy Center, in a one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$9,520,000.

### **PRINCIPAL PLACE OF BUSINESS**

Accelleron US Inc.  
Miramar, FL

### **ESTIMATED SCHEDULE OF PROJECT**

This is an initial one (1) year contract with options to extend the contract for four (4) additional one (1) year periods, with all terms and conditions remaining the same. Delivery of the items will occur within 30 days after receipt of the order.

### **FISCAL INFORMATION**

A total of \$2,500,000 to project will be funded from revenue account 605331497, and the remaining in 10-year bonds. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$9,520,000.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Pricing Evaluation  
Exhibit 3: Presentation  
Exhibit 4: Ordinance and Contract

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

For information concerning this acquisition, contact: Arthur Pando, 940-349-8653.

Legal point of contact: Leah Bush at 940-349-8333.

**Exhibit 2**

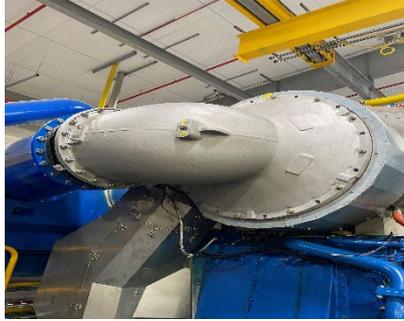
**RFP 8816 - Pricing Evaluation for DEC Turbo Replacement, Parts, and Service**

Respondent's Business Name: **Accelleron US Inc.** Motor-Services Hugo  
 Principal Place of Business (City and State): **dba ABB Inc** Stamp, Inc.  
**Deer Park, TX** Fort Lauderdale, FL

Line #	Description	UOM	Unit	Unit
1	TURBOCHARGER COMPLETE A175	EA	\$420,463.71	\$420,463.71-no bid
2	SPEED PICKUP	EA	\$4,205.40	\$5,918.17
3	NOZZLE RING ASSEMBLY A175	EA	\$36,917.18	\$52,799.01
4	TURBINE DIFFUSER A175	EA	\$11,884.45	\$16,724.77
5	DIFFUSER A175	EA	\$27,968.03	\$39,358.90
6	SPARE PART SET A175	EA	\$12,685.18	\$12,685.18-no bid
7	SPARE PART SET A175	EA	\$24,102.37	\$24,102.37-no bid
8	SPARE PART SET A175	EA	\$3,171.56	\$3,171.56-no bid
9	SPARE PART SET A175	EA	\$634.52	\$634.52-no bid
10	TURBOCHARGER A175 INSPECTION	EA	\$17,533.00	\$4,340.00-labor only
11	TURBOCHARGER A175 OVERHAUL	EA	\$500,000.00	\$4,340.00-labor only
12	FIELD SERVICE, LABOR, TRAVEL AND ACCOMMODATION	HR	\$11,504.00	\$44,205.00-labor only
13	PERFORM 16,000 HR TURBOCHARGER MAINTENANCE INTERVAL	HR	\$7,286.40	\$4,340.00-labor only
		<b>Total:</b>	<b>\$1,078,355.80</b>	\$633,083.19

<b>Evaluation</b>				
Item #	Standard Criteria	Accelleron US Inc.	Motor-Services Hugo	
		<b>dba ABB Inc</b>	Stamp, Inc.	
1	Delivery/Project Schedule - 30%	24.00	18.00	
2	Compliance with Specifications - 30%	24.00	18.00	
3	Probable Performance - 20%	16.00	10.67	
4	Price, Total Cost of Ownership - 20%	11.74	20.00	
		<b>Total Score:</b>	<b>75.74</b>	66.67

# 8816 - Denton Energy Center Turbo Replacement, Parts, Services



**Public Utilities Board Presentation**

**PUB26-033**

**Arthur Pando (Plant Manager) – Denton Municipal Electric**

**March 23, 2026**



# Background

- ▶ Denton Energy Center (DEC) has 12 engines with 2 turbos on each engine, totaling 24 turbochargers installed across the units. To maintain high generating unit availability and reliability, the turbos require regular scheduled inspections and maintenance to reduce unplanned unit downtime.
- ▶ Peak shaving operation poses specific challenges for turbochargers, especially for the rotating equipment and the components on the exhaust gas side. Despite the state-of-the-art development and high-grade materials, the components suffer from thermomechanical fatigue, which significantly accelerates the crack initiation and wear and tear of turbine side components. These damages are impacting the lifetime of the components and are due for replacement early.
- ▶ The new challenging part of the peak shaving operation for the turbocharger is primarily the number of starts and stops of the engine rather than the operating hours. Consequently, service work recommendations as well as the expected replacement intervals specified in the turbocharger operation manual now include engine start cycles alongside operating hours. Whatever comes first is applicable.

# Inspections

## ▶ Operating Hours & Start Cycles

- ▶ Hour based maintenance and inspection is performed at 16,000 engine hours or 2,500 start cycles.
  - \* Whichever is earlier.
- ▶ Current engine hours at 13,500 and starts at 3,500-4,000.
  
- ▶ Manufacturer of turbos released a bulletin in February of 2025 revising the maintenance schedule to include cycles/starts every 2,500. Inspections and repairs are now recommended to be performed as early as possible.

## ▶ Maintenance Tasks

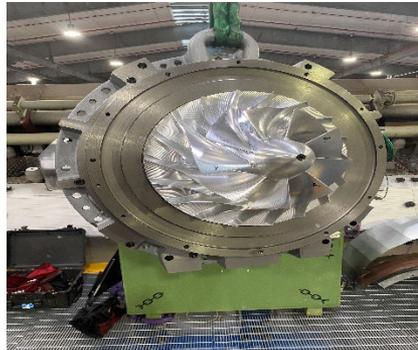
- ▶ Dismantle turbo charger.
- ▶ Clearance measurements.
- ▶ Clean casings and inspect for damage.
- ▶ Clean bearing casings and clear oil ports.
- ▶ Clean nozzle ring and inspect for damage.
- ▶ Check and assess rotor bearing parts.
- ▶ Balancing.



# Turbo R&R

## ▶ Repair & Replacement of Turbos.

- ▶ Average cost of turbo found with damage but repairable- (\$125,000) .
  - ▶ 24 turbos expected to be overhauled during term of contract totaling (\$3,000,000).
- ▶ Complete turbo replacement average cost- (\$400,000).
  - ▶ Expecting to purchase 10 new turbos through term of contract totaling (\$4,000,000).



March 23, 2026

PUB26-033

# Parts & Services

- ▶ Original design manufacturer (ODM) recommends checking operation profile of engine to verify, if the specified number of operating hours or the number of engine start cycles is reached earlier to ensure the recommended service work is carried out at the right time. This will ensure an assessment and overhauling of the turbocharger and its parts based on the results in a high performance, efficient and reliable operation of the product.
- ▶ **Turbo Charger Overhauls**
  - ▶ Performed at ODM authorized workshop.
- ▶ **Field Services**
  - ▶ Performed on site by ODM.
  - ▶ Labor, Travel and Accommodations accounted for.
- ▶ **Turbo Parts**
  - ▶ Components and spare parts for normal maintenance intervals, inventory stock and maintenance repairs planned and unplanned is an estimated cost of (\$105,000.00) per unit for a 5 year span on 24 turbos totaling (\$2,520,000.00).



# Expenditure Summary

- ▶ Manufacturer and authorized repairs.
- ▶ Restocking critical component inventory for future maintenance needs.
- ▶ Restocking critical components for unplanned maintenance.
- ▶ 24 turbos installed on 12 units. A complete new turbo charger is (\$400,000) expecting to purchase 10 through term of contract totaling (\$4,000,000).
- ▶ Estimated overhaul and repair cost is (\$125,000) and expecting all 24 turbos to be overhauled during term of contract totaling (\$3,000,000).
- ▶ Critical components, parts, and services for normal maintenance and hour based intervals averages a cost of (\$105,000) for all turbos totaling (\$2,520,000).
- ▶ Total cost estimated of (\$9,520,000.00).
  - ▶ \$2.5M funded from revenue (605331497).
  - ▶ Remaining will be in 10-year bonds.



# Recommendation

- ▶ Staff recommendation for City Council to approve 5-year contract award to Accelleron US Inc. for turbo chargers at the Denton Energy Center.



# Questions:



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ACCELLERON US INC., FOR TURBO REPLACEMENT, PARTS, AND SERVICE FOR THE DENTON ENERGY CENTER; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8816 – AWARDED TO ACCELLERON US INC., FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$9,520,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for turbo replacement, parts, and service for the Denton Energy Center; 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</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8816	Accelleron US Inc.	\$9,520,000.00

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 [ \_\_\_ - \_\_\_ ]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2026.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
INGRID REX, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush



## DocuSign City Council Transmittal Coversheet

RFP	8816
File Name	DEC TURBO REPLACEMENT, PARTS AND SERVICE
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND ACCELLERON US INC.  
(CONTRACT 8816)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between **ACCELLERON US INC.**, a Delaware corporation, whose address is 1109 Howard Ave., Deer Park, TX 77536 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 document RFP 8816 – DEC Turbo Replacement, Parts and Service, 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 and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's RFP 8816 (**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 Turbo SmartCare Agreement and Proposal (**Exhibit "F"**);
- (g) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "G"**);

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 agreement, 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 agreement.*** 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 2274 of the Texas Government Code, City is  
Contract # 8816

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.

#### **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.

#### **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.

#### **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.

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 agreement in the year and day first above written.

Contract # 8816

**CONTRACTOR**  
Signed by: Burak Hayfavi  
3C80CE8625A64DD...  
AUTHORIZED SIGNATURE

DS Initial  
H TD

**CITY OF DENTON, TEXAS**

BY: SARA HENSLEY, CITY MANAGER

Printed Name: Burak Hayfavi

Title: Sales Director  
754-260-4205

ATTEST:  
INGRID REX, CITY SECRETARY

PHONE NUMBER  
sirri-burak.hayfavi@accelleron-industries.com

BY: \_\_\_\_\_

EMAIL ADDRESS  
2026- 1295

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

Signed by: Leah Bush  
2A936B08B5D7485

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

Signed by: Antonio Puente, Jr.  
E3760944C2BF4B5...  
SIGNATURE      PRINTED NAME

DME General Manager  
TITLE  
Electric  
DEPARTMENT

## **Exhibit A Special Terms and Conditions**

### **1. Total Contract Amount**

The contract total for services shall not exceed \$9,520,000. Pricing shall be per Exhibit F attached.

### **2. The Quantities**

The quantities indicated on Exhibit F are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

### **3. Contract Terms**

Subject to Clause 28, the contract term will be one (1) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional four (4) one-year periods

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council, up to a total of four (4) additional yearly extensions. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

### **4. Price Adjustment**

The Turbo SmartCare Fee shall be adjusted in accordance with Clause 6 of Exhibit F (Contractor's Turbo SmartCare Agreement).

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

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

### **5. Performance Liquidated Damages**

The Contractor shall incur contractual payment losses, as initiated by the City for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times: liquidated damages for delay.

The Contractor shall be charged a one (1%) percent fee of the Order affected by the delay each month when any one of the performance standards outlined above are not met in full. Under any circumstance the liquidated damages for delay shall exceed five (5%) percent of the affected Order fee. At the end of each month, the City will review the monthly reports and determine the application of the liquidated damages to be assessed to the Contractor's monthly profit margin. If

the maximum cap of delay liquidated damages is reached, the City may terminate the affected Order. Payment of liquidated damages for delay and termination if the maximum agreed cap is reached are the two only and exclusive remedies of the City for any and all Contractor's delay.

**Exhibit B**

**City of Denton's RFP 8816 (on File at the Office of the Purchasing Agent)**

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## Exhibit C **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 the Seller or respondent herein after referred to as Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the seller'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, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 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, this Contract shall be effective as of the date the 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 Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and 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 City shall bear cost of packaging (i.e. crating). 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.

5. **TITLE & RISK OF LOSS:** Title to the deliverables shall pass to the City only when the City actually receives and accepts the deliverables. Risk of loss of the deliverables shall pass to the City upon delivery under the Incoterms® 2020 applicable as per clause 6 below.

## **6. DELIVERY TERMS AND TRANSPORTATION CHARGES:**

Unless otherwise agreed in written, deliveries of:

- a. spare-parts shall be subject to CIP (closest international airport to destination) Incoterms® 2020 for all deliveries from the central spare part warehouse in Baden, Switzerland or FCA (Contractor premises Switzerland) Incoterms® 2020 for all deliveries from a local warehouse of a local Contractor service station, at Contractor's choice.
- b. turbochargers shall be subject to EXW (Contractor's designated place) Incoterms® 2020.

Unless otherwise agreed in written, all prices shall be deemed to be net, subject to the Incoterms® 2020 described above, excluding packing, in freely available Swiss francs without any deductions whatsoever.

Customs clearance shall be carried out by the City or, at the City's request and Accelleron acceptance, by Accelleron on the City's behalf. Where Accelleron carries out customs clearance, the City shall reimburse Accelleron for all costs and expenses incurred by Accelleron in connection with such customs clearance. The Contract Price excludes all costs arising after delivery at the closest international airport to the destination (in the case of CIF or FCA deliveries) or after collection at the Contractor's designated premises in Switzerland (in the case of EXW deliveries). From that point onward, all such costs shall be borne by the City. These include, without limitation, customs duties, broker or agent fees, export fees, import taxes, tariffs, local freight, insurance, transit costs, and any permit or certification fees, as well as all related administrative costs which are levied out of or in connection with the Contract or its fulfilment. If the Contractor or its representatives incur any such costs, the City shall reimburse them upon submission of appropriate supporting documents.

The CHF prices shall be converted into USD using the using the Federal Reserve Board's official noon buying rate for cable transfers in New York City on the date of issuance of the relevant invoice. If no such rate is published on that date, the rate published on the most recent preceding business day shall apply. The applicable exchange rate and date shall be stated on each invoice.

**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. Notwithstanding the foregoing, if the City does not provide written notice of rejection within thirty (30) days of delivery, then the deliverables will be deemed accepted. 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.

**9. PLACE AND CONDITION OF WORK:** 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 Contract # 8816

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. 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**

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 while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or 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, on the job.

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 on the job, 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.

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** 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 in duplicate 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, the purchase order or delivery 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 Vendor'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. As the City is exempt from Federal excise taxes, State taxes, or City sales taxes, these 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. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

**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, 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 the shipment or delivery.

D. Intentionally Omitted

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or 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 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 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 nor removal fees 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 terms. 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 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 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 City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract, subject to the confidentiality provisions in this Agreement. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and 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 available, within ten (10) business days of 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 a 50 mile radius of the City of Denton. 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. 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 in a DBE/MBE/WBE agreed to 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, 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 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 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 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.

**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 AND SERVICES:** Supplier warrants the deliverables of its own manufacture included in this sale shall be delivered free of defects in material and workmanship under normal use and service as follows: The Warranty Remedy Period for complete turbochargers to be used as a component of new equipment shall end twelve (12) months after the date of initial startup or eighteen (18) months after the date the complete turbocharger is ready for shipment from the plant of manufacturer, whichever first occurs. The Warranty Remedy Period for replacement parts and/or replacement of complete turbochargers, in each case, shall be twelve (12) months from the date of shipment from Supplier's plant to City, provided that this Agreement has not expired and has not been terminated prior to the end of such twelve (12) month period; otherwise, the Warranty Remedy Period shall be six (6) months from the date of shipment from Supplier's plant to City. Supplier warrants Services against defects in workmanship for a period of twelve (12) months from the date of completion of such Services, provided that this Agreement has not expired and has not been terminated prior to the end of such twelve (12) month period; otherwise, the warranty period for Services shall be six (6) months from the date of completion of such Services. Supplier's warranty is conditioned upon City giving Supplier immediate written notice upon discovery of any such defect. Defective Equipment must be held for Supplier's inspection and, if requested by Supplier, returned to the original delivery point, transportation prepaid by City. Supplier's obligation under this warranty is limited to, at its option, replacing or repairing the defective part or parts, and without charge to City, delivering any such replacement or repaired part to the original delivery point. City shall provide free and clear access to the Equipment without cost to Supplier. In the case of nonconforming Service, Supplier shall, at its discretion, provide equivalent Services at the job site or refund the price therefor. The original Warranty Period shall not otherwise be extended.

This warranty does not apply to any Equipment which exceeds the original equipment manufacturer's recommended useful life or if after delivery is subjected to abuse, accident, alteration or repair by anyone other than engineers authorized by Supplier, improper storage, misuse in its application, improper maintenance or failure to observe operating instructions or, if upon discovering a defect, City does not immediately take appropriate steps (such as discontinuing use of the Equipment) to prevent the defect from being aggravated or resulting in damage to other parts. Supplier reserves the right to check and investigate any claim made by City that a defect in Equipment exists before taking any steps to correct such defect.

THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM COURSE OF DEALING, USAGE OR TRADE ARE HEREBY DISCLAIMED BY SUPPLIER.

**22. WARRANTY – SERVICES:** [NOT USED]

**23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:**  
[NOT USED]

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 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:** 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.

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 ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, initiates and pursues with due diligence to cure 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 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 any Offer submitted by the Contractor may be disqualified for up to three (3) years. Except as otherwise provided in this Contract, all rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

28. **MINIMUM TERM FOR INITIAL 24 TURBOCHARGER BASELINE SERVICE.** Notwithstanding clause 3, any non-renewal or expiry shall not take effect until Accelleron has completed the first Scheduled Service for each of the twenty-four (24) turbochargers listed in the Installation List, including removal (as applicable) and inspection sufficient to complete Accelleron's initial condition assessment and issue the related service report.

29. **FRAUD:** Fraudulent statements by the Contractor on any Offer 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 49. 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, epidemics, pandemics, mobilization, war, civil war, acts of terrorism, political unrest, revolutions, serious breakdown in the works, accidents, late or deficient delivery by subcontractors of raw materials, semi-finished or finished products, the need to scrap important work pieces, actions or omissions by any authorities or state or supranational bodies, embargoes, unforeseeable transport problems, explosion, natural catastrophes 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. INDEMNITY:

#### A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, or causes of action, for 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 tangible 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 or disease, worker's compensation (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 mean 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 TO THE EXTENT 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.**

32. **INSURANCE:** The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Exhibit E** for services only. The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas

and satisfactory to the City of Denton.

A. General Requirements:

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:  
City of Denton  
Materials Management Department  
901B Texas Street  
Denton, Texas 76209
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage's indicated within the Contract.

xiv. The insurance coverage's specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

33. **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 the Contractor becomes aware of it. Failure to provide notice within such period shall not bar the claim or constitute a waiver, but the City shall be entitled to recover damages, if any, that are directly caused by the delay in notice. 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.

34. **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 address specified in the Contractor's Offer, 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.

35. **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.

36. **NO WARRANTY BY CITY 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 registered US patent, trademark, or copyright, nor misappropriate any 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. 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 misappropriates 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.

With respect to any claim of patent infringement, Supplier agrees to defend or settle at its own expense any suit or proceeding brought against City based on a claim that the deliverables furnished under this contract constitute an infringement of any United States patent, provided that Supplier is notified promptly of such suit, copies of all suit papers are made available to Supplier; City grants Supplier sole control of the defense and settlement of the claim; and City provides Supplier all reasonable cooperation and makes no admission of liability except as approved in advance by Supplier. Supplier shall have no obligation and shall not be responsible for (i.) any settlement of such suit made without its written consent; (ii.) any other equipment or process, including deliverables, which have been modified or combined with other equipment not supplied by Supplier; (iii.) any deliverable supplied according to a design, other than Supplier's design, required by City; or (iv.) any patent issued after the date hereof. If any deliverables are held to constitute an infringement or use thereof is otherwise enjoined, Supplier shall, at its option and expense, procure for City the right to continue using said deliverables; or modify or replace it with non-infringing equipment, or remove it and refund the portion of the price allocable to the infringing deliverables. THE PROVISIONS OF THIS ARTICLE 36 STATE SUPPLIER'S AND ITS SUPPLIERS ENTIRE LIABILITY FOR PATENT INFRINGEMENT.

37. **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) which is provided in writing and marked as "Confidential" or "Proprietary" (collectively, "Confidential Information"). However, Confidential Information shall not include information which can be clearly demonstrated to be:

- (a) generally known or available to the public at the time of disclosure, or thereafter becomes part of the public domain through no act or omission on the part of the receiving party;
- (b) is received by the receiving party from a third party who, to the extent that the receiving party's reasonable inquiry disclosed, was not under obligation of confidentiality to the disclosing party;
- (c) already known by the receiving party at the time of disclosure under this Agreement

as can be established by its written documentation; or

- (d) independently developed by the receiving party as can be established by its written documentation.

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 Agreement, 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.

**38. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the tangible deliverables (Turbochargers and parts). The Contractor shall retain ownership and all right, title, and interest in and to all intellectual property embodied in, incorporated into, or used to design, manufacture, or supply such deliverables.

**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 required by law.

**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 of Denton 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:** 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 Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

**44. 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 of Denton, Texas 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 of Denton, Texas, or their designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

**45. ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and ensure 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 Vendor shall notify the City's Purchasing Manager, in writing, of a company name, 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.

**46. 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.

**47. 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 shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**48. 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. 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.

**49. 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. 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.

**50. 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.

51. **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.

52. **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                   |
| Veterans Day                |
| Thanksgiving                |
| 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 City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or their authorized designee.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations or protections on the parties, including but not limited to the warranty, indemnity, limitation of liability, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton 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 Vendor 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 of Denton.

55. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any Contract # 8816

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 RFQ.

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

**56. 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 Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

**57. RIGHT TO INFORMATION:** The City of Denton 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 or rejection of the submittal does not affect this right.

**58. 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. For clarity, the Contractor is not responsible for any import duties, customs broker fees, international freight or insurance charges, or taxes related to importation, transit, or delivery under this Contract.

Contract # 8816

**59. 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](http://www.wdol.gov) for Denton County, Texas (WD-2509).

**60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier 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. The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

**61. FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Contractor shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton 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 of Denton and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

**62. 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.

**63. 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 negligence of the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any negligent performance pursuant to the Contract. The Contractor shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

**64. FORCE MAJEURE:** The City of Denton, 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 of Denton and as defined in clause 30.B. 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 of Contract # 8816

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.

**65. 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.

**66. 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 Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

**67. 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.

**68. Limit of Liability.** In no event shall Supplier or its suppliers be liable for loss of profits or revenues, loss of use of the deliverables, loss of production, loss of orders, recall costs, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers or other third parties for such or other damages or any other special, indirect, incidental or consequential damages, of any kind or nature, whether in contract, warranty, tort, indemnity, negligence, strict liability or otherwise. The aggregate liability of Supplier for all claims whether in contract, warranty, negligence, tort, indemnity, strict liability, or otherwise for any loss or damage arising out of or related to this Agreement shall in no event exceed 100% of the amounts paid by the City for the Services in respect of the relevant Turbocharger covered by the Agreement in the course of which the liability claims have arisen, and a total of 50% of cumulated total amounts paid by the City under or in connection with the Agreement (as applicable) in the calendar year in which the liability claims have arisen.

**69. Entire Agreement.** This Agreement and any attachments constitute the entire understanding between the parties and supersedes all previous understandings, agreements, communications and representations, whether written or oral, with respect to the sale of the deliverables.

**Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.**

- 1. Final negotiated contract**
- 2. RFP/Bid documents**

- 3. City's standard terms and conditions**
- 4. Purchase order**
- 5. Supplier terms and conditions**

**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/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](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: Contract 1234 – 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

*Contractor'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** 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** 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. Business Automobile Liability Insurance** covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of \$500,000.00 per occurrence.

**NOTE:**

- a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

**D. 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.

# Turbo SmartCare Agreement

between **Accelleron US Inc.**  
1109 Howard Ave  
Deer Park, TX 77536

and **City of Denton**  
215 E McKinney St  
Denton, TX 76201

**CONTENTS**

COVER LETTER 5

1. Parties ..... 5

2. Objective and Scope ..... 5

3. Options ..... **Error! Bookmark not defined.**

4. Fees and Expenses ..... 5

5. Invoicing Currency ..... 6

6. Invoicing and Payment Terms ..... 6

7. Price Adjustment ..... 6

8. Commencement Date ..... 6

9. Term and Termination ..... 6

10. Parts of the Agreement ..... 7

APPENDIX 1 Definitions ..... 9

1. Particular Definitions ..... 9

2. Further Definitions ..... 10

3. Interpretation ..... 10

APPENDIX 2 Installation List ..... 11

APPENDIX 3 Running Hours Notification Template ..... 13

APPENDIX 4 Service Description ..... 14

1. Services of Accelleron ..... 14

2. Prerequisites for Turbo SmartCare Services ..... 14

3. Exchange Units ..... **Error! Bookmark not defined.**

4. Replacement of Turbochargers ..... 14

5. Removed Spare parts ..... 15

6. Installation List ..... 15

7. General Exclusions ..... 15

8. Original Spare Parts policy ..... 16

9. Shipping ..... 17

10. Collaboration under this Agreement ..... 17

11. Customer Obligations relating to the Services ..... 17

APPENDIX 5 Pricing and Invoicing ..... 19

1. Turbo SmartCare Fee ..... 19

2. Rates and Prices for Supplementary Services ..... 19

3. Handling and Packaging ..... 19

4. Expenses ..... 19

5.	Currency Conversion .....	19
6.	Tax, Customs, VAT .....	19
7.	Invoicing and Default .....	19
APPENDIX 6 Digital Services.....		21
1.	Definitions .....	21
2.	Services .....	21
3.	Prerequisites .....	21
4.	Exclusions .....	22
5.	Limitations.....	22
6.	Duration of Service Provision.....	23
7.	Non-Delivery of Turbocharger Data .....	23
8.	Usage of Turbocharger Data .....	23
APPENDIX 7 AccelleronGeneral Terms and Conditions for Maintenance Services .....		<b>Error! Bookmark not defined.</b>
1.	Definitions .....	24
2.	Subcontractors.....	<b>Error! Bookmark not defined.</b>
3.	Scheduling, delay .....	<b>Error! Bookmark not defined.</b>
4.	Free Issue Materials.....	<b>Error! Bookmark not defined.</b>
5.	Delivery terms, passing of Risk.....	<b>Error! Bookmark not defined.</b>
6.	Acceptance Tests .....	<b>Error! Bookmark not defined.</b>
7.	Retention of Title .....	<b>Error! Bookmark not defined.</b>
8.	Customer Obligations relating to the Services.....	<b>Error! Bookmark not defined.</b>
9.	Confidentiality .....	<b>Error! Bookmark not defined.</b>
10.	Technical Documents .....	<b>Error! Bookmark not defined.</b>
11.	Intellectual Property .....	<b>Error! Bookmark not defined.</b>
12.	Data Privacy and Data Collection.....	<b>Error! Bookmark not defined.</b>
13.	Warranty .....	<b>Error! Bookmark not defined.</b>
14.	Force Majeure.....	<b>Error! Bookmark not defined.</b>
15.	Limitation of Liability .....	<b>Error! Bookmark not defined.</b>
16.	Non-OEM Spare Parts Warranty and Liability Exclusions .....	<b>Error! Bookmark not defined.</b>
17.	Export Control and Restricted use.....	<b>Error! Bookmark not defined.</b>
18.	Extraordinary Termination.....	<b>Error! Bookmark not defined.</b>
19.	Change of Law.....	<b>Error! Bookmark not defined.</b>
20.	Various Provisions.....	<b>Error! Bookmark not defined.</b>
21.	Applicable Law and Dispute resolution .....	<b>Error! Bookmark not defined.</b>



**COVER LETTER**

**1. PARTIES**

Customer	
Company:	City of Denton
Address:	215 E McKinney St
Postal Code:	76201
City:	Denton
Country:	USA

Accelleron	
Company:	Accelleron US Inc.
Address:	1109 Howard Ave
Postal Code:	77536
City:	Deer Park
Country:	USA

Customer contact details	
Name:	Arthur Pando
E-Mail:	Arthur.Pando@cityofdenton.com
Desk phone number:	940-349-8653
Mobile phone number:	575-263-3845

Accelleron contact details	
Name:	Daniel De La Garza
E-Mail:	Daniel.delagarza@acceleron-industries.com
Desk phone number:	832-727-3088
Mobile phone number:	832-727-3088

**2. OBJECTIVE AND SCOPE**

- (a) Accelleron shall render the Turbo SmartCare Services as further specified in the Service Description ([Appendix 4](#)) for Turbochargers listed in the Installation List.
- (b) The Customer shall pay to Accelleron the Fees for the Services, as provided for by this Agreement.
- (c) Accelleron shall inform the Customer of any Scheduled Services at least 30 days prior to such Scheduled Services being due.

**3. FEES AND EXPENSES**

- (a) The Turbo SmartCare Fee is a recurring fee that is calculated based on Turbocharger-specific Fixed Rate as set out in the agreement
- (b) The Fixed Rate shall be the following:

Turbocharger Type	Fixed Rate per Service Event (covering field+workshop+travel) per turbocharger
A175-M	99,879 CHF

- (c) The Fixed Rate is subject to the Turbocharger Data being delivered by the Customer (see the Digital Services Appendix for details). Should the Customer not deliver the Turbocharger Data in accordance with this Agreement, then the Fixed Rate for the affected Turbocharger(s) will increase as contemplated by Clause 7 of the Digital Services Appendix.
- (d) The Fixed Rate include the following expenses and levies:

Expense/Tax/Levy/Duty type	Included
VAT	No
Other Taxes, stamp fees, customs duties	No
Cost for transportation / insurance / tariffs (closest international airport to Accelleron or to the site)	No

**4. INVOICING CURRENCY**

All Fees shall be invoiced in USD. If Fees are quoted in this Agreement in another currency, then the conversion shall occur as set out in Appendix 5. The following institute's publications shall be used for the conversion of currency as provided for by Clause 5 of Appendix 5 (tick the applicable box):

Bloomberg (<https://www.bloomberg.com/markets/currencies>)

**5. INVOICING AND PAYMENT TERMS**

- (a) The Turbo SmartCare Fee shall be invoiced per event per turbocharger basis (the "**Turbo Smart-Care Fee Invoicing Period**") in arrears.
- (b) The Customer shall pay Accelleron's invoices within 30 days from their receipt.

**6. PRICE ADJUSTMENT**

The Turbo SmartCare Fee shall be adjusted according to the average price adjustment of the GSP. The annual price increase shall not exceed 8%.

**7. COMMENCEMENT DATE**

The Turbo SmartCare Services will commence **upon agreement start unless** otherwise agreed upon by the Parties in writing. As per the Service News No. 02/2025 issued by Accelleron, the services should commence at the earliest convenience.

**8. TERM AND TERMINATION**

**8.1 Term**

This Agreement takes effect on the date it is signed by the Parties and is entered into for a fixed term ending on the earlier of (i) all Turbochargers listed in the Installation List having reached their respective End Running Hours (ii) all Turbochargers listed in the Installation list having reached their respective End Starts Stops and (iii) 11/01/2030. The period between the effective date of this Agreement and the date on which it terminates shall be referred to as the "**Agreement Term**".

**8.2 Reserved. Extraordinary termination**

**8.2.1. Termination for payment default**

Accelleron may, after having sent the Customer a final notice, terminate this entire Agreement if the Customer is in uncured payment default for more than 30 days.

**8.2.2. Termination for cause**

Either Party may terminate this Agreement with immediate effect by sending a notice in writing should the other Party be in material breach of Agreement and not remedy such breach (if curable) within reasonable time after having been first notified of the breach by the non-breaching Party in writing.

**9. PARTS OF THE AGREEMENT**

- (a) This Agreement consists of the following document, all of which form integral parts of this Agreement. In case of conflicts between the various documents forming part of this Agreement, the following hierarchy shall apply (documents set out higher in the following list shall prevail over documents set out lower):
  - (i) the Cover Letter;
  - (ii) Appendix 1;
  - (iii) Appendix 2;
  - (iv) Appendix 3;
  - (v) Appendix 4;
  - (vi) Appendix 5;
  - (vii) Appendix 6;
  - (viii) Appendix 7;
- (b) Lower ranking documents may however deviate from higher-ranking documents (and prevail over the higher-ranking documents) where:
  - (i) the higher-ranking document explicitly provides for deviations in lower-ranking documents (e.g. by stating that a provision shall apply "unless otherwise agreed" or similar); or
  - (ii) the lower-ranking document explicitly refers to the provision of the higher-ranking document which it aims to deviate from and explicitly states that it aims to deviate from such provision.
- (c) In case of conflict between terms set out in documents of the same hierarchy level, the terms set out in the document agreed upon later than the other document(s) shall prevail (application of the lex posterior rule). In particular, the newest Installation List executed by both Parties shall supersede all earlier versions of the Installation List.
- (d) All Supplementary Services shall be subject to the terms and conditions of this Agreement.
- (e) Any other terms and conditions of the Parties (other than the City Contract 8816 and exhibits attached thereto and such named in this Agreement) shall not be applicable even if explicitly named in an order or other communication between the Parties.

[Signatures on the following page]

**SIGNATURES**

**Accelleron US, Inc.**

_____	_____	_____
Date	Date	
_____	_____	_____
Name	Name	
_____	_____	_____
Title	Title	

\_\_\_\_\_  
Signature Signature

**City of Denton**

\_\_\_\_\_  
Date Date

\_\_\_\_\_  
Name Name

\_\_\_\_\_  
Title Title

\_\_\_\_\_  
Signature Signature

## APPENDIX 1

### Definitions

#### 1. PARTICULAR DEFINITIONS

In this Agreement, the following capitalized terms shall have the meanings set out next to them:

"**Accelleron**" has the meaning set out on the cover page.

"**Agreement**" means this Turbo SmartCare Agreement, including all Appendices thereto.

"**Agreement Term**" has the meaning assigned to such term in the Cover Letter.

"**Cover Letter**" means the section of this Agreement titled "Cover Letter".

"**Covered Running Hours/Start Stops**" means, for each Turbocharger listed in the Installation List, the Running Hours/Starts Stops between (i) the Running Hours/Start Stops at the effective date of this Agreement and (ii) the End Running Hours/Start Stops, it being understood that in any case.

"**Customer**" has the meaning set out on the cover page.

"**Digital Services Appendix**" means Appendix 7.

"**End Running Hours/Starts Stops**" means the Running Hours/Starts Stops up to which a Turbocharger listed in the Installation List is covered by the Turbo SmartCare Services, as set out in the Installation List for each specific Turbocharger.

"**Fees**" means the fees owed by the Customer under this Agreement.

"**General Terms and Conditions**" means the Accelleron's general terms and conditions for maintenance services set out in Appendix 8.

"**GSP**" means the global sales prices for Accelleron products issued on a price list by Accelleron Switzerland Ltd from time to time and available upon written request.

"**Fixed Rate**" means the fixed rate per service event named in the Cover Letter to be paid for each Service Events.

"**Installation List**" means Appendix 2.

"**Investigation Report**" means a report issued by Accelleron identified by the investigation report number, which sets out the reason for the investigation, the investigation carried out, a description of damages found, a root cause analysis, and conclusions and recommendations.

"**Party**" means a Party to this Agreement.

"**Quality Requirements**" means all components of a Turbocharger (i) having been manufactured by or under license of Accelleron (including previously ABB Schweiz AG, Turbocharging) and (ii) being in a condition not worse than is reasonably to be expected, provided that the Turbocharger has been operated in accordance with the Operation Manual, given the Running Hours/Starts Stops of such Turbocharger at the relevant time.

"**Site**" means the installation site of a Turbocharger listed in the Installation List.

"**Service Description**" means Appendix 4.

"**Services**" means the services to be rendered by Accelleron under this Agreement.

"**Start Running Hours**" has the meaning assigned to such term in Clause 9.1(a) of the Service Description.

"Starts Stops" means a successful Engine Start with load increase above 20%

"**Supplementary Services**" means Services and Spare Parts that are not covered by the Turbo SmartCare Fee set out in the Agreement and are invoiced separately on a time and materials basis.

"**Turbo SmartCare Fee**" means the Fee to be paid for the Turbo SmartCare Services.

"**Turbo SmartCare Services**" means the Services rendered by Accelleron that are covered by the Turbo SmartCare Fee, as further defined in the Service Description.

## 2. FURTHER DEFINITIONS

Further definitions are set out in the General Terms and Conditions and the Appendices.

## 3. INTERPRETATION

- (a) Any term denoting the singular shall be interpreted to also denote the plural and vice versa.
- (b) Any reference to a "**Clause**" shall be deemed to be a reference to a clause of the document in which such reference is made unless the circumstances provide otherwise.
- (c) Any reference to an "**Appendix**" shall be deemed to be a reference to an appendix of this Agreement unless the circumstances provide otherwise.
- (d) "**Including**" shall be deemed to mean "including (without limitation)".

\*\*\*\*\*

**APPENDIX 2**  
**Installation List**

Installation	TC Serial Number	TC Type	Expected TC Running Hours/Starts Stops upon the start of the Agreement Term	Expected annual Running Hours/Starts Stops	End Running Hours/Starts Stops (total)
P.ST. Denton Energy Center	HT567757	A175-M	12'321 / 3500	2,200 / 500	23'321 / 6000
P.ST. Denton Energy Center	HT567695	A175-M	12'450 / to be filled	2,200 / to be filled	23'450 / to be filled
P.ST. Denton Energy Center	HT567707	A175-M	11'906 / to be filled	2,200 / to be filled	22'906 / to be filled
P.ST. Denton Energy Center	HT567336	A175-M	12'603 / to be filled	2,200 / to be filled	23'603 / to be filled
P.ST. Denton Energy Center	HT567756	A175-M	12'321 / to be filled	2,200 / to be filled	23'321 / to be filled
P.ST. Denton Energy Center	HT567706	A175-M	12'450 / to be filled	2,200 / to be filled	23'450 / to be filled
P.ST. Denton Energy Center	HT567940	A175-M	12'550 / to be filled	2,200 / to be filled	23'550 / to be filled
P.ST. Denton Energy Center	HT567692	A175-M	12'197 / to be filled	2,200 / to be filled	23'197 / to be filled
P.ST. Denton Energy Center	HT567752	A175-M	11'906 / to be filled	2,200 / to be filled	22'906 / to be filled
P.ST. Denton Energy Center	HT567694	A175-M	12'197 / to be filled	2,200 / to be filled	23'197 / to be filled
P.ST. Denton Energy Center	HT567337	A175-M	12'603 / to be filled	2,200 / to be filled	23'603 / to be filled
P.ST. Denton Energy Center	HT568296	A175-M	12'154 / to be filled	2,200 / to be filled	23'154 / to be filled
P.ST. Denton Energy Center	HT567461	A175-M	12'437 / to be filled	2,200 / to be filled	23'437 / to be filled
P.ST. Denton Energy Center	HT567593	A175-M	12'370 / to be filled	2,200 / to be filled	23'370 / to be filled
P.ST. Denton Energy Center	HT568294	A175-M	12'824 / to be filled	2,200 / to be filled	23'824 / to be filled
P.ST. Denton Energy Center	HT550199	A175-M	12'255 / to be filled	2,200 / to be filled	23'255 / to be filled
P.ST. Denton Energy Center	HT568293	A175-M	12'824 / to be filled	2,200 / to be filled	23'824 / to be filled
P.ST. Denton Energy Center	HT555457	A175-M	12'154 / to be filled	2,200 / to be filled	23'154 / to be filled
P.ST. Denton Energy Center	HT568295	A175-M	12'154 / to be filled	2,200 / to be filled	23'154 / to be filled
P.ST. Denton Energy Center	HT567574	A175-M	12'370 / to be filled	2,200 / to be filled	23'370 / to be filled
P.ST. Denton Energy Center	HT567455	A175-M	12'437 / to be filled	2,200 / to be filled	23'437 / to be filled

P.ST. Denton Energy Center	HT568259	A175-M	12'550 / to be filled	2,200 / to be filled	23'550 / to be filled
P.ST. Denton Energy Center	HT567534	A175-M	11'710 / to be filled	2,200 / to be filled	22'710 / to be filled
P.ST. Denton Energy Center	HT567529	A175-M	11'710 / to be filled	2,200 / to be filled	22'710 / to be filled

Date: \_\_\_\_\_

Signed by Accelleron:

\_\_\_\_\_

Date: \_\_\_\_\_

Signed by Customer:

\_\_\_\_\_

**APPENDIX 3**

**Running Hours / Start Stops Notification Template**

Installation name	Engine number and bank	Turbocharger serial no.	Reading date [dd. mm. yyyy]	Engine Starts Stops	Engine Running Hours

## APPENDIX 4

### Service Description

#### 1. SERVICES OF ACCELLERON

##### 1.1 Turbo SmartCare Services

- (a) As long as the Running Hours/Starts stops of a Turbocharger listed in the Installation List is within its Covered Running Hours/Starts Stops, but in any case only within the Agreement Term, Accelleron shall as part of the Turbo SmartCare Services render the following Services with respect to such Turbocharger:
- (i) Accelleron shall manage and undertake all Scheduled Maintenance on the Turbocharger as specified in this Agreement with a minimum and maximum of 48 service events; and
  - (ii) Accelleron shall undertake Corrective Services with respect to the Turbocharger, including such that become necessary due to damage or breakdown of any SIKO Parts.
- (b) The scope of the Turbo SmartCare Services includes all respective field, workshop labor and Spare Parts and travel time and travel costs

##### 1.2 Additional Services

Unless agreed otherwise on a case-by-case basis, all further Services shall be deemed Supplementary Services.

#### 2. PREREQUISITES FOR TURBO SMARTCARE SERVICES

- (a) Accelleron will analyze the overall condition of each Turbocharger listed in the Installation List during the first Scheduled Service that is undertaken with respect to such Turbocharger. The same shall be true with respect to Turbochargers added to the Installation List in accordance with Clause 5.1.1.
- (b) Accelleron will inform the Customer as to the condition of the Turbocharger listed in the Installation List. If the state of all parts of the Turbocharger listed in the Installation List satisfy Accelleron's Quality Requirements, then such Turbocharger shall be covered by the Turbo SmartCare Services.
- (c) Should the state of certain parts not conform to Accelleron's Quality Requirements, then Accelleron shall inform the Customer accordingly, and the Customer shall have the following options:
- (i) the Customer has Accelleron replace the parts in question, it being understood that the respective work and Products shall be Supplementary Services; or
  - (ii) the Customer elects not to replace the parts in question, in which case all Corrective Services that become necessary due to the parts in question shall not be part of the Turbo SmartCare Services but shall be Supplementary Services, and Accelleron shall have no liability whatsoever with respect to any breakdowns and incidents caused by the parts in question.
- (d) Any incidents and breakdowns that occur between Accelleron's notice pursuant to Clause 2(c) and the replacement of the non-conforming parts shall not be covered by the Turbo SmartCare Services, and any Corrective Services rendered with respect to the Turbocharger listed in the Installation List shall be Supplementary Services. Accelleron shall have no liability whatsoever with respect to any breakdowns and incidents occurring in such timeframe.

#### 3. REPLACEMENT OF TURBOCHARGERS

In case of a replacement of a Turbocharger listed in the Installation List, the relevant Customer Turbocharger shall cease to be subject to the Turbo SmartCare service and shall be removed from the

Installation List, and the replacement Turbocharger shall be inserted into the Installation List in its stead, and shall henceforth be subject to the Turbo SmartCare Services.

#### 4. REMOVED SPARE PARTS

Accelleron shall remove the Spare Parts replaced under this Agreement from the Site at Accelleron's expense. The removed Spare Parts shall become the property of Accelleron. Accelleron shall bear the costs and risk of transportation of all removed Spare Parts.

#### 5. INSTALLATION LIST

##### 5.1 Installation List

Appendix 2 sets out the list of Turbochargers covered by this Agreement. The Installation List may be updated by the Parties upon mutual agreement in writing as specified in Clause 6.2 in the following cases:

##### 5.1.1. Adding of Turbochargers to the Installation List

In case additional Turbochargers are added to the Installation List the Fixed Rate will be recalculated for the type of Turbocharger(s) added to the Installation list (which shall henceforth apply also to the Turbochargers already included in the Installation List). Alternatively, Accelleron may at its discretion offer to the Customer a separate Fixed Rate for the added Turbocharger(s). Upon agreeing thereon, Accelleron shall update the Installation List pursuant to Clause 5.2.

##### 5.1.2. Removal of Turbochargers from the Installation List

- (a) The Customer may remove any Turbocharger(s) from the Installation List prior to such Turbocharger(s) having reached their End Running Hours/Starts Stops. Such removal shall be subject to the payment of a cancellation fee, which shall be equal to the lower of (per removed Turbocharger):
  - (i) the Turbo SmartCare Fee that the Customer would have had to pay for such removed Turbocharger until it would have reached 2 service intervals.
  - (ii) the Turbo SmartCare Fee that the Customer would have had to pay, based on the annual Fixed Rate set out in the Installation List for the respective Turbocharger, for one event.

##### 5.2 Updating of Installation List

Accelleron shall maintain the Installation List and shall make the necessary amendments if Turbochargers are added to or removed from the Installation List. Accelleron shall submit to the Customer the amended, signed and dated Installation List for the Customer's signature, and the Customer shall promptly sign and return to Accelleron such amended Installation List.

#### 6. GENERAL EXCLUSIONS

- (a) Any Services that become necessary due to any circumstance other than (i) faults in Accelleron-original parts included in the Turbocharger listed in the Installation List that have not arisen due to external circumstances, and (ii) faulty workmanship of Accelleron that has led to defects in the Turbocharger listed in the Installation List, including (without limitation) any of the following circumstances and Defects (as applicable), shall not be covered by the Turbo SmartCare Fee but shall rather be Supplementary Services, and shall therefore be remunerated on a time and materials basis:
  - (i) operation in deviation from the Accelleron Operation Manual (e.g. cleaning not performed according to Accelleron Operation Manual);
  - (ii) improper lubrication oil quality, supply, sealing and/or filtering, improper lubrication oil drainage;

- (iii) improper venting;
  - (iv) foreign object damage;
  - (v) exhaust gas temperatures caused by engine in excess of operating limits;
  - (vi) engine room fire or fire in the air ducts;
  - (vii) faults of the engine to which the Turbocharger is connected;
  - (viii) water or moisture in the engine room;
  - (ix) boiler and scrubber leakage;
  - (x) usage of Non-Original Spare Parts;
  - (xi) exceeding of operational limits (according to rating plate, e.g. TC speed above nBmax, TBmax);
  - (xii) repeated operation beyond surging line;
  - (xiii) non-compliance with the applicable safety regulations or other legal standards by parties other than Accelleron; and
  - (xiv) premature wear on Turbocharger listed in the Installation List parts due to inadequate or incorrect functioning of the engine related systems.
- (b) Any Corrective Services due to any damage or breakdown resulting from any SIKO Parts not having been replaced by the Customer when due is not part of the Turbo SmartCare Services, and accordingly, any such repair shall be Supplementary Services.
- (c) No Services shall be owed by Accelleron with respect to any Turbocharger listed in the Installation List that:
- (i) has been serviced by, or which otherwise was manipulated or amended by, the Customer or any third-party service provider; or
  - (ii) includes non-Original Spare Parts.
- (d) The following Services, if requested by the Customer, shall not be covered by the Turbo SmartCare Fees and shall be invoiced as Supplementary Services:
- (i) replacement of non-Original Spare Parts; and
  - (ii) supply of classification certificates from recognized classification societies.
- (e) Furthermore, Accelleron shall not owe any Services to the Customer if the Customer is in breach of this Agreement.
- (f) For the avoidance of doubt, no Services or compensation whatsoever are owed by Accelleron under this Agreement for any equipment or other tangibles that are damaged due to a defect of the Turbocharger listed in the Installation List.

## 7. ORIGINAL SPARE PARTS POLICY

Customer acknowledges the Quality Requirements and accepts that Accelleron shall have the right to refuse the use or the installation of turbocharger parts other than Original Spare Parts.

**8. SHIPPING**

**9. PRODUCTS WILL BE SHIPPED ACCORDING TO THE TERMS OF CITY CONTRACT 8816. COLLABORATION UNDER THIS AGREEMENT**

**9.1 Exchange of information**

Customer shall notify Accelleron of the current Running Hours and Start Stops of the Turbochargers listed in the Installation List:

(a) on the date on which the Turbo SmartCare Services start with respect to the Turbocharger listed in the Installation List (the "Start Running Hours" and "Start Start Stops"); and

(b) Every six months,

for each of which the Customer shall use the notification template set out in [Appendix 3](#).

**9.2 Planning of Services**

(a) Accelleron shall inform the Customer when a Scheduled Service is due and shall provide details of the planned maintenance, including, but not limited to, the necessity for cranes and other support tools and time to perform the Services. The respective notice shall be delivered with the advance notice set out in the Cover Letter.

(b) The timing of the Scheduled Services relating to a Turbocharger subject to Digital Services shall be set by Accelleron in accordance with its respective recommendations as to service intervals provided as part of the Digital Services. For Turbochargers not subject to Digital Services (including such Turbochargers for which Turbocharger Data are not delivered by the Customer in accordance with the Digital Services Appendix), the service intervals set out the new operation manual and Service News. No 02/2025 shall apply.

(c) Any incidents, failure, damage or breakdowns relating to a Turbocharger listed in the Installation List resulting from Scheduled Services that have not been executed on schedule due to reasons beyond Accelleron's control shall not be covered by the Turbo SmartCare Fee, and any Corrective Services relating thereto shall be Supplementary Services.

(d) For clarity: The exchange intervals for SIKO Parts indicated on the Turbocharger rating plates relating to the preventive exchange of SIKO Parts shall apply notwithstanding different service intervals in accordance with Clause 9.2(b).

**9.3 Investigation Report**

Accelleron shall for each case of Corrective Services deliver to the Customer an Investigation Report. Unless challenged by the Customer based on objective grounds within 10 days from receipt, the Investigation Report shall be binding for both Parties.

**9.4 Documentation of Services**

After each provision of Services, Accelleron shall deliver to the Customer a service report using the standard Accelleron service report template.

**10. CUSTOMER OBLIGATIONS RELATING TO THE SERVICES**

(a) Customer shall notify Accelleron immediately after noticing a Turbocharger listed in the Installation List showing non-standard behavior including, but not limited to, unusual vibrations, unusual noise and reduced power output of the engine.

(b) Customer shall operate and maintain the Turbochargers included in the Installation List according to the Accelleron Operation Manual and strictly within the normal operation limits specified on each Turbocharger rating plate.

- (c) Customer shall maintain all engine related systems in good working condition, especially non-Accelleron air filtration systems.
- (d) In the event of a Turbocharger breakdown or on Accelleron's specific request, Customer shall provide all necessary information and materials including (but not limited to) samples of used and new lubrication oil, fuel oil samples or analyses, damaged Turbocharger parts, and engine operation data records such as engine load profile, Running Hours, Turbocharger air inlet temperature, Turbocharger exhaust gas inlet temperature or mean exhaust gas temperature after cylinder, Turbocharger speed, Turbocharger cleaning parameters. Accelleron shall be entitled to investigate the damaged Turbocharger parts also by using destructive methods.
- (e) Customer shall contract all services relating to the Turbochargers listed in the Installation List to Accelleron only, except for regular checks and maintenance to be performed by the Customer pursuant to the Accelleron Operation Manual.
- (f) Customer shall give Accelleron written advance notice of at least fifteen (15) calendar days prior to planned overhauls of the engines on which Turbochargers listed in the Installation List are installed.
- (g) The Customer shall keep safe and in good working order all Spare Parts stored at any Customer site.

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**APPENDIX 5**

**Pricing and Invoicing**

**1. TURBO SMARTCARE FEE**

- (a) The Customer shall owe Accelleron for the Turbo SmartCare Services a Turbo SmartCare Fee as per fixed rate provided.
- (b) The Turbo SmartCare Fee does not include the following efforts and costs, which shall be invoiced in addition to the Turbo SmartCare Fee:
  - (i) cost of replacement parts for non-Original Spare Parts;
  - (ii) any other efforts and costs excluded in this Agreement;

**2. RATES AND PRICES FOR SUPPLEMENTARY SERVICES**

- (a) In case of any Supplementary Services, Accelleron's transactional rates shall apply.
- (b) All Products to be supplied by Accelleron in the context of Supplementary Services shall be invoiced at the prices set out in the GSP.

**3. HANDLING AND PACKAGING**

Handling and packaging necessary due to insufficient Customer packaging shall be additionally invoiced.

**4. EXPENSES**

- (a) The Customer shall reimburse Accelleron for all expenses incurred, it being understood that the following principles shall apply:

Expense type	Principle
Hotels	Included in the fixed rate
[<Meals>]	Included in the fixed rate
[<Other living expenses>]	Included in the fixed rate
Transit and travel ( > 50 km from closest Accelleron service station )	Included in the fixed rate

**5. CURRENCY CONVERSION RESERVED**

**6. TAX, CUSTOMS, VAT**

**6.1 Principle Reserved**

**7. INVOICING AND DEFAULT**

**7.1 Invoicing**

- (a) Unless otherwise set out herein, Accelleron will invoice its Products and Services after Service provision or Product delivery, respectively.
- (b) Accelleron shall issue all invoices to the Customer using the contact details set out in the Cover Letter or otherwise notified to Accelleron.
- (c) All invoices shall be paid within the payment period set out in the Cover Letter, calculated from receipt of the invoice.
- (d) Should the Customer require Accelleron to include a purchase order number or similar information in its invoices, then the Customer shall promptly submit such information to Accelleron.

For the avoidance of doubt, should the Customer not promptly provide such information, then Accelleron shall create its invoice without such information, and the Customer shall have no right to delay payment due to such missing information.

## **7.2 Default**

- (a) If the Customer exceeds the agreed periods of payment, it shall be liable, without reminder and with reservation of the right to bring further claims, for interest at a rate depending on the terms prevailing at Accelleron's domicile, but not less than 5 percent per annum. The contractual payment obligations remain in force.
- (b) Accelleron may further suspend all Services if the Customer is in default with any payment. Accelleron shall not be liable for any damages resulting from such suspension. The intervention with respect to and repair of any breakdowns or damages to any Turbocharger listed in the Installation List due to such suspension shall not be covered by the Turbo SmartCare Fee but shall be Supplementary Services, it being understood that such services may be made subject to an advance payment.

\*\*\*\*\*

**APPENDIX 6**  
**Digital Services**

**1. DEFINITIONS**

"Digital Services" means the Services named in Clause 2.

"Turbocharger Data" has the meaning assigned to such term in Clause 3(a).

**2. SERVICES**

Accelleron shall under this Appendix render the following Digital Services with respect to the Turbochargers included in the Installation List:

- (a) analyze the Turbocharger Data provided by the Customer;
- (b) notify the Customer, based on the Turbocharger Data delivered by the Customer, if Accelleron has detected any anomalies in the Turbocharger Data;
- (c) notify the Customer, based on the Turbocharger Data delivered by the Customer which service interval is recommended for each Turbocharger.

**3. PREREQUISITES**

Accelleron shall only be obligated and able to render the Digital Services, or to render them in a timely and complete fashion, with respect to any Turbocharger, if the following prerequisites are met:

- (a) the Customer has provided to Accelleron the results of the factory acceptance test of the engine which the respective Turbocharger is mounted to;
- (b) the Customer provides to Accelleron the following data relating to the relevant Turbocharger and the engine it is connected with (collectively, the "Turbocharger Data"):

Data point	Unit	Recommended sampling rate range	Category
Turbocharger rotor speed	rps or rpm	1 - 10 s	Mandatory
Turbine inlet temperature	°C or K	1 - 10 s	Mandatory
Turbine outlet temperature	°C or K	1 - 10 s	Mandatory
TC lube oil outlet temperature	°C or K	1 - 10 s	Mandatory
TC lube oil inlet temperature	°C or K	1 - 10 s	Mandatory
TC lube oil pressure	bar or Pa	1 - 10 s	Mandatory
Engine speed	rps or rpm	1 - 10 s	Mandatory
Engine load	MW or %	1 - 10 s	Mandatory
Intake receiver/Charge air pressure	bar or Pa	1 - 10 s	Mandatory
Active fuel oil (for dual fuel application)	Binary	-	Mandatory
Active fuel gas (for dual fuel application)	Binary	-	Mandatory
Start/Stop Cycles	Number	Daily	Mandatory
Engine running hours	hours	-	Mandatory
Compressor Inlet Temperature (or Ambient Temperature)	°C or K	1 - 10 s	Mandatory
Intake receiver/Charge air temperature	°C or K	1 - 10 s	Optional
Compressor Inlet Pressure (or Ambient Pressure)	bar or Pa	1 - 10 s	Optional
Turbine Outlet Pressure	bar or Pa	1 - 10 s	Optional
Exhaust Wastegate Position (only if applicable)	%	1 - 10 s	Optional

A sampling rate for all signals in a range of 1 – 10 sec is preferred as it allows for more detailed and concise analytics. A slower sampling rate up to 60 sec is acceptable.

- (c) the Customer provides the Turbocharger Data in the following format, using the following method and at the following intervals:

Data Delivery Format	
Data Delivery Method	
Data Delivery Interval	

- (d) the Turbocharger Data is delivered to Accelleron, in the reasonable opinion of Accelleron, in a quality that allows the provision of the Digital Services, a respective check of which Accelleron will undertake prior to taking up the Digital Services, the result of which Accelleron shall communicate to the Customer, it being understood that Accelleron shall notify the Customer promptly upon recognizing missing, incomplete or unclear Turbocharger Data;
- (e) the data exchange fulfils Accelleron's information and cybersecurity requirements;

**4. EXCLUSIONS**

- (a) The Digital Services shall exclude any and all services not explicitly set out in Clause 2, including:
  - (i) provision, delivery or installation of additional measurement or telecommunications devices or any hard- or software (including cabling) whatsoever, including the upgrading or replacement thereof; and
  - (ii) organization and payment of offshore-onshore connection on Customer's side.
- (b) The Customer acknowledges and understands that any recommendations and notifications made by Accelleron in the context of the Digital Services are only as good as the Turbocharger Data delivered by the Customer. Accelleron shall have no obligation to check, verify or otherwise assess the correctness of the Turbocharger Data delivered by the Customer, and shall not be liable for any damages (including damage to the relevant Turbocharger) due to analysis created or recommendations made on the basis of incorrect or incomplete Turbocharger Data.
- (c) Customer notes that all Accelleron recommendations are based on the Turbocharger Data delivered by the Customer, which are subject to measurement tolerance and may not fully accurately reflect the status of the Turbocharger(s) from which the information has been collected. Accordingly, the recommendations derived by Accelleron from the Turbocharger Data may not fully accurately describe the status of the Turbocharger(s) and the actual operational performance may differ therefrom and the outcome of data analysis. The recommendations shall be used as a means of guidance and any decision based on the information provided by Accelleron is taken at Customer's own risk.
- (d) For the avoidance of doubt, Accelleron's recommendations do not contain any information relating to Turbocharger performance or aiming to improve Turbocharger performance.

**5. LIMITATIONS**

In case the Customer does not or not adequately or timely perform any of its obligations set out in this Appendix or otherwise agreed in writing (including by e-mail), (i) any and all agreed deadlines which are affected by the default shall be postponed accordingly; (ii) Accelleron shall have the right to invoice any and all additional efforts directly caused by, and cost incurred as a consequence of, the default on a time and materials basis; and (iii) Accelleron's liability for damages resulting from the postponement of applicable timelines shall be excluded.

**6. DURATION OF SERVICE PROVISION**

The Digital Services will be provided with respect to a Turbocharger in the Turbocharger List throughout the respective TURBO SMARTCARE HOURS/STARTS STOPS, it being understood that the Digital Services shall only be provided if, to the extent, and as long as the Turbocharger Data is regularly provided by the Customer.

**7. NON-DELIVERY OF TURBOCHARGER DATA**

The Fixed Rate for a Turbocharger set out in this Turbo SmartCare Agreement has been calculated based on the Turbocharger Data being delivered by the Customer at the agreed intervals and from the beginning of the Agreement. Should the Customer not deliver the Turbocharger Data as agreed due to reasons not set by Accelleron, then, after having notified the Customer and having granted the Customer a reasonable curing period of not less than 90 days, Accelleron shall have the right to increase the Fixed Rate for the respective Turbocharger(s) by 25% with effect as from the date the aforementioned curing period has lapsed.

**8. USAGE OF TURBOCHARGER DATA**

- (a) Other than:
  - (i) the rights granted in Clause 8(b) below, Accelleron acquires no right, title or interest in any Turbocharger Data; and
  - (ii) as allowed by clauses 8(b) below, Accelleron shall keep confidential all Turbocharger Data.
- (b) The Customer grants Accelleron and all Accelleron Affiliates, and any third party who acts on behalf of Accelleron or any Accelleron Affiliates the world-wide, perpetual and non-exclusive right to use, collect, store, aggregate, analyze or otherwise use Turbocharger Data, free of charge. Turbocharger Data may be used (without limitation) to (i) provide and maintain its services, (ii) develop, improve, invent, market and sell, lease, license or otherwise make available existing or new technologies, products, services and software. All developments, inventions and improvements (including all resulting intellectual property rights) shall be exclusively owned by Accelleron. Accelleron has the right to transfer, including, without limitation, across country borders, such data and information to any Accelleron Affiliate or to third parties who act on Accelleron's or any Accelleron Affiliate's behalf. In addition, Accelleron shall have the right to use Turbocharger Data for benchmarking purposes if and to the extent such Turbocharger Data is anonymized or non-confidential.
- (c) Accelleron has established and maintains a formal information and cybersecurity program which includes commercially reasonable technical and organizational measures to protect Turbocharger Data against security breaches, accidental or unlawful destruction, loss, alteration, and unauthorized disclosure of, or access to Turbocharger Data. Except to the extent explicitly specified otherwise in the Agreement, it is solely the Customer's responsibility to establish and maintain the security of its systems, hardware and software, in particular those that directly or indirectly connect to Accelleron's systems in connection with this Agreement.

## APPENDIX 7

### Accelleron Turbocharging General Terms and Conditions for Maintenance Services

#### 1. GENERAL

1.1 These General Terms and Conditions ("GTC"), as amended or supplemented from time to time, apply to all Services and connected sales of Original Spare Parts, SIKO Parts, Replacement Units or Exchange Units (as the case may be or collectively "Products") by a member of the Accelleron Group designated in the Agreement as the contracting party providing Services and/or supplying Products ("Accelleron") to the company designated in the Agreement to whom Accelleron provides the Services and/or supplies the Products ("Customer"), and they shall form an integral part of the respective agreement between Customer and Accelleron in any written form ("Agreement"). The Agreement shall be deemed to have been entered into upon receipt of Accelleron's written acknowledgement stating acceptance of an order ("Order Acknowledgement"). Once accepted by Accelleron, orders placed cannot be cancelled or modified by the Customer without Accelleron's written consent. Tenders which do not stipulate an acceptance period shall not be binding.

1.2 These GTC shall be binding if declared applicable in the tender or in the Order Acknowledgement. Any conditions stipulated by the Customer which are in contradiction to these GTC shall only be valid if expressly acknowledged by Accelleron in writing.

1.3 All agreements and legally relevant declarations of the contracting parties must be in writing to be valid. However, the contracting parties acknowledge electronic signature (e.g. Adobe Sign, DocuSign or similar which ensure identification of the issuer and the integrity of the document) applied by authorized persons, to be sufficient and binding for entering into the Agreement and for any documents related to the Agreement, including, without limitation, documents for which the Agreement requires written form or which require to be signed by the contracting parties.

1.4 Should a provision of these GTC prove to be invalid in full or in part, the contracting parties shall replace such provision by a new one that is as close as possible to the legal and economic effect of the invalid provision.

1.5 Reserved.

1.6 All quotations are valid for 30 days from the date thereof unless otherwise specified. Thereafter, Accelleron shall not be bound to any quotations.

1.7 Accelleron may use subcontractors for the provision of its Services and shall remain fully responsible for the actions and omissions of its subcontractors as if they were its own.

#### 2. DEFINITIONS

The following terms shall have the following meanings either in these GTC and/or the Agreement:

**"Accelleron"**: The Affiliate of the Accelleron Group, designated in the Agreement or order as the contracting party providing the Services and/or Products to the Customer.

**"Affiliate"** means any entity, whether incorporated or not, that is controlled by, controls, or is under common control with the respective Party, whereby control means the power to direct management of the entity, whether through the exercise of voting rights, by contract or otherwise.

**"Corrective Services"** means maintenance Services that become necessary due to an incident relating to or a breakdown of a Turbocharger.

**"CPEX Part"** means any reconditioned part to be exchanged for reconditionable Customer-held parts as part of the Customer Part Exchange program.

**"Customer"**: The company designated in the Agreement or order as the party receiving the Services or Products.

**"Documents"** means all designs, drawings, plans, diagrams, deliverables, documents, software and the like in any form and media provided by Accelleron to the Customer under the Agreement.

**"Exchange Unit"** means either a complete Turbocharger or a cartridge or a rotor of a Turbocharger to be installed on the engine during the maintenance of the originally installed equipment.

**"GSP"** means the global sales prices for Accelleron products issued on a price list by Accelleron Switzerland Ltd from time to time and available upon written request.

**"GTC"** means these general terms and conditions.

**"Operation Manual"** means the official manufacturer's operation manual relating to the Turbocharger in question issued by Accelleron (including previously ABB Turbocharging)

**"Original Spare Part(s)" or "Spare Part(s)"** means a single or assembled part for a Turbocharger, or special tool or equipment, manufactured by or under license of Accelleron (including previously ABB Turbocharging).

**"Overhaul" or "OH"** means a standard overhaul of a Turbocharger executed by Accelleron, consisting of labor and material for (i) the dismantling and inspection of the Turbocharger, and (ii) any necessary replacement of parts, all in accordance with the instructions for regular maintenance of the Turbocharger pursuant to the respective Operation Manual.

**"Product"** means Original Spare Parts, SIKO Parts, Replacement Unit and Exchange Units.

**"Replacement Unit"** means Turbochargers ordered by the Customer for the replacement of a Turbocharger of the same specification after the commissioning of the engine.

**"Running Hour/Start Stop"** means an hour / a start stop during which a Turbocharger, installed on an engine, is supplying compressed air for such engine, regardless of the load on the engine. The source of the Running Hour /Start Stops information is the engine running hour / start stop counter.

**"Services"** means, any and all services rendered by Accelleron, as defined in the Agreement or order.

**"Scheduled Service"** means regular maintenance to be performed on a Turbocharger in accordance with the respective Operation Manual necessary to ensure its proper operation. The term "Scheduled Service" includes the related Services. The term "Scheduled Service" shall exclude any and all Corrective Services. For the sake of clarity, the term "Scheduled Service" shall not include any maintenance or Spare Parts for washing devices (cleaning units, valve units and pipelines), filter silencers and Turbocharger insulations.

**"Service Station"** means one of the Accelleron turbocharger service stations worldwide. The Service Station is equipped with the necessary tools and equipment to execute all Turbocharger-related services.

**"SIKO Parts"** means all rotating parts of a Turbocharger, particularly blades, shafts, and compressor wheels. "SIKO" is short for "Sicherheitskonzept", i.e. "safety concept". Exchange intervals for SIKO Parts are indicated on the Turbocharger rating plates and refer to the preventive exchange of SIKO Parts.

**"Turbocharger"** means a turbocharger made by or under license of Accelleron Group including Accelleron Switzerland Ltd, Baden, Switzerland (and including previously ABB Turbocharging). Where used in these GTC, "Turbochargers" means the Turbochargers subject to the Agreement unless the context provides otherwise.

### 3. SCHEDULING, DELAY

3.1 All ordered Products and Services are to be delivered and undertaken, respectively, within the timeframes agreed for such deliveries or work, respectively, between the Parties in writing.

3.2 Shipping dates are quoted based on conditions prevailing on the date of the quotation. In no event shall any order of the Customer or Agreement for the delivery of Products or parts be subject to cancellation by Customer as a result of delays in delivery or for any other cause, except by mutual written agreement.

3.3 The Customer shall have no right to claim damages for late shipment unless deadlines were explicitly agreed in writing as binding. In case of delays with respect to binding deadlines agreed between the parties solely caused by Accelleron, Accelleron shall be liable to the Customer for the direct damages resulting therefrom, subject to the limitation on liability set out herein. The foregoing shall be the sole remedy of the Customer in such case.

3.4 If delivery is delayed by the Customer, Turbochargers and/or Original Spare Parts held for the Customer by Accelleron shall be subject to storage charges and shall be at the risk and expense of Customer, any other provision herein notwithstanding.

#### **4. FREE ISSUE MATERIALS**

4.1 Accelleron shall not be liable for any defects or deficiencies in free issue materials (i.e. all materials, consumables and parts, information and documentation to be used for the purposes of the provision of the Services) provided by the Customer, if any, and the Customer agrees to pay Accelleron for any Services which must be repeated, or any materials replaced or repaired due to defects or deficiencies discovered in the free issue materials, and for any additional costs incurred as a consequence of (i) the defects or deficiencies discovered in the free issue materials and/or (ii) the delays in the receipt of such free issue materials. In the event that the Services cannot be performed as scheduled due to delays in the receipt of free issue materials and/or due to defects or deficiencies discovered in the free issue materials, any agreed timelines will be extended by the duration of the effect of the delays.

#### **5. DELIVERY TERMS, PASSING OF RISK**

5.1 Reserved.

5.2 Reserved.

#### **6. ACCEPTANCE TESTS**

6.1 Acceptance tests with respect to the work results of Services shall be undertaken directly after the completion of the respective Services. The Customer shall immediately notify to Accelleron any deficiencies found, and Accelleron shall promptly correct such deficiencies.

6.2 Any work results shall be deemed accepted upon the usage thereof by the Customer at the latest.

#### **7. RETENTION OF TITLE**

7.1 All parts provided by Accelleron shall remain Accelleron's sole property until the respective fees have been fully paid.

#### **8. CUSTOMER OBLIGATIONS RELATING TO THE SERVICES**

8.1 The Customer shall in a timely and complete fashion, and at its own cost, provide all access and information required for Accelleron to render its Services, including:

Provision of good and continuous accessibility, including necessary permits, to the Turbochargers, to onboard and alongside lifting devices, to good passageway for transporting of tools, materials and parts to and from the engine room, and to all cranes, rigging, tools, launch services and such other facilities or assistance to enable Accelleron to efficiently perform the Services.

Provision of all fuel, lubricating oil, water, electric power, and other supplies and utilities that may be required in connection with the Services.

Preparation of the Service-related working areas. Required scaffolds, working platforms, crane runways, etc. shall be provided by Customer.

Execution of all documents as reasonably required by Accelleron in connection with the Services prior to commencement of the Services.

8.2 The Customer shall provide a safe working environment as per clause 18.

8.3 The Customer shall be responsible for the proper packaging of any Customer-packaged materials.

8.4 In case the Customer does not or not adequately or timely perform any of its obligations set out in the Agreement or otherwise agreed in writing (including by e-mail), any and all agreed deadlines which are affected by the default shall be postponed accordingly. In this case:

- Accelleron shall have the right to suspend its Services and delivery of Products;
- Accelleron shall have the right to invoice any and all additional efforts directly caused by, and cost incurred as a consequence of, the default on a time and materials basis; and
- Accelleron's liability for damages resulting from the postponement of applicable timelines shall be excluded.

## 9. CONFIDENTIALITY

9.1 Each Party shall keep confidential any and all confidential information received from the other Party that is clearly marked Confidential ("Confidential Information"). In particular, any and all pricing information transmitted to the Customer shall be deemed Confidential Information of Accelleron. Accelleron acknowledges that Customer 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 Accelleron 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*.

9.2 Any information that is or has become publicly available without any breach of the foregoing confidentiality obligation by any of the Parties shall not constitute Confidential Information.

9.3 Each Party shall have the right to disclose Confidential Information if so required by law. In a case of a disclosure required by law, the relevant Party shall notify the other Party as early as possible of a pending disclosure, so that the other Party may take any steps necessary to safeguard its Confidential Information, provided that the disclosing Party is not prohibited by law to make such notification.

9.4 The obligations set out in this clause 9 shall remain in force for three years after the termination of the Agreement.

## 10. TERMS OF PAYMENT

10.1 Payments shall be made by the Customer at Accelleron's domicile according to the agreed terms of payment, without any deduction for cash discount, expenses, levies, fees, or duties.

10.2 Unless otherwise stipulated by the Parties, all fees and prices are in Swiss francs and payments shall be made in full against invoice no later than 30 days after invoice date. Payments shall not be deemed to have been effected before Accelleron's account has been fully irrevocably credited.

10.3 If payment by bills of exchange or letter of credit is agreed, the Customer shall pay the cost of discounting such bills, bill of exchange taxes and collection charges and the cost of opening, notifying and confirming the letter of credit.

10.4 If the Customer exceeds the agreed periods of payment, it shall be liable, without reminder and with reservation of the right to bring further claims, for interest at a rate depending on the terms prevailing at Accelleron's domicile, but not less than five percent (5%) per annum. The contractual payment obligations remain in force.

10.5 Upon a payment default by the Customer in the form of non-payment, incomplete payment or late payment, Accelleron shall be entitled to interrupt the Service or the delivery of the Spare Parts and/or rescind the Contract.

10.6 In case that part of the invoice for the Services performed is under dispute, Accelleron shall have the right to receive payment for the portion of such invoice accepted by Customer.

## **11. INTELLECTUAL PROPERTY**

11.1 Accelleron retains ownership of all intellectual property rights in all designs, drawings, plans, diagrams, deliverables, documents, software and the like in any form and media ("Documents") provided by Accelleron to the Customer under the Agreement. The Customer acknowledges Accelleron's ownership rights in the Documents and must not make such Documents available to any third Party, either in whole or in part, nor use them for any purpose other than to make use of the Services and work results and for the operation of any Turbocharger covered by the Agreement without the express prior written consent of Accelleron. The confidentiality and non-use obligations set out in this paragraph do not apply to Documents, which a) are in the public domain at the time of receipt; b) are already known to the Customer at the time of receipt; c) have been lawfully received by the Customer from a third Party without similar restrictions; or d) have been developed by the Customer independently from the information received. Technical Documents shall serve only as an approximate indication unless they have been specified as binding.

11.2 If the Services and/or Products provided by Accelleron include software, the Customer is granted a non-exclusive right of use of the software together with the delivery item, unless otherwise agreed. The Customer is not entitled to copy (except for archival purposes, troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the Customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of Accelleron. In case of infringement, Accelleron may withdraw the right of use. For third-party software, the conditions of use of the licensor apply, and the licensor, as well as Accelleron, may also assert a claim in the event of infringement.

## **12. DATA PRIVACY AND DATA COLLECTION**

12.1 Each Party shall comply with all applicable data protection laws and regulations and agrees not to withhold or delay its consent to any changes to applicable contract provisions necessary in order to comply with applicable data protection laws and regulations and/or with guidelines and order from any competent authority. The Parties acknowledge that the processing of personal data may require the conclusion of additional data processing/protection agreements. A Party shall, upon request of the other Party, promptly enter into any such agreement(s) as required by mandatory law or a competent authority.

12.2 Other than the rights contractually conferred, Accelleron acquires no right, title or interest in any Customer owned or licensed information and data provided by or on behalf of Customer to Accelleron in connection with the Services ("Customer Data").

12.3 The Customer grants Accelleron and all Accelleron Affiliates, and any third party who acts on behalf of Accelleron or any Accelleron Affiliate the world-wide, perpetual and non-exclusive right to use, collect, store, aggregate, analyze or otherwise use Customer Data, free of charge, including (without limitation) (i) all data and information generated or gathered by any embedded sensors and SCADA devices in any Turbocharger and (ii) all data and information relating to any Turbocharger delivered to Accelleron by the Customer under the Agreement. Customer Data may be used (without limitation) to (i) provide and maintain its services, (ii) develop, improve, invent, market and sell, lease, license or otherwise make available existing or new technologies, products, services and software. All

developments, inventions and improvements (including all resulting intellectual property rights) shall be exclusively owned by Accelleron. Accelleron has the right to transfer, including, without limitation, across country borders, such data and information to any Accelleron Affiliate or to third parties who act on Accelleron's or any Accelleron Affiliate's behalf. In addition, Accelleron shall have the right to use Customer Data for benchmarking purposes if and to the extent such Customer Data is anonymized or non-confidential.

12.4 Accelleron has established and maintains a formal information and cybersecurity program which includes commercially reasonable technical and organizational measures to protect Customer Data against security breaches, accidental or unlawful destruction, loss, alteration, and unauthorized disclosure of, or access to Customer Data. Except to the extent explicitly specified otherwise in the Agreement, it is solely the Customer's responsibility to establish and maintain the security of its systems, hardware and software, in particular those that directly or indirectly connect to Accelleron's systems in connection with the Agreement.

### **13. WARRANTY**

13.1 Accelleron warrants that the Services are performed with reasonable skill and care and if the Services include delivery of Spare Parts by Accelleron that the Spare Parts are free from defects in materials and workmanship.

13.2 If defects in the Services (excluding Spare Parts) are revealed within a period of six (6) months of completion of Services or, in case of delivery of Spare Parts, within twelve (12) months from the delivery of such Spare Parts, and provided that the Customer promptly upon occurrence of defects notifies Accelleron in writing by specifying the defects within the said time, Accelleron shall re-perform Services and in case of Accelleron-supplied Spare Parts repair or replace the defective part (it being understood that the decision of whether to repair or replace a Spare Part shall be at Accelleron's sole discretion).

13.3 Accelleron's sole responsibility relating to defects in the Services is such re-performance and, with respect to defective Accelleron-supplied Spare Parts, the repair or replacement thereof without charge to Customer by delivery any such replacement part as set forth in City Contract 8816

13.4 Where a defect is remedied under the warranty above, such Service is re-warranted subject to an overall limit of twelve (12) months from the performance of the initial Service or twenty-four (24) months from the delivery of the first defective Spare Parts. The original warranty period shall not otherwise be extended.

13.5 Accelleron reserves the right to require that the Customer returns the defective Spare Part to Accelleron (nearest Accelleron Service Station) to enable Accelleron to provide the warranty Service.

13.6 This warranty does not apply to, and Accelleron is not liable for making good or compensating for any damage, arising from:

-defective services.

-non-Original Spare Parts.

-any defects caused by the Customer or a third party.

-defects or damage due to circumstances for which Accelleron is not responsible, including but not limited to: faulty maintenance; non-compliance with operating and maintenance manuals; excessive strain, assembly; works or activities not performed by Accelleron (even if based on or related to advice given by Accelleron); improper storage; misuse in its application; abuse; accident; alteration or repair by anyone other than engineers authorized by Accelleron; improper maintenance or failure to observe operating instructions; or Customer not having immediately taken appropriate steps (such as discontinuing use of the Turbocharger and/or Spare Part) to prevent the defect from being aggravated or resulting in damage to other parts upon discovery of a defect.

-Any Turbocharger and/or Original Spare Part which exceeds the original equipment manufacturer's recommended useful life shall also be excluded from the warranty.

-Accelleron reserves the right to check and investigate any claim made by Customer that a defect in a Turbocharger and/or Spare Part exists before taking any steps to correct such defect.

-Costs of travelling, accommodation, daily allowance, shipping, customs and duties and any other costs related to warranty claims shall be paid by the Customer. Any Spare Part or Turbocharger units replaced under the Agreement shall become the property of Accelleron. Customer shall provide free and clear access to the Turbocharger and/or Spare Parts without cost to Accelleron.

-The warranties set out in this clause 13 are exclusive and in lieu of all other written, implied or oral and all other warranties, covenants and representations including without limitation implied warranties of merchantability or fitness for a particular purpose, which are hereby disclaimed. Notwithstanding anything in the Agreement to the contrary, the remedies stated in this clause 13 constitute the Customer's exclusive remedies with regard to quality and performance of the Services and for any breach of warranty, covenant or representation and Accelleron's entire liability for any breach of warranty.

#### **14. FORCE MAJEURE**

14.1 Accelleron shall not be liable to the Customer for damages arising as a consequence of Force Majeure Events. If Accelleron is unable to perform its obligations under the Agreement due to a Force Majeure Event, the performance of such obligation shall be postponed until the Force Majeure Event ceases to exist, but Customer shall pay Accelleron for the Services and Products provided until the date when the event of Force Majeure started.

14.2 For the purpose of this clause 14, "Force Majeure Events" means any event or circumstance beyond the reasonable control of Accelleron such as industrial disputes, actions of terrorists or threat of terrorism, acts of war (whether declared or undeclared), blockade, piracy, civil commotion, fire, embargo, epidemics, pandemics, extensive military mobilization, insurrection, natural catastrophes, strikes and/or other organized work stoppage, whether local or industry wide, governmental acts and orders (whether legal or not), revolution, requisition, riot, seizure, storm, volcanic activity, flood, lightning, landslide, drought, whirlwind, and any other natural disaster or adverse climatic or sea conditions, obsolescence of parts, restrictions in the use of power and defects or delays in deliveries or work by sub-contractors caused by any such events or circumstances referred to in this paragraph.

14.3 Accelleron's travel policy is updated from time to time. Any restrictions in travel, as set out in applicable travel guidelines in Accelleron, or any acts of authority whether lawful or unlawful, that affects Accelleron's ability to perform the Services, shall be deemed as Force Majeure Events.

14.4 Accelleron shall be entitled to recover from the Customer its reasonable costs arising as a result of any Force Majeure event occurring in the sphere of risk of the Customer, provided always that Accelleron is under a duty to take reasonable action to mitigate such costs.

14.5 Should the Force Majeure Event continue for more than three months, then Accelleron may terminate the Agreement without adhering to any notice period and without liability for any damages resulting therefrom.

14.6 Reserved. .

#### **15. LIMITATION OF LIABILITY**

15.1 Notwithstanding anything to the contrary contained in the Agreement and these GTC:

-Accelleron, its Affiliates, and all employees, officers and agents of Accelleron and its Affiliates shall in no event be liable for consequential or indirect damages, including loss of production, loss of earnings, loss of profit, loss of use, loss of contracts, costs or losses due to pollution, costs of capital or costs connected with interruption of operation, loss of anticipated savings, loss or corruption of data.

-Accelleron's (including its Affiliates' and all of Accelleron/Accelleron Affiliates employees', officers' and agents') total liability in respect of any and all claims for damages or losses which may arise in

connection with Accelleron's performance or non-performance, whether as a result of breach of contract, warranty, guarantee, tort, negligence, strict liability or otherwise, shall in no event exceed 100% of the amounts paid by the Customer for the Services in respect of the relevant Turbocharger covered by the Agreement in the course of which the liability claims have arisen, and a total of 50% of cumulated total amounts paid by the Customer under or in connection with the Agreement (as applicable) in the calendar year in which the liability claims have arisen. 15.2 The limitation of Accelleron's liability according to this clause 15 shall not apply with respect to gross negligence or willful misconduct by Accelleron or as far as in conflict with mandatory law.

#### **16. NON-OEM SPARE PARTS WARRANTY AND LIABILITY EXCLUSIONS**

16.1 Notwithstanding any provision in the Agreement and these GTC to the contrary, in no event shall Accelleron be liable for any damages, whether direct or indirect, arising out of or resulting from customer's use of non-Original Spare Parts on a Turbocharger.

16.2 If Accelleron discovers any such non-Original Spare Parts on a Turbocharger, Accelleron will recommend replacement of such non-Original Spare Parts with Original Spare Parts. If such recommendation is not followed, then notwithstanding Clause 13 ("Warranty") above, no warranty shall be given for any Services or Original Spare Parts provided by Accelleron as part of such Services relating to such Turbocharger.

#### **17. EXPORT CONTROL AND RESTRICTED USE**

17.1 The Customer acknowledges that turbochargers, turbocharger parts, technology, software and/or services may be subject to domestic and/or foreign statutory provisions and regulations regarding export control and, without export or re-export authorizations from the competent authorities, may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon. The Customer agrees to comply with such provisions and regulations. The Customer acknowledges that such provisions and regulations may change and are applicable to the Agreement according to the wording valid at the time.

17.2 Turbochargers, turbocharger parts, technology, software and/or services delivered by Accelleron may neither directly nor indirectly be used in any way in connection with the design, production, use or storage of chemical, biological or nuclear weapons or carrier systems. They may also not be used for military or nuclear applications without Accelleron's prior written consent.

17.3 Turbocharger, turbocharger parts, technology, software and/or services may additionally be subject to Accelleron's internal policies regarding doing business in certain countries/regions.

17.4 Accelleron is entitled to reject orders and is not be obliged to deliver in the case such transactions are in conflict with such policies.

#### **18. HEALTH AND SAFETY**

18.1 To the extent Accelleron provides Services at any site under the care, custody or control of Customer, Customer shall identify any potential health and safety hazard at site and shall at all times maintain healthy and safe working conditions at such site for Accelleron's personnel to perform the Services, in line with local and international rules & regulations and relevant codes of practice related to occupational health and safety. This includes, without limitation, implementing appropriate policies and procedures regarding safe working order of lifting equipment like cranes, hoists and rails, hazardous materials, electrical safety, control of hazardous energy working at heights, confined space entry, machine guarding, lifting loads, energization and de-energization of power systems (electrical, mechanical and hydraulic), the whole using safe and effective industry practices. Customer shall timely advise Accelleron's personnel in writing of all applicable site-specific health, safety, security and environmental requirements and procedures, and provide Accelleron's personnel with any specific protection required for the site, other than Accelleron's usually available safety protection. If there are multiple contractors and/or service providers providing services and work, Customer shall establish a health and safety management plan and a clear hierarchy of responsibilities related to health and

safety management between all parties. Customer's safety officer/supervisor or equivalent shall be promptly available upon Accelleron's request when the Services are being performed.

18.2 Accelleron shall comply with the health and safety policies and procedures communicated by Customer for the site, applicable laws and regulations and similar Accelleron's policies and procedures, it being understood that the more stringent mandatory health and safety policies and procedure shall be applied. Without limiting Customer's responsibilities under this clause, Accelleron has the right but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the site.

18.3 Accelleron's personnel will conduct an assessment at the Customer's premises to ensure compliance with Accelleron's health and safety standards. If, in Accelleron's reasonable opinion, the health, safety or security of personnel or the site is or may be imperiled by security risks or threats, the presence of or threat of exposure to hazardous materials or unhealthy or unsafe working conditions, Accelleron may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from site, suspend performance of all or any part of the Services hereunder, and/or remotely perform or supervise work, in which case and to the extent allowed by Texas law without waiving any applicable immunities Accelleron shall be indemnified by Customer for any costs or delays arising out thereof. Accelleron shall give Customer written notice describing the basis for such claim and a good faith estimate of the amounts to be claimed prior to incurring such costs to the extent practicable, and in any event within a reasonable time after such costs are known or reasonably determinable.

18.4 Customer shall notify emergency services should any of Accelleron's personnel suffer an accident or become ill while at the Customer's premises

## **19. TERMINATION**

19.1 The Agreement may be terminated by either Party without adhering to any notice period if the other Party ceases or threatens to cease carrying on its business, becomes insolvent, files for or is otherwise subject to bankruptcy or insolvency proceedings, has its assets seized or encumbered due to debt enforcement proceedings, enters into negotiations with its creditors for composition or similar arrangements or is subject to a receivership.

19.2 The Parties may terminate the Agreement by mutual written agreement at any time.

19.3 Accelleron shall have the right, at its sole discretion, to terminate the Agreement or order by giving written notification to Customer of such decision, in the following cases:

- Impossibility of performance, for any cause, not attributable to the gross negligence of Accelleron.
- Breach of the Agreement by the Customer, including default in payments.
- When an event of force majeure prevents Accelleron to perform its obligations under the Agreement for more than six (6) months.

## **20. CHANGE OF LAW**

20.1 If, after the effective date of the Agreement, by reason of any adoption of or change in law, ordinances, statutes, rules, regulations, treaties, orders or decrees (including changes to tax laws), or change in the interpretation or administration thereof, that makes the performance by Accelleron under the Agreement more expensive or more onerous, and/or will cause a delay in the Services, the Parties will inform each other without undue delay, and submit detailed information of such effects, and Accelleron will be entitled to reimbursement for any increased efforts and costs (on a time and materials basis) and be awarded time and other contractual adjustments (as applicable).

## **21. VARIOUS PROVISIONS**

### **21.1 Compliance**

The Parties will comply with all applicable laws in connection with the Agreement and these GTC, including without limitation the U.S. Foreign Corrupt Practices Act 1977 (as amended), UK Bribery Act

2010 (as amended), any legislation enacting the principles of the OECD Convention on Combating Bribery of Foreign Officials and any other applicable laws, rules, regulations, decrees and/or official governmental orders relating to anti-corruption, anti-money laundering and anti-tax evasion in relevant jurisdictions (collectively "Anti Bribery & Corruption Laws").

The Parties shall ensure that their respective employees, officers, directors, and any Affiliates or third parties engaged in any manner in relation to the Agreement shall undertake to comply with all Anti Bribery & Corruption Laws and the requirements set out in this clause. The Parties confirm that they have not violated, shall not violate, and shall not cause the other party to violate, any Anti Bribery & Corruption Laws in connection with the Agreement and these GTC.

Customer's violation of any of the obligations contained in this clause may be considered by Accelleron to be a material breach of the Agreement and shall entitle Accelleron to terminate the Agreement or cancel the order with immediate effect and without prejudice to any further right or remedies on the part of Accelleron under the Agreement or applicable law. To the extent allowed by Texas law without waiving any applicable immunities, the Customer shall indemnify for all liabilities, damages, costs or expenses incurred as a result of any such violation of the above mentioned obligations and termination of the Agreement

-The Customer notes that Accelleron has published its Code of Conduct, available at [www.acceleron-industries.com/integrity](http://www.acceleron-industries.com/integrity), and that it is Accelleron's policy to do business with companies adhering to similar levels of ethical business conduct. The Customer notes that Accelleron is maintaining an anonymous platform for the reporting of suspected unethical behavior: <https://acceleron.speakup.report/en-GB/integrity/home>.

#### **21.2 Non-solicitation**

During the term of the Agreement and for a period of one (1) year following the termination or expiry thereof, neither Party shall solicit for hire as an employee, consultant or otherwise, any of the other Party's personnel; provided, however, that nothing contained herein will prevent a Party from hiring any such employee or consultant who responds to a general hiring program conducted in the ordinary course of business not specifically directed to such employees or consultants or who approaches such Party on a wholly unsolicited basis.

#### **21.3 Notices**

All notices under the Agreement will be in writing and will be delivered by e-mail, personally, via first class return receipt requested mail, registered mail, by courier service, or by express mail, addressed as set out in the Agreement, or to such other address as either Party may designate in writing to the other Party from time to time. Any personal delivery will be deemed to be effective upon delivery as shown by the courier receipt.

#### **21.4 Severability**

Each provision of the Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. The invalidity or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other provision hereof. If any provision of the Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of the Agreement remain in full force and effect if both the economic and legal substance of the transactions that are contemplated in the Agreement are not affected in any manner adverse to any Party.

#### **21.5 No waiver**

The waiver of a breach of the Agreement or the failure of a Party to exercise any right under the Agreement or these GTC shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under the Agreement. The failure of either Party to enforce at any time any of the provisions of the Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of a Party to enforce each and every such provision thereafter.

**21.6 No set-offs**

The Customer must not make any set-offs against, or deductions from, any fee owed to Accelleron without Accelleron's prior written consent.

**21.7 No partnership, no agency**

Nothing in the Agreement and these GTC is intended to or shall be deemed to establish any partnership or joint venture between the Parties or constitute any Party as the agent of another Party. Accelleron is and shall be an independent contractor with respect to the performance of services or delivery of products.

**21.8 Assignment**

Other than explicitly set out in the Agreement, the Customer shall not assign the Agreement or any of the rights or obligations hereunder to any third Party without the prior written consent of Accelleron. Accelleron may transfer or assign the Agreement and any rights and obligations thereunder to an Affiliate of Accelleron without the Customers prior consent, however, Accelleron shall provide prompt written notice of assignment to Customer.

**21.9 Entire Agreement**

The Agreement and the City of Denton Contract 8816 are the entire agreement of the Parties with respect to subject-matter hereof and supersedes and cancels all prior oral or written representations, communications, or agreements between the Parties.

**21.10 Amendments**

No alteration, amendment, waiver, cancellation or any other change in any term or condition of the Agreement and these GTC shall be valid or binding on either Party unless agreed in writing.

**22. APPLICABLE LAW AND DISPUTE RESOLUTION**

22.1 Unless otherwise agreed by the Parties, these GTC and the Agreement or order shall be governed by, construed, enforced, and interpreted in accordance with the laws of the State of Texas.

22.2 Unless otherwise agreed, the exclusive jurisdictional venue for disputes arising under these GTC and the Agreement shall be those of Denton County.

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EXHIBIT F

					Accelleron
Line #	Description	Mfgno	QTY	UOM	BAFO Pricing
1	TURBOCHARGER COMPLETE A175	156638	1	EA	CHF 337,042.12
2	SPEED PICKUP	SE518/SE528	1	EA	CHF 3,379.32
3	NOZZLE RING ASSEMBLY A175	156317	1	EA	CHF 29,665.44
4	TURBINE DIFFUSER A175	1562857	1	EA	CHF 9,549.96
5	DIFFUSER A175	1562005	1	EA	CHF 22,474.20
6	SPARE PART SET A175	1561071	1	EA	CHF 10,193.40
7	SPARE PART SET A175	1561072	1	EA	CHF 19,367.88
8	SPARE PART SET A175	156379	1	EA	CHF 2,548.56
9	SPARE PART SET A175	156380	1	EA	CHF 509.88
10	TURBOCHARGER A175 INSPECTION	156380	1	EA	\$18,058.99
11	TURBOCHARGER A175 OVERHAUL	156380	1	EA	\$515,000.00
12	FIELD SERVICE, LABOR, TRAVEL AND ACCOMI		1	HR	\$11,849.12
13	PERFORM 16,000 HR TURBOCHARGER MAIN		1	HR	\$7,504.992

**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.**

ACCELLERON US 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 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

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

\_\_\_\_\_  
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.**

Signed by:  
*Burak Hayfani*

2/23/2026

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>. 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 3<sup>rd</sup> 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: A4E9DBC5-50F7-4B49-A814-AB9C7B2FD5E7

Status: Sent

Subject: Please DocuSign: City Council Contract 8816 DEC Turbo Replacement, Parts and Service

Source Envelope:

Document Pages: 69

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 3

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: 198.49.140.104

## Record Tracking

Status: Original

Holder: Crystal Westbrook

Location: DocuSign

2/17/2026 10:23:06 AM

crystal.westbrook@cityofdenton.com

## Signer Events

## Signature

## Timestamp

Crystal Westbrook

**Completed**

Sent: 2/17/2026 10:28:27 AM

crystal.westbrook@cityofdenton.com

Viewed: 2/17/2026 10:28:47 AM

Senior Buyer

Signed: 2/17/2026 10:30:25 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

Initial

Sent: 2/17/2026 10:30:28 AM

lori.hewell@cityofdenton.com

Viewed: 2/17/2026 12:52:11 PM

Purchasing Manager

Signed: 2/17/2026 12:52:56 PM

City of Denton

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.104

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Leah Bush

Signed by:  
  
2A936B08B5D7485...

Sent: 2/17/2026 12:55:06 PM

leah.bush@cityofdenton.com

Viewed: 2/18/2026 10:06:53 AM

Security Level: Email, Account Authentication  
(None)

Signed: 2/18/2026 12:54:39 PM

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

### Electronic Record and Signature Disclosure:

Accepted: 2/18/2026 10:06:53 AM

ID: 4023077a-eaeb-41b6-a7db-403e400df4e4

Ihab Hlayel

DS

Sent: 2/23/2026 3:35:36 PM

ihab.hlayel@accelleron-industries.com

Viewed: 2/23/2026 3:43:21 PM

Managing Director

Signed: 2/23/2026 3:53:44 PM

Accelleron US Inc.

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 136.226.56.113

### Electronic Record and Signature Disclosure:

Accepted: 2/23/2026 3:43:21 PM

ID: 5d690780-746e-44c9-80cc-37217c1f7739

**Signer Events**

Taydi Delgado  
taydi.delgado@acceleron-industries.com  
Finance Director  
Security Level: Email, Account Authentication (None)

**Signature**



Signature Adoption: Pre-selected Style  
Using IP Address: 136.226.56.93

**Timestamp**

Sent: 2/23/2026 3:35:36 PM  
Viewed: 2/23/2026 4:05:23 PM  
Signed: 2/23/2026 4:33:35 PM

**Electronic Record and Signature Disclosure:**

Accepted: 2/23/2026 4:05:23 PM  
ID: 360e0754-0364-4657-9722-a84b00e2b2be

Burak Hayfavi  
sirri-burak.hayfavi@acceleron-industries.com  
Sales Director  
Security Level: Email, Account Authentication (None)



Signature Adoption: Pre-selected Style  
Using IP Address:  
2600:1700:4a0:1610:b596:3268:f1e2:80da

Sent: 2/18/2026 12:54:47 PM  
Viewed: 2/23/2026 4:37:19 PM  
Signed: 2/23/2026 4:39:21 PM

**Electronic Record and Signature Disclosure:**

Accepted: 2/23/2026 4:37:19 PM  
ID: ce67d558-abbc-45f0-9b71-a57f0bf5a06b

Antonio Puente, Jr.  
antonio.puente@cityofdenton.com  
DME General Manager  
Denton Municipal Electric  
Security Level: Email, Account Authentication (None)



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

Sent: 2/23/2026 4:39:24 PM  
Viewed: 2/23/2026 4:55:48 PM  
Signed: 2/23/2026 4:56:07 PM

**Electronic Record and Signature Disclosure:**

Accepted: 2/23/2026 4:55:48 PM  
ID: 10c9b465-79cf-4c5e-9941-aac87a901da3

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

Sara Hensley  
sara.hensley@cityofdenton.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Ingrid Rex  
Ingrid.Rex@cityofdenton.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Sent: 2/23/2026 4:56:11 PM

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

**Status**

**Timestamp**

**Agent Delivery Events**

**Status**

**Timestamp**

Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 2/17/2026 10:30:28 AM
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Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 2/17/2026 12:55:08 PM
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Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 2/23/2026 4:56:11 PM Viewed: 2/25/2026 12:01:40 PM
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City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
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Arthur R. Pando Arthur.Pando@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 1/21/2026 10:40:15 AM ID: b6004c8e-8fba-402f-aaa9-cbe67c8074a6		
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	2/17/2026 10:28:27 AM
Envelope Updated	Security Checked	2/23/2026 3:35:35 PM
Envelope Updated	Security Checked	2/23/2026 3:35:35 PM

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

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**Required hardware and software**

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

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

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## 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
March 23, 2026		
April 13, 2026	Water/Wastewater Quarterly Report	Water
April 27, 2026		
May 4, 2026		
May 18, 2026		
June 8, 2026		
June 22, 2026	Water/Wastewater Quarterly Report Budget Update	Water Budget
July 13, 2026	Budget Workshop	Budget
July 27, 2026	Rate and Budget Recommendation	Budget
August 10, 2026		
August 24, 2026		
September 14, 2026		
September 28, 2026	Water/Wastewater Quarterly Report	Water
October 12, 2026	2027 PUB Schedule	DME
October 26, 2026		

November 16, 2026		
December 14, 2026	Water/Wastewater Quarterly Report	Water
Codes: Work Session WS, Consent Agenda CA, Individual Consideration IC		

## PUBLIC UTILITIES BOARD - NEW BUSINESS ACTION ITEMS

	DATE REQUESTED	REQUESTOR	ITEM	DEPT	STATUS
1.	2/9/26	Riback	Major Water and Wastewater infrastructure projects such as Ray Roberts Expansion, Pecan Creek Expansion and any others the department may deem responsive to this request.	Water/Waste water – Stephen Gay	Quarterly Reports 4/13/26, 6/22/26, 9/28/26, 12/14/26
2.	2/23/26	Taylor	Comparison of Electric Commercial Rates	Electric	4/13/26