



City of Denton

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

Meeting Agenda Public Utilities Board

Monday, July 8, 2024

9:00 AM

Council Work Session Room

REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD

Citizens will be able to participate in the following way:

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

After determining that a quorum is present, the Public Utilities Board of the City of Denton, Texas will convene in a Regular Meeting on Monday, July 8, 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 – E). 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. [PUB24-130](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas

home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and Kimley-Horn and Associates, Inc., amending the contract approved by City Council on February 23, 2021, in the not-to-exceed amount of \$461,100.00; said first amendment to provide design services for the Ryan Road Widening Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 6590-097 - providing for an additional first amendment expenditure amount not-to-exceed \$1,238,265.15, for a total contract amount not-to-exceed \$1,699,365.15).

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

- B. [PUB24-131](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of Change Order No. 5 to the Design-Build Agreement between the City of Denton and Beta Engineering, LLC, for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7670 - Change Order No. 5 in the not-to-exceed amount of \$248,569.09, for a total contract award aggregated to \$41,551,141.48).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Original Ordinance, Contract, Ordinance and Change Orders 1-4](#)
 [Exhibit 3 - Ordinance and Change Order 5](#)

- C. [PUB24-132](#) 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 Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc., for design services for Neighborhood 5B & Oakland Drainage for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8377-003 - Professional Services Agreement for design services awarded to Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc., in the not-to-exceed amount of \$4,512,215.00).

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

- D. [PUB24-133](#) 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 ReSolved Energy Consulting, LLC, for the supply of Energy Management Office Regulatory Advisement Services for Denton Municipal Electric as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8392 - Professional Services Agreement for energy management office regulatory advisement services awarded to ReSolved Energy Consulting, LLC, in the three (3) year not-to-exceed amount of \$715,000.00).

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

- E. [PUB24-134](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Construction Manager at Risk contract with Sundt Construction, Inc., for pre-construction services of the Mingo Ruddell Roadway and Quiet Zone project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8490 - awarded to Sundt Construction, Inc., in the not-to-exceed amount of \$585,000.00).

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

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [PUB24-141](#) Consider approval of the June 24, 2024 minutes.

Attachments: [6.24.24 PUB Minutes](#)

- B. [PUB24-138](#) Consider recommending adoption of an ordinance of the City of Denton, Texas establishing the schedule of rates for electric service to be effective August 1, 2024, and adjusting the energy cost adjustment (ECA) rate to reflect actual ECA revenues, expenses and forecast; providing severability and repealer clauses; and providing an effective date.

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

- C. [PUB24-142](#) Management Reports
 1. Future Agenda Items
 2. New Business Action Items

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

4. CONCLUDING ITEMS

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

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

WORK SESSION

- A. [PUB24-126](#) Receive a report, hold a discussion, and give staff direction regarding the Value of Solar Study.

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Value of Solar Presentation](#)
 [Exhibit 3 - Value of Solar Report](#)

- B. [PUB24-140](#) Receive a report, hold a discussion, and give staff direction on the proposed Solid Waste, Water, Wastewater, and Electric rates for FY 2024-2025.

Attachments: [Exhibit 1. Agenda Information Sheet](#)
 [Exhibit 2. Presentation](#)

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 July 3, 2024, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

OFFICE OF THE CITY SECRETARY

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



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Legislation Text

File #: PUB24-130, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and Kimley-Horn and Associates, Inc., amending the contract approved by City Council on February 23, 2021, in the not-to-exceed amount of \$461,100.00; said first amendment to provide design services for the Ryan Road Widening Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 6590-097 - providing for an additional first amendment expenditure amount not-to-exceed \$1,238,265.15, for a total contract amount not-to-exceed \$1,699,365.15).



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AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: July 8, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and Kimley-Horn and Associates, Inc., amending the contract approved by City Council on February 23, 2021, in the not-to-exceed amount of \$461,100.00; said first amendment to provide design services for the Ryan Road Widening Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 6590-097 - providing for an additional first amendment expenditure amount not-to-exceed \$1,238,265.15, for a total contract amount not-to-exceed \$1,699,365.15).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

In February 2021, the City Council approved a contract with Kimely-Horn and Associates, Inc. for the 30% design of the Ryan Road Widening Project. The staff has evaluated the 30% project scope of Ryan Road Widening to progress the design from 30% to the final design of full-depth pavement reconstruction and additional utility work. The addition of the utility work includes water and wastewater lines to current areas that do not receive City utility services. The purpose of this amendment is to provide funding to finish the project's design.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On February 23, 2021, City Council approved a contract with Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$461,100 (Ordinance 21-319).

RECOMMENDATION

Award Amendment No. 1 with Kimley-Horn and Associates, Inc., for design services for the Ryan Road Widening Project for the Capital Projects Department, in a not-to-exceed amount of \$1,238,265.15, for a total amended contract amount of \$1,699,365.15.

PRINCIPAL PLACE OF BUSINESS

Kimley-Horn and Associates, Inc.
Raleigh, NC

ESTIMATED SCHEDULE OF PROJECT

This project design will be started upon approval, followed by Right-Of-Way acquisition into construction.

FISCAL INFORMATION

These services will be funded from 2019 Go Bond election account 250080473. Purchase Order #180028 will be revised to include the first amendment amount of \$1,238,265.15, for a total amended contract amount of \$1,699,365.15.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Original Ordinance and Contract
Exhibit 3: Ordinance and Amendment 1

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

For information concerning this acquisition, contact: Dustin Draper, 940-349-7104.

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

ORDINANCE NO. 21-319

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER, OR HER DESIGNEE, TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR PROFESSIONAL ENGINEERING SERVICES FOR THE RYAN ROAD CORRIDOR IMPROVEMENTS PROJECT FOR THE CAPITAL PROJECTS-ENGINEERING DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 6590-097 – PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES AWARDED TO KIMLEY-HORN AND ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$461,100.00).

WHEREAS, on March 6, 2018 and June 5, 2018, the City Council approved a pre-qualified engineer list (Ordinance 2018-331), and the professional services provider (the “Provider”) mentioned in this ordinance, is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than the recommended practices and fees published by the professional associations applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or her designee, is hereby authorized to enter into an agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

The motion to approve this ordinance was made by John Ryan and seconded by Jesse Davis, the ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Birdia Johnson, District 1:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Connie Baker, District 2:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Jesse Davis, District 3:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
John Ryan, District 4:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Deb Armintor, At Large Place 5:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Paul Meltzer, At Large Place 6:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>

PASSED AND APPROVED this the 23rd day of February, 2021.



GERARD HUDSPETH, MAYOR

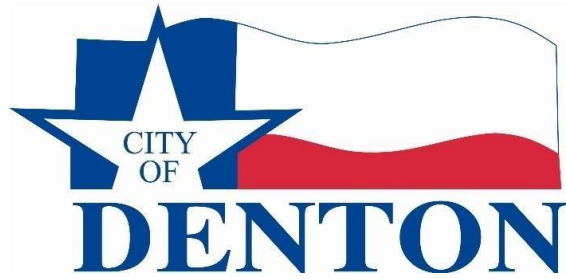
ATTEST:
ROSA RIOS, CITY SECRETARY

BY: 



APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: 
Digitally signed by Marcella Lunn
DN: dc=com, dc=cityofdenton, dc=codad,
ou=Department Users and Groups,
ou=General Government, ou=Legal,
cn=Marcella Lunn,
email=Marcella.Lunn@cityofdenton.com
Date: 2021.02.12 10:37:29 -06'00'



DocuSign City Council Transmittal Coversheet

PSA	6590-097
File Name	Ryan Road Corridor Improvements
Purchasing Contact	Cori Power
City Council Target Date	February 23, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-319

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES

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 421 Fayetteville Street, Suite 600, Raleigh, NC 27601 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Ryan Road Corridor Improvements (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 \$461,100 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 D.

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

Amendments to Section 4, if any, are included in Attachment C.

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

Amendments to Section 5, if any, are included in Attachment C.

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**

Amendments to Section 6, if any, are included in Attachment C.

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
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 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. 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.

P. Agreement Documents


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

Attachment A - Scope of Services
 Attachment B - Compensation
 Attachment C - Amendments to Standard Agreement for Engineering Services
 Attachment D - Project Schedule
 Attachment E - 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

DocuSigned by:

 B776C711BA0D454...

Sara Hensley
 City Manager

Date: 2/24/2021

BY:
 ENGINEER
 Kimley-Horn and Associates, Inc.

DocuSigned by:

 EDB15720A1C6421...

Date: 2/11/2021

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

DocuSigned by:

 CF9F2B454B6745F...

Signature

Director of Capital Projects/City Engineer
 Title


Capital Projects - Engineering
 Department

Date Signed: 2/11/2021

2021-716252

TEXAS ETHICS COMMISSION
 CERTIFICATE NUMBER

APPROVED AS TO LEGAL FORM:
 AARON LEAL, CITY ATTORNEY

By: 
 4B070831B4AA438...

ATTEST:
 ROSA RIOS, CITY SECRETARY

By: 
 1C5CA8C5E175493...

ATTACHMENT "A"

RYAN ROAD CORRIDOR IMPROVEMENTS

Scope of Services

PROJECT UNDERSTANDING

The Scope of Services consists of conceptual design (30%) of corridor improvements along Ryan Road from Country Club Road to Teasley Lane. Ryan road will be widened from a two lane section to three lane undivided roadway section. The existing drainage crossings and ditches will be improved. Sidewalk and street lighting improvements will be included.

SCOPE OF SERVICES

The ENGINEER will perform its services pursuant to the requirements delineated with ATTACHMENT "A". Services under this attachment include the following tasks:

- Task 1 – Project Management
- Task 2 – Data Collection
- Task 3 – Conceptual Design (30%)
- Task 4 – Right-of-Way and Easement Documentation

Task 1 Project Management

Task 1.1 Monthly Status Reports, Invoicing, and Team Coordination

The ENGINEER will provide monthly invoices and status reports.

Task 1.2 Design Meetings with City Staff

The ENGINEER will conduct and document up to four (4) design meetings with the CITY and other key stakeholders. A scoping meeting, kickoff Meeting and up to two design coordination meetings. During these meetings, the design team will discuss design elements, challenges, and make decisions regarding design elements for the proposed conceptual design options.

Deliverables:

- Monthly invoices and status reports.
- Meeting agendas and meeting notes

Assumptions:

City of Denton, Texas
Standard Agreement for Engineering Related Design Services
Revised Date: 9/6/18
Page 18 of 25

- It is assumed the project will last 6 months. If the contract duration is longer than 6 months, additional project management will be considered additional services.

Task 2 Data Collection

Task 2.1 Data Collection and Analysis

The ENGINEER will collect data to develop a base map, this information will be utilized to analyze existing constraints and issues for the development of the conceptual design. The following elements will be used to develop the base map.

- 2.1.1 Aerial Photography – The ENGINEER will collect aerial photography for the project corridor from NearMaps and/or available aerial photos from the CITY.
- 2.1.2 Available Record Drawing Research – The ENGINEER will collect any available record drawings from the CITY within the project limits.
- 2.1.3 Available CITY GIS utility information – The ENGINEER will utilize the CITY's online GIS information to compile utility information for the study area.
- 2.1.4 Field Observation – The ENGINEER will conduct up to one (1) site visit to visually document the existing conditions.
- 2.1.5 Topographic and Boundary Survey collected in Task 2.2.1
- 2.1.6 Subsurface Utility Exploration Level B collected in Task 2.4.1.

Task 2.2 Topographic and Boundary Survey

- 2.2.1 The ENGINEER will prepare a topographic survey and right-of-way determination to be used for civil engineering design purposes. The topographic survey is to be used in-house and will not be issued as a stand-alone survey document.
 - The limits of survey will be approximately 100' wide from the (up to existing residential fencing) along Ryan Road from Country Club Road to 170' east of Overlake Drive.
 - The survey will consist of: the location of the right-of-way lines and adjoining property lines with existing easements readily available in the public record (this does not include an abstract of title); elevations; contour lines representing the surface of the existing ground at one foot intervals based on a survey grid system and tied to existing control points; observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, franchise utility facility appurtenances, trees, shrubs, and flowerbeds; pavement, sidewalk, and other visible corridor improvements, and benchmarks established with the survey.

Task 2.3 Geotechnical Analysis

- 2.3.1 The ENGINEER will utilize a subconsultant to perform geotechnical analysis to determine an asphalt pavement recommendation and soil information for the design of headwalls at up to seven (7) culvert crossing locations.

Task 2.4 Subsurface Utility Engineering (SUE)

2.4.1 Level B Subsurface Utility Exploration

The ENGINEER will, via a sub-consultant, expose certain utilities using SUE methods and collect survey data on their exposed location. This information will be used during civil engineering design. SUE quality level B is described as follows:

- Quality Level B. QL-B involves the application of appropriate surface geophysical methods to determine the existence and horizontal position of virtually all utilities within the project limits. This activity is called "designating". The information obtained in this manner is surveyed to project control. It addresses problems caused by inaccurate utility records, abandoned or unrecorded facilities, and lost references.
- SUE fee is based on an average of 5 underground utilities for roughly 9,700 linear feet. If there are additional utility lines, or we need to obtain more than 9,700 LF for each utility, additional fee may be needed. Additional Level B SUE will be considered additional services.

Task 3 Conceptual Design (30%)

Task 3.1 Conceptual Design (30%)

3.1.1 Conceptual Corridor Improvement Alternatives

- Prepare up to five (5) corridor improvement alternatives for the City's consideration for Ryan Road Corridor.
- Prepare opinion of probable construction cost for each of the alternative.

3.1.2 Roadway Improvements: Upon the City's preferred corridor improvement alternative, the ENGINEER will prepare conceptual roadway plans. The ENGINEER will prepare a schematic design of Ryan Road that will include the following:

- Country Club Road Intersection: The intersection will remain as is.
- Asphalt Widening: Widen Ryan Road from a 2-lane asphalt roadway to a 3 lane-asphalt roadway (2 through lanes and a center two-way left-turn lane) on the south side of the street from Country Club Road to Commodore Court.
- Concrete Widening with Curb and Gutter: Widen Ryan Road between Roxbury Street to east of Overlake Drive to a 3 lane-concrete roadway (approximately 810 linear feet).
- Re-Stripe: The existing concrete section between east of Commodore Court and east of Roxbury Street will be re-striped. (approximately 650 linear feet)
- Teasley Lane Intersection: The concrete section from east of Overlake Drive to Teasley lane as well as the intersection at Teasley Lane will remain as is.

The ENGINEER will not submit plans to TxDOT for review. The ENGINEER will not perform any coordination or meet with TxDOT. Any services associated with TxDOT will be considered additional services.

3.1.3 Drainage Improvements:

- Drainage Area Maps: Existing and proposed condition drainage area maps will be created based on available data from Task 2.
- Drainage ditches: Existing ditches on the south side of Ryan Road will be evaluated to maximize the design year that can be accommodated within the existing right-of-way. Up to two (2) options will be evaluated.
- Culvert crossings: Up to seven (7) existing culvert crossings will be evaluated and downstream assessments performed. Each crossing will be preliminary designed to accommodate the 100-year storm event. If the downstream will experience adverse impacts the ENGINEER will report to the City.
- Internal Storm System: An internal storm system will be designed for the concrete widening with curb and gutter portion of Ryan Road.

3.1.4 Sidewalk: Sidewalk will be proposed to provide a continuous route along the south side of Ryan Road from Country Club Road to Teasley Lane. Existing sidewalk will be utilized where possible. Additional pedestrian crossings will be evaluated at up to three (3) locations.

3.1.5 Illumination: A photometric analysis for will be completed in accordance with City of Denton requirements. The photometric analysis will consist of the following items:

- Modeling site fixtures to meet roadway and intersection illumination level requirements.
- Illuminance calculations in accordance with City of Denton requirements.
- Photometric Analysis Exhibit documenting the findings.

3.1.6 Opinion of Probable Cost (OPCC):

- Based on the OPCC prepared by the ENGINEER, the corridor improvements may be reduced or bid alternatives added in order to fit within the City's budget. 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 are based on the information known at the time the costs were prepared 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.

Deliverables: The following deliverables will be submitted via electronic PDF. Up to three (3) full size hard copy versions can be provided at the request of the CITY.

- Conceptual Schematic:

- Existing and proposed typical sections
- Proposed horizontal geometry including: right-of-way, easements, asphalt widening geometry, proposed sidewalk, curb ramps (if necessary), driveways, side streets, pavement markings, illumination poles, ground boxes, and conduits, ditch flowlines, culvert crossing, driveway culverts, internal storm drain pipe, drop inlets, and curb inlets.

- Existing and proposed ground contours at one-foot intervals.
- Existing horizontal geometry including: right-of-way, easements, utilities, roadway pavement, driveways, side streets, storm drain features, and culvert crossings, and proposed ditches.
- Cross Sections:
 - Cross sections will be developed for all areas to be widened at 100-foot increments.
- Existing Drainage Area Maps
- Opinion of Probable Construction Cost (OPCC)

Assumptions: Following the review of the conceptual design (30%) submittal, the ENGINEER will respond to one (1) round of comments for resubmittal.

Task 4 Right-of-Way and Easement Documentation

The ENGINEER will prepare a metes and bounds description and sketch showing the location and dimensions for proposed easements and or right-of-way dedications. Right-of-way dedication and or easement language will either be the unaltered standard language provided by the local jurisdiction, or as agreed to by the Grantor and Grantee and provided complete to the ENGINEER. The CITY will file the documents.

The ENGINEER will prepare up to ten (10) right-of-way or easement documents for the CITY. Additional documents will be considered additional services.

Deliverables: Electronic PDF copies of the right-of-way or easement documents.

ADDITIONAL SERVICES

The following additional services are not anticipated as part of this Scope of Services agreement, however, can be provided if deemed necessary during the project development process. The ENGINEER will not provide the additional services listed below without the written consent and approval of the CITY.

- Additional Meetings.
- TxDOT submittals, reviews, meetings, and permits will be considered additional services.
- Preparing right-of-way or easement documentation.
- Preliminary and Final Design beyond what is listed in the scope of services.
- Bidding and Construction Phase Services.
- The attendance or preparation of materials for Public Meetings.
- Attending or preparing any materials for more than one (1) city council meetings.
- Traffic Control Plan design.
- Modeling or formal submittals to FEMA.
- Storm drain modeling and design beyond what is listed in the scope of services.
- Design of franchise utility relocations.
- Design of CITY utility relocations beyond what is listed in the scope of services.
- Illumination design beyond what is listed in the scope of services.
- Architectural or 3D renderings.
- Preparation of the contractor's SWPPP.
- Services related to warranty claims, enforcement and inspection after final completion;
- Assist the CITY as an expert witness in litigation in connection with the project or in hearings before approving and regulatory agencies;
- Redesign to reflect project scope changes requested by the CITY, 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; and
- Any services not listed above.

ATTACHMENT "B"

RYAN ROAD CORRIDOR IMPROVEMENTS

Compensation

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$461,100** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

BASIC SERVICES

For Basic Services Tasks 1-5 the total compensation shall be on a reimbursable (hourly) basis and not to exceed **\$461,100**.

Progress payments for Basic Services 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 the Basic Services for each phase of the Project:

• Task 1 – Project Management	\$ 10,400
• Task 2 – Data Collection	
○ Task 2.1 – Base Mapping	\$ 18,800
○ Task 2.2 – Topographic Survey	\$ 78,600
○ Task 2.3 – Geotechnical Analysis (Specialty Service)	\$ 28,600
○ Task 2.4 – SUE Level B (Specialty Service)	\$ 97,900
• Task 3 – Conceptual Design (30% Submittal)	\$197,100
• Task 4 – Right-of-Way Documentation	\$ 27,500
• <u>Task 5 – Reimbursable Expenses</u>	<u>\$ 2,200</u>
Total	\$461,100

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.

EXTRA SERVICES

Any services not specifically provided for in the above scope and authorized by the CITY, will be billed as additional services and performed at our then current hourly rates.

ATTACHMENT “C”
CHANGES AND AMENDMENTS TO STANDARD AGREEMENT
Design Services for
RYAN ROAD CORRIDOR IMPROVEMENTS

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

Attachement "D"

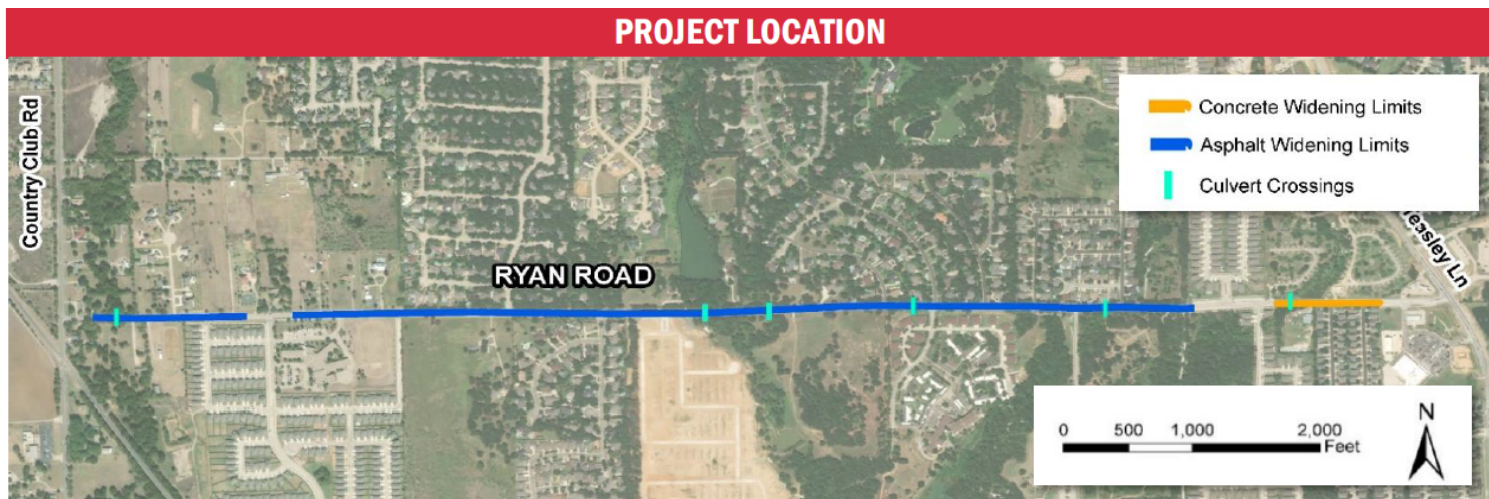
Ryan Road Corridor Improvements
Kimley-Horn and Associates, Inc.

TASK	START
Project Initiation	Feb-21
Council Approval/Notice to Proceed	Feb-21
Conceptual Design (30%)	Mar-21
Survey/Data Collection	Mar-21
Begin Conceptual Design (30%)	Apr-21
Design Review Meeting	May-21
Schematic Roll Plot Submittal	Jun-21
City Review	Jul-21
Address Comments	Jul-21
Final Schematic Submittal	Aug-21

ATTACHMENT “E”

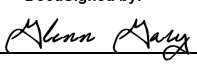
RYAN ROAD CORRIDOR IMPROVEMENTS

Location Map



Extents: Country Club Road to Teasley Lane

Exhibit CIQ

	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.		
	<p>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).</p> <p>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.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		
1	Name of vendor who has a business relationship with local governmental entity. Kimley-Horn and Associates, Inc		
2	<input type="checkbox"/> 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 th 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. <div style="text-align: center; border-bottom: 1px solid black; margin: 10px 0;">Name of Officer</div> <p>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.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div> <p>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?</p> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div> <p>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?</p> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div> <p>D. Describe each employment or business and family relationship with the local government officer named in this section.</p>		
4	<input checked="" type="checkbox"/> I have no Conflict of Interest to disclose.		
5	<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 45%;"> <p>DocuSigned by:</p>  <p>Signature of Vendor doing business with the governmental entity</p> </div> <div style="width: 45%; text-align: right;"> <p>2/11/2021</p> <p>Date</p> </div> </div>		

Certificate Of Completion


Envelope Id: CF31D8CED9364F16A733CEB796182FBF	Status: Completed
Subject: Please DocuSign: City Council Contract 6590-097 Ryan Road Contract	
Source Envelope:	
Document Pages: 29	Signatures: 6
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Cori Power
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	cori.power@cityofdenton.com
	IP Address: 198.49.140.104


Record Tracking

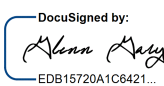
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2/2/2021 2:41:12 PM	cori.power@cityofdenton.com	

Signer Events

Signature	Timestamp
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cori.power@cityofdenton.com	Viewed: 2/2/2021 3:53:40 PM
Senior Buyer	Signed: 2/2/2021 4:01:16 PM
City of Denton	
Security Level: Email, Account Authentication (None)	
Electronic Record and Signature Disclosure:	
Not Offered via DocuSign	

Lori Hewell		Sent: 2/2/2021 4:01:18 PM
lori.hewell@cityofdenton.com		Viewed: 2/2/2021 4:15:00 PM
Purchasing Manager		Signed: 2/2/2021 4:19:20 PM
City of Denton		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure:		
Not Offered via DocuSign		

Marcella Lunn		Sent: 2/2/2021 4:19:23 PM
marcella.lunn@cityofdenton.com		Viewed: 2/2/2021 4:35:38 PM
Deputy City Attorney		Signed: 2/2/2021 4:52:45 PM
City of Denton		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure:		
Not Offered via DocuSign		

Glenn Gary		Sent: 2/2/2021 4:52:47 PM
Glenn.Gary@kimley-horn.com		Resent: 2/8/2021 10:57:21 AM
Sr. Vice Presedent		Viewed: 2/2/2021 5:17:42 PM
Kimley-Horn and Associates, Inc.		Signed: 2/11/2021 10:13:38 AM
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure:		
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Signer Events	Signature	Timestamp
Rebecca Diviney Rebecca.Diviney@cityofdenton.com Director of Capital Projects/City Engineer Security Level: Email, Account Authentication (None)	 <p>DocuSigned by: Rebecca Diviney CE9F2B4E4B6745F...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104</p>	Sent: 2/11/2021 10:13:41 AM Viewed: 2/11/2021 8:16:29 PM Signed: 2/11/2021 8:16:54 PM

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Cheyenne Defee
cheyenne.defee@cityofdenton.com
Contract Administrator
City of Denton

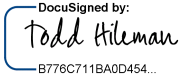
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Electronic Record and Signature Disclosure:
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Todd Hileman
Todd.Hileman@cityofdenton.com
City Manager
City of Denton
Security Level: Email, Account Authentication (None)



DocuSigned by:
Todd Hileman
B776C711BA0D454...

Signature Adoption: Pre-selected Style
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Electronic Record and Signature Disclosure:
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ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21

Rosa Rios
rosa.rios@cityofdenton.com
City Secretary
Security Level: Email, Account Authentication (None)



DocuSigned by:
Rosa Rios
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Signature Adoption: Pre-selected Style
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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
Contract Administrator
City of Denton
Security Level: Email, Account Authentication (None)

COPIED

Sent: 2/2/2021 4:01:18 PM

Electronic Record and Signature Disclosure:

Carbon Copy Events	Status	Timestamp
Not Offered via DocuSign		
Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 2/11/2021 8:16:57 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 2/11/2021 8:16:57 PM Viewed: 2/12/2021 7:56:32 AM
Zolaina Parker Zolaina.Parker@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 2/24/2021 12:17:22 PM
Rachel Wood Rachel.Wood@cityofdenton.com Deputy Director of Facilitation City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 2/24/2021 12:17:23 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 2/24/2021 12:17:24 PM
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Notary Events	Signature	Timestamp
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Completed	Security Checked	2/24/2021 12:17:24 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND KIMLEY-HORN AND ASSOCIATES, INC., AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON FEBRUARY 23, 2021, IN THE NOT-TO-EXCEED AMOUNT OF \$461,100.00; SAID FIRST AMENDMENT TO PROVIDE DESIGN SERVICES FOR THE RYAN ROAD WIDENING PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 6590-097 - PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$1,238,265.15, FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$1,699,365.15).

WHEREAS, on February 23, 2021, City Council awarded a contract to Kimley-Horn and Associates, Inc. in the amount of \$461,100.00, for professional engineering services for the Ryan Road Corridor Improvements Project for the Capital Projects Department; and

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

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider's profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The First Amendment, increasing the amount of the contract between the City and Kimley-Horn and Associates, Inc., which is on file in the office of the Purchasing Agent, in the amount of One Million Two Hundred Thirty-Eight Thousand Two Hundred Sixty-Five and 0/100 (\$1,238,265.15) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to \$1,699,365.15.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

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

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

PASSED AND APPROVED this the _____ day of _____, 2024.

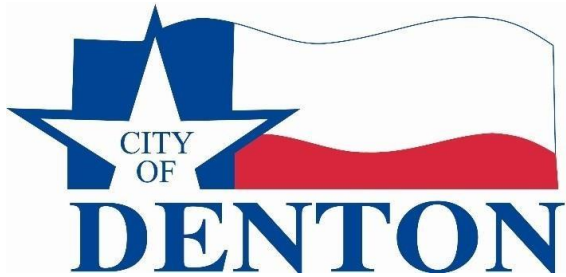
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Benjamin N. Samples, II



Docusign City Council Transmittal Coversheet

FILE	6590-097
File Name	Ryan Rd Design Amendment 1
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND KIMLEY-HORN AND ASSOCIATES, INC
PSA 6590-097**

THE STATE OF TEXAS §

COUNTY OF DENTON §

THIS FIRST AMENDMENT TO CONTRACT 6590-097 (“Amendment”) by and between the City of Denton, Texas (“City”) and Kimley-Horn and Associates, Inc. (“Engineer”); to that certain contract executed on February 23, 2021, in the original not-to-exceed amount of \$461,100 (the “Agreement”); for services related to Ryan Road Corridor Improvements.

WHEREAS, the City deems it necessary to further expand the services provided by Engineer to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$1,238,265.15 with this Amendment for an aggregate not-to-exceed amount of \$1,699,365.15; 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 Ryan Road Design, 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 \$1,238,265.15.
2. This Amendment modifies the Agreement amount to provide an additional \$1,238,265.15 for the additional services with a revised aggregate not to exceed total of \$1,699,365.15.

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 Engineer, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date _____.

“City”

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

“Engineer”

KIMLEY-HORN AND ASSOCIATES,
INC.

By: _____

AUTHORIZED SIGNOR, TITLE

By: _____

DocuSigned by:



Scott R. Arnold

AUTHORIZED SIGNOR, TITLE

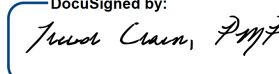
APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

By: 
4B070831B4AA438...

ATTEST:
LAUREN THODEN, CITY SECRETARY

By: _____

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

DocuSigned by:
 Trevor Crain, PMP
7B46EEAB11BC4F2...
SIGNATURE PRINTED NAME

Director of Capital Projects

TITLE

Capital Projects

DEPARTMENT

EXHIBIT A**AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT
ADDITIONAL SERVICES****Professional Services Agreement:
RYAN ROAD CORRIDOR IMPROVEMENTS
Amendment Scope of Services**

This is Amendment number 1 dated _____ to the agreement between **City of Denton** ("CITY") and Kimley-Horn and Associates, Inc. ("ENGINEER") dated **February 23, 2021** ("the Agreement") concerning **Ryan Road Corridor Improvements** (the "Project").

The ENGINEER has entered into the AGREEMENT with CITY for the furnishing of professional services, and the parties now desire to amend the Agreement.

The AGREEMENT is amended to include services to be performed by ENGINEER for compensation as set forth below in accordance with the terms of the ENGINEER, which are incorporated by reference.

A. Scope of Services

The CITY has requested that the services currently authorized to be performed by the ENGINEER in accordance with the original Agreement be modified. The CITY has requested that the ENGINEER perform additional services consisting of:

- Additional data collection
- Preliminary and final design for roadway, utilities, drainage, and illumination
- Bidding and construction phase services

Task 1 Project Management**Task 1.1 Monthly Status Reports, Invoicing, and Team Coordination**

The ENGINEER will provide monthly invoices and status reports.

Task 1.2 Design Meetings with City Staff

The ENGINEER will conduct and document monthly coordination meetings with the project team and other key stakeholders. During these meetings, the design team will discuss design elements, challenges, and make decisions regarding any proposed design options.

Task 1.3 Permitting

The CITY will be responsible for administration of all permits. The ENGINEER will provide exhibits and information necessary for permit approval. The ENGINEER understands the following permits will be required:

- TxDOT Utility Installation Request (UIR)/RULIS Permit
- Canadian Pacific Kansas City (CPKC) Rail Crossing Permit

EXHIBIT A**Task 1.4 Franchise Utility Coordination**

The ENGINEER will coordinate with franchise utility companies within the project area to obtain existing line maps, determine potential conflicts, and provide conflict information to the CITY for further coordination. The ENGINEER will assist the CITY in review of any franchise utility relocation plans. Up to sixty (60) hours will be spent on franchise utility coordination. Any additional time spent beyond the allotted sixty (60) hours will be considered additional services.

Task 1.5 Eminent Domain Coordination

The ENGINEER will attend and document up to two (2) meetings with CITY staff to aid in eminent domain proceedings.

Deliverables:

- Monthly invoices and status reports.
- Meeting agendas and meeting notes

Assumptions:

- It is assumed Coordination Meetings will be required for twelve (12) months. Additional Coordination Meetings will be considered Additional Services.

Task 2 Data Collection**Task 2.1 Data Collection and Analysis**

The ENGINEER will collect additional data for preliminary and final design. This information will be utilized to analyze existing constraints and issues for the development of the conceptual design. The following elements will be used to develop the base map.

- 2.1.1 Aerial Photography – The ENGINEER will collect aerial photography for the project corridor from NearMaps and/or available aerial photos from the CITY.
- 2.1.2 Available Record Drawing Research – The ENGINEER will collect any available record drawings from the CITY within the project limits.
- 2.1.3 Available CITY GIS utility information – The ENGINEER will utilize the CITY's online GIS information to compile utility information for the study area.
- 2.1.4 Field Observation – The ENGINEER will conduct up to five (5) site visits to visually document the existing conditions with the Contractor.
- 2.1.5 Utility Data Collection – The ENGINEER will meet with the CITY to discuss historical, existing, and future conditions along the project corridor.

Task 2.2 Topographic and Boundary Survey

The ENGINEER will prepare additional topographic survey and right-of-way determination to be used for civil engineering design purposes. The topographic survey is to be used in-house and will not be issued as a stand-alone survey document.

- 2.2.1 The limits of survey will include ten (10) feet beyond existing right-of-way and fifty (50) feet beyond the construction limits for the water line extension area along Country Club Road between Ryan Road and the Denton Classical Academy.
- 2.2.2 The survey will consist of: the location of the right-of-way lines and adjoining property lines with existing easements readily available in the public record (this does not include an abstract of title); elevations; contour lines representing the surface of the existing ground at one foot intervals based on a survey grid system and tied to existing

EXHIBIT A

control points; observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, franchise utility facility appurtenances, trees, shrubs, and flowerbeds; pavement, sidewalk, and other visible corridor improvements, and benchmarks established with the survey.

Task 2.3 Subsurface Utility Engineering (SUE)

The ENGINEER will, via a sub-consultant, expose additional utilities using SUE methods and collect survey data on their exposed location. This information will be used during civil engineering design. SUE qualities are described as follows:

2.3.1 Level B Subsurface Utility Exploration

- Quality Level B (QL-B) involves the application of appropriate surface geophysical methods to determine the existence and horizontal position of virtually all utilities within the project limits. This activity is called "designating". The information obtained in this manner is surveyed to project control. It addresses problems caused by inaccurate utility records, abandoned or unrecorded facilities, and lost references.
- SUE QL-B fee is based on an average of six (6) underground utilities for approximately 850 linear feet each. If there are additional utility lines, or we need to obtain more than 850 linear feet for each utility, additional fee may be needed. Additional Level B SUE will be considered additional services.

2.3.2 Level A Subsurface Utility Exploration

- Quality Level A (QL-A), also known as "locating", is the highest level of accuracy presently available and involves the full use of subsurface utility engineering services. It provides information for the precise plan and profile mapping of underground utilities through the nondestructive exposure of underground utilities. QL-A provides the type, size, condition, material, and other characteristics of underground features.
- SUE QL-A fee is based on obtaining up to twenty (20) test holes within the project limits. Test hole information will be provided in the construction drawings in a table format. Any additional test holes needed will be considered additional services.

Task 4 Property Acquisition Services**Task 4.1 Right-of-Way and Temporary Construction Easement Documentation**

- 4.1.1 The ENGINEER will prepare a metes and bounds description and sketch showing the location and dimensions for proposed easements. Easement language will either be the unaltered standard language provided by the local jurisdiction, or as agreed to by the Grantor and Grantee and provided complete to the ENGINEER. The CITY will file the documents.

The ENGINEER will prepare up to twenty (20) temporary construction easement or right-of-way documents.

EXHIBIT A**Task 4.2 Property Acquisition Services****4.2.1 ENGINEER will perform the following services for Easement Acquisition Services:**

1. ENGINEER's Real Estate Agent shall provide appraisals for proposed easements on up to twenty (20) 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 (20) parcels for the proposed line as follows:
 - a. 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 easements 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).
 - b. 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 their 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 easement 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.
 - c. 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.
 - d. 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

EXHIBIT A

Real Estate Agent. ENGINEER's Real Estate Agent will then inform the Title Company that the parcel is ready for closing.

3. ENGINEER's Real Estate Agent will coordinate contacts with the CITY to deliver any payments to the Title Company prior to closing.
4. 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.
5. ENGINEER's Real Estate Agent will coordinate and attend all closings at the Title Company.
6. ENGINEER's Real Estate Agent will confirm that the Title Company records all documents at the Denton County Courthouse after closing.
7. ENGINEER's Real Estate Agent will confirm that the Title Company forwards copies of all recorded documents to the CITY.

Task 5 Roadway Design

The ENGINEER will prepare construction plans, specifications, and estimates for full depth reconstruction and mill and overlay of Ryan Road per CITY standards.

Task 5.1 Preliminary Design (60%)

- 5.1.1 The ENGINEER will prepare a 22"x34" Preliminary (60%) Plan Set consisting of the following elements:
 - Cover sheet and index of sheets
 - General notes
 - Project control
 - Utility layout
 - Existing and proposed horizontal layout
 - Utility design will be performed under Task 6
 - Roadway typical sections
 - Existing and Proposed
 - Removals
 - Roadway plan and profile drawings at 1"=20' horizontal and 1"=4' vertical scale.
 - Sidewalk and curb ramps
 - Pavement markings and signage
 - Retaining wall plan and profile drawings at 1"=20' horizontal and 1"=4' vertical scale.
 - Cross sections at fifty (50) foot increments

EXHIBIT A

- Traffic control and detour plans
- Construction details
- Summary of quantities
- Specifications and special provisions

5.1.2 Opinion of Probable Cost (OPCC):

Based on the OPCC prepared by the ENGINEER, the corridor improvements maybe reduced or bid alternatives added in order to fit within the CITY's budget. 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 are based on the information known at the time the costs were prepared 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.

- 5.1.3 The ENGINEER will conduct a Preliminary Design (30%) review meeting to review and respond to all comments received from the CITY.

Task 5.2 Final Design (90%)

- 5.2.1 The ENGINEER will respond to and address one (1) round of comments provided by the CITY and prepare a 22"x34" Final (90%) Plan Set consisting of the elements in Task 5.1.

- 5.2.2 OPCC

- 5.2.3 The ENGINEER will conduct and document a Final Design (90%) review meeting for each project area to review and respond to all comments received from the project team.

Task 5.3 Final Sealed (100%) Submittal

- 5.3.1 The ENGINEER will respond to and address one (1) round of comments provided by the CITY and prepare a Final Sealed (100%) Plan Set consisting of the elements in Task 5.3.

- 5.3.2 OPCC

Deliverables:

- Digital 22"x34" PDF Plan Set for Preliminary (60%), Final (90%), and Final Sealed (100%) Roadway Design.
 - Up to three (3) 22"x34" hard copies may be submitted at the CITY's request.
- Meeting notes Preliminary (60%) and Final (90%) Roadway Design review meetings.

Task 6 Utility Design

The ENGINEER will prepare construction plans, specifications, and estimates for the construction of water and sanitary sewer line segments identified, including the water line extension along Country Club Road, per CITY standards.

EXHIBIT A**Task 6.1 Water Design**

- 6.1.1 The ENGINEER will prepare the following items for the construction plan set:
- Horizontal layouts for water line relocations and necessary appurtenances.
 - Vertical profiles for water line relocations and necessary appurtenances providing the required clearance from all known conflicts.
 - Water line details, including connection details.
 - Sequencing notes for shutdown and connection sequencing plans.
 - Abandonment layouts as needed.
 - Temporary and permanent easements as needed.
 - 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.

Task 6.2 Sanitary Sewer Design

- 6.2.1 The ENGINEER will prepare the following items for the construction plan set:
- Horizontal layouts for sanitary sewer line relocations and necessary appurtenances.
 - Vertical profiles for sanitary sewer line relocations and necessary appurtenances providing the required clearance from all known conflicts.
 - Sanitary sewer line details.
 - Sequencing notes for shutdown and connection sequencing plans.
 - Abandonment layouts as needed.
 - Temporary and permanent easements as needed.
 - 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.

Task 6.3 Preliminary Design (60%)

- 6.3.1 The ENGINEER will prepare a 22"x34" Preliminary (60%) Plan Set consisting of the following elements:
- Abandonment layout
 - Waterline plan and profile drawings at 1"=40' horizontal and 1"=4' vertical scale
 - Sanitary sewer line plan and profile drawings at 1"=40' horizontal and 1"=4' vertical scale
 - 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.
 - Plan view shall include design notes for stationing, size, slope, pipe material, embedment, length, and construction method.
 - Profile view shall include design notes for stationing, size, slope, flow-line of pipe, pipe material, embedment, length and construction method.
 - Standard construction details
 - Preliminary water line details, including connection details
 - Summary of quantities
 - Specifications and special provisions

- 6.3.2 OPCC

EXHIBIT A**Task 6.4 Final Design (90%)**

- 6.4.1 The ENGINEER will respond to, and address one (1) round of comments provided by the CITY and prepare a Final Design (90%) Plan Set consisting of the elements in Task 6.3 as well as the following elements:
- Surface repair sheets and details as needed.
- 6.4.2 OPCC

Task 6.5 Final Sealed (100%) Submittal

- 6.5.1 The ENGINEER will respond to and address one (1) round of comments provided by the CITY and prepare a Final Sealed Design (100%) Plan Set consisting of the elements in Task 6.4.
- 6.5.2 OPCC

Deliverables:

- Digital 22"x34" PDF Plan Set for Preliminary (60%), Final (90%), and Final Sealed (100%) Utility Design.
 - Up to three (3) 22"x34" hard copies may be submitted at the CITY's request.

Task 7 Storm Drain Design**Task 7.1 Preliminary Design (60%)**

- 7.1.1 The ENGINEER will prepare the following items for the construction plan set:
- Existing and Proposed Drainage Area Maps
 - Horizontal layout for internal systems, roadside ditches, and culvert crossings
 - Vertical profiles for internal systems, roadside ditches, and culvert crossings
 - Hydraulic calculations for internal systems, roadside ditches, and culvert crossings
 - Headwall construction details
 - Standard construction details
 - Preliminary storm drain details
 - Summary of quantities
 - Specifications and special provisions

Task 7.2 Final Design (90%)

- 7.2.1 The ENGINEER will respond to and address one (1) round of comments provided by the CITY and prepare a Final Design (90%) Plan Set consisting of the elements in Task 7.1.
- 7.2.2 OPCC

Task 7.3 Final Sealed (100%) Submittal

- 7.3.1 The ENGINEER will respond to and address one (1) round of comments provided by the CITY and prepare a Final Sealed Design (100%) Plan Set consisting of the elements in Task 7.2.
- 7.3.2 OPCC

EXHIBIT A**Task 7.4 Flood Study**

- 7.4.1 The ENGINEER will revise the hydrology for Ryan Road culvert crossings prepared as part of the conceptual design. The revisions will be to reflect the final design of the major culvert crossings. The study will include existing, proposed, and fully developed watershed conditions as required by the CITY. Hydrologic parameters will be developed in accordance with CITY criteria.
- 7.4.2 The ENGINEER will revise the hydraulics models to determine the impacts of the proposed culvert crossings. In total there are six (6) culvert crossings, two (2) of which being crossings within FEMA effective floodplains. The ENGINEER will perform iterations to the models and grading plan to mitigate adverse increases in 100-year water surface elevations.
- 7.4.3 The Flood study will be prepared to meet FEMA standards and requirements and CITY requirements. The Flood Study will consist of the following:
- Narrative
 - Drainage Area Maps
 - Peak Flow Comparison Tables
 - HEC-HMS Output
 - Pre/Post-Project Floodplain Maps
 - Water Surface Elevation Comparison Tables
 - HEC-RAS Output
 - Cross-Culvert Plan and Profile Sheets
 - Storm Pipe and Headwall Details
 - FEMA Effective Flows
 - FIS Profile
 - FEMA FIRM
 - Annotated FEMA FIRM
 - Affected Property Owners
 - Digital Files
- 7.4.4 After completion of the culvert crossings within the FEMA effective floodplains, topographic survey will be performed by the Contractor and returned to the CITY. This survey will be used for the purposes of preparing the Letter of Map Revision (LOMR) to submit to FEMA. The ENGINEER will revise the flood study based upon as-built data and submit to FEMA for approval. Permitting Fee for the LOMR requests will be paid for by the CITY. Additional items to be included as part of LOMR Submittal:
- Signed and Sealed Topographic Survey (Provided by Contractor)
 - FEMA Forms
 - As-Built Plans
 - Check RAS

Deliverables:

- Digital 22"x34" PDF Plan Set for Preliminary (60%), Final (90%), and Final Sealed (100%) Roadway Design.
 - Up to three (3) 22"x34" hard copies may be submitted at the CITY's request.
- HEC-HMS and HEC-RAS output files.
- LOMR submitted to FEMA.

EXHIBIT A**Task 8 Illumination Design****Task 8.1 Illumination Design**

The ENGINEER will prepare construction plans, specifications, and estimates for illumination design for Ryan Road and the proposed shared use path per CITY standards.

- 7.1.2 The ENGINEER will gather available as-built information from the CITY including existing lighting infrastructure. As-built information received from the CITY will be visually verified in the field.
- 7.1.3 The ENGINEER will meet on-site with CITY street lighting staff to determine street light circuit configurations. The ENGINEER will also meet on-site with DME to determine service feed options for the proposed street lighting.
- 7.1.4 The ENGINEER will prepare the illumination plans in accordance with CITY guidelines. The following design elements will be included with Task 5 Preliminary (60%), Final (90%), and Final Sealed (100%) deliverables:
 - Existing Conditions and Removals
 - Proposed Illumination Layout
 - Wiring Charts
 - Summary Sheets
 - Electrical Service Panel Schedules

Deliverables:

- Digital 22"x34" PDF Plans for Illumination Design with Preliminary (60%), Final (90%), and Final Sealed (100%) deliverables.

Task 9 Bidding and Construction Services**Task 9.1 Bidding Support**

The ENGINEER will provide the following support for bidding of Ryan Road:

- Pre-Bid Meeting – The ENGINEER will attend one (1) pre-bid meeting.
- Requests for Information - The ENGINEER will respond to reasonable and appropriate Contractor requests for information during bidding in the form of an addenda. Requests for information will be received and responded to until an agreed upon date prior to the established bid opening date. The addenda will be issued to all registered plan holders.
- Bid Opening – The ENGINEER will attend one (1) bid opening meeting.
- Addenda – The ENGINEER will incorporate all addenda into the contract documents and issue conformed sets.

Regular Construction Meetings

The ENGINEER will attend monthly construction meetings with the project team.

EXHIBIT A**Task 9.2 Site Visits**

- 9.2.1 The ENGINEER will conduct one (1) site visit for the entire project limits each month during construction and perform construction observation.
- 9.2.2 The ENGINEER shall not, during such visits or as a result of such observations of the Contractor's work in progress, supervise, direct, or have control of the Contractor's work, nor shall the ENGINEER have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by the Contractor, for safety precautions and programs incident to the Contractor's work, nor for any failure of the Contractor to comply with laws and regulations applicable to the Contractor's furnishing and performing the work. Accordingly, the ENGINEER neither guarantees the performance of any contractor nor assumes responsibility for any of the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

Task 9.3 Recommendations with Respect to Defective Work

Provide recommendations to the CITY that Contractor's work be disapproved and rejected while it is in progress if, on the basis of site visit evaluations, the ENGINEER believes such work will not produce a completed Project that conforms generally to the 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 the Contractor's work without a recommendation from the ENGINEER.

Task 9.4 Clarifications and Interpretations

Issue necessary clarifications and interpretations of the Contract Documents to the CITY as appropriate to the orderly completion of the 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 the CITY.

Task 9.5 Change Orders

- 9.5.1 Recommend change orders to the CITY, as appropriate.
- 9.5.2 Review and make recommendations related to Change Orders submitted or proposed by the Contractor.

Task 9.6 Shop Drawings and Samples

Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which the 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. Assumes up to one hundred (100) shop drawings.

EXHIBIT A**Task 9.7 Substitutes and “or-equal”**

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

Task 9.8 Inspections and Tests

Review certificates of inspections and tests within the 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. The 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.

Task 9.9 Disagreements between City and Contractor

As necessary, the ENGINEER will, with reasonable promptness, render initial written decision on all claims of the CITY and Contractor relating to the acceptability of the 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, the ENGINEER will be fair and not show partiality to the 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.

Task 9.10 Final Walkthrough and Punchlist Preparation

- 9.10.1 Attend final walkthrough with the Contractor and CITY to determine if the completed work of the Contractor is generally in accordance with the Contract Documents.
 - a. Limitation of Responsibilities: The ENGINEER will not be responsible for the acts or omissions of any contractor, suppliers, or of any other individual entity performing or furnishing the work. The ENGINEER will not have the authority or responsibility to stop the work of any contractor.
- 9.10.2 Compile punch list from information gathered during final walkthrough with the CITY and Contractor.

Assumptions:

- It is assumed the construction phase will be for twenty-four (24) months. Additional Construction Phase Services will be considered Additional Services.

Task 10 Record Drawings**Task 10.1 Record Drawings**

- 10.1.1 Obtain and review comments and field changes on the construction plans from the CITY and contractor.
- 10.1.2 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

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basis and will therefore not seal the record drawings. The record drawings will be provided as digital 22"x34" PDF.

Compensation

The additional services described above will be accommodated by increasing the contract amount by \$1,238,265.15. The CITY shall compensate the ENGINEER as follows:

Lump Sum

The ENGINEER will perform the services in Tasks 2 and 5-7 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the CITY.

Task	Original Contract	Remaining	Amendment No. 1	Revised Contract	Revised Remaining
Task 2 – Data Collection					
2.1 – Base Mapping	\$18,800.00	\$17,482.03	\$3,417.97	\$22,217.97	\$20,900.00
2.2 – Topographic Survey	\$78,600.00	\$6,300.46	\$(3,500.46)	\$75,099.54	\$2,800.00
2.4.1 – SUE (Level B)	\$97,900.00	-	\$62,300.00	\$160,200.00	\$62,300.00
Task 5 – Roadway Design	-	-	\$274,900.00	\$274,900.00	\$274,900.00
Task 6 – Utility Design	-	-	\$207,100.00	\$207,100.00	\$207,100.00
Task 7 – Drainage Design	-	-	\$278,000.00	\$278,000.00	\$278,000.00
Totals:	\$195,300.00	\$23,782.49	\$822,217.51	\$1,017,517.51	\$846,000.00

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Individual task amounts are provided for budgeting purposes only. The ENGINEER reserves the right to reallocate amounts among tasks as necessary.

Hourly Not to Exceed

The ENGINEER will perform the services in Tasks 1-4, and 8-11 on a labor fee plus expense basis with the maximum labor fee shown below.

The ENGINEER will not exceed the total maximum labor fee shown without authorization from the CITY. Individual task amounts are provided for budgeting purposes only. The 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.

EXHIBIT A

Task	Original Contract	Remaining	Amendment No. 1	Revised Contract	Revised Remaining
Task 1 – Project Management	\$10,400.00	\$2,392.51	\$62,307.49	\$72,707.49	\$64,700.00
Task 2 – Data Collection					
2.3 – Geotechnical Analysis	\$28,600.00	\$6,462.50	\$27,637.50	\$56,237.50	\$34,100.00
2.4.2 – SUE (Level A)	-	-	\$41,800.00	\$41,800.00	\$41,800.00
Task 3 – Conceptual Design (30% Submittal)	\$197,100.00	\$50,997.35	\$(50,997.35)	\$146,102.65	-
Task 4 – Right-of-Way Documentation	\$27,500.00	\$27,500.00	\$170,500.00	\$198,000.00	\$198,000.00
Task 8 – Illumination Design	-	-	\$60,500.00	\$60,500.00	\$60,500.00
Task 9 – Construction Phase Services	-	-	\$89,900.00	\$89,900.00	\$89,900.00
Task 10 – Record Drawings	-	-	\$14,400.00	\$14,400.00	\$14,400.00
Task 11 – Reimbursable Expenses	\$2,200.00	\$1,998.78	-	\$2,200.00	\$1,998.78
Totals:	\$265,800.00	\$89,351.14	\$416,047.64	\$681,847.64	\$505,398.78

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 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

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

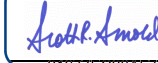
BY:
CITY OF DENTON, TEXAS

Title: _____

Date: _____

BY:
ENGINEER
Kimley-Horn and Associates, Inc

Designated By



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Title: Scott Arnold, Vice President

Date: _____

Certificate Of Completion

Envelope Id: C73C553B4DDF41BE974CD697F3C921D3
 Subject: Please DocuSign: City Council Contract 6590-097
 Source Envelope:
 Document Pages: 17
 Certificate Pages: 6
 AutoNav: Enabled
 Envelope Stamping: Enabled
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:
 Erica Garcia
 901B Texas Street
 Denton, TX 76209
 erica.garcia@cityofdenton.com
 IP Address: 198.49.140.104

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Holder: Erica Garcia
 erica.garcia@cityofdenton.com

Location: DocuSign

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


Erica Garcia
 erica.garcia@cityofdenton.com
 Senior Buyer
 City of Denton
 Security Level: Email, Account Authentication
 (None)

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Lori Hewell
 lori.hewell@cityofdenton.com
 Purchasing Manager
 City of Denton
 Security Level: Email, Account Authentication
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 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

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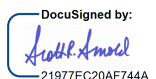
Marcella Lunn
 marcella.lunn@cityofdenton.com
 Senior Deputy City Attorney
 City of Denton
 Security Level: Email, Account Authentication
 (None)


 Signature Adoption: Pre-selected Style
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 Viewed: 6/6/2024 10:13:18 AM
 Signed: 6/6/2024 1:08:30 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Scott Arnold
 Scott.arnold@kimley-horn.com
 Scott R. Arnold
 Security Level: Email, Account Authentication
 (None)


 Signature Adoption: Uploaded Signature Image
 Using IP Address: 130.41.212.55

Sent: 6/6/2024 1:08:34 PM
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Electronic Record and Signature Disclosure:
 Accepted: 6/6/2024 1:14:51 PM
 ID: 7ce5023c-f82e-4f84-847c-d6e07fba254f

Signer Events	Signature	Timestamp
<p>Scott Arnold</p> <p>Scott.arnold@kimley-horn.com</p> <p>Scott R. Arnold</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p>  <p>21977EC20AF744A...</p> <p>Signature Adoption: Uploaded Signature Image</p> <p>Using IP Address: 130.41.212.55</p>	<p>Sent: 6/7/2024 8:36:50 AM</p> <p>Viewed: 6/7/2024 9:58:43 AM</p> <p>Signed: 6/7/2024 9:58:50 AM</p>
<p>Electronic Record and Signature Disclosure:</p> <p>Accepted: 6/7/2024 9:58:43 AM</p> <p>ID: e642d710-dbd5-406a-a3d4-bf8a15e750d7</p>		
<p>Trevor Crain, PMP</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p>  <p>7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 6/6/2024 1:15:22 PM</p> <p>Viewed: 6/6/2024 1:39:32 PM</p> <p>Signed: 6/7/2024 8:41:21 AM</p>
<p>Electronic Record and Signature Disclosure:</p> <p>Accepted: 6/6/2024 1:39:32 PM</p> <p>ID: 63c2d14a-f198-4cba-b9a0-7677f5c051f7</p>		
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>		<p>Sent: 6/7/2024 9:58:54 AM</p>
<p>Electronic Record and Signature Disclosure:</p> <p>Not Offered via DocuSign</p>		
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p>		
<p>Electronic Record and Signature Disclosure:</p> <p>Not Offered via DocuSign</p>		
<p>Lauren Thoden</p> <p>lauren.thoden@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p>		
<p>Electronic Record and Signature Disclosure:</p> <p>Not Offered via DocuSign</p>		

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

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: 6/6/2024 6:51:01 AM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 6/7/2024 9:58:53 AM Viewed: 6/13/2024 2:46:58 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Dustin Draper dustin.draper@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/7/2024 1:23:55 PM ID: 135454af-a37f-4459-b46d-8425184d7d63		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	6/7/2024 8:36:49 AM
Envelope Updated	Security Checked	6/7/2024 8:36:49 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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



City of Denton

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

Legislation Text

File #: PUB24-131, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of Change Order No. 5 to the Design-Build Agreement between the City of Denton and Beta Engineering, LLC, for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7670 - Change Order No. 5 in the not-to-exceed amount of \$248,569.09, for a total contract award aggregated to \$41,551,141.48).



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: July 8, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of Change Order No. 5 to the Design-Build Agreement between the City of Denton and Beta Engineering, LLC, for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7670 – Change Order No. 5 in the not-to-exceed amount of \$248,569.09, for a total contract award aggregated to \$41,551,141.48).

INFORMATION/BACKGROUND

The work to be provided under this change order to contract 7670 includes redesigning and rerouting underground distribution lines; a 48-foot conduit addition; and anti-graffiti treatment for the screen wall.

- The scope of work for the Hickory GIS Substation project includes relocating overhead distribution lines underground. The underground distribution lines were planned to utilize the right of way (ROW) obtained for the Bonnie Brae Phase 4 road widening project. Since the Bonnie Brae Phase 4 project has been delayed, ROW was not acquired; resulting in no place to route the underground distribution lines. The engineering firm responsible for the Hickory GIS project must redesign and reroute the underground distribution to a new location and requires additional funding to cover these costs. The additional work includes demolition and replacement of asphalt, sidewalk, curb, and time and material cost for trench excavation.
- To maintain compliance with City Council's directive to remove all overhead facilities in the area around Hickory Substation, a 48' underground conduit is needed between two transformers on Hickory Avenue. The cost for this change includes equipment and labor hours for installation.
- To ensure graffiti can be easily removed from the architectural screen wall, an Anti-Graffiti siloxane treatment will be applied over the entire exterior of the screen wall. The cost includes equipment.

Project Description	Contract Estimate
Reroute Distribution Feeders	\$157,193.52
48' Conduit Run	16,691.07
Anti-Graffiti Covering	74,684.50
Total:	\$248,569.09

The Utility Extendable Commercial Paper program is being used as appropriation authority for this contract.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On December 14, 2021, City Council approved a contract with Beta Engineering, LLC, in the not-to-exceed amount of \$40,469,000 (Ordinance 21-2701).

On August 16, 2022, City Council approved Change Order #1 with Beta Engineering, LLC, in the not-to-exceed amount of \$811,000, for a total contract amount of \$41,280,000 (Ordinance 22-1540).

RECOMMENDATION

Award Change Order No. 5 with Beta Engineering, LLC, for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric, in a not-to-exceed amount of \$248,569.09, for a total amended contract amount of \$41,551,141.48.

PRINCIPAL PLACE OF BUSINESS

Beta Engineering, LLC
Pineville, LA

ESTIMATED SCHEDULE OF PROJECT

Design and construction will begin (or continue) immediately upon approval by the City Council.

FISCAL INFORMATION

This contract will be funded using DME's Capital Improvement Plan budget account 603234500. The Utility Extendable Commercial Paper program is being used as appropriation authority for this contract. The third-year Purchase Order will include Change Order 5 amount of \$248,569.09. The total amended amount of this contract is \$41,551,141.48.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Original Ordinance, Contract, Ordinances, and Change Orders 1-4

Exhibit 3: Ordinance and Amendment 5

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

For information concerning this acquisition, contact: Mark Zimmerer, 940-349-7169.

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

ORDINANCE NO. 21-2701

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A DESIGN-BUILD AGREEMENT WITH BETA ENGINEERING, LLC, FOR THE DESIGN AND CONSTRUCTION OF THE HICKORY GAS INSULATED SUBSTATION (GIS) FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7670 – AWARDED TO BETA ENGINEERING, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$40,469,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the design and construction of the Hickory Gas Insulated Substation (GIS) 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, 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>
7670	Beta Engineering, LLC	\$40,469,000.00

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 Gerard Hudspeth and seconded by Paul Meltzer. This ordinance was passed and approved by the following vote [6 - 1]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Vicki Byrd, District 1:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Brian Beck, District 2:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Jesse Davis, District 3:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Alison Maguire, District 4:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Deb Armintor, At Large Place 5:	<u> </u>	<u>✓</u>	<u> </u>	<u> </u>
Paul Meltzer, At Large Place 6:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>

PASSED AND APPROVED this the 14th day of December, 2021.




 GERARD HUDSPETH, MAYOR

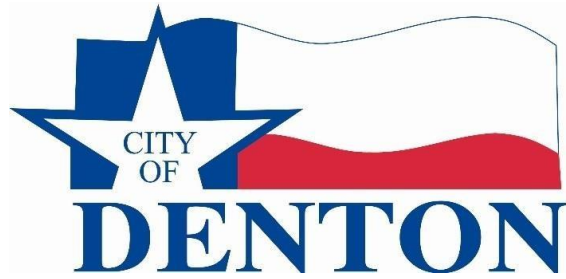
ATTEST:
ROSA RIOS, CITY SECRETARY

BY: 



APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: 
Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o,
ou=City of Denton,
email=marcella.lunn@cityofd
enton.com, c=US
Date: 2021.11.30 14:01:38
-06'00'



Docusign City Council Transmittal Coversheet

RFP	7670
File Name	Hickory GIS Substation Design Build
Purchasing Contact	Christa Christian
City Council Target Date	DECEMBER 14, 2021
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	21-2701

DESIGN BUILD AGREEMENT

BY AND BETWEEN

CITY OF DENTON (as Owner)

AND

**[Beta Engineering, LLC] (as
Contractor)**

FOR THE CONSTRUCTION OF THE HICKORY GIS SUBSTATION

DATED AS OF DECEMBER 14, 2021

LIST OF EXHIBITS

- A. Scope of Work & Design Basis (Exhibit A on file at the office of the Purchasing Agent)
 - i. Appendix A – RFP Introduction, Scope Discussion, Discussion of Sequencing and Work Already Performed.
 - ii. Appendix B – Design Basis Documents
 - iii. Appendix C – Wall System Drawings and Specifications
 - iv. Appendix D – Building Drawings and Specifications
 - v. Appendix E – Site Development Drawings and Specifications
 - vi. Appendix F – Underground Transmission Drawings and Specification
 - vii. Appendix G – GIS Drawings and Specification
 - viii. Appendix H – Outdoor Substation Drawings and Specifications
 - ix. Appendix I – Distribution Drawings and Specifications
 - x. Appendix J – Geotechnical Report
 - xi. Appendix K – Bid Checklist
 - xii. Appendix L – Existing Switchgear Building Drawings
 - xiii. Appendix M – Laydown Yard and Items Complete
 - xiv. Appendix N – Existing Hickory Substation
 - xv. Supplementals
- B. Form of Change Order
- C.
 - (1) Form of Partial Lien Waivers and Release
 - (2) Form of Final Lien Waiver and Release
- D.
 - (1) Form of Mechanical Completion Certificate
 - (2) Form of Substantial Completion Certificate
 - (3) Form of Final Completion Certificate
- E. Notice to Proceed
 - (1) Form of Limited Notice to Proceed

(2) Form of Final Notice to Proceed

- F Permit Responsibility
- G. Milestone Payment Schedule
- H. Form of Performance Security

4894-5228-1604, v. 1

- I. Form of Monthly Progress Report
- J. Key Personnel
- K. Not used
- L. Not used
- M. Project Schedule
- N. Contractors Rate Sheet

DESIGN BUILD AGREEMENT

THIS DESIGN BUILD AGREEMENT (this “Agreement”) dated as of and effective the DECEMBER 14, **2021** (“**Effective Date**”), is by and between **Beta Engineering, LLC** (hereinafter referred to as “**Contractor**”) and **City of Denton**, a home-rule municipal corporation organized under the laws of the State of Texas (hereinafter referred to as “**Owner**”). Contractor and Owner may be referred to collectively as the “**Parties**” or individually as a “**Party**”.

RECITALS

WHEREAS, Owner has determined the need to replace the existing Hickory Street Substation with a new Hickory Gas Insulated Substation (“GIS”) facility and owns the property for the new substation;

WHEREAS, Contractor has represented to Owner that it is qualified to perform engineering, procurement, construction, testing, start-up, commissioning and training services of the nature contemplated by this Agreement; and

WHEREAS, Owner desires to engage Contractor to perform engineering, procurement, construction, testing, start-up, commissioning and training services related to Owner’s planned GIS facility, which is to be located at 2600 W. Hickory St. in the City of Denton, Texas, and Contractor desires to perform such services for Owner;

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth in this Agreement, Contractor and Owner agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. Definitions.

In addition to other defined terms contained in this Agreement, the following terms shall have the meaning specified below in this Article.

“**Adjusted Reference Price**” means the Reference Price for Copper, Steel and PVC Resin adjusted up or down five percent (5%), as applicable.

“**Affiliate**” of a Party means any other entity directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Party.

“Applicable Law” means any law, including, but not limited to, Environmental Laws, statute, rule, regulation, ordinance, code, judgment, decree, injunction, writ, order, license, regulation of any Governmental Authority having jurisdiction over a Party or any portion of the Work, in each case applicable to the Work or the rights and obligations of a Party under this Agreement.

“Business Day” means a day other than Saturday, Sunday, or a day other than on which banks are legally closed for business in the State of Texas.

“Change in Law” means the enactment, adoption, promulgation, modification (including a written or oral change in interpretation by a Governmental Authority) or repeal of any Applicable Law or Permit after the Effective Date that has or will have an adverse effect on Contractor’s costs and/or schedule for performing the Work; provided, however, that no Change in Law pursuant to the Contract Documents shall arise or be deemed to arise by reason of (a) any applicable national, federal, state or provincial (other than City of Denton) income tax law (or any other applicable tax law based on income), (b) a labor wage law or other Applicable Law (other than imposed by City of Denton) that affects Contractor’s or its Subcontractor’s costs of employment, and (c) the final enactment, modification, amendment or repeal of an Applicable Law prior to the Effective Date with an effective date of such action that falls after the Effective Date.

“Change Order” means a written instrument, in substantially the form attached hereto as **Exhibit B**, signed by Owner and Contractor in accordance with **Article V**.

“Commodity Price Change Order” means a change order pursuant to Section 5.3(b)(6) and shall be; (a) a credit to Owner for quantities of Copper, Steel and PVC Resin, if the Copper Index Price, the Steel Index Price or the PVC Resin Price is less than ninety five percent (95%) of the Reference Price for such commodity on the day such commodity is purchased by Contractor for the Work; and/or (b) a price increase to Contractor for the quantities of Copper, Steel and PVC Resin, if the Steel Index Price, the Cooper Index Price or the PVC Resin Price is greater than one hundred and five percent (105%) of the Reference Price on the day such commodity is purchased by Contractor for the Work. The Section 5.3(b)(6) Change Order shall be for the quantity of the commodity purchased (Copper, Steel or PVC Resin) multiplied by the difference between the Adjusted Reference Price and applicable Steel Index Price, Copper Index Price or PVC Resin Price. Contractor shall provide commercially reasonable documentation to Owner documenting the basis for the Commodity Price Change Order associated with each requested Change Order.

“Confidential Information” means information or data that the Disclosing Party considers to be a trade secret or competitively sensitive and which is designated as such in writing by the Disclosing Party. In order to be considered Confidential Information, written information has to be identified at the time of the disclosure with an appropriate legend, marking, stamp or positive written identification on the face thereof as Confidential Information. In order to be considered Confidential Information, verbal or visual information has to be so identified at the time of the verbal or visual disclosure and the Disclosing Party will notify the other Party (the **“Receiving Party”**) in writing within thirty (30) days of the disclosure and specifically identify the Confidential Information previously disclosed. Confidential Information does not include information or data that:

(a) was in the public domain at the time of the disclosure or is subsequently made available to the general public without restriction and without breach of this Agreement;

(b) was known by the Receiving Party at the time of disclosure without restrictions on its use or independently developed by the Receiving Party, as shown by adequate documentation;

(c) is disclosed to the Receiving Party by a third person without restriction and without breach of any agreement or other duty to keep the information confidential; or

(d) is disclosed in compliance with the requirements of Applicable Law, including the Texas Public Information Act, Tex. Gov. Code Ch. 552 et al.

“Contamination” means any Hazardous Material present at the Site or which has been brought to the Site by a party other than Contractor or its Subcontractors.

“Contract Completion Date” means October 25, 2024 as may be adjusted pursuant to the Agreement.

“Contract Documents” means this Agreement plus all attachments, exhibits, specifications, schedules, and drawings and any Change Orders or amendments thereto.

“Contract Interest Rate” shall have the meaning set forth in **Section 4.3(c)**.

“Contract Price” means [CONTRACT AMOUNT] U.S. dollars (**\$40,469,000**), which is the total amount payable to Contractor pursuant to this Agreement in accordance with the “Milestone Payment Schedule” in **Exhibit G**, as adjusted pursuant to the terms hereof.

“Contractor” shall have the meaning set forth in the preamble to this Agreement.

“Contractor Payment, Maintenance & Performance Bond” shall have the meaning set forth in **Section 4.7(b)**.

“Contractor’s Project Manager” or “Project Manager” shall mean the person identified in **Section 7.2**.

“Control” means the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise, and **“Controlled”** and **“Controlling”** shall have correlative meaning.

“Copper” means any Copper purchased by the Contractor for the Work.

“Copper Index Price” means the daily index price of Copper as published by the Chicago Mercantile Exchange as the closing price as represented by trading symbol HG:CMX.

“Corrective Action Plan” shall have the meaning set forth in **Section 3.2(c)**.

“Delay Damages” shall have the meaning set forth in **Sections 9.6 and 12.8** and as follows: \$10,000 per calendar day after Contract Completion Date.

“Delivery Point” means the point of delivery for the Owner-Supplied Equipment as set forth in **Section 2.20(a)**.

“Design Warranty” shall have the meaning set forth in **Section 6.2**.

“Disclosing Party” means the Party disclosing information in **Section 15.2**.

“Early Substantial Completion” shall mean the number of days Substantial Completion is achieved prior to the Contract Completion Date.

“Effective Date” shall have the meaning set forth in the preamble to this Agreement.

“Engineering Services” shall have the meaning set forth in **Section 6.2**. **“Environmental Laws”** means all federal, state and local laws, rules, regulations and ordinances governing, regulating or relating to public health, pollution, or the protection of the environment (including ambient air, noise, soil, surface water, ground water, wastewater, wetlands, land or subsurface strata), including, but not limited to, those relating to (a) emissions, discharges, releases or threatened releases of Hazardous Materials into the environment, (b) manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, and (c) human exposure to Hazardous Materials or conditions, including the laws and regulations promulgated pursuant to: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq., as amended, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., as amended, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., as amended, the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended, the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended, the Oil

Pollution Act, 33 U.S.C. §2701 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., as amended, the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as amended, and the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as amended, together with all applicable similar and related federal, state and local laws, rules, regulations and ordinances, as may be amended from time to time.

“Facility” means all of the equipment and systems related to Hickory Gas Insulated Substation including all other equipment, systems and materials, including associated and ancillary systems, subsystems, assemblies, instruments, equipment, apparatus, materials, structures, facilities, appliances, lines, conductors, and all other components and documents comprising, describing and integrating the entire facility into a fully operational gas insulated substation as described in **Exhibit A**.

“Facility CPM Schedule” shall have the meaning set forth in **Section 3.2(b)**.

“Final As-Built Drawings and Documentation” means all drawings, specifications and other documentation prepared by Contractor to construct the Facility in accordance with the standards of performance set forth in **Section 6.2**, which accurately and completely represent in detail in all material respects the physical placement of all Facility components and systems as installed and/or constructed as at the time of Final Completion, including “as-built” surveys illustrating the established building setback lines, if any, and the location of the Facility on the Site and within any established boundaries and setback lines.

“Final Completion” shall have the meaning set forth in **Section 9.5(b)**.

“Final Notice to Proceed” means the written notice delivered from Owner to Contractor indicating that the Bond Financial Closing has occurred.

“Force Majeure” shall have the meaning set forth in **Section 16.1**.

“Governmental Authority” means any United States federal, state, local or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision, court, tribunal, or other governmental arbitrator, arbitral body or other authority. **“Hazardous Materials”** means, collectively, (a) any hazardous, toxic, or polluting substance, material, or waste as defined or regulated under any Applicable Law; (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by a Governmental Authority.

“Initial Notice to Proceed” shall have the meaning set forth in **Section 3.1**.

“Key Personnel” means those Contractor positions identified in **Section 2.17**.

“**Lien**” means with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, security interest or encumbrance of any kind, whether or not filed, recorded or otherwise perfected or effective under Applicable Law, as well as the interest of any lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“**Major Subcontractors**” means any Subcontractor with a scope of work having consideration due to such Subcontractor greater than \$500,000.

“**Major Subcontracts**” means all of the contracts between Contractor and Major Subcontractors.

“**Mechanical Completion**” shall have the meaning set forth in **Section 9.1**.

“**Milestone Payment Schedule**” means the summary schedule of values as shown in **Exhibit G**.

“**Milestone Payment**” shall have the meaning set forth in **Section 4.3(a)**.

“**Other Equipment Delivery Site Work**” means the Work comprised of Contractor’s timely making available of sufficient space at the Site for to complete Other Owner-Supplied Equipment Deliveries, in each case which tasks are more particularly described in **Exhibit A**.

“**Other Owner-Supplied Equipment Delivery**” means each delivery of all Owner-Supplied Equipment available for loading onto Contractors truck at the Owner’s Brinker Substation, complete with corresponding packing lists supplied by Owner.

“**Owner**” shall have the meaning set forth in the preamble hereto.

“**Owner’s Representative**” means the person identified pursuant to **Section 7.1**.

“**Owner-Supplied Equipment**” means the equipment, and its associated drawings, installation instructions, operation and maintenance manuals, spare parts and technical advisor services associated with two (2) 15 kV Switchgear Buildings provided by Owner and furnished to Contractor as described in **Exhibit A**.

“**Performance Security**” shall have the meaning set forth in **Section 4.7(a)**.

“**Permits**” means any permit, license, authorization, consent, registration, approval, permission, ruling, certification, or exemption that must be obtained from any Governmental Authority for the performance of this Agreement, as set forth in **Exhibit F**.

“**Project Milestone**” means those activities and associated deadlines set forth in the Project Milestone Schedule.

“Project Milestone Schedule” means the schedule of dates for completion of each principal category of the Work for achieving each Project Milestone and for achieving Substantial Completion by the Contract Completion Date. The Project Milestone Schedule is set forth in **Exhibit M**.

“Prudent Utility Practice” means that degree of skill and judgment and the utilization of practices, methods, and techniques and standards that are generally expected of skilled and experienced engineering and construction firms in the electric power industry in the United States of America. Prudent Utility Practice is not limited to the optimum practice, method or act to the exclusion of all others, but rather to a spectrum of reasonable and prudent practices, methods, standards and procedures.

“Punch List” means a listing of all incomplete or deficient Work, prepared and agreed to by the Parties pursuant to **Section 9.5**.

“PVC Resin” means PVC piping purchased by Contractor from a third party for the Work.

“PVC Resin Price” means the actual price paid by Contractor (\$/ton) to a third party for any PVC pipe required for the Work.

“Receiving Party” shall have the meaning set forth in the definition of “Confidential Information”.

“Reference Price” means \$4.74/lb for Copper, \$1,330/ton for PVC Resin and \$1,919/ton for Steel.

“Services” means the engineering, procurement, construction, testing, start-up and commissioning services to be performed by Contractor in accordance with the Contract Documents.

“Site” means the Owner’s site on which the Facility is located, which is more particularly described in **Exhibit A**.

“Steel” means any structural, architectural, or other Steel purchased by Contractor required for the Work.

“Steel Index Price” means the daily index price of Steel as published by the Wall Street Journal as the closing price reported as the NYSE American Steel Index.

“Subcontractors” means any person with whom Contractor has entered into any subcontract, purchase order or other agreement for such person to perform any part of the Work or to provide any materials, equipment, supplies or services, including any person at any tier with whom any Subcontractor has further subcontracted any part of the Work.

“Substantial Completion” shall have the meaning set forth in **Section 9.2**.

“**Warranty Period**” means the period commencing on the date of Substantial Completion and ending on the third anniversary thereof; provided, however, any Work repaired or replaced shall be re-warranted for a three year period that shall not, however, extend beyond the fourth anniversary of the date of Substantial Completion. Owner Supplied Equipment will not have a Warranty Period under this Agreement but all work to integrate Owner Supplied Equipment will be subject to the Warranty Period.

“**Work**” means the Services and all things to be designed, engineered, manufactured, procured, furnished, executed, installed, constructed, tested, completed, made good or otherwise provided by Contractor in accordance with the Contract Documents, all as more particularly described by the descriptions contained in **Exhibit A**.

SECTION 1.2. Rules of Interpretation.

(a) Terminology. Unless otherwise required by the context in which any term appears:

(i) The singular shall include the plural and the masculine shall include the feminine and neuter.

(ii) References to “Articles,” “Sections,” “Annexes,” or “Exhibits” shall be to articles, sections, annexes, or exhibits of the relevant Contract Document, and references to paragraphs or clauses shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs.

(iii) The words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; the words “include,” “includes” or “including” shall mean “including, but not limited to.”

(iv) The term “day” shall mean calendar day (beginning at 12:00 a.m. and ending at 11:59 p.m.), in the location where the relevant (a) payment of funds is to be received, (b) notice is to be received, or (c) performance is to be made. Whenever an event is to be performed by a particular date, or a period ends on a particular date, and the date in question falls on a weekend, or on a day which is not a Business Day, the event shall be performed, or the period shall end, on the next succeeding Business Day.

(v) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied.

(vi) All references to a particular entity shall include such entity's successors and permitted assigns.

(vii) All references herein to any contract (including the Contract Documents) or other agreement shall be to such contract or other agreement as amended and supplemented or modified to the date of reference.

(viii) All references to any Applicable Law includes any amendment, modification or successor thereto.

(ix) Words and abbreviations that have well-known technical or trade meanings are used in these Contract Documents in accordance with such recognized meanings, except to the extent a definition herein set forth requires otherwise.

1.1.2 Headings. The titles of the articles and sections herein have been inserted as a matter of convenience or reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

1.1.3 Joint Responsibility for Drafting. This Agreement was negotiated and prepared by both Parties and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part thereof.

1.1.4 Obligation to Act in Good Faith, Etc. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless otherwise expressly provided herein, where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld or delayed, and wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable. This Agreement may not be complete in every detail. Owner and Contractor shall comply with its intent and general purpose, and shall not avail itself of manifest errors or omissions herein to the detriment of the Facility.

ARTICLE II

THE WORK AND OBLIGATIONS OF THE PARTIES

SECTION 2.1. The Work

Contractor agrees to timely perform the Work for the Contract Price in accordance

with the Scope of Work set forth in **Exhibit A**. Time is of the essence in completion of the Work and Owner will suffer financial if Final Completion is not achieved by the Contract Completion Date, plus any extensions thereof allowed by this Agreement. Contractor shall fully perform the Work in accordance with Prudent Utility Practice, all Applicable Laws and all other terms and provisions of this Agreement. Contractor shall design, engineer, procure and construct the Facility so that the Facility reaches Final Completion. Contractor acknowledges that it shall carry out all of the supply and services specified in the Contract Documents to satisfy the requirements of the Contract Documents, and to the extent not specifically addressed by the Contract Documents, in accordance with Prudent Utility Practice. The Parties shall cooperate fully in all regards with the intent to improve the performance of the Work and reduce the likelihood of operating and maintenance impacts consistent with the requirements of the Contract Documents.

SECTION 2.2. Specific Obligations for the Work

Without limiting the generality of **Section 2.1** or the requirements of any other provision of this Agreement (including, but not limited to, **Exhibit A**), Contractor shall:

- (a) Protect from damage and properly store all equipment procured by Contractor or accepted by Contractor at the Site or other location (including Owner-Supplied Equipment);
- (b) Provide construction, construction management (including the furnishing of all field supplies, tools, construction equipment, and all Site supervision and craft labor), engineering, procurement, inspection and quality control services required under this Agreement;
- (c) Coordinate all delivery schedules and performance obligations of all Subcontractors so that performance under such subcontracts and purchase orders, as the case may be, is enforced in accordance with the terms thereof and as required by this Agreement;
- (d) Perform inspections of the Work of Subcontractors as reasonably required to determine conformance with all of the requirements of this Agreement;
- (e) Comply with all Applicable Laws, including, but not limited to, state and federal occupational, safety and health laws and regulations;
- (f) Perform all quality control and quality assurance activities (including witnessing tests) to confirm that the Work complies with this Agreement;
- (g) Perform the Work in accordance with the Project Milestone Schedule; and
- (h) Perform commissioning and start-up, including the turnover packages, technical direction, and Owner interfaces.

SECTION 2.3. Spare Parts

Contractor shall provide Owner with a recommended spare parts list as equipment is procured with a final list, including prices, for the Facility within twelve (12) months after receiving a Final Notice to Proceed. The spare parts list shall identify those spare parts that are recommended for operations. Contractor shall supply the spare parts necessary for testing, startup and commissioning. Subject to Owner's consent, which shall not be withheld unreasonably, Contractor may use any spare parts maintained on the Site by Owner. Contractor shall reimburse Owner for Owner's replacement cost of the Owner-supplied spare parts used by Contractor, unless replaced by an equipment supplier as a warranty replacement. Contractor's obligations to provide the spare parts list does not include any spare parts for Owner-Supplied Equipment.

SECTION 2.4. Contractor's Tools and Equipment

Contractor shall furnish all tools and equipment necessary and appropriate for the timely and safe performance and completion of the Work.

SECTION 2.5. Employment of Personnel

(a) Contractor shall not employ, or permit any Subcontractor to employ, in connection with its performance under this Agreement, any unfit person or anyone not skilled in the Work assigned to such person. Contractor agrees to promptly remove (or to require any Subcontractor to remove) from its services in connection with the Work any employee who is unfit or unskilled. If Owner has any objection to the fitness or qualifications of any person retained by Contractor to perform the Work, Owner shall so notify Contractor in writing. Upon receipt of such notice, Contractor shall investigate Owner's concerns and take appropriate action, which may include the reassignment or removal of such person. Notwithstanding any other provisions in this Agreement to the contrary, Contractor shall provide workers qualified, skilled and specialized (and duly licensed as required) in the Work to which they are assigned.

(b) Owner reserves all rights to deny placement of any of Contractor's workers on Owner premises, property, equipment or projects in its reasonable discretion. Such denial of placement of subject workers shall be conveyed subject to the provisions of **Section 7.3** "Notices".

(c) Contractor shall use its commercially reasonable efforts to maintain good labor relations, shall comply with the applicable project labor agreement, and shall implement actions designed to avoid labor disputes that might adversely affect performance of the Work.

SECTION 2.6. Clean-up and Non-Interference

Contractor shall at all times keep the Site free from waste materials or rubbish

caused by its activities. As soon as practicable after the completion of all Punch List items, Contractor shall remove all of its equipment and materials not constituting part of the Facility and remove all waste material and rubbish generated by Contractor or that Contractor has brought to the Site, in connection with Contractor's performance of the Work, from the Site to a permitted disposal facility, and restore the Site in accordance with all Applicable Laws and this Agreement.

SECTION 2.7. Safety and Security

Contractor recognizes and agrees that safety is of significant importance in the performance of the Work and that Contractor is responsible for performing the Work in a safe manner. Contractor agrees to perform the Work, and Contractor shall require all Subcontractors to perform their portion of the Work, in accordance with the safety and health rules and standards of Applicable Law and the safety program developed by Contractor and submitted to Owner. Contractor further agrees to provide necessary training to its employees and Subcontractors to inform them of the foregoing safety and health rules and standards. Should Owner at any time observe Contractor, or any of its Subcontractors, performing the Work in an unsafe manner, or in a manner that may, if continued, become unsafe, then Owner shall have the right (but not the obligation) to require Contractor to stop the Work affected by the unsafe practice until such time as the manner of performing the Work has been rendered safe. Contractor shall be responsible for the security and care of the Facility as set forth in **Section 2.13**. Nothing in this **Section 2.7** shall affect Contractor's status as an independent contractor.

SECTION 2.8. Emergencies

In the event of any emergency endangering life or property, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage, or loss and shall, as soon as possible, report any such incidents, including Contractor's response thereto, to Owner. If Contractor has not taken reasonable precautions for the safety of the public or the protection of the Work, and such failure creates an emergency requiring immediate action, then Owner, with or without advance notice to Contractor may, but shall be under no obligation to, provide reasonable protection as required to address such emergency; provided, however, that Owner shall in any event notify Contractor of any actions taken by Owner within ten (10) Business Days of taking such action. All reasonable direct costs so incurred by Owner as a result of any emergency caused by Contractor shall be reimbursed by Contractor.

SECTION 2.9. Approvals, Certificates, Permits and Licenses

Contractor shall obtain all approvals, certificates, and licenses required to be in Contractor's name to perform the Work and provide the Permits set forth in **Exhibit F**. Contractor shall promptly, within such time period as may be agreed upon by the Parties, provide Owner with reasonable assistance that Owner may require to secure the approvals, certificates, Permits and licenses required to be in the name of Owner as set forth in **Exhibit F**.

SECTION 2.10. Taxes

The Contract Price includes and Contractor shall be liable for and pay to the applicable Governmental Authority all taxes and contributions for unemployment insurance, benefits, withholding taxes, and similar benefits, as well as taxes measured by or imposed on the net income of Contractor by Applicable Law or collective bargaining agreements with respect to persons employed by Contractor for performance of the Work. **Contractor shall indemnify Owner from, all such taxes and contributions, including any interest accrued and penalties imposed thereon.**

On all invoices, Contractor shall separately show all sales, use, value added, excises, assessments, charges, and other similar taxes imposed by any Governmental Authority on the Work, or any part thereof, including but not limited to Contractor's purchase or sale of equipment or other materials installed in, incorporated into, or affixed or attached to the Facility, the Site, or the Work (collectively, "**Owner Taxes**").

Contractor shall reasonably cooperate with Owner to utilize appropriate nontaxable transaction exemptions and certificates or similar certificates from other states (a properly completed form of which shall be timely provided to Contractor by Owner), where allowed by Applicable Law, to minimize such Owner Taxes. Charges not subject to Owner Taxes shall be identified and no such Owner Taxes shall be charged to Owner thereon. In the event, however, that despite the use of nontaxable transaction certificates or the identification by Owner of charges not subject to Owner Taxes, such taxes are imposed by any Governmental Authority, such taxes and any resulting interest, fines, penalties, audit costs, and defense costs shall be invoiced to and reimbursed by Owner as set forth herein. Owner agrees to timely pay or reimburse Contractor for the disputed taxes once they are assessed to avoid any further tax liabilities, interest, penalties or fines against Contractor. Contractor shall provide sufficient detail, as requested by Owner, as to document the Work which was subject to Owner Taxes which are invoiced to Owner. Owner shall have the right to inspect and audit the records of Contractor with respect to such invoiced amounts. In the event of an audit by any Governmental Authority with respect to such taxes, Contractor shall provide reasonable cooperation to Owner to defend and document the amount of such taxes paid on the Work. Owner qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. In the performance of its Work for Owner, Contractor may, by separate agreement, purchase materials and supplies and rent or lease equipment sales tax free. In connection with any such transaction, Owner would issue exemption certificates to Contractor in compliance with the State Comptroller's ruling #95-0.07 and #95-0.09. SECTION 2.11. Hazardous Materials

Contractor shall design, construct, pre-commission, test and start-up the Facility and otherwise perform the Work in compliance with the requirements of all Applicable Laws. If, during the course of the performance of the Work, Contractor or any Subcontractor discovers, or reasonably believes it has discovered in, on or under any part of the Site, any Hazardous Materials (other than Hazardous Materials that Contractor or a Subcontractor has brought onto the Site, produced, created or used), Contractor shall proceed in accordance with **Section 13.4(c)**. Except to the extent of Contractor's responsibility under **Section 13.4(b)**, Owner shall be solely responsible and liable for all liabilities arising from: (i) Hazardous Material existing at the Site as

of the date of this Agreement, and (ii) all other Hazardous Material brought to, or produced at, the Site by Owner, or others (other than Contractor or its Subcontractors) on or after the date of this Agreement.

SECTION 2.12. Progress Meeting and Reports

Contractor shall hold a bi-weekly progress meeting during construction at the Site, or at an alternate location mutually agreeable to Owner and Contractor, for the purpose of reviewing the monthly progress report for the previous month with Owner. Contractor shall provide Owner with monthly progress reports, the following other information relating to the progress of the Work, and such other information as may be reasonably requested by Owner:

- (a) Minutes for all meetings involving the Owner within four (4) Business Days following such meeting;
- (b) Weekly progress reports of construction activities;
- (c) Incident reports within three (3) Business Days of the occurrence of safety incidents, environmental incidents or incident involving damage to the Facility (preliminary written notice is to be provided to Owner within eight (8) hours of a such incidents; provided, however, that verbal notice of critical or fatal injuries shall be provided to Owner within three (3) hours);
- (d) Monthly construction milestone status reports and monthly progress reports no later than the fifth (5th) Business Day of each month, which shall cover activities up to the end of the previous month;
- (e) Updates every month to the Facility CPM Schedule pursuant to **Section 3.2**;

SECTION 2.13. Care, Custody and Control/Risk of Loss

Upon the issuance of a Final Notice to Proceed pursuant to **Section 3.1**, Contractor shall have the full responsibility for care, custody and control and risk of loss of the Facility including the Owner-Supplied Equipment upon transfer of risk of loss from the Owner. While Contractor bears responsibility for care, custody and control and risk of loss of the Owner-Supplied Equipment, Owner shall, with Contractor's cooperation, obtain any repair services or replacements for the Owner-Supplied Equipment or otherwise from Owner or any service provider of Owner including the allocation between Owner and Contractor of the responsibility for the costs thereof in accordance with the terms of this Agreement. Care, custody and control and risk of loss of the Facility shall transfer to Owner upon the earlier of (a) Substantial Completion (unless Owner specifically elects in writing to accept care, custody and control of the Facility prior to Substantial Completion) or (b) the date of termination of this Agreement pursuant to the provisions of **Article X**. If Owner elects to take care custody and control of the Facility before Substantial Completion is achieved, then Contractor may be entitled to a Change Order pursuant to the provisions of

Article V; provided, however, that Contractor shall not be entitled to a Change Order if Owner elects to take care, custody and control of the Facility prior to Substantial Completion but after the Contract Completion Date and the resulting delay was not excusable under the Contract. Notwithstanding anything to the contrary contained herein, if Owner takes possession or uses any portion of the Work prior to Substantial Completion or termination of this Agreement as set forth herein, such possession shall constitute acceptance of that portion of the Work and the risk of loss for such Work passes to Owner at the time Owner takes possession of such portion of the Work. Any such early Owner possession shall remain subject to the Warranty Period however, the period of such 3-year warranty shall begin at the time of early Owner possession. In connection with Contractor's risk of loss obligation, Contractor shall be responsible for and obligated to replace, repair, or reconstruct, and to furnish any material, equipment, or supplies furnished by Contractor or Owner-Supplied Equipment (after transfer of risk of loss from the Owner upon delivery to the Facility), which are lost, damaged, or destroyed prior to transfer of care, custody, and control of the relevant portion of the Facility or the affected portion thereof to Owner.

SECTION 2.14. Interpretation

In the event of any inconsistencies between Applicable Laws and the Contract Documents, Contractor shall comply with Applicable Laws. If Contractor finds a conflict, error, omission, inconsistency or discrepancy in the Contract Documents, then Contractor shall notify Owner before proceeding with the portion of the Work affected thereby.

SECTION 2.15. Operational Supervision

Prior to Substantial Completion, Contractor shall supervise Owner's relevant operations and maintenance personnel; provided, however, that Owner shall be responsible for the failure of its personnel to follow the reasonable direction of Contractor. Owner shall provide competent substation technicians and electric operations personnel required for training and commissioning assistance in a timely manner.

SECTION 2.16. Responsibility for Subcontractors

(a) Contractor may subcontract portions of the Work to any Subcontractor without further approval by Owner except for any Major Subcontracts, which for any Major Subcontractor not identified in **Exhibit A** are subject to Owner's review and approval, which approval shall not be unreasonably withheld or delayed. Contractor may have portions of the Work performed by its Affiliates or their employees. Contractor shall be responsible for such Work performed by a Subcontractor, Major Subcontractor or Affiliate and Owner will look solely to Contractor as if the Work were performed by Contractor.

(b) The issuance of subcontracts shall not relieve Contractor of any of its obligations under the Contract Documents, including, among other things, the obligation to properly supervise and coordinate the work of Subcontractors. Work

performed by Contractor's Affiliates shall be treated as if the Contractor had performed the Work.

(c) Owner's approval of any proposed Major Subcontract shall not constitute an approval of any portion of the Work or a waiver of any of Owner's rights hereunder or reduce Contractor's responsibilities hereunder. Contractor shall provide to Owner, on request, information concerning the status of the performance under and any disputes under each Major Subcontract, including information concerning specifications and cancellation terms.

(d) Notwithstanding any agreement with any Subcontractor(s), Contractor shall be solely responsible for the Work. Contractor has complete and sole responsibility as a principal for its agents and all others it hires to perform or assist in performing the Work. Except as otherwise provided in this Agreement, Owner shall not be deemed to have any contractual obligation to any Subcontractor and nothing contained in any subcontract shall create a contractual relationship between any Subcontractor and Owner.

SECTION 2.17. Key Personnel

Contractor shall appoint a Project Manager, a Construction Site Manager, and an Engineering Manager (together the "**Key Personnel**"), as set forth in **Exhibit J**. The Project Manager shall have full responsibility and authority for the Work on behalf of Contractor and shall act as Owner's primary point of contact with Contractor with respect to prosecution of the Work. Contractor shall not change a Key Personnel position, or the person appointed to such position without the prior written consent of Owner, which shall not be unreasonably withheld or delayed.

SECTION 2.18. Co-operation and Coordination

Upon prior reasonable notice by Owner, Contractor shall cooperate with, and grant reasonable access to the Site to, any person whom Owner appoints in writing to provide services with respect to the Facility, including, without limitation, any person, whether employed by Owner or not, carrying out interface work in relation to the transmission and distribution systems, SCADA systems, protection systems, fiber optics and communications systems and the water supply and discharge system; provided, that Owner obtains agreement from such persons to coordinate with Contractor's work activities, comply with Contractor's health and safety requirements, Applicable Law and Prudent Utility Practices. Subsequent to Substantial Completion (or, if care, custody and control of the Facility is transferred to Owner prior to Substantial Completion), Owner and Contractor shall cooperate and coordinate so that Contractor's activities with respect to the Facility do not interfere with the operation and maintenance of the Facility and so that Owner's operation and maintenance of the Facility does not interfere with Contractor's completion of the Work with respect to the Facility.

SECTION 2.19. Start-Up, Commissioning and Testing

(a) Contractor shall perform all startup, commissioning and testing of the Facility and shall coordinate energization of the Facility with Owner consistent with Prudent Utility Practices. Contractor should be aware and, and take into consideration, work will be occurring on both the transmission and distribution systems during construction. Contractor must consider and take actions or make proper notification to Owner if this work impacts the acceptance testing and must work with Owner to facilitate transmission and distribution construction and timely acceptance testing.

SECTION 2.20. Owner-Supplied Equipment

(a) **Care, Custody and Control.** From the date that Contractor removes the Owner-Supplied Equipment from Owner's premises (the "**Delivery Point**") Contractor shall have care, custody and control of such Owner-Supplied Equipment until transferred to Owner as part of the Facility pursuant to **Section 2.13**. The Parties agree to develop a mutually agreeable inspection procedure of the Owner-Supplied Equipment upon receipt at the Delivery Point.

(b) **Separate Undertaking.** Subject to the other provisions of this Agreement, Contractor shall not be responsible for providing or furnishing the Owner-Supplied Equipment, and Owner shall provide or cause the Owner-Supplied Equipment to be provided or furnished. Contractor shall be responsible for receiving, handling, installing, testing and other tasks with respect to incorporating the Owner-Supplied Equipment into the Facility, as set forth in **Exhibit A**. The Owner-Supplied Equipment shall be made available to Contractor at the Delivery Point.

(c) **Administration of Owner-Supplied Equipment.** Contractor shall conduct receiving inspection at the Delivery Point and shall be responsible for loading, shipping, unloading and storage of Owner-Supplied Equipment at the Facility. Contractor shall be responsible for installation of the Owner-Supplied Equipment in accordance with the Contract Documents. Notwithstanding any of the foregoing, Contractor shall not be liable to pay the Owner for any Owner-Supplied Equipment, this being the sole responsibility of Owner.

(d) Notwithstanding the foregoing, Contractor's authority in connection with Contractor's administration of the Owner-Supplied Equipment shall be limited such that Contractor shall neither do nor undertake to do any of the following without Owner's prior written consent in each case:

- (i) amend or modify the Owner-Supplied Equipment; or

(ii) bring or commence any lawsuit, arbitration or other action in Owner's name or otherwise to enforce any of the Owner-Supplied Equipment;

or

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SECTION 2.21. Owner Obligations

(a) **Site.** As set forth in **Exhibit A**, Owner shall make the Site available to Contractor to support the project schedule, which, as of the Effective Date, reflects a plan to mobilize Contractor's activities on the Site on June 1, 2022.

(b) **Owner-Supplied Equipment.** No later than the date of the Final Notice to Proceed, Owner shall make available to Contractor the Owner-Supplied Equipment

(c) **Operations Personnel.** Owner shall provide, at its cost, a complement, consistent with normal staffing levels for the Facility of appropriately qualified, competent, and, where necessary, substation technicians when required by Contractor to support the commissioning, initial operation of the Facility and all Performance Tests.

(d) **Construction Power** – Contractor shall arrange for and be responsible for all costs associated with installation, consumption, and removal of any required construction power.

(e) **Scheduling of Commissioning and Testing.** Contractor shall comply with the schedule developed by the Parties prior to the date for such delivery set out in the Project Milestone. Any delays may be cause for extended time and cost under Article V.

(f) **Licenses and Permits.** Contractor shall obtain any approvals, certificates, Permits and other licenses required to be obtained and held in its name for the Facility and as set forth in **Exhibit F**, Owner shall be responsible for all water and sewer impact fees payable to the City of Denton. Contractor's project schedule shall incorporate any schedule requirements associated with invoicing and payment of such impact fees and Owner shall not be responsible for any delays incurred by Contractor due to payment of such impact fees.

(g) **Property Taxes.** The Owner is a Texas home-rule municipality and as such is generally exempt from ad valorem property taxation under Texas law.

Contractor shall confirm that the Owner is exempt before paying ad valorem taxes for that may not be lawfully charged to the Owner.

(h) **Drawings and Specifications.** Owner shall provide Contractor with access to and the right to use all drawings and specifications, if any, prepared for the Owner-Supplied Equipment, that are necessary for Contractor's performance of the Work.

(i) **Subsurface Conditions.** To the extent that actual subsurface conditions are substantially different from those identified in the geotechnical study set forth in Contractor's proposal and adversely affect the Work, as notified to Owner by Contractor, Contractor shall be entitled to a Change Order pursuant to **Article V** and Owner shall then perform, at its cost and upon Contractor's written request, an additional geotechnical analysis. For the avoidance of doubt, if Contractor alleges substantially different subsurface conditions are present, Contractor shall immediately contact Owner or Owner's Representative to obtain consent, such consent shall not be unreasonably withheld, that soil or other subsurface conditions are substantially different before claiming any Change Order pursuant to Article V. Project schedule delays will not be considered excusable due to substantially different soil conditions except for contaminated soil due to unknown hazardous materials not disclosed in any geotechnical study.

SECTION 2.22. Commercial Activities

Contractor shall not, and shall ensure that any Subcontractors do not, engage in any commercial activity or permit any third parties, under the Contractor's control, to establish commercial activities on the Site that are unrelated to the performance of the Work. Contractor shall not allow its employees to engage in any commercial activity on the Site other than the performance of the Work.

ARTICLE III

CONSTRUCTION SCHEDULE AND COST

SECTION 3.1. Commencement of the Work and Contract Completion Date

(a) Upon delivery of the initial notice to proceed (the "**Initial Notice to Proceed**") and Owner's payment to Contractor of the initial Milestone Payment, Contractor shall diligently prosecute only the limited Work set forth in **Exhibit M** associated with such initial Milestone Payment. Contractor shall diligently prosecute the rest of the Work on an unrestricted basis in accordance with the Contract Documents upon Owner's issuance of a Final Notice to Proceed. Owner anticipates that the Final Notice to Proceed will be issued on or about May 1, 2022 and if such anticipated date is a later date, then Owner shall provide Contractor with

ten (10) Business Days' notice of the anticipated issuance of the Final Notice to Proceed. Contractor acknowledges and agrees that all amounts payable or to be paid by Owner under or in connection with this Agreement, other than the initial Milestone Payment, are in all respects subject to and conditioned upon the relevant governmental budget appropriation of sufficient funding to pay for the Facility (including the Owner's costs and obligations arising under the Contract Documents). Until a Final Notice to Proceed is issued, Contractor shall not perform any Work not associated with the initial Payment Milestone as described in **Exhibit M** and shall not be entitled to any payment other than the initial Milestone Payment. If the Final Notice to Proceed is received later than April 1, 2022 then Contractor shall be entitled to seek a Change Order in accordance with Article V to account for cost and schedule impacts. If the Agreement is so terminated, Contractor shall deliver to Owner promptly any documentation with respect to preliminary design and engineering Work performed in connection with the initial Payment Milestone promptly after such termination without representation or warranty as to usability, completeness or accuracy.

SECTION 3.2. Project Milestone Schedule and Facility CPM Schedule

(a) Following receipt of the Final Notice to Proceed, Contractor shall perform the Work continuously and with due diligence in accordance with the Project Milestone Schedule, as may be adjusted from time to time in accordance with this Agreement, so that each Project Milestone is timely achieved and so that Substantial Completion will be achieved by the Contract Completion Date.

(b) Within thirty (30) days after the issuance of an Initial Notice to Proceed, Contractor shall submit for Owner's review and approval a "Level II" schedule, in both electronic and hardcopy form, which shall use Microsoft Project, conform to the Project Milestone Schedule, and identify the critical path for the Work. Within ninety (90) days after the issuance of an Initial Notice to Proceed, Contractor shall submit for Owner's review and approval a "Level III" critical path method schedule (the "**Facility CPM Schedule**"), in both electronic and hardcopy form, which shall use Microsoft Project, conform to the Project Milestone Schedule, and set forth the timing of all elements of the Work and the interrelationship of such elements. The Facility CPM Schedule shall describe comprehensively, and in a form and to the level of detail agreed to by Owner, the activities required to complete the Work. The Facility CPM Schedule shall be a resource-loaded, integrated project schedule that includes all significant activities divided into specific, identifiable tasks according to their importance, together with a critical path schedule. The Facility CPM Schedule shall highlight selected activities by time period and type of activity showing the sequence in which Contractor proposes to perform the Work and the date by which Contractor reasonably requires that Owner shall have fulfilled

its obligations under this Agreement and Contractor intends to rely upon the Facility CPM Schedule in connection therewith. Contractor shall not change the dates set forth in the Facility CPM Schedule for Owner's obligations unless approved by Owner.

(c) The Facility CPM Schedule shall be periodically (but at least monthly) updated and delivered to Owner, in both electronic and hard copy form, with the monthly progress report. Contractor shall provide an explanation of any expected delay in achieving a Project Milestone designated in **Exhibit M** by the date therefor in the Project Milestone Schedule and Contractor's plan (in a level of detail reasonably requested by Owner) to remedy such delay as necessary to achieve Substantial Completion by the Contract Completion Date and any additional costs associated with such plan. If at any time the Facility CPM Schedule shows that any Project Milestone (including Substantial Completion) will not be achieved within fifteen (15) days of such Project Milestone (and the Contract Completion Date with respect to Substantial Completion), Contractor shall advise Owner and submit to Owner for its review, a recovery plan that demonstrates Contractor's commercially reasonable efforts to recover lost time or, if the delay cannot be recovered using commercially reasonable efforts, provide a plan to mitigate further delays (a "**Corrective Action Plan**"). Upon receipt of Owner's approval (which shall not constitute or require a waiver of any right of Owner to Delay Damages or to declare or exercise remedies for any Contractor Default hereunder), which shall not be unreasonably withheld, Contractor shall implement such Corrective Action Plan as approved. The submission of a schedule under this Section 3.2 shall not, without a Change Order, change any contractual guarantee dates.

SECTION 3.3. Delays

Without limiting the obligations of Contractor set forth in **Sections 3.2(b)** and **3.2(c)**, Contractor shall promptly notify Owner in writing of any actual or anticipated event that is delaying or could delay completion of the Facility in accordance with the Contract Completion Date. Contractor shall indicate the expected duration and anticipated effect of the delay, and the action being taken to correct the problem and make up for lost time. Subject to receipt of the appropriate Change Order for delays not caused by Contractor, Contractor shall take all steps reasonably available to Contractor to mitigate any impacts to the Contract Completion Date.

ARTICLE IV

COMPENSATION

SECTION 4.1. Compensation

Owner shall pay Contractor, as full compensation and consideration for Contractor's complete and timely performance of the Work and its other obligations hereunder, the fixed, turnkey lump sum Contract Price, subject only to adjustments by Change Order under the terms of this Agreement. Contract Price includes all Work, including equipment, materials, supplies, labor, intellectual property rights, transportation, and services to be provided by Contractor hereunder and all remedial work to be performed with respect to Contractor's warranties under Article VI or as otherwise required under the Contract Documents. SECTION 4.2. Other Payments

In addition to, but not as part of, the Contract Price, Owner shall pay to Contractor:

- (a) payments with respect to any Owner Taxes pursuant to **Section 2.10**;
- (b) reimbursements to Contractor pursuant to **Section 5.3(c)**;
- (c) the costs of any termination or suspension pursuant to **Article X**;
- (d) any payments due to Contractor pursuant to **Article XII**; and
- (e) any other amounts due to Contractor under the terms of this Agreement.

SECTION 4.3. Monthly Billing

(a) Subject to the terms of this Agreement, each month Owner shall make progress payments to Contractor in accordance with the Milestone Payment Schedule (Exhibit G) with respect to progress completed in accordance with the Facility CPM Schedule in the prior month and properly invoiced by Contractor to Owner hereunder, subject to Owner's right to retain payment pursuant to **Section 4.7** or withhold amounts pursuant to **Section 4.3(b)**. All payments shall be made by wire transfer to a bank account of which due notice shall have been given to Owner by Contractor. Payments as set out in the Milestone Payment Schedule for Work properly invoiced and encompassed within the progress invoice submitted pursuant to **Section 4.4** below shall be due and payable on the last day of the month in which such progress invoice was received; provided, however, that Owner's obligation to make payment shall be a minimum of 30 Business Days after the date of such invoice and shall be extended on a day-for-day basis for any failure by Contractor to submit its progress invoice on a timely basis in accordance with **Section 4.4**. Invoices shall be sent directly to the address of Owner set forth in Article VII but to the attention of: City of Denton Accounts Payable Department, with a copy to Denton Municipal Electric at the street and email address set forth in Article VII. Invoices must specifically reference this Agreement and Owner's Purchase Order Number.

(b) Payments to be made by Owner to Contractor shall be subject to withholding on the following basis:

(i) Owner withholds monies otherwise due by way of a refund of any earlier overpayments by Owner not in dispute by Contractor;

(ii) Any Delay Damages not in dispute that are due and payable by Contractor to Owner;

(iii) Work not in accordance with the requirements of the Contract Documents;

(iv) Claims filed against Owner, the Facility or the Site arising from Contractor's actions or inactions in connection with the performance of the Work, other than claims for which Liens have been filed against Owner, the Facility or the Site that Contractor has fully bonded;

(v) Damages to Owner not covered by insurance as a result of Contractor's failure to comply with the Contract Documents for which Contractor is required to indemnify Owner pursuant to the Contract Documents; and

(vi) Where Owner has made demand in respect of any other monies which are due and payable to Owner in accordance with the terms of the Agreement which are not being disputed in good faith by Contractor; provided, Contractor has thereafter failed to make such payment.

(c) In the event Owner disputes any invoiced item, including the completion of Work for which payment is sought, Owner shall give Contractor written notice of such disputed item within ten (10) Business Days after receipt of the invoice. Owner may withhold the related portion of the payment from its payment of the progress invoice. If Contractor disputes such withholding, such dispute shall be resolved pursuant to **Article XI**, "Dispute Resolution"; provided, however, the Parties shall use their reasonable efforts to resolve any such dispute within twenty (20) days of the due date for Owner's payment of the related progress invoice. To the extent such dispute resolution determines that a Party improperly withheld payment owed to the other Party, the Party which improperly withheld payment shall make such payment to the other Party, with interest accruing from the original due date for such payment at the maximum rate required by Sec. 2251.025 of the Texas Government Code (Prompt Payment Act).

(d) To the extent Contractor fails to deliver the monthly progress report as outlined in **Exhibit I**, Owner's obligation to make payment shall be extended on a day-for-day basis.

(e) Contractor shall continue to perform the Work notwithstanding a withholding or set off by Owner or a dispute over amounts due.

SECTION 4.4. Contents of Progress Invoices

Contractor shall submit its monthly progress invoice no later than the fifth (5th) day of each month. Each progress invoice shall set forth the amount from the Payment Schedule, the accumulated payments of the Contract Price to date, the applicable Owner Taxes under **Section 2.10**, and any other entitlement to payment or reimbursement claimed by Contractor under this Agreement (including an explanation thereof). Each progress invoice shall be supported by (i) Contractor's partial waiver of mechanic's liens and all other actual or potential encumbrances and rights of recovery against Owner for work that has been completed and payment received by Contractor in the form attached hereto as **Exhibit C-1** and (ii) partial lien waivers in the form attached hereto as **Exhibit C-1** from all Major Subcontractors.

SECTION 4.5. Final Payment; Liens

The final payment of the Contract Price set forth in the Payment Schedule in **Exhibit G** shall be made only upon the accomplishment of the following:

- (a) Contractor shall complete all Work (other than any Work under **Sections 6.1** and **6.2** to the extent the Warranty Period applicable thereto extends beyond the date of the final payment), including Punch List Work; and
- (b) Contractor shall execute and deliver to Owner Contractor's final waiver of liens in the form attached hereto as **Exhibit C-2** and final waivers of liens (in the form attached hereto as **Exhibit C-2**) executed by all Major Subcontractors.

Contractor shall indemnify, defend and save Owner harmless from all laborers', materialmen's, and mechanic's liens arising out of the Work and from all reasonable attorneys' fees relating thereto incurred by Owner so long as Owner has paid Contractor all undisputed amounts required by this Agreement.

SECTION 4.6. Effect of Payment

No payment, final or otherwise by Owner, shall be considered or deemed to represent that Owner or Owner's Representative or any other representative of Owner has inspected the Work, nor shall it constitute or be deemed an acceptance, in whole or in part, of any portion of the Work not, or subsequently determined not to be, in accordance with the Contract Documents.

SECTION 4.7. Security of Performance

- (a) Owner shall retain and withhold payment of ten percent (10%) of all payments due to be made to Contractor (the "**Retainage**"). Such amount shall be held by Owner. Retainage shall be released by Owner upon its receipt of corresponding Performance Security satisfying the requirements of this Section. Except as provided in the immediately preceding sentence, Owner

shall release the Retainage or, if applicable, the Performance Security, returning it to Contractor upon Substantial Completion; provided, however, that notwithstanding such a release of Retainage or the Performance Security, Owner will retain Retainage or Performance Security equal to 200% of the Punch List value until Final Completion.

(b) In order to secure Contractor's performance obligations under this Agreement, Contractor shall within ten (10) days after receipt of the Final Notice to Proceed deliver to Owner a payment maintenance and performance bond in substantially the form set forth in **Exhibit H** and otherwise in form and substance compliant with the Law of the State of Texas for such bonds for projects similar to the Facility, duly issued by a reputable national underwriter reasonably acceptable to Owner (collectively, the "**Contractor Payment, Maintenance & Performance Bond**").

SECTION 4.8. Wire Transfer Instructions

Owner shall make all payments due Contractor via wire transfer to Contractor's account as follows:

Bank:	Capital One, N.A.
ABA:	065000090
Account:	Checking
Name:	Crest Operations, LLC
Address:	201 St. Charles Ave., 29th Floor, New Orleans, LA 70170
Reference:	

ARTICLE V

CHANGES IN THE WORK

SECTION 5.1. Change Order

Change Orders may be initiated by either Owner or Contractor in accordance with this **Article V**. The Work, Contract Price, Contract Completion Date and any other obligation under this Agreement shall only be adjusted as allowed under this Agreement and any adjustment shall be documented by a Change Order. It is the desire of the Parties to keep changes in the Work and the Contract Completion Date at a minimum, but the Parties recognize that such changes may become necessary and agree that they shall be handled as follows.

SECTION 5.2. Individuals Authorized to Make Changes

All Change Orders must be approved and signed on behalf of Owner by Owner's Representative. Contractor's Project Manager may approve and sign any Change Order on behalf of Contractor.

SECTION 5.3. Change Orders

(a) To the extent that Contractor notifies Owner, within twenty (20) days of Contractor becoming aware of the impact of the relevant circumstances, and demonstrates that a Change (as defined in Section 5.3(b) below) (i) adversely affects Contractor's (or its Subcontractor's) ability to perform the Work, (ii) increases the cost of the Work or its other obligations under this Agreement, or (iii) causes a delay in the Project Milestone Schedule, the Target Substantial Completion Date or the Contract Completion Date or adversely impacts Contractor's critical path schedule, Contractor shall be entitled to claim an equitable and appropriate adjustment to the Contract Price, Contract Completion Date and any other affected obligation under this Agreement pursuant to a Change Order. Within a reasonable period of time after the Notice required by this section, but in no event later than thirty (30) days after such Notice, Contractor shall provide Owner with the information and other documentation then known to Contractor substantiating such claim. Contractor shall periodically update Owner with additional information as it becomes available until the claim is resolved. Failure of Contractor to provide the initial Notice of such claim within such twenty (20) day period shall constitute a waiver of any effect of such claimed Change and the right to request a Change Order therefor. If any Change affects Contractor's ability to achieve Substantial Completion by the Contract Completion Date, Contractor shall at Owner's request prepare a draft Change Order that, to the extent practical, does not adjust the Contract Completion Date, but compensates Contractor, as the case may be, for the effect of such Change by adjusting other milestones in the Project Milestone Schedule or other provisions of this Agreement pursuant to a Change Order. Adjustments to any price or scheduled date shall reflect only the reasonable and necessary impact of such Change. Within seven (7) days of receipt of all such information from Contractor, Owner and Contractor shall meet and, acting reasonably and in good faith, negotiate a mutually acceptable Change Order in accordance with the principles set forth herein. Contractor shall not, and shall not be obligated to proceed with, any changes or extra work until the price of such change or extra work and its effect has been agreed upon in writing with Owner in a Change Order. Upon mutual approval of such Change Order, Contractor shall diligently perform the changes contemplated by such Change Order in accordance with the Contract Documents. Contractor shall not suspend, in whole or in part, performance of the undisputed Work during any dispute over the scope of the Work or during the review and negotiation of any proposed Change Order unless directed in writing to do so by Owner, and if so directed, Contractor shall do so without waiving any right with respect to such

change or disputed item. During the deliberations as to the Change Order specified herein, Contractor shall diligently pursue completion of the Facility using commercially reasonable efforts.

(b) Contractor shall be entitled in accordance with and subject to the other provisions of this Section to an equitable and appropriate adjustment to the Contract Price, Contract Completion Date and any other affected obligation under this Agreement pursuant to a Change Order in any of the following events: (1) Owner-directed changes (including suspensions or stoppages of the Work not due to the fault of Contractor), including those caused by Owner's contractors other than Contractor or its Subcontractors, or by any third party not under control of Contractor; (2) the occurrence of an event of Force Majeure; (3) an act or omission of Owner in breach of its obligations under this Agreement (including an act or omission of Owner caused by Owner's contractors other than Contractor or any Subcontractor, or by any third party not under control of Contractor); (4) any Change In Law; (5) differing site conditions under **Section 8.1**; (6) increases and/or decreases of greater than five percent (+/-5%) in the Reference Price for each commodity (Steel, Copper and PVC Resin) purchased by Contractor to complete the Work ("Commodity Price Change Orders"); and (7) as otherwise provided in this Agreement (each of the foregoing being a "**Change**" for purposes of this Contract).

(c) Owner may initiate a change by advising Contractor in writing of the change believed to be necessary or desirable. As soon as practicable, Contractor shall prepare and forward to Owner a cost estimate and a schedule impact of the change, which shall include any applicable adjustment to the Contract Price, Contract Completion Date and any effect on Contractor's ability to comply with any of its obligations under this Agreement, including warranties. Contractor shall also consider any potential adjustments to the Work or the Project Milestone Schedule that may be undertaken to mitigate the effects of the change. Contractor shall be reimbursed for the reasonable costs incurred to prepare any estimate. Reimbursement shall be at the rates specified by Contractor consistent with **Exhibit N**. Owner shall advise Contractor in writing of its approval or disapproval of the change. If Owner approves the change, Contractor shall perform the Work as changed.

(d) With respect to any such Change Order to adjust the Contract Completion Date, the Parties agree that such adjustment shall preserve the period of time between Contractor's "Target Substantial Completion Date" (which date shall be identified in the Project Milestone Schedule and updated from time to time as part of the Facility CPM Schedule to be provided by Contractor pursuant to **Section 3.2**) and the Contract Completion Date that would have existed absent the event giving rise to the Change Order other than any portion of such period of time between Contractor's "Target Substantial Completion Date" and the Contract Completion

Date that is solely attributable to the actions of Owner in the performance of its obligations hereunder to preserve or extend such period of time.

SECTION 5.4. If No Agreement

If in connection with this **Article V** either Owner or Contractor disputes the existence, extent, validity of a Change or is unable to reach agreement on the terms of any Change in the Work, including, but not limited to, an adjustment in the Contract Price or Contract Completion Date, then either Party may notify the other Party that it desires to meet and resolve the dispute in accordance with **Article XI**. If the disputed portion of the proposed change to the Contract Price is less than \$100,000, Contractor shall proceed with the Work described in the disputed Change Order pending resolution of the dispute. If such disputed portion is equal to or greater than \$100,000, Contractor shall proceed with the associated work on a time and materials basis which time and materials payments to Contractor shall be subject to adjustment upon the resolution of the dispute. Under no circumstances, however, shall Contractor delay its performance of the Work because of an inability to agree on the terms of a Change Order.

ARTICLE VI

INSPECTION AND WARRANTY

SECTION 6.1. Warranty

(a) Contractor warrants (i) it will at all times be fully qualified and capable of performing the Work to complete the Facility according to the terms of this Agreement, (ii) it will perform the Work (other than the portions of the Work described in **Section 6.2**), in accordance with Prudent Utility Practice and in accordance with Applicable Law, **Exhibit A** and as otherwise specified in this Agreement, and that such Work shall be free of Liens (to the extent Owner is compliant with its undisputed payment obligations hereunder) or defects in title and free from any defect in workmanship performed by Contractor and its Subcontractors, and (iii) the materials and equipment provided under this Agreement shall be new, unused, undamaged and comply with **Exhibit A** and the Contract Documents. If Contractor fails to meet the standards set forth in this Section and Owner gives Contractor notice of any such failure or defect as promptly as practicable after discovery of such failure, but in no event later than the expiration of the Warranty Period, Contractor shall remedy such deficiency so that such Work conforms to those standards. Contractor's costs for such remedy shall be borne solely by Contractor. Contractor's obligation to correct defects and deficiencies shall include labor, parts, transportation, insurance, factory repair and testing, dismantling, re-erecting, re-testing and commissioning.

(b) Contractor shall, for the protection of Owner, use commercially reasonable efforts to obtain from all Subcontractors from which Contractor procures

machinery, equipment or materials or Work, warranties and guarantees with respect to such machinery, equipment, materials or Work consistent with the foregoing, except warranties for machinery and equipment from any original equipment manufacturer (“OEM”), which shall be as specified by such OEM’s standard terms, which shall be made available to Owner to the full extent of the terms thereof; provided, however, that the inability of Contractor to obtain such warranties or guarantees shall not limit or reduce Contractor’s obligations under this Agreement. Unless otherwise specified in the Contract Documents or as otherwise agreed by Owner, all materials and equipment so procured by Contractor shall be new, and both workmanship and material shall comply with the specifications and requirements set forth by the Contract Documents. Equipment and material which are procured by Contractor, but fail to comply with the requirements of the Contract Documents, shall be removed and replaced with complying equipment and material. However, if the progress of Work is such to make such removal impractical, Owner shall have the right to accept equipment or material and reduce the Contract Price by an amount equivalent to any recovery from the relevant Subcontractor for the difference in its value and the value of complying equipment or material. Contractor shall perform such factory or field tests as are necessary to verify that equipment meets the requirements of the Contract Documents. Contractor shall provide Owner with reasonable notice of such tests and Owner shall be permitted to witness such tests. All Subcontractors’, manufacturers’, and suppliers’ warranties and guaranties, express or implied, respecting any part of the Work and any materials used therein shall be deemed obtained by Contractor for the benefit of Owner without the necessity of separate transfer or assignment thereof. Contractor shall assign such warranties and guaranties to Owner upon the end of the Warranty Period.

(c) All Work repaired or replaced during the Warranty Period shall be rewarranted for an additional three years from the date of completion of the repair or replacement; provided, however, in all cases the Warranty Period shall expire four years following Substantial Completion of the original Work.

(d) If requested by Owner, Contractor will assist Owner in obtaining and administering any other warranties with respect to the Owner-Supplied Equipment and such request shall be treated as an Owner-directed change under **Article V**.

SECTION 6.2. Engineering and Design Warranty

Contractor warrants it will cause to be performed the engineering and design Services, as more particularly described in **Exhibit A** (the “**Engineering Services**”) in accordance with Prudent Utility Practice and otherwise in compliance with **Exhibit A** and the Work will be free from errors or omissions in engineering and design (the “**Design Warranty**”). Contractor shall provide a State of Texas professional engineering stamp on all drawings and designs. If within the Warranty Period it is shown that there is an error in the Engineering Services or a breach of the

Design Warranty as a result of a failure of Contractor or Contractor's engineering Subcontractor to meet those standards and Owner has notified Contractor in writing of any such error within thirty (30) days after the expiration of that period, Contractor promptly shall investigate and determine the cause of the deficiency or defect, promptly correct or cause to be corrected any deficient design that resulted therefrom, promptly issue corrected final as-built drawings, if applicable, and promptly replace or cause to be replaced all equipment and materials associated with the defective design and re-perform all other work necessary to cure the breach of the Design Warranty. All costs incurred by Contractor in performing such corrective services shall be borne solely by Contractor.

SECTION 6.3. Inspection and Testing

(a) All Work shall be subject to reasonable inspection by Owner, or its representatives or consultants, at all times to determine whether or not the Work conforms to the Contract Documents. Contractor shall provide Owner access to the Work wherever located. Owner may visit and inspect the Work, or any part thereof, at any time during normal business hours, and Contractor shall provide safe and proper access for inspection of the Work. Owner may be present at any test to be performed. Contractor shall promptly furnish all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and testing that may be required by Owner. All inspections and tests by Owner shall be performed in such manner as not to unnecessarily interfere, hinder or delay the Work. All such tests and inspections shall not relieve Contractor of its obligations.

(b) If Contractor fails to provide Owner with reasonable opportunity to inspect the Work, and if in the opinion of Owner it is necessary to uncover or dismantle such Work for such inspection, then Contractor shall uncover, dismantle and recover the Work as necessary for such inspection. If such inspection reveals a defect or deficiency in the Work, Contractor's cost of uncovering, dismantling and recovering the Work shall be borne solely by Contractor. If such inspection does not reveal a defect or deficiency in the Work, Contractor shall be entitled to a Change Order pursuant to the terms of **Section 5.3(c)** for the impact to Contractor of uncovering, dismantling and recovering the Work and to the extent of any effect on Contractor's ability to comply with its obligations under this Agreement.

(c) Where Owner has a reasonable belief that there is a defect or deficiency, even though Contractor has given Owner reasonable opportunity to inspect the Work and Owner subsequently requires uncovering, having made no comment during the original inspection, Contractor shall nevertheless uncover, dismantle and recover the Work as necessary for such inspection. If such inspection reveals a defect or deficiency in the Work, Contractor's cost of uncovering, dismantling and recovering the Work shall be borne solely by Contractor. If such inspection does not reveal a defect or deficiency in the Work, Contractor shall be entitled to a Change Order pursuant to the terms of **Section 5.3(c)** for the cost(s) and

impact to Contractor of uncovering, dismantling and recovering the Work and to the extent of any effect on Contractor's ability to comply with its obligations under this Agreement.

SECTION 6.4. Correction of Defects

If Contractor does not take action to correct any defects or deficiencies for which it is responsible under the Contract Documents within a reasonable time after receipt of Owner's written notice thereof, Owner may, as its sole option, (a) take such corrective action itself or through contract with others the costs of which shall be reimbursed by Contractor; (b) deduct an equitable amount from the Contract Price pursuant to a Change Order for defects or deficiencies in the Work in lieu of correcting Work that was not performed in accordance with the Contract Documents; or (c) exercise any other remedy available under this Agreement, including requiring Contractor to perform the corrective action if the relief under sub-clause (a) or (b) is not practicable.

SECTION 6.5. Limitations

The obligations contained in this **Article VI** govern and supersede any other terms in this Agreement which address warranties, guarantees, or the quality of the Work and are Contractor's sole warranty and guarantee obligations and Owner's exclusive remedies with respect to defects and deficiencies in the Work. Contractor makes no other warranties or guarantees, express or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose which are expressly disclaimed and waived. Contractor shall have no warranty obligation or liability for defects in the Work caused by normal wear and tear, Owner's improper operation or maintenance of the Facility, alterations that are not in compliance with the guidelines of the original equipment manufacturer, and any event of Force Majeure.

SECTION 6.6. Title

(a) Contractor shall include, as a term of each Subcontract, a warranty that all materials and equipment furnished by its Subcontractors that become part of the Facility or are purchased by Contractor for Owner for the operation, maintenance or repair thereof shall be legally and beneficially owned by the Owner free from any Lien and any defects in title whatsoever, without regard to any expiration of the Warranty Period. Title to all such materials and equipment shall pass to Owner upon delivery to the Site. Notwithstanding passage of title, Contractor shall retain sole care, custody and control of, and retain risk of loss for, such materials and equipment and shall exercise due care with respect thereto in accordance with **Section 2.13**. (b) In order to protect Owner's interest in all materials and equipment with respect to which title has passed to Owner but which remain in the possession of a third party, Contractor shall follow the directions of Owner with respect to the action to be taken by Contractor to maintain Owner's clear title and to protect Owner against claims by other parties with respect thereto, and the costs incurred by Contractor in curing any defect in title shall be borne solely by Contractor; provided, however, Contractor

shall be entitled to a Change Order pursuant to the terms of **Section 5.3(c)** for any costs incurred by Contractor at the direction of Owner to protect Owner's title, including, for example, the filing of financing statements.

(c) To the extent Owner is compliant with its undisputed payment obligations hereunder, Contractor agrees that it shall not establish, and shall not allow its employees, agents or Subcontractors to maintain, any contractor's or laborer's Lien on the Work or the Facility or any part thereof.

(d) Contractor shall not file or permit any Liens on the Work or the Facility; provided, however, that this clause shall not prohibit Contractor from taking any action allowed under Applicable Law to secure amounts due from Owner under this Agreement. Contractor shall follow the directions of Owner with respect to the action to be taken by Contractor regarding any mechanics' or materialmen's Liens arising from the Work and Contractor shall, if ordered by Owner, as soon as practical discharge or file a bond naming Owner as sole beneficiary in lieu of any Lien filed by any Subcontractor against the Facility based on a claim for payment in connection with the Work, and the costs incurred by Contractor in so doing be borne solely by Contractor.

(e) Contractor shall provide prompt notice to Owner of any Lien of which it receives notice.

(f) In the event Contractor fails to discharge or bond over any such encumbrance within a reasonable period or otherwise provide Owner with adequate assurances or security with regard to any such Lien arising in respect of the Work or the Facility, Owner shall have the right to discharge the same and Contractor shall reimburse Owner for the costs incurred to obtain such discharge.

ARTICLE VII

REPRESENTATIVES AND NOTICES

SECTION 7.1. Owner's Representative

Owner appoints the following individual as its "**Owner's Representative**":

Name:	Mark Zimmerer
Address:	Denton Municipal Electric 1685 Spencer Road Denton, TX 76205
E-mail:	mark.zimmerer@cityofdenton.com
Phone:	940-349-7169

The Owner's Representative shall be authorized to act on behalf of Owner, with whom Contractor may consult at all reasonable times, and whose instructions, requests, and decisions shall be binding upon Owner as to all matters pertaining to this Agreement and the performance of the Parties hereunder. Without limiting the foregoing, the responsibilities of Owner's Representative shall encompass but not be limited to (1) issuance of instructions, (2) review and inspection of Contractor's Work, (3) rejection of nonconforming Work, (4) determination of when the Work is complete, (5) approval of milestone payments, and (6) approval of certain Change Orders as set forth in **Article V** "Changes in the Work". All communications from Contractor to Owner shall be directed to Owner's Representative and all communications from Owner to Contractor shall be directed from the Owner's Representative. Owner may appoint another person as Owner's Representative at any time by written notice to Contractor from the current Owner's Representative. Only the Owner's Representative may provide binding direction to the Contractor.

SECTION 7.2. Contractor's Project Manager

Contractor shall appoint, subject to the approval of Owner (which shall not be withheld unreasonably) an individual as its "Project Manager" in charge of Contractor's performance and execution of the Work. Contractor shall provide Owner with the Project Manager's address, e-mail address, telephone number, cell phone number and facsimile number. All instructions, requests for Change Orders and all other communications from Owner to the Contractor shall be directed to the Project Manager.

Name:	Dane Anderson
Address:	4725 Highway 28E Pineville, LA 71360
E-mail:	Dane.anderson@betaengineering.com
Phone:	847.494.6609

SECTION 7.3. Notices

Except as expressly provided otherwise herein, any formal notice, demand, or request provided for in the Contract Documents shall be in writing and shall be effective upon delivery (electronic transmission to the e-mail address specified above may be done in addition to delivery of a paper copy). Copies of Notices from Owner to Contractor shall also be provided to Contractor's Project Manager.

With a copy to:

Name:	Crest Operations, LLC
Address:	Crest Operations, LLC

	General Counsel 4725 Hwy 28E, Bldg. 1 Pineville, LA 71360
E-mail:	Generalcounsel@crestoperations.com
Phone:	318-767-5530

SECTION 7.4. Changes

Each Party shall provide the other Party with notice when its respective address, contact person, telephone number, e-mail address, or facsimile number changes to which notices are to be sent.

SECTION 7.5. Ordinary Course

Nothing contained herein shall preclude the transmission of routine invoices or correspondence, messages and information between the Parties by a representative of a Party in the ordinary course of performing their respective obligations under the Contract Documents.

ARTICLE VIII

SITE

SECTION 8.1. Site Investigation

The Site characteristics are described in **Exhibit A**. Contractor represents and warrants that it knows and has carefully reviewed and taken account of all visible and disclosed conditions at the Site, including, the topography, utilities, traffic and weather patterns at the Site and surrounding area, the management and storage of materials, the availability of labor, construction water, construction electricity, and construction communications, the access routes to the Site, and soil and subsoil (to the extent expressly disclosed and described in the geotechnical report referred to in **Exhibit A**) characteristics. The Parties understand and agree that if Owner has conducted any geotechnical investigations of the Site, such investigations and resulting reports will be included in **Exhibit A** and shared with Contractor, and that Contractor has a right to reasonably rely upon such without independent verification. Contractor's failure to acquaint itself with such general or local conditions or circumstances affecting the Work existing as of the Effective Date of this Agreement shall neither relieve Contractor from the responsibility for successfully performing this Work nor entitle Contractor to an adjustment to the Contract Price or Project Milestone Schedule. Contractor shall be entitled to a Change Order under **Article V** with respect to subsurface conditions or other differing or changed site conditions which were not known or disclosed to Contractor and which Contractor could not have anticipated from a thorough site investigation.

SECTION 8.2. Lines and Grades

Contractor shall establish construction base lines and benchmarks for the Work. Said base lines and benchmarks, and all stakes or other markers established, shall be preserved by Contractor until their removal is authorized by Owner. Owner may, from time to time, check the layout of Contractor, but such checking shall in no way relieve Contractor of its responsibility for the accuracy of the Work. Contractor shall provide, at the request of Owner, competent personnel to assist in this checking.

SECTION 8.3. Specifications and Drawings

(a) Contractor shall maintain at the Site a copy of the “approved for construction” working specifications and drawings (including “as-built drawings”) applicable to the Work with all changes and modifications, and shall at all times give Owner access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

(b) **“As-Built” Drawings.** Contractor shall provide and keep at the Site a complete “as-built” record set of drawings (also called **“record drawings”**) that shall be updated periodically. The drawings shall reflect exact and actual “as-built” conditions of construction, installation, and erection as it progresses. Where drawings are not adequate to show “as-built” conditions, Contractor shall prepare sketches which delineate the necessary “as-built” information. Contractor shall furnish two (2) sets of all paper “blue-line” prints “approved” drawings for use in accomplishing specified mark-up. Final “as-built” drawings, and a computerized disk of such drawings, with respect to the Facility shall be delivered to Owner by Contractor on or before Final Completion. Contractor represents that the specifications and drawings submitted by it to Owner hereunder are all those customary and necessary for the operation and maintenance of a facility such as the Facility.

SECTION 8.4. Use of Premises

Contractor shall confine the storage of materials and construction equipment in connection with the Work in accordance with all Applicable Law, and Contractor’s safety procedures. Contractor shall provide adequate safety barriers, signs, lanterns, and other warning devices and services to properly protect any person having access to or near the areas where Work is being performed at the Site. Contractor shall follow Owner’s instructions concerning the location of signs and posters, the time and location of the burning of debris, and any other similar nuisance items.

SECTION 8.5. Cleaning Up

Contractor shall, at all times, keep the Site and other locations on the Site where the Work is performed, including storage areas used by it, in a clean and orderly condition and free from combustible debris and waste materials. Upon completion of the Work, Contractor shall remove all rubbish from and about the premises and restore the Site to its original condition with special respect to ruts and debris of all kinds.

SECTION 8.6. Underground Facilities

Contractor shall be familiar with the requirements of the respective underground facility laws of the State of Texas. Contractor shall identify (through “as-built” drawings as provided by Owner and reasonable inspection) to the extent necessary to perform the Work all underground facilities in the areas on the Site where Work is to be performed, including, but not limited to, gas, electric, telephone, water, drain lines, sewer, and the like. Contractor will take the necessary steps to safeguard these underground facilities. If, however, Contractor encounters underground facilities that could not be reasonably identified through compliance with underground facilities laws, review of any Owner-provided as-built drawings, or Site walk-downs, Contractor shall be entitled to a Change. With respect to areas outside of the Site, Contractor may rely on third parties, as necessary and appropriate, and in compliance with Applicable Laws. Contractor shall notify the appropriate agency or owner of the underground property and Owner’s Representative. Contractor shall file a report of accident with the relevant local official, owner or agency at the time of any damage.

SECTION 8.7. Other Contracts

Owner may undertake or award other contracts for additional work at or near the Site. The Parties shall coordinate the performance of any such additional work to avoid any adverse impact on the performance by Contractor of its obligations under this Agreement.

ARTICLE IX

COMPLETION OF THE WORK

SECTION 9.1. Mechanical Completion

(a) “**Mechanical Completion**” shall occur when the following requirements have been satisfied:

(i) Contractor has constructed and installed all materials, equipment (including Owner-Supplied Equipment), components and systems necessary to begin commissioning of Owner-Supplied Equipment and the Facility (except for completion of minor portions of the Work such as painting, final grading, landscaping, final insulation, and any other portion of the Work not affecting the reliability, dependability, testing, operability, safety, and mechanical and electrical integrity of the Facility) in accordance with the Contract;

(ii) Contractor has made available for inspection by Owner all systems necessary to begin Commissioning in accordance with procedures mutually agreed to at the time by Contractor and Owner;

(iii) the Work with respect to the Facility is mechanically and electrically sound, all systems necessary to begin commissioning of Owner-Supplied Equipment and the Facility, and all required pre-operations checking and testing (including construction, electrical, control) have been completed satisfactorily;

(iv) the Work is ready to allow start-up testing, preliminary operation and commissioning of the Facility; and

(v) all Facility systems and subsystems have been installed, the equipment and systems included therein (can be operated in a manner that does not void any Subcontractor or system warranty and Contractor has made the Facility available for interconnection with the ERCOT transmission grid and Owner's distribution system;

(b) When Contractor believes that the requirements of Mechanical Completion have been met, Contractor shall issue a notice of Mechanical Completion to Owner in substantially the form attached hereto as **Exhibit D-1**. Within five (5) Business Days after receiving such notice of Mechanical Completion, Owner shall advise Contractor, in writing, with reasonable precision, of any known reason(s) that Contractor has not met the criteria for Mechanical Completion. If Owner advises of any such reason(s), Contractor shall then take appropriate corrective action and again notify Owner, in writing, that the Facility has achieved Mechanical Completion. Owner shall have five (5) Business Days after receipt of such notification to advise Contractor of any remaining known reason(s) under the preceding paragraph why Contractor has not met the criteria for Mechanical Completion. This process shall be repeated as necessary until Owner agrees that no such reasons remain and Mechanical Completion is achieved. If Owner fails to notify Contractor of any such known reasons within the allotted time, the Facility shall be deemed to have achieved Mechanical Completion as of the date of such notification. Otherwise, subject to Contractor's right to dispute Owner's assertion that Mechanical Completion has not been achieved, Mechanical Completion shall not be achieved until Owner and Contractor agree that all of the criteria for Mechanical Completion have been achieved. If Owner does agree that the Contractor has meet the requirements of Mechanical Completion then the date of Mechanical Completion shall as per the date of the Contractor's notice.

SECTION 9.2. Substantial Completion

(a) **"Substantial Completion"** shall occur on the date on which:

(i) the conditions for Mechanical Completion have been satisfied;

(ii) all services, materials and equipment comprising the Facility have been completed in accordance with the requirements of this Agreement (other than Punch List items);

(iii) the Performance Tests have been satisfactorily completed with respect to the Facility and by Contractor with respect to the Performance Tests and that Contractor's performance of the Work does not prevent the Facility from achieving the - interconnections and performance guarantee levels;

(iv) the Punch List has been provided to Owner as set forth in **Section 9.3**.

(b) Owner and Owner's Representative shall have the right and opportunity to be present and observe the Performance Tests and to inspect and validate all meters, meter readings and other pertinent data necessary to verify the results of the Performance Tests. Contractor and Owner shall coordinate such observation, inspection and validation so as not to interfere with the Performance Tests yet provide for a verifiable result.

(c) When Contractor believes it has achieved Substantial Completion, Contractor shall tender a certificate of Substantial Completion to Owner in substantially the form attached hereto as **Exhibit D-2**. Owner shall accept or reject Contractor's certification in writing within three (3) Business Days after receipt of Contractor's tender. If Owner fails to notify Contractor of any such known reasons within the allotted time, Substantial Completion shall be deemed to have been achieved as of the date of the tender of the certificate. If Owner rejects Contractor's certification, Owner shall identify its reasons for rejection in detail sufficient for verification and thereafter Contractor shall:

(i) take prompt corrective action, as necessary, to achieve the requirements of Substantial Completion and then submit a new certification to Owner as provided for above; or

(ii) disagree with Owner's reasons for such rejection, promptly notify Owner, and the Parties shall attempt to resolve the disagreement without delay. If the disagreement cannot be resolved within five (5) Business Days, then Contractor may seek a determination whether or not Substantial Completion has been achieved under **Article XI** "Dispute Resolution".

(d) The date of Substantial Completion shall be the date of the relevant notice that Owner accepts or is deemed to have accepted under the procedures outlined in **Section 9.2(c)**.

SECTION 9.3. Punch List

At the time of submitting a certificate of Substantial Completion, Contractor shall prepare and submit to Owner a Punch List for the Facility and an estimate of costs necessary to complete the Punch List. Owner shall have seven (7) Business Days from receipt of said Punch List or update to provide any comments to the Punch List. The Parties shall review the Punch List and discuss the items to be included in a mutually agreed Punch List, with an estimate of the cost to complete the Punch List items; provided, however, that pending resolution of any dispute with respect to the Punch List, Owner may withhold from any payment of the Contract Price due on Substantial Completion, draw on the Retainage or, if applicable, draw on the Performance Security, in an amount equal to two hundred percent (200%) of the estimated cost of completing the Punch List items of work. Owner shall provide Contractor with reasonable access to the Facility to complete the Punch List. Contractor shall diligently pursue completion of the Punch List within sixty (60) days following Substantial Completion and shall notify Owner in writing upon Contractor's determination that Punch List Work is complete. Owner shall have seven (7) Business Days to accept or reject Contractor's determination that the Punch List Work is complete. If Owner rejects Contractor's determination, then Contractor may seek a determination whether or not the Punch List Work is complete under **Article XI** "Dispute Resolution".

SECTION 9.4. Remedy of Failure to Achieve Performance Guarantees

Subject to the provisions of **Article V**, during the one hundred twenty (120) day period following the relevant date of Substantial Completion, Owner may direct Contractor to undertake remedial action with respect to the Facility to achieve such performance guarantees.

SECTION 9.5. Final Completion

(a) "**Final Completion**" with respect to the Facility shall occur on the date on which:

- (i) Mechanical Completion has occurred;
- (ii) Substantial Completion has occurred;
- (iii) all Punch List items have been completed;
- (iv) the Performance Tests have all been completed;
- (v) Contractor has paid all undisputed Delay Damages as set forth in **Section 9.7**;
- (vi) Contractor has executed and delivered to Owner Contractor's final waiver of liens in the form attached hereto as **Exhibit C-2** and final waivers of

liens (in the form attached hereto as **Exhibit C-2**) executed by all Subcontractors with subcontracts having a value, individually or in the aggregate, in excess of one hundred thousand dollars (\$100,000) and Contractor's certification that, to the best of Contractor's knowledge after reasonable inquiry, (1) all indebtedness, including liens, with respect to or in connection with the Work has been paid and (2) all claims for payment for labor and materials for which Contractor is responsible in connection with the construction of the Facility have been paid or satisfied; and/or bonded off;

(vii) all Final As-built Drawings and Documentation have been delivered by Contractor to Owner; and

(viii) Contractor shall have reimbursed Owner for or shall have, without cost to Owner, ordered or replaced any of Owner's spare parts used to perform the Work.

(b) When Contractor believes it has achieved Final Completion of the Facility, Contractor shall tender a certificate of Final Completion to Owner substantially in the form attached hereto as **Exhibit D-3**. Owner shall accept or reject Contractor's determination of Final Completion in writing within five (5) Business Days after receipt of Contractor's tender. If Owner fails to notify Contractor of any such known reasons within the allotted time, the Facility shall be deemed to have achieved Final Completion as of the date of the tender of the certificate. If Owner rejects Contractor's determination of Final Completion, Owner shall identify its reasons for rejection in detail sufficient for verification and thereafter Contractor shall:

(i) take prompt corrective action, as necessary, to achieve the requirements for Final Completion, and then submit a new determination of Final Completion to Owner as provided for above; or

(ii) disagree with Owner's reasons for such rejection, promptly notify Owner, and the Parties shall attempt to resolve the disagreement without delay. If the disagreement cannot be resolved within five (5) Business Days, then Contractor may seek a determination whether or not Final Completion has been achieved under **Article XI "Dispute Resolution"**.

SECTION 9.6. Schedule Guarantee and Delay Damages

Contractor shall perform the Work so that Substantial Completion is achieved no later than the Contract Completion Date. Contractor agrees that if Substantial Completion is not achieved by the Contract Completion Date because of Contractor's unexcused performance failure, Contractor shall pay Delay Damages to Owner until Substantial Completion (or a percent thereof if there is only partial Substantial Completion of the Facility) occurs. . Subject to Owner's rights under Article X, the receipt by Owner of Delay Damages shall be Owner's sole and exclusive

remedy, and Contractor's sole and exclusive obligation, for a failure to achieve Substantial Completion by the Contract Completion Date.

SECTION 9.7. Payment of Delay Damages

Contractor shall pay Delay Damages in arrears every fifteen (15) days within seven (7) days of receipt of an invoice from Owner delivered after the end of such fifteen (15) day period.

Owner's invoice for Delay Damages shall specify the amount due and shall include reasonable data and calculations on the basis of which such amount has been determined.

SECTION 9.8. Payment of Early Substantial Completion

Owner shall compensate Contractor \$2,000 per calendar day for each day that Substantial Completion is achieved prior to the Contract Completion Date. Owner shall make payment for Early Substantial Completion within seven (7) days of receipt of an invoice from Contractor. Contractor's invoice for payment of Early Substantial Completion shall specify the amount due and shall include reasonable data and calculations on the basis of which such amount has been determined.

ARTICLE X

DEFAULT AND TERMINATION

SECTION 10.1. Contractor Default

Contractor shall be deemed to be in default if it at any time during the performance of the Work Contractor shall:

- (a) Materially fail to prosecute the Work or any portion thereof with sufficient diligence or otherwise commit a substantial breach of any material provision of this Agreement and Contractor does not commence and diligently proceed to cure such failure or breach within fifteen (15) calendar days following delivery of a notice from Owner to Contractor to remedy such failure or breach or, if a cure of such failure or breach cannot be effected within such fifteen (15) day period, Contractor has commenced such cure within such period and diligently pursues such cure thereafter;
- (b) Become insolvent or make a general assignment for the benefit of its creditors;
- (c) File a petition in bankruptcy or have a petition in bankruptcy filed against it or an attachment or execution levied upon any of its property used

hereunder, or have a receiver for its business appointed on account of the condition of such business or of insolvency;

(d) Materially disregard or fail to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction and Contractor does not commence and diligently proceed to cure such failure within twenty (20) calendar days following delivery of a notice from Owner to Contractor to remedy such failure or, if such cure cannot be effected within such twenty (20) day period, Contractor has commenced such cure within such period and diligently pursues such cure thereafter;

(e) Attempt to assign this Agreement without obtaining Owner's prior consent;

(f) Fail to make an undisputed payment to Owner when due hereunder and Contractor does not cure such failure within ten (10) days following delivery of a notice from Owner to Contractor to remedy such failure.

(g) Failure to maintain insurance coverage required of Contractor as specified in **Article XIV** of this Agreement and Contractor does not commence and diligently proceed to cure such failure or breach within fifteen (15) calendar days; provided, however, Contractor shall not be allowed to continue any Work until such insurance coverage is reinstated and such stoppage shall not constitute a delay due to a third party hereunder. Contractor shall use best efforts to ensure that any stoppage of Work due to this Section does not impact any Subcontractor or other applicable third party.

(h) The issuer of the Contractor Payment & Performance Bond disavows its obligations under the Contractor Payment & Performance Bond, respectively, the Contractor Payment & Performance Bond ceases to be in full force and effect for the duration required under this Agreement and Contractor does not promptly, using best efforts, replace such Contractor Payment & Performance Bond with an equivalent security acceptable to Owner.

SECTION 10.2. Right to Terminate for Cause

If at any time Contractor shall be deemed in default pursuant to **Section 10.1** "Contractor Default", Owner may elect to terminate this Agreement in accordance with **Section 10.3** "Termination by Owner for Cause" and Owner may draw on the Retainage or, if applicable, the Performance Security for any amounts due from but not paid by Contractor under this Agreement.

SECTION 10.3. Termination by Owner for Cause

(a) If Owner elects to terminate this Agreement due to Contractor's default under the terms of **Sections 10.1** and **10.2**, Owner shall give written notice of termination to Contractor specifying the date of termination and in such event:

(i) Owner, without incurring any liability to Contractor, shall have the right to have the Work finished either by itself, its affiliates or by a third-party contractor. In such event, Owner shall not be liable to make further payments to Contractor until the Work is completed and Contractor shall be liable to Owner for costs incurred by Owner in accordance with Prudent Utility Practices in completing the Work, including without limitation, costs of accelerated or expedited construction methods actually performed in an attempt to achieve Substantial Completion by the Contract Completion Date, and/or to mitigate any delay by Contractor, and costs for administering any subcontracts associated with the termination, but only to the extent such foregoing costs exceed the portion of the Contract Price that, absent such termination, remained to be paid to Contractor under this Agreement; and

(ii) upon termination of the Work pursuant to this **Section 10.3**, Contractor shall promptly submit to Owner an accounting of Contractor's costs for the Work performed prior to the date of termination, which shall not exceed the sum of all milestone and other payments paid or owed as of the date of termination, plus a portion of the milestone payment immediately next due after the date of termination corresponding to that portion of the Work which has been satisfactorily completed but not previously invoiced. Where Owner does not exercise its rights under **Section 10.3(a)(i)** to complete the Work, Owner shall pay Contractor, not later than sixty (60) days after receipt of Contractor's accounting of costs, Contractor's costs of the Work, less the sum of all milestone payments of the Contract Price and other payments previously paid. Where Owner completes the Work for less than the Contract Price, Owner shall pay Contractor, not later than sixty (60) Days after the Work is completed, Contractor's costs of the Work, less the sum of all milestone payments and other payments previously paid.

(b) Termination of the Work in accordance with this Article shall not relieve Contractor of its responsibilities for Work performed.

(c) Delay Damages and Performance Damages, if any, shall cease to accrue as of the date of termination.

(d) Nothing in these Contract Documents with respect to Delay Damages or any payment of any of the same to Owner shall be construed as limiting or relieving (a) Contractor's obligations generally to achieve its Project Milestones, (e) warranties granted under these Contract Documents, or (c) Owner's remedies for Contractor's default as provided herein.

(e) If Owner terminates this Agreement for cause and the grounds for such termination are subsequently found to be invalid, such termination will be treated as a termination for convenience by Owner and payment to Contractor shall be in accordance with **Section 10.4**.

SECTION 10.4. Termination by Owner for Convenience

(a) Owner may, upon thirty (30) calendar days' advance written notice to Contractor, suspend, abandon, or terminate the Work, or any portion thereof, and terminate this Agreement, for any reason whatsoever, including for the convenience of Owner without regard to whether or not Contractor has defaulted or failed to comply with the provisions of the Contract Documents, except for the purpose of substituting another contractor in place of the Contractor.

(b) If Owner terminates the Work, or any portion thereof for convenience, Contractor shall be entitled to amounts paid previously or invoiced and unpaid to Contractor hereunder and in addition Owner shall pay, without duplication of the milestone or other payments paid previously, Contractor for all its costs for the parts of the Work done prior to the effective date of termination, including materials provided, plus any Subcontractor or vendor cancellation costs, plus an amount for the Contractor's substantiated, reasonable direct costs plus reasonable overhead and profit incurred in preparation for the parts of the Work not yet performed and in demobilization.

(c) Contractor shall not be entitled to any other costs or damages whatsoever arising out of Contractor's performance of the Work for the termination by Owner for convenience.

SECTION 10.5. Stopping Work

(a) When Owner terminates the Work in accordance with **Section 10.3** "Termination by Owner for Cause" or **10.4** "Termination by Owner for Convenience", Contractor shall take the actions set forth below.

(b) Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Contractor shall promptly:

(i) stop performing Work on the date and as specified in the notice of termination;

(ii) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work that is not terminated;

(iii) cancel all orders and subcontracts, upon commercially reasonable terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;

(iv) assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;

(v) deliver completed Work to Owner and take such action as may be necessary or as directed by Owner to preserve and protect the Work, Site, and any other property related to the Work in the possession of Contractor in which Owner has an interest; and

(vi) continue performance only to the extent not terminated.

(c) In the case of any termination, Contractor shall proceed with the orderly demobilization and closeout of the Work.

SECTION 10.6. Suspension of the Work

(a) Owner may, for any reason, at any time suspend the carrying out of the Work or any part thereof by advance written notice to Contractor. Any such notice shall specify the date of suspension, the expected duration of the suspension and any other information relevant to the scope of work being suspended. Whereupon, Contractor shall suspend the carrying out of the Work or any part thereof for such time or times and in such manner as Owner may require. During any such suspension, Contractor shall properly protect and secure the Work in such manner as Owner may reasonably require. Unless otherwise instructed by Owner, Contractor shall, during any such suspension, maintain its staff and labor on or near the Site and otherwise be ready to proceed with the Work upon receipt of Owner's further instructions. Should the Work be so suspended, Owner and Contractor shall negotiate a Change Order to address the impact of any suspension by Owner hereunder on the Contract Price, the Project Milestone Schedule and Contract Completion Date in accordance with **Article V** "Changes in the Work" of the Agreement. When a suspension equals or exceeds one hundred eighty (180) days in the aggregate, Contractor may elect to treat such suspension as a Termination for Convenience of Owner pursuant to **Section 10.4**.

SECTION 10.7. Owner Default

Owner shall be deemed to be in default if at any time during the performance of this Agreement:

(a) Owner commits a breach or default of any of its covenants or obligations hereunder and fails to commence proceedings to remedy such breach or

default within twenty (20) Business Days after written notice thereof from Contractor and thereafter diligently proceeds with such remedy;

(b) Owner becomes insolvent or makes a general assignment for the benefit of its creditors;

(c) Owner files a petition in bankruptcy or has a petition in bankruptcy filed against it or an attachment or execution levied upon any of its property used hereunder, or has a receiver for its business appointed on account of the condition of such business or of insolvency;

(d) Owner materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction and Owner does not commence and diligently proceed to cure such failure within thirty (30) calendar days following delivery of a notice from Contractor to Owner to remedy such failure or, if such cure cannot be effected within such thirty (30) day period, Owner has commenced such cure within such period and diligently pursues such cure thereafter; or

(e) Owner fails to make an undisputed payment to Contractor when due hereunder and Owner does not cure such failure within thirty (30) days following delivery of a notice from Contractor to Owner to remedy such failure.

In the event of an Owner default, Contractor may, at its option, suspend performance or terminate this Agreement thirty (30) Business Days following notice thereof to Owner; provided, however, that Contractor may, at its option, suspend performance of this Agreement ten (10) Business Days following notice to Owner of a failure by Owner to make an undisputed payment to Contractor when due hereunder if Owner has not cured such non-payment within such notice period. Should Contractor so suspend or terminate this Agreement, it shall be paid for all costs incurred and Work performed to the date of suspension/termination, including any cancellation charges by Subcontractors (including suppliers, vendors and OEMs), and the cost of all standby and demobilization/remobilization expenses pursuant to the provisions of **Section 10.4**.

SECTION 10.8. Delivery of Documents

Upon the termination of this Agreement, in whole or in part, pursuant to either **Section 10.3** "Termination by Owner for Cause", **10.4** "Termination by Owner for Convenience", or **10.7** "Owner Default", Contractor shall execute and deliver all such instruments and take all such steps, including assignment of its contractual rights with third parties, as may be required to fully vest in Owner all right, title, and interest in all Work, subject to **Section 15.1**, including, but not limited to, all plans, specifications, deliverables, materials, and equipment procured and all contractual rights, and/or cancel or terminate, at Owner's option, such of those contractual rights including, but not limited to, subcontracts and purchase orders as may be requested in writing by Owner.

ARTICLE XI

DISPUTE RESOLUTION

SECTION 11.1. Dispute Resolution

(a) **Dispute.** Any dispute, controversy or claim involving the Parties arising out of or relating to this Agreement or any related contract or the validity, interpretation, breach or termination hereof or thereof (a “**Dispute**”), including claims seeking redress or asserting rights under Applicable Law, shall be resolved in accordance with the procedures set forth in this **Article XI**. Until completion of such procedures, no Party may take any action not contemplated herein to force a resolution of the Dispute by any judicial, arbitral or similar process, except to the limited extent necessary to avoid expiration of a claim that could eventually be permitted hereby or as provided in **Section 11.3**.

(b) **Discovery Exemption.** All communications between the Parties or their respective representatives in connection with the attempted resolution of any Dispute shall be deemed to have been delivered in furtherance of a Dispute settlement and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as an admission or otherwise), in any proceeding for the resolution of the Dispute.

SECTION 11.2. Consideration by Senior Management

In the event a Dispute cannot be resolved by the Contractor’s Project Manager and Owner’s Representative, either Party may, by notice to the other Party, request referral to the senior management of Owner and Contractor for their consideration. Such request shall be accompanied by a written statement of the Dispute and of each Party’s position. Within ten (10) days following such request, the non-requesting Party shall either concur in such statement or prepare its own, and such statement shall be delivered to such senior management. Such senior management shall meet in person or by telephone within ten (10) days thereafter to seek a resolution. In the event no resolution is reached by the expiration of thirty (30) days following the referral request, then the Parties may agree to submit such Dispute to resolution as further provided in **Section 11.3** by notice to the other Party (“**Mediation Notice**”) or proceed directly to resolution as provided in **Section 11.4**.

SECTION 11.3. Mediation

(a) Any Dispute arising out of or relating to this Agreement or the breach thereof which has not been resolved through negotiation in accordance with the procedures set forth in Section 11.2 may be submitted to non-binding mediation upon agreement of the Parties. The decision of the mediator shall be in writing and shall give reasons for the decisions reached by the mediator, but it shall not be binding on the Parties. Prior to commencement of the mediation, the mediator shall

be required to enter into a confidentiality agreement to keep the information disclosed during mediation and the occurrence of the mediation confidential.

SECTION 11.4. Jurisdiction

Each of the Parties expressly irrevocably agrees that any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby shall be brought and determined in Denton County, Texas and each Party hereby irrevocably submits to the exclusive jurisdiction of such court in respect of any such action or proceeding and waives any defense of forum non conveniens, provided, however, that the foregoing shall not limit the rights of either Party to obtain execution or enforcement of judgment in any other jurisdiction. The Parties further agree that, to the extent permitted by Law, a final and unappealable judgment against a Party from any action or proceeding contemplated above in this Section 11.4 shall be conclusive and may be enforced in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified copy of which shall be conclusive evidence of the amount of such judgment.

ARTICLE XII

INDEMNITY AND LIMITATIONS OF LIABILITY

SECTION 12.1. General Liability

(a) CONTRACTOR ON BEHALF OF ITSELF, AND ITS AFFILIATES, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER, OWNER'S REPRESENTATIVE, ANY LENDER PROVIDING OWNER WITH FINANCING FOR THE FACILITY AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, EXPENSES, AND CLAIMS FOR THIRDPARTY PERSONAL INJURY, INCLUDING INJURIES TO EMPLOYEES OF CONTRACTOR OR EMPLOYEES OF SUBCONTRACTOR OR THIRD-PARTY PROPERTY DAMAGE (EXCEPT TO THE WORK) TO THE EXTENT CAUSED BY CONTRACTOR'S OR ITS SUBCONTRACTORS' ACTS OR OMISSIONS IN THE PERFORMANCE OF THE WORK.

SECTION 12.2. Liability for Owner Property

The Parties agree that builder's all-risk property insurance, which is to be provided pursuant to **Section 14.2(f)** will(subject to policy terms, limitations and exclusions) cover risks, damage and losses to the Work prior to Substantial Completion. Notwithstanding **Section 2.13**, after Substantial Completion, (a) Owner's property insurance, which is to be provided pursuant to **Section 14.2(a)**, will cover all risks, damage and, on industry standard forms, losses to property owned by or in the custody of Owner(subject to policy terms, limitations and exclusions); (b)

deductibles for losses covered under the property coverage and non-covered losses shall be paid by Owner, unless such loss is caused by the negligence of Contractor and its Subcontractors, in which case Contractor shall be liable for applicable deductibles not to exceed 1,000,000] each occurrence; and (c) except as otherwise provided in clause (b), Owner hereby releases Contractor and its Subcontractors from any liability for property damage arising from the ownership, use or operation of the Facility or any part thereof, subsequent to the transfer of care, custody and control to Owner.

SECTION 12.3. Trespass

Contractor shall be solely responsible for any act of trespass or any injury to adjacent third party property resulting from Contractor's performance of the Work. Contractor shall be liable for any claims that may arise from Contractor's deposit of debris of any kind upon adjacent property.

SECTION 12.4. Intellectual Property Rights Infringement Indemnity

Contractor warrants that none of the Work performed by Contractor, or the documents, goods or equipment produced, designed, fabricated, or assembled by Contractor (which excludes Owner-Supplied Equipment) pursuant to this Agreement infringe upon or violate any North American patent, copyright, trade secret, or any other intellectual or proprietary rights of any third party. If any third party makes a claim or commences a proceeding against Owner regarding the Work, alleging such an infringement or violation, then subject to this **Section 12.4, Contractor shall indemnify, defend and save harmless Owner, its directors, officers, employees, agents and affiliates from and against all damages and costs incurred by or awarded against Owner (including court costs and reasonable attorneys' fees).** Contractor agrees to include, as a term or condition of each purchase order employed by it in the performance of the Work, a patent indemnification provision extending from the Subcontractor under such purchase order to Owner and Contractor and to render such assistance to Owner as may be reasonably required, to enforce the terms of such indemnification by such Subcontractors. Owner will notify Contractor if any such claim is made or proceeding is commenced. Owner may, at its option, be represented by separate legal counsel in any such claim or proceeding; however, Contractor shall not be obligated to reimburse Owner the costs and expenses incurred by Owner in being so represented. If the use of any of the Work, or the results of such Work, or documents, goods, or equipment, or any part thereof, furnished under this Agreement in connection with the Work is held in any such claim or proceeding to constitute an infringement and/or is enjoined, whether temporarily or permanently, Contractor shall, at its sole cost and expense, do any of the following (the selection of which shall be at the sole discretion of the Contractor):

- (a) Procure for Owner the right to use the Work or results of such Work or such documents, goods and equipment; or
- (b) Replace the Work or the results of such Work or such documents, goods, or equipment with non-infringing Work, documents, goods or equipment

having the equivalent functionality as the infringing or allegedly infringing Work, documents, goods or equipment; or

(c) Modify such Work, documents, goods, or equipment so as to make them non-infringing, but equivalent in functionality.

SECTION 12.5. Owner's Use of Drawings and Specifications

Drawings and specifications prepared by Contractor specifically for Owner pursuant to this Agreement, which Owner may require Contractor to supply in accordance with the Agreement, shall become the property of Owner upon payment, and Owner agrees to use the information contained therein solely for the purpose of facilitating or completing construction, maintenance, operation, modification and repair of the Facility (and not for duplication of the Facility, in whole or part) and agrees to treat such as Confidential Information. Nothing herein shall be construed as limiting Contractor's ownership of all rights to use its know-how, experience and skills, whether or not acquired during performance of the Work or to perform any engineering design or other Work for any other party.

SECTION 12.6. Consequential Damages

Neither Owner nor Contractor and its Subcontractors shall not be held responsible to the other for consequential, incidental, special, exemplary, punitive, or indirect damages, including, without limitation, liability for loss of production or use of the Facility, or loss of profits or revenue, interest, product or business interruption, increased costs of operations and maintenance or staffing needs, however the same may be caused. The waiver in this Section shall not be construed to apply to indemnity obligations for any third party claims concerning damage to property, bodily injury or death for which Contractor owes an indemnity under **Section 12.1** or to any liquidated Delay Damages.

SECTION 12.7. Compliance with Laws

(a) **To the extent authorized by the laws of the State of Texas, Contractor on behalf of itself, and its affiliates, successors, assigns, officers, directors, employees, and agents, agrees to indemnify Owner, Owner's Representative, and their respective successors, assigns, officers, directors, employees, and agents, from and against any and all losses, expenses, and damages, including any fines or penalties, that arise from or out of Contractor's or its Subcontractors' failure to comply with Applicable Law.**

(b) **To the extent authorized by the laws of the State of Texas, Owner on behalf of itself, and its affiliates, successors, assigns, officers, directors, employees, and agents, agrees to indemnify Contractor and its Subcontractors, and their respective successors, assigns, officers, directors, employees, and agents, from and against any and all losses, expenses, and**

damages, including any fines or penalties, that arise from or out of Owner's failure to comply with Applicable Law.

SECTION 12.8. Limitation of Liability

Except for (i) liability arising out of the fraud, gross negligence, or willful misconduct of Contractor or (ii) liability arising out of Contractor's indemnity obligations as contemplated by **Section 12.1**, Contractor's aggregate liability shall not exceed one hundred (100%) of the Contract Price; provided, that the aggregate liability of Contractor for any Delay Damages shall be limited in the aggregate to twenty-five (25%) percent of the Contract Price.

ARTICLE XIII

DRUG, ALCOHOL, SAFETY AND HAZARDOUS MATERIALS

SECTION 13.1. Drug and Alcohol Policy

During the term of the Agreement, Contractor shall have in place and comply with a drug and alcohol policy that at a minimum is consistent with Owners such policy. Contractor's policy shall include: reasonable testing procedures. Further, Contractor is responsible for testing and other related costs, for providing required reports to any government agency, and, at Owner's request, Contractor shall make its policy and drug/alcohol testing statistics available to Owner's drug and alcohol testing program administrators as identified by Owner from time to time.

SECTION 13.2. Safety Materials

Contractor agrees and warrants that all materials supplied by Contractor and articles and/or Work provided by Contractor in connection with the Work meet the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970 and, if applicable, the Federal Motor Carrier Safety Act, or under any Applicable Law of a state in lieu thereof, for the protection of employees who will be affected by the use or performance of said articles and/or Work. Contractor shall comply with all federal, state, and local rules and regulations governing safety and the safe operation of commercial motor vehicles and the safe performance of the Work. Contractor's safety procedures and guidelines will be prepared and submitted to Owner thirty (30) days after the Effective Date.

SECTION 13.3. Safety Precautions

Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs concerning the performance of the Work in accordance with all Applicable Laws. Contractor shall provide and be directly responsible for its own safety program for its employees and for the safe operation of its own vehicles and equipment. Contractor shall furnish Owner with a copy of its safety manual which has been compiled and designed for the Facility. Contractor shall comply with its own safety manual.

(a) In carrying out its responsibilities according to the Contract Documents, Contractor shall (i) protect the lives and health of employees performing the Work and other persons who may be affected by the Work, and shall erect and maintain all reasonable safeguards for such safety and protection; (ii) prevent damage to materials, supplies, and equipment whether on-site or stored off-site; (iii) prevent damage to other property at the Site or adjacent thereto; and (iv) notify Owner's Representative when prosecution of the Work may affect owners of adjacent properties and utilities.

(b) In reporting an accident involving Contractor and the Work, the requirements of **Section 2.12(c)** shall apply.

(c) In the event Owner has a reasonable objection to any employee of Contractor, Contractor shall investigate and take appropriate disciplinary action, up to and including removal of the employee from the Site or Owner's premises.

(d) Owner's Representative and Owners safety specialists shall have the right to demand Contractor or its Subcontractors, stop work in the event of an observed unsafe work practice or procedure. In the event that work is stopped pursuant to Section 13.3(d), Contractor shall not resume work on that portion of the Facility impacted by the unsafe practice or procedure until the situation is resolved to an acceptable level by the Owner's Representative or the Owner's safety specialist. and delays caused by such a safety related work stoppage shall not excuse Contractor from meeting any Project Milestone.

SECTION 13.4. Hazardous Materials

(a) **Hazardous Materials to Be Brought onto Site.** Contractor shall not, nor shall it permit or allow any Subcontractor to, bring Hazardous Materials onto the Site and shall bear all responsibility and liability for such materials; provided, however, that Contractor and its Subcontractors may bring onto the Site such Hazardous Materials as are necessary to perform the Work so long as the same is done in compliance with Applicable Laws and Contractor shall remain responsible for the management, transportation, treatment and disposal of all such Hazardous Materials. Contractor shall provide Owner's Representative (or his designated representative) the following information with respect to any Hazardous Materials: (i) material safety data sheet ("**MSDS**"), (ii) quantity (volume/mass), (iii) length of time on Site, (iv) container type, and (v) disposal location if disposed or otherwise managed. Contractor shall require all Subcontractors and suppliers to provide the information required under this sub-article to Owner prior to bringing any Hazardous Materials to the Site. Contractor shall exclude the use of lead paint and material containing asbestos and Contractor shall minimize the use of acetone and chlorinated solvents and similar substances at the Site, and shall require all Subcontractors and suppliers to adhere to the same restrictions.

(b) INDEMNIFICATION. CONTRACTOR HEREBY INDEMNIFIES OWNER FROM ANY AND ALL LOSS, DAMAGE, COST, OR EXPENSE TO THE EXTENT CAUSED BY THE HANDLING, STORAGE, REMOVAL, REMEDIATION, OR OTHER APPROPRIATE ACTION (IF ANY), WITH RESPECT TO ANY HAZARDOUS MATERIALS THAT (I) WERE BROUGHT OR CAUSED TO BE BROUGHT ON THE SITE BY CONTRACTOR OR ANY SUBCONTRACTOR AND RELEASED TO THE ENVIRONMENT BY ANY ACT OR OMISSION OF CONTRACTOR OR ANY SUBCONTRACTOR IN THE COURSE OF PERFORMANCE OF THE WORK OR (II) WERE EXISTING AT THE SITE AS OF THE EFFECTIVE DATE TO THE EXTENT THE LOSS, LIABILITY, CLAIM, CAUSE OF ACTION, SUIT, DAMAGE, COST, ATTORNEYS' FEES, OR EXPENSE ARISES FROM A NEGLIGENT ACT OR OMISSION RESULTING IN A RELEASE BY CONTRACTOR OR ANY SUBCONTRACTOR OF HAZARDOUS MATERIALS IDENTIFIED IN THE CONTRACT DOCUMENTS AS EXISTING AT THE SITE WITH REGARD TO LOCATION, QUANTITY, AND NATURE, SUCH THAT A REASONABLE CONTRACTOR OR SUBCONTRACTOR WITH THE SAME INFORMATION WOULD HAVE ACTED DIFFERENTLY THAN CONTRACTOR OR SUBCONTRACTOR AND WOULD HAVE AVOIDED SUCH RELEASE (PROVIDED, THAT, FOR THE AVOIDANCE OF DOUBT, CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL APPLY ONLY TO THE RELEASE RESULTING FROM SUCH ACTS OR OMISSIONS AND NOT FOR THE PRE-EXISTING CONDITION OF THE SITE), OR (III) WERE THE RESULT OF ANY INTENTIONALLY WRONGFUL OR UNLAWFUL ACT OR OMISSION OF CONTRACTOR OR ANY SUBCONTRACTOR.

(c) Discovery of Hazardous Materials at Site. If, during the course of the performance of the Work, Contractor or any Subcontractor discovers, or reasonably believes it has discovered in, on or under any part of the Site, any Hazardous Materials (other than Hazardous Materials that Contractor or a Subcontractor has brought onto the Site, generated or produced by Contractor (or its Subcontractors) from materials brought to the Site by Contractor (or its Subcontractors)), Contractor shall promptly advise Owner and shall follow Owner's direction with respect to such Hazardous Materials. Owner shall undertake the abatement and disposal of any Hazardous Materials existing at the Site which are encountered by Contractor in the performance of the Work, and dispose of waste generated by the Facility during start-up, testing and operation of the Facility.

(i) Contractor shall be entitled to a Change Order for Contractor's costs and schedule impacts resulting from its compliance with Owner's direction pursuant to this **Section 13.4(c)**. Owner is responsible for the cost and actions

necessary for removing Hazardous Materials not brought onto the Site by Contractor (or its Subcontractors) or not generated or produced by Contractor (or its Subcontractors) from materials brought to the Site by Contractor (or its Subcontractors).

(ii) To the extent Contractor encounters Hazardous Materials not introduced by Contractor, Contractor shall use reasonable efforts to minimize the consequences to the Project Milestone Schedule of dealing with such Hazardous Materials.

(iii) Owner has disclosed or shall promptly disclose to Contractor as information becomes available (i) any reports, test results, public records and other sources of information known to Owner which show areas of Contamination at the Site and (ii) any other information related to the condition of the Site, and Contractor has a right to reasonably rely upon any such information without independent verification. Anything herein to the contrary notwithstanding (but without limiting liability Contractor may have under **Sections 13.4(b)** or **13.4(d)(iii)**), title to, ownership of, and legal responsibility and liability for any Contamination shall remain with Owner. Owner shall, at Owner's sole expense and risk, arrange for handling, storage, transportation, treatment and delivery for disposal of Contamination. Owner shall be solely responsible for obtaining a disposal site for such material. Contractor shall not have or exert any control over Owner in Owner's obligations or responsibilities as a generator in the storage, transportation, treatment or disposal of any Contamination. Owner shall complete and execute, in accordance with Applicable Law, any required governmental forms relating to regulated activities, including, but not limited to, generation, storage, handling, treatment, transportation, or disposal of Contamination. In the event that Contractor executes or completes any required governmental forms relating to regulated activities, including, but not limited to, storage, generation, treatment, transportation, handling or disposal of Hazardous Materials (other than in connection with Contractor's responsibilities under **Section 13.4(a)**), Contractor shall be and be deemed to have acted as Owner's agent. To the extent allowed by the laws of the State of Texas, Owner shall indemnify, defend, release and hold Contractor, its Affiliates, and their respective officers, directors, agents and employees harmless from all costs, liability, damages and penalties assessed against or paid by Owner or Contractor resulting from Contamination other than costs, liability, damages and penalties for which Contractor provides indemnification pursuant to **Section 13.4(b)**.

(d) **Contractor's Responsibility.** Contractor shall be responsible for the handling, management, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to any Hazardous Materials present at, on, in or under, or migrating and/or emanating to or from the Site that: (i) were brought or caused to be brought on to the Site and released to the environment by

any act or omission of Contractor or any Subcontractor in the course of performance of the Work; (ii) were brought to the Site or caused to be brought to the Site by Owner for Contractor's use in the performance of the Work and that are released to the environment by any act or omission of Contractor or any Subcontractor in the course of performance of the Work; or (iii) were the result of any wrongful or unlawful act of Contractor or any Subcontractor. Notwithstanding the provisions of clause (i) of this **Section 13.4(d)**, Contractor shall not be liable for any Hazardous Materials brought, or caused to be brought, to the Site by Contractor that are released to the environment by the act or omission of Owner or any other party not under Contractor's direction and control.

ARTICLE XIV

INSURANCE

SECTION 14.1. STANDARD PROVISIONS

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the Work has been completed and accepted by the Owner insurance coverage as indicated hereinafter.

As soon as practicable after notification of bid award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance, containing the bid number and title of the Project. **Contractor shall not commence any work or deliver any material until it receives notification that the Agreement has been accepted, approved, and signed by the Owner.**

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 as otherwise specified herein:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- VII or better**.
- Liability policies shall be endorsed to provide the following:

- Other than Workers Compensation and Professional Liability policies, name or include as additional insured the City of Denton, its Officials, Agents, Employees, and volunteers.
- That such insurance(Other than Workers Compensation and Professional Liability policies) 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.
- Other than Professional Liability, provide a waiver of subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: Owner requires 30 day written notice should any of the policies described on the certificate be cancelled before the expiration date (ten (10) days for non-payment of premium). Contractor shall provide such notice of cancellation for any cancellation if insurer will not provide such notice pursuant to policy terms.***
- Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the Agreement expiration, such that occurrences arising during the Agreement term which give rise to claims made after expiration of the Agreement shall be covered.
- Should any required insurance lapse during the Agreement term, requests for payments originating after such lapse shall not be processed until the Owner receives satisfactory evidence of reinstated or replacement coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated or replaced, Owner may, at its sole option, terminate this Agreement effective on the date of the lapse.

SECTION 14.2. SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Agreement shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of this Agreement, or longer or as otherwise specified herein:

A. General Liability Insurance

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence

basis either in a single policy or in a combination of underlying and umbrella or excess policies.

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

- Coverage A shall include (subject to policy terms, limitations and exclusions) premises, operations, products, and completed operations, independent contractors, contractual liability and broad form property damage coverage.
- Coverage B shall include (subject to policy terms, limitations and exclusions) personal injury.
- Coverage C, medical payments, is not required.

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

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement), personal injury liability and broad form property damage liability.

B. Automobile Liability Insurance

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

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

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

C. Workers Compensation Insurance

Contractor shall purchase and maintain Worker's Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance,

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

D. Owner's and Contractor's Protective Liability Insurance

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this Agreement, a Contractor's Protective Liability insurance policy naming the Owner as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations under this Agreement. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least combined bodily injury and property damage per occurrence with a \$2,000,000 limit per occurrence and \$4,000,000 aggregate limit.

E. Professional Liability Insurance

Professional liability insurance with limits not less than \$1,000,000 per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.

F. Builder's Risk Insurance

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

G. Commercial Crime

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity, subject to policy terms, limitations, and exclusions; provided, however, that such coverage will not be extended to theft of Owner's property except during the period the Contractor is integrating Owner's property to the project. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. Limits of not less than \$500,000 each occurrence are required.

H. Worker's Compensation Coverage for Building or Construction Projects for Governmental Facilities

i. Definitions:

Certificate of coverage ("certificate")- Contractor shall provide a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

Duration of the project - includes the time from the beginning of the work on the Project until the Contractor's Work on the Project has been completed and accepted by Owner.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- ii. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
- iii. The Contractor must provide a certificate of coverage to the Owner prior to being Initial Notice to Proceed.
- iv. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- v. The Contractor shall obtain from each person providing services on the Project, and provide to the governmental entity:

- a. a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - b. no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- vi. The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- vii. The Contractor shall notify the Owner within 30 days after the Contractor knew, or should have reasonably known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- viii. The Contractor shall post on the Site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- ix. The Contractor shall contractually require each person with whom it contracts to provide services on the Project, to:
 - a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - b. provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - c. provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - d. obtain from each other person with whom it contracts, and provide to the Contractor:
 - i. certificate of coverage, prior to the other person beginning work on the Project; and

- ii. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- e. retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- f. notify the Owner in writing by certified mail or personal delivery, within 30 days after the person knew, or should have reasonably known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- g. Contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (f), with the certificates of coverage to be provided to the person for whom they are providing services.
- x. The Contractor represents that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- xi. The Contractor's failure to comply with any of these provisions is a Default which entitles the Owner to terminate the Agreement if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

ARTICLE XV

OWNERSHIP OF PLANS; REPRESENTATIONS AND WARRANTIES

SECTION 15.1. Title to Plans and Specifications

(a) Any and all products of the Work performed by Contractor, any Subcontractor and any of their employees under the Contract Documents, including but not limited to, all inventions, discoveries, formulas, processes, devices, methods, compositions, compilations, outlines, notes, reports, system plans, flow charts, source code, and other forms of computer software including computer modeling, algorithms,

procedures, policies, data, documentation, and other materials or information which Contractor, any Subcontractor or any of their employees may conceive, invent, author, create, reduce to practice, construct, compile, develop, or improve in the course of performing the Work or otherwise delivered to Owner as part of the Work, specifically for Owner (collectively, "Work Product") shall be the sole and exclusive property of Contractor from and after the time it is created; provided, however, that notwithstanding the foregoing the specific documents (including drawings, manuals and reports) and models delivered by Contractor to Owner shall be the property of Owner for use of Owner, its contractors and successors in operating and maintaining the Facility and in administering these Contract Documents (and not for duplication of the Facility, in whole or part), and Owner agrees to treat such as Confidential Information. Contractor and all Subcontractors shall retain all rights and title in all Intellectual Property, which shall include by way of example, its standard drawing details, designs, specifications, databases, computer software, all preexisting or independently developed Intellectual Property, Intellectual Property conceived, created, or first reduced to practice by Contractor in the performance of this Agreement, and all know-how developed in the course of performing the Work and any other proprietary and intellectual property, whether or not such Intellectual Property is used or incorporated into the Work, either alone or in contribution from Owner ("Contractor Intellectual Property").

(b) License. To the extent Contractor Intellectual Property is incorporated into the Work pursuant to the Contract Documents and necessary for Owner to fully utilize the Work, Contractor will obtain and grant to Owner upon Substantial Completion (together with its successors and assigns) a perpetual, non-transferable, non-exclusive, royalty free license in Contractor Intellectual Property and all Work Product, including any and all related patent, copyright, trademark, and other property or proprietary rights of any nature whatsoever to use such Work Product for the limited purposes of operation and maintenance of the Plant. Contractor shall use commercially reasonable efforts to obtain for the benefit of Owner a similar license from any Major Subcontractor, as may be necessary for Owner to operate, monitor and maintain the Plant in accordance with Prudent Utility Practice. Contractor further agrees that the sums paid to Contractor by Owner in connection with Contractor's performance of the Work serve, in part, as full consideration for the foregoing license, and that said consideration is fair and reasonable, and was bargained for by Contractor. Contractor represents that it has full right, power and authority to grant the license granted under this Section.

(c) Knowledge. Nothing in this Section should be construed to prohibit Contractor or Subcontractor from using its skills, knowledge and experience that have a general applicability, including such skills, knowledge or experience gained by Contractor or any Subcontractor in connection with performing services for Owner in performing services for other clients; provided, however, that Contractor's or any Subcontractor's knowledge or use thereof shall not include any Confidential Information of Owner.

(d) Use of Work Product. Owner agrees not to use any Contractor Intellectual Property or any Work Product subject to the provisions of Section 15.1(a), including any drawings, specifications, reports or any unique design aspects of the Project in any other project without the prior written approval of Contractor.

(e) Contractor Indemnity. Contractor agrees to indemnify and hold Owner harmless, to the fullest extent permitted under Applicable Law, against any claim that the Work Product infringes on the intellectual property rights of a third party or was misappropriated from a third party, except to the extent such Work Product was modified by Owner, including any modifications directed by Owner, and such modification resulted in the claim.

(f) Survivability. The obligations of this Section shall survive any termination of this Contract

SECTION 15.2. Confidentiality

Neither Party shall disclose any Confidential Information to a third party, other than (a) such Party's employees, lenders, counsel, accountants, advisors, rating agencies, equity investors, subcontractors and affiliates, potential lenders or potential equity investors who have a need to know such information with respect to the performance of the relevant Party's obligations under this Agreement and have agreed to keep such terms confidential; or (b) in order to comply with any Applicable Law, regulation, or any exchange, control area or ISO rule, or order issued by a Governmental Authority with competent jurisdiction over the disclosing Party ("**Disclosing Party**"). In connection with disclosures pursuant to clause (b), each Party shall, to the extent practicable, use reasonable efforts to: (i) notify the other Party prior to disclosing the Confidential Information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a disclosure order or making the regulatory disclosures or (ii) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the Confidential Information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this **Section 15.2**. If this Agreement is terminated pursuant to **Article X**, each Party will promptly return or certify the destruction of, if so requested by the other Party, any Confidential Information provided to it and will use commercially reasonable efforts to return any copies thereof that may have been provided to others in accordance with this **Section 15.2**. The obligations of the Parties in this **Section 15.2** will survive the termination of this Agreement and the discharge of all other obligations owed by the Parties to each other.

SECTION 15.3. Owner's Representations and Warranties. Owner hereby represents and warrants to Contractor that

(a) Corporate Matters. Owner is a home-rule municipal corporation duly organized, validly existing and in good standing under the laws of the State of Texas. Owner has all the requisite corporate power and authority to conduct its business and to own, lease and operate its properties as presently conducted, owned or leased. Owner has all requisite legal power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(b) Validity of Agreement; No Conflicts. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized and approved by all requisite corporate action on the part of Owner. This Agreement constitutes a legal, binding and valid obligation of Owner, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors' rights generally and by legal and equity principles relating to the availability of specific remedies. The execution and performance by Owner of this Agreement, the consummation of the transactions contemplated hereby, and the compliance with the provisions hereof by Owner will not (a) conflict with, constitute a breach of, or violate any provision of the formation, charter, organizational or governing documents of Owner or violate in any material respect any Law applicable to it, (b) require Owner to file or obtain any Permit with or from any Governmental Authority which has not already been filed or obtained or (c) require any consent under or constitute a breach or default under any material contract to which Owner is a party or any of its assets, properties or businesses is bound.

(c) No Litigation. There is no action, claim, suit or proceeding by or before any Governmental Authority pending, or to the actual knowledge of Owner, threatened that seeks to prevent the consummation of, or that would materially adversely affect the ability of Owner to consummate, the transactions contemplated hereby.

SECTION 15.4. Representations and Warranties of Contractor.

(a) Corporate Matters. Contractor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Contractor has all the requisite corporate power and authority to conduct its business and to own, lease and operate its properties as presently conducted, owned or leased. Contractor has all requisite legal power and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(b) Validity of Agreement; No Conflicts. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized and approved by all requisite corporate

action on the part of Contractor. This Agreement constitutes a legal, binding and valid obligation of Contractor, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect that affect creditors' rights generally and by legal and equity principles relating to the availability of specific remedies. The execution and performance by Contractor of this Agreement, the consummation of the transactions contemplated hereby, and the compliance with the provisions hereof by Contractor will not (a) conflict with, constitute a breach of, or violate any provision of the formation, charter, organizational or governing documents of Contractor or violate in any material respect any Law applicable to it, (b) require Contractor to file or obtain any Permit with or from any Governmental Authority which has not already been filed or obtained or (c) require any consent under or constitute a breach or default under any material contract to which Contractor is a party or any of its assets, properties or businesses is bound.

(c) No Litigation. There is no action, claim, suit or proceeding by or before any Governmental Authority pending, or to the actual knowledge of Contractor, threatened that seeks to prevent the consummation of, or that would materially adversely affect the ability of Contractor to consummate, the transactions contemplated hereby.

(d) Expertise and Capability. Contractor has substantial experience and expertise in the engineering and design of GIS substations, and installation of, GIS Equipment and the capability to carry out its obligations under this Agreement. Contractor acknowledges that Owner is relying upon such experience, expertise and capability in executing this Agreement. Contractor has the financial resources, personnel, equipment, and other resources necessary to perform the Work under this Agreement on a timely basis.

ARTICLE XVI

FORCE MAJEURE

SECTION 16.1. Force Majeure

"Force Majeure" shall mean any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to (but only to the extent that the following examples satisfy all of the foregoing elements of this definition):

(a) acts of God, such as droughts, floods, earthquakes, hurricanes, tornadoes, fires (but not including fires caused by the negligent or willful acts or omissions of Contractor or its Subcontractors or fires caused by improper

installation, or operation during testing), epidemic and pandemic (including impacts of the current COVID-19 pandemic which arise after the effective date of this Agreement);

(b) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy and other forms of civil unrest, acts of terrorism and sabotage, blockades, and embargoes; and

(c) industry-wide, regional or general (*i.e.*, not directed specifically at or by the Party claiming Force Majeure) strikes, lockouts or other labor disputes.

Notwithstanding the foregoing, Force Majeure shall not include (A) weather conditions reasonably to be expected for the climate in the geographic area of the Site where the Work is to be performed, (B) any delay, default or failure (direct or indirect) in the performance of the Work by any Subcontractor or any other delay, default or failure (financial or otherwise) attributable to a Subcontractor unless such delay, default or failure results from any act, event or condition which would, with respect to such Subcontractor, constitute an event of Force Majeure, (C) failure to timely apply for Permits, (D) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure), or (E) a Party's financial inability to perform under this Agreement.

SECTION 16.2. Applicability of Force Majeure

(a) Notwithstanding any terms herein to the contrary, neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure; provided, that:

(i) the non-performing Party gives the other Party notice within the four (4) days after the date on which the non-performing Party becomes aware of the impact of an event of Force Majeure on the affected Party and documentary evidence with respect to such event of Force Majeure promptly but in no event later than twenty-eight (28) days after such initial notice;

(ii) the suspension of performance is of not greater scope and of no longer duration than is required by the Force Majeure;

(iii) the non-performing Party proceeds with reasonable diligence to use all reasonable efforts to mitigate the effects of the Force Majeure and to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure;

(iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect; and

(v) the affected Party shall continue to perform its other obligations hereunder not affected by such Force Majeure.

ARTICLE XVII

OTHER PROVISIONS

SECTION 17.1. Assignment

This Agreement and all provisions hereof shall inure to and be binding upon the respective Parties, their successors, and assigns. Since Contractor was selected to perform the Work covered by this Agreement based on its professional and creditworthiness qualifications, among other considerations, Contractor shall not assign this Agreement or any part hereof without the prior written consent of Owner which shall not be unreasonably withheld, conditioned or delayed; provided, however, that Contractor may (i) subcontract the Work in accordance with the terms hereof, and (ii) assign its accounts receivable without consent of Owner. Owner shall have the right, with Contractor's consent which shall not be unreasonably withheld, to assign its interests in this Agreement (i) as security to entities providing financing for the Facility, or (ii) to any Affiliate of Owner. Notwithstanding the foregoing, this Agreement may be assigned without consent to the successor of either Party, or to a person, firm or corporation acquiring all or substantially all of the business assets of such Party or to a wholly-owned subsidiary of either Party.

SECTION 17.2. Independent Contractor

In performing the Work, Contractor is acting as, and shall be deemed for all purposes to be, an independent contractor. Owner and Contractor are not partners, agents or joint ventures with each other, and this Agreement is not intended to nor shall it be construed to create a partnership, joint venture, or agency relationship between Owner and Contractor. Contractor shall complete the Work according to Contractor's own procedures, techniques, sequences, means and methods of work, which shall be in the exclusive charge and control of Contractor, and which shall not be subject to the control and supervision of Owner, except as to the results of the Work. Contractor shall be entirely and solely responsible for its acts and the acts of its employees and agents while engaged in the performance of the Work. Except as allowed by this Agreement, Contractor, its employees and agents shall not hold themselves out as employees or agents of Owner. Contractor and its employees are hereby expressly precluded from and not entitled to any employee benefits from Owner. For the purpose of clarifying the ineligibility of the Contractor under Owner's employee benefits plans or programs, Contractor and its employees are hereby specifically excluded from any eligibility and/or are deemed a "temporary employee" when such term is used to define ineligibility in benefits in any Owner employee benefit plan or program.

SECTION 17.3. No Waiver

No term, covenant or condition of the Contract Documents or any breach thereof shall be deemed waived, unless such waiver shall be in writing and executed by the Party claimed to have waived the same. The waiver of any breach by a Party, whether express or implied, shall not constitute a waiver of any subsequent breach.

SECTION 17.4. Gratuities

Contractor shall not, under any circumstances, extend any gratuity or special favor to employees of Owner that might be reasonably construed as an attempt to influence the recipients in the conduct of their official duties.

SECTION 17.5. Severability

If a court or regulatory agency or arbitrator having jurisdiction over the Parties determines that a condition of this Agreement, or any part thereof, is void, illegal or unenforceable, said condition or part shall be deemed to have been severed from this Agreement, and the remaining conditions, or parts, shall be unaffected and shall be enforced to the fullest extent allowed by law.

SECTION 17.6. Governing Law

This Agreement shall be governed and interpreted in accordance with the laws of the State of Texas, without regard to the conflicts of law rules of that State that would require the application of the laws of another jurisdiction.

SECTION 17.7. Counterparts

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. Owner may retain a duplicate copy (*e.g.*, electronic image, photocopy, facsimile) of this Agreement, which shall be considered an equivalent to this original.

SECTION 17.8. Entire Agreement

The Contract Documents represent the entire agreement and understanding between Owner and Contractor with respect to the subject matter hereof and performance of the Work, and supersede any prior understandings, representations or agreements, whether verbal or written, prior to execution of this Agreement. No prior course of dealing between the Parties shall form part of, or be used in the interpretation or construction of, any of the Contract Documents. Headings and titles of Sections, paragraphs and other subparts of this Agreement are for

convenience of reference only and shall not be considered in interpreting the text of this Agreement. Modifications or amendments to this Agreement must be in writing and executed by a duly authorized representative of each Party. The Contract Documents set forth the full and complete understanding of the Parties as of the date first above stated, and it supersedes any and all agreements and representations made or dated prior thereto. In the event of conflict between the Contract Documents and any of the Exhibits hereto, the terms and provisions of the Contract Documents shall control. In the event of any conflict among the Exhibits, the Exhibit of the latest date shall control.

SECTION 17.9. Agreement Authors

This Agreement has been agreed to by the Parties and no ambiguity shall be construed against any Party based on the identity of the author or authors of this Agreement. THE PARTIES ACKNOWLEDGE AND AGREE THE TERMS AND CONDITIONS OF THIS AGREEMENT HAVE BEEN FREELY, FAIRLY AND THOROUGHLY NEGOTIATED. FURTHER, THE PARTIES ACKNOWLEDGE AND AGREE SUCH TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WAIVERS, ALLOCATIONS OF, RELEASES FROM, INDEMNITIES AGAINST AND LIMITATIONS OF LIABILITY, WHICH MAY REQUIRE CONSPICUOUS IDENTIFICATION, HAVE NOT BEEN SO IDENTIFIED BY MUTUAL AGREEMENT AND THE PARTIES HAVE ACTUAL KNOWLEDGE OF THE INTENT AND EFFECT OF SUCH TERMS AND CONDITIONS. EACH PARTY ACKNOWLEDGES THAT IN EXECUTING THIS AGREEMENT THEY RELY SOLELY ON THEIR OWN JUDGMENT, BELIEF, AND KNOWLEDGE, AND SUCH ADVICE AS THEY MAY HAVE RECEIVED FROM THEIR OWN COUNSEL, AND THEY HAVE NOT BEEN INFLUENCED BY ANY REPRESENTATION OR STATEMENTS MADE BY ANY OTHER PARTY OR ITS COUNSEL. NO PROVISION IN THIS AGREEMENT IS TO BE INTERPRETED FOR OR AGAINST ANY PARTY BECAUSE THAT PARTY OR ITS COUNSEL DRAFTED SUCH PROVISION.

SECTION 17.10. Survival of Obligations

The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including but not limited to any expressed limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration. Specifically, Contractor's warranty obligations under **Article VI** "Inspection & Warranty" and indemnity obligations, including those under **Articles IV, XII, and XVI** "Compensation", "Liability", and "Other Provisions" and **Section 13.4** "Hazardous Materials", respectively, of this Agreement, and all other warranty and performance obligations, guaranties, and indemnity obligations in the Contract Documents shall survive any termination of the Agreement, and the suspension, completion and acceptance of the Work, or any part thereof, or final payment to Contractor, it being agreed that said obligations and rights are and shall be of a continuing nature. The terms of **Article XI** "Dispute Resolution" and this **Article XVII** shall also survive termination, suspension and completion of this Agreement.

SECTION 17.11. No Third Party Beneficiaries

There are no third party beneficiaries to this Agreement and no third person or entity shall claim that any portion of this Agreement creates a duty running to that third person or entity. The Parties agree to look solely to each other with respect to the obligations and liability arising in connection with this Agreement and the Work performed hereunder. This Agreement and each and every provision hereof is for the exclusive benefit of Owner and Contractor and not for the benefit of any third party, except to the extent such benefits have been expressly extended pursuant to this Agreement.

SECTION 17.12. Further Assurances

Subject to the terms and conditions of this Agreement, the Parties shall use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under Applicable Law to consummate the transactions contemplated under this Agreement. Contractor shall cooperate with and provide reasonable assistance to Owner in the financing of the Facility, including the execution of any certificates or consent to assignment of this Agreement requested by Owner's lenders in a form consistent with industry practice and reasonably acceptable to Contractor.

SECTION 17.13. Exclusivity of Remedies

The remedies expressly afforded by this Contract with respect to a particular matter are intended to be the sole and exclusive remedies of the Parties to this Contract for the liabilities of such Parties arising out of or in connection with such matter, notwithstanding any remedy otherwise available at law or in equity.

SECTION 17.14. Right to Audit

Owner has the right to audit all of Contractor's records and billings relating to the performance of the Work under this Agreement for compliance with any state, federal or local law that is applicable to the Project; provided, however, that Contractor shall have the right to redact such records to remove confidential and proprietary pricing information on lump sum billings to the extent such information is not required to document compliance with law, as well as any personally identifiable information of individual persons. Contractor agrees to retain records related to the Project for a minimum of five (5) years following completion of the Work. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Agreement shall be subject to Owner's rights as may be disclosed by an audit under this section.

SECTION 17.15. Proportionate Liability

To the extent permitted by the laws of the State of Texas and without waiving any applicable immunity, as it pertains to the acts and/or failure to act, or any negligent or willful misconduct of a Party in performing the Work or meeting their respective obligations pursuant to the Contract

Documents and set forth herein, if the joint, concurring, comparative or contributory fault or negligence of the Parties gives rise to damages for which a Party may be entitled to recover from the other, or from any other person in connection with this Agreement, any such damage(s) or liability shall be allocated among and between all Parties involved in proportion to their respective degree of fault, liability, or negligence contributing to any such damage(s), as the case may be.

[Remainder of Page Left Blank Intentionally]

EXHIBIT B
FORM OF CHANGE ORDER

CHANGE ORDER NO. Date

In accordance with **Article V** of that certain Engineering, Procurement and Construction Agreement, dated _____ (the “**Agreement**”), between Beta Engineering, LLC (“**Contractor**”) and (“**Owner**”), Contractor Cityof Denton and Owner agree as follows:

Description of Change:

Original Contract Price	\$ _____
Previous Change Orders	\$ _____
Amount of this Change Order	\$ _____
New Contract Price	\$ _____

This Change Order will modify the Contract Completion Date as follows:

_____ Increase _____ Decrease _____ No Effect _____ Calendar Days

Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement. Except as modified hereby, the Agreement shall remain in full force and effect and unmodified.

ACCEPTED BY CONTRACTOR

By: _____

Printed Name: _____

Its: _____

ACCEPTED BY OWNER

By: _____

Printed Name: _____

Its: _____

EXHIBIT C
FORM OF PARTIAL LIEN WAIVERS AND RELEASE

EXHIBIT C-1
FORM OF PARTIAL LIEN WAIVER AND RELEASE

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen,

and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME, by
_____ who is the _____ of _____ on this
the _____ day of _____, 20____.

Notary Public In and For
The State of Texas

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

The signer of this document has been paid and has received a progress payment in the sum of \$ _____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME, by
_____ who is the _____ of _____ on this
the _____ day of _____, 20____.

Notary Public In and For
The State of Texas

EXHIBIT C-2
FORM OF FINAL LIEN WAIVER AND RELEASE

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ (maker of check) in the sum of \$ _____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME, by
_____ who is the _____ of _____ on this
the _____ day of _____, 20____.

Notary Public In and For
The State of Texas

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO BEFORE ME, by
_____ who is the _____ of _____ on this
the _____ day of _____, 20____.

Notary Public In and For
The State of Texas

EXHIBIT D-1
FORM OF MECHANICAL COMPLETION CERTIFICATE

[_____] , a [_____] (“**Contractor**”) does hereby certify that Mechanical Completion has been achieved in accordance with the terms of the Agreement.

IN WITNESS WHEREOF, Contractor has caused this Certificate of Substantial Completion to be duly executed and delivered this ____ day of _____.

[_____]

By: _____

Printed Name: _____

Its: _____

EXHIBIT D-2
FORM OF SUBSTANTIAL COMPLETION CERTIFICATE

[_____] , a [_____] (“**Contractor**”) does hereby certify that Substantial Completion has been achieved in accordance with the terms of the Agreement.

IN WITNESS WHEREOF, Contractor has caused this Certificate of Substantial Completion to be duly executed and delivered this ____ day of _____.

[_____]

By: _____

Printed Name: _____

Its: _____

EXHIBIT D-3

FORM OF FINAL COMPLETION CERTIFICATE

[_____] , a [_____] ("**Contractor**") does hereby certify that Final Completion of the Facility has been achieved in accordance with the terms of the Agreement.

IN WITNESS WHEREOF, Contractor has caused this Certificate of Final Completion to be duly executed and delivered this ____ day of _____.
[_____]

By: _____

Printed Name: _____

Its: _____

EXHIBIT E-1 LNT

January

[Contractor Name]

[Address]

[Address]

Telephone:

Facsimile:

Attention: [_____]

**Subject: Hickory GIS Substation
 Design/Build Agreement
 Limited Notice to Proceed (“LNT Agreement”)**

City of Denton (“**Owner**”) hereby notifies Beta Engineering, LLC. (“**Contractor**”, together with Owner, the “**Parties**”) that, subject to the terms of this LNT Agreement, Contractor is authorized to perform certain preliminary work as described below.

RECITALS

WHEREAS, the Parties have entered into that certain Engineering, Design/Build Agreement (the “Contract”) dated as of [_____], 20[___] for the Hickory GIS Substation. Capitalized but undefined terms have the meaning set forth in the “Contract”, and the terms of the “Contract” shall govern this LNT Agreement as if fully set forth herein.

WHEREAS, pursuant to Section [_____] of the “Contract”, Owner hereby authorizes Contractor to commence certain limited portions of the Work, as further specified below.

WHEREAS, this LNT Agreement is intended to allow the Contractor to proceed with certain preliminary work (“**LNT Work**”) authorized by Owner pending Owner’s authorization of a full Notice to Proceed pursuant to the “Contract” .

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

1. NOTICE TO PROCEED

- 1.1 Owner hereby directs Contractor to commence the LNT Scope of Work (as hereinafter defined) in accordance with all terms of the “Contract” and the LNT Pricing Schedule attached as **Exhibit B** and Scope of Work attached as **Exhibit A**. Contractor shall commence performing the LNT Work immediately upon the execution of this LNT Agreement.
- 1.2 Contractor shall not incur any costs during the performance of the LNT Work to be paid by the Owner in excess of \$4,355,263 Dollars without obtaining prior written approval from the Owner.

2. EPC CONTRACT

- 2.1 The LNTP Work shall be merged into and included within the “Contract” and the “Contract” will supersede this LNTP Agreement and will apply retroactively to all matters pertaining to the LNTP Work, except as expressly provided otherwise in the “Contract”.
- 2.2 The capitalized terms used, but not defined herein, shall have the meanings ascribed thereto in the “Contract”, and the “Contract” shall govern this LNTP as if fully set forth herein.

3. SCOPE OF WORK

- 3.1 Subject to any limitations set forth in this LNTP Agreement, the Owner authorizes Contractor to proceed with the LNTP Work as more fully described in **Exhibit A** attached hereto.
- 3.2 This scope is sufficient to permit Contractor to maintain the contemplated schedule for the Project.
- 3.3 If additional preliminary work is required to support the “Contract” project schedule, the Parties may negotiate further agreements in substantially the same form as this LNTP.

4. PAYMENT

Owner shall pay Contractor the amounts in accordance with the Payment Schedule attached hereto as **Exhibit B**. Contractor shall invoice the Owner monthly with respect to the LNTP Work covered therein. Within thirty (30) days of receiving an invoice in satisfactory form, the Owner shall make payment of all undisputed amounts indicated on the invoice.

5. AMENDMENTS AND WAIVERS

Any term of this Agreement may be amended or waived only with the written consent of both parties.

6. SOLE AGREEMENT

This Agreement, including the Exhibits hereto, constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

7. NOTICES

Any notice required or permitted by this Agreement shall be in writing, signed by the party giving such notice, and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, if such notice is addressed to the party to be notified at such party’s address or facsimile number as set forth below. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee’s receipt of such notice.

To Owner: As set forth in the “Contract”.

To Contractor: As set forth in the “Contract”.

8. SEVERABILITY

If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall

be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

9. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

10. ADVICE OF COUNSEL

EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

11. GOVERNING LAW

This LNTP Agreement is governed by the laws of the State of Texas.

[OWNER NAME]

By: _____

Name: _____

Title: _____

Acceptance

The terms and conditions of this LNTP Agreement are hereby accepted by Contractor on _____, 20__.

[CONTRACTOR NAME]

By: _____

Name: _____

Title: _____

Exhibit A

Scope of Work

Contactor Services

Engineering

SITE DEVELOPMENT – THROUGH IFC

- Design Packages
- Stormwater Pollution Prevention Plan (SWPPP)
- Grading Plan and Details
- Subsurface Drainage Plan and Details
- Finish Grading Plan and Details
- Access Drive Plan and Details
- Retaining Wall Details
- Landscaping and Irrigation Plan
- Landscaping and Irrigation Details

GIS BUILDING – THROUGH IFC

- Design Packages
- Code Information
- Cover Sheet
- Site Plan
- Floor Plan
- Reflected Ceiling Plan, Finish Plan, Roof Plan
- Exterior Elevations
- Building Sections
- Wall Sections
- Details
- Door Schedule
- Legend and Notes - Electrical
- One-Line Diagram
- Floor Plan - Lighting
- Floor Plan - Power
- Floor Plan - Power to mechanical
- Schedules - Mechanical
- First Floor Plan - HVAC
- Roof Plan - HVAC
- General Notes
- Typical Details - Foundation
- Typical Details - Foundation Schedules
- Typical Details - Tilt-Wall Panel
- Typical Details - Masonry
- Foundation Plan
- Roof Framing Plan
- Foundation Details

PRELIMINARY ENGINEERING TO SUPPORT PERMITTING

- Outdoor Substation Drawings
- 138kV GIS Drawings
- Screen Wall Drawings

Procurement

GENERAL

- Performance and Payment Bond
- Builder's Risk Insurance

138kv GIS

- Issue Purchase Order

138/13.2kV Transformer

- Issue Purchase Order

Exhibit B

Payment Schedule

	BP4004 - City of Denton - 138/13.2kV GIS Substation								
	Invoice Projections								
	November 17, 2021				Forecast	Forecast	Forecast	Forecast	Forecast
					Invoice Period				
	No.	Milestone Description	Milestone Value	January-22	February-22	March-22	April-22	May-22	
LNTP	1	Initial Notice to Proceed	\$ 1,009,250	\$ 1,009,250			\$ -	\$ -	
	2	Preformance and Payment Bond	\$ 423,000	\$ 423,000					
	3	Builder's Risk Insurance	\$ 107,172	\$ 107,172					
	4	Engineering - Site Development - Through IFC	\$ 303,892	\$ 75,973	\$ 151,946	\$ 75,973			
	5	Engineering - GIS Building - Through IFC	\$ 176,194	\$ 35,239	\$ 35,239	\$ 35,239	\$ 35,239	\$ 35,239	
	6	Engineering - Outdoor Substation - Permitting Set	\$ 230,929	\$ 46,186	\$ 46,186	\$ 46,186	\$ 46,186	\$ 46,186	
	7	Engineering - 138kV GIS - Permitting Set	\$ 249,852	\$ 49,970	\$ 49,970	\$ 49,970	\$ 49,971	\$ 49,971	
	8	Engineering - Screen Wall - Permitting Set	\$ 202,786	\$ 40,557	\$ 40,557	\$ 40,557	\$ 40,557	\$ 40,557	
	7	Procurement - 138/13.8kV Transformer - Issue Purchase Order	\$ 420,927	\$ 420,927	\$ -	\$ -	\$ -	\$ -	
	8	Procurement - 138kV GIS - Issue Purchase Order	\$ 1,231,261	\$ 1,231,261	\$ -	\$ -	\$ -	\$ -	
		Subtotal - LNTP Milestones	\$ 4,355,263	\$ 3,439,535	\$ 323,898	\$ 247,925	\$ 171,953	\$ 171,953	171,953

EXHIBIT E-2 LNTF

[Date], 20__

[Contractor Name]

[Address]

[Address]

Telephone:

Facsimile:

Attention: [_____]

**Subject: Hickory GIS Substation
 Design/Build Agreement
 Full Notice to Proceed (“FNTF Agreement”)**

City of Denton (“**Owner**”) hereby notifies Beta Engineering, LLC. (“**Contractor**”), together with Owner, the “**Parties**”) that Contractor is authorized to proceed as described below.

WHEREAS, the Parties have entered into that certain Design/Build Agreement (the “Contract”) dated as of [_____], 20[___] for the Hickory GIS Substation. Capitalized but undefined terms have the meaning set forth in the “Contract”, and the terms of the “Contract” shall govern this FNTF Agreement as if fully set forth herein.

NOW, THEREFORE, pursuant to Section [_____] of the “Contract”, Owner hereby directs Contractor to fully perform the “Contract” Scope of Work in accordance with all terms of the “Contract” and Exhibits attached thereto.

[OWNER NAME]

By: _____

Name: _____

Title: _____

Acceptance

The terms and conditions of this FNTF Agreement are hereby accepted by Contractor on _____, 20__.

[CONTRACTOR NAME]

By: _____

Name: _____

Title: _____

EXHIBIT F
PERMITS

Contractor and Owner shall be each responsible for obtaining and maintaining all permits with respect to the Facility as specified in the following table:

	Permit, License, Approval Name	Approval Authority	DME	Design Build Firm
1	Preliminary Plat	City of Denton	X	
2	Final Plat	City of Denton	X	
3	Driveway/Curb Cut Permit	City of Denton		X
4	Clearing & Grading Permit	City of Denton		X
5	Drilled Pier Permit	City of Denton		X
6	Foundation Permit	City of Denton		X
7	Building Permit	City of Denton		X
8	Fence/Wall Permit	City of Denton		X
9	Electric Generating Air Quality Standard Permit	TCEQ	N/A	N/A
10	NPDES Permit for Construction Activities	TCEQ	N/A	N/A
11	Aeronautical Obstruction Clearance	FAA	N/A	N/A

12	US Army Corps of Engineers (USACE) Section 404/401 Permit	USACE/ TCEQ	N/A	N/A
----	--	----------------	-----	-----

BP4004 - City of Denton - 138/13.2kV GIS Substation

Invoice Projections

November 19, 2021				Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
				Invoice Period																
	No.	Milestone Description	Milestone Value	January-22	February-22	March-22	April-22	May-22	June-22	July-22	August-22	September-22	October-22	November-22	December-22	January-23	February-23	March-23	April-23	May-23
LNTP	1	Initial Notice to Proceed	\$ 1,009,250	\$ 1,009,250			\$ -	\$ -	-	-	-	-	-	-	-	-	-	-	-	-
	2	Preformance and Payment Bond	\$ 423,000	\$ 423,000																
	3	Builder's Risk Insurance	\$ 107,172	\$ 107,172																
	4	Engineering - Site Development - Through IFC	\$ 303,892	\$ 75,973	\$ 151,946	\$ 75,973				-	-	-	-	-	-	-	-	-	-	-
	5	Engineering - GIS Building - Through IFC	\$ 176,194	\$ 35,239	\$ 35,239	\$ 35,239	\$ 35,239	\$ 35,239	-	-	-	-	-	-	-	-	-	-	-	-
	6	Engineering - Outdoor Substation - Permitting Set	\$ 230,929	\$ 46,186	\$ 46,186	\$ 46,186	\$ 46,186	\$ 46,186	-	-	-	-	-	-	-	-	-	-	-	-
	7	Engineering - 138kV GIS - Permitting Set	\$ 249,852	\$ 49,970	\$ 49,970	\$ 49,970	\$ 49,971	\$ 49,971												
	8	Engineering - Screen Wall - Permitting Set	\$ 202,786	\$ 40,557	\$ 40,557	\$ 40,557	\$ 40,557	\$ 40,557			-	-	-	-	-	-				
	7	Procurement - 138/13.8kV Transformer - Issue Purchase Order	\$ 420,927	\$ 420,927	\$ -	\$ -	\$ -	\$ -	-	-	-	-	-	-	-	-	-	-	-	-
Engineering	8	Procurement - 138kV GIS - Issue Purchase Order	\$ 1,231,261	\$ 1,231,261	\$ -	\$ -	\$ -	\$ -	-	-	-	-	-	-	-	-	-	-	-	-
	9	Final Notice to Proceed	\$ 1,009,250	-	-	-	-	-	1,009,250	-	-	-	-	-	-	-	-	-	-	-
	10	Engineering - Outdoor Substation	\$ 230,929						46,186	46,186	23,093	23,093	23,093	23,093	23,093	23,093				
	11	Engineering - 138kV GIS - Through IFC	\$ 249,852						49,970	49,970	24,985	24,985	24,985	24,985	24,985	24,985	-	-	-	-
	12	Engineering - Screen Wall - Through IFC	\$ 51,105						25,553	25,553	-	-	-	-	-	-	-	-	-	-
	13	Engineering - Transmission - Through IFC	\$ 505,504	-	-	-	-	-	-	101,101	101,101	101,101	50,550	50,550	50,550	50,550	-	-	-	-
Procurement	14	Engineering - Distribution - Through IFC	\$ 426,962	-	-	-	-			85,392	85,392	85,392	42,696	42,696	42,696	42,696	-	-	-	-
	15	Procurement - 138/13.8kV Transformer - Approval Drawings, Release for Manufacturing, Delivery to Site	\$ 1,683,709	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		
	16	Procurement - 138kV GIS - Basic Design, FAT, Delivery to Site	\$ 4,995,046	-	-	-	-	-	999,009	-	-	-	-	-	-	-	-	-	999,009	-
	17	Procurement - 138kV HV Equipment (Switches, CT, SSVT, etc.)	\$ 554,502	-	-	-	-	-	277,251	-	-	-	-	-	-	-	-	-	-	277,251
	18	Procurement - 15kV Switchgear, PME, etc.	\$ 395,629	-	-	-	-	-	197,815	-	-	-	-	-	-	-	-	-		197,815
	19	Procurement - 138kV, 5000kCMIL Cable and Terminators	\$ 2,965,888	-	-	-	-	-	-	-	-	-	-	1,482,944	-	-	-	-		-
	20	Procurement - 15kV, 750kcmil Cable and Terminations	\$ 1,567,096	-	-	-	-	-	-	-	-	-	-	783,548	-	-	-	-		-
	21	Procurement - Steel Structures	\$ 115,172	-	-	-	-	-	57,586	-	-	-	-	-	-	-	-	-		57,586
	22	Procurement - Grounding, Bus, Conduit, etc.	\$ 168,432	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	84,216	84,216
	23	Procurement - LV Power & Control Cable	\$ 319,434	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	159,717	159,717
Construction	24	Procurement - Protection/Control/Relay Panels	\$ 491,394	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	245,697	245,697
	25	Procurement - Station AC/DC Aux. Service	\$ 204,918	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	102,459	102,459
	26	Procurement - Bus & Insulators	\$ 166,280	-		-						-		-	-	-	-	-	83,140	83,140
	27	Construction - Mobilization	\$ 1,208,047	-	-	-	-	-	-	-	-	-	1,208,047	-	-	-	-	-	-	-
	28	Construction - Site Development	\$ 1,287,659	-	-	-	-	-	-	-	-	-	643,830	321,915	321,915	-	-	-	-	-
	29	Contruction - Wall System - Foundations	\$ 1,064,413	-	-	-	-	-	-	-	-	-	-	-	-	-	-	532,207	266,103	266,103
	30	Contruction - Wall System - Concrete Tilt-Up	\$ 2,215,362	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	221,536
	31	Contruction - Wall System - Masonry	\$ 1,897,815	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	189,782
	32	Contruction - GIS Building - Foundations	\$ 445,998	-	-	-	-	-	-	-	-	-	-	-	-	-	-	222,999	222,999	-
	33	Contruction - GIS Building - Concrete Tilt-Up	\$ 1,113,154	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	278,289	278,289
	34	Contruction - GIS Building - Masonry	\$ 910,763	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	227,691	227,691
	35	Contruction - GIS Building - Electrical, Mechanical, etc...	\$ 255,431	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	36	Contruction - 138kV GIS - Equipment Installation	\$ 878,317	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	37	Contruction - Outdoor Substation - Foundation Construction	\$ 753,182	-	-	-	-	-	-	-	-	-	-	188,296	188,296	188,296	188,296	-	-	-
	38	Contruction - Outdoor Substation - Below and Above Grade Grounding and Conduit Installation	\$ 1,367,638	-	-	-	-	-	-	-	-	-	-	-	-	341,910	341,910	341,910	170,955	170,955
	39	Contruction - Outdoor Substation - 138kV Transformer Installation	\$ 180,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	40	Contruction - Outdoor Substation - Pull and Terminate Control and Power Cable	\$ 401,245	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	41	Contruction - Outdoor Substation - Steel Erection and Equipment Installation	\$ 610,548	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	305,274
	42	Contruction - Outdoor Substation - Testing and Commissioning	\$ 248,253	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	43	Contruction - 138kV Transmission - Ductbank Installation	\$ 533,320	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	44	Contruction - 138kV Transmission - Pull and Terminate Cable	\$ 1,172,669	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	45	Contruction - 138kV Transmission - Testing and Commissioning	\$ 180,774	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	46	Contruction - 15kV Distribution - Ductbank Installation	\$ 1,558,424	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	47	Contruction - 15kV Distribution - Pull and Terminate Cable	\$ 1,263,809	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	48	Contruction - 15kV Distribution - Overhead Line Installation	\$ 351,934	-	-	-	-	-	-	-	-	-	351,934	-	-	-	-	-	-	-
	49	Contruction - 15kV Distribution - Testing and Commissioning	\$ 113,881	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Subtotal - LNTP Milestones			\$ 4,355,263	\$ 3,439,535	\$ 323,898	\$ 247,925	\$ 171,953	\$ 171,953	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal - Engineering Milestones			\$ 2,473,602	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,130,959	\$ 308,202	\$ 234,571	\$ 234,571	\$ 141,325	\$ 141,325	\$ 141,325	\$ 141,325	\$ -	\$ -	\$ -	\$ -
Subtotal - Procurement Milestones			\$ 13,627,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,531,661	\$ -	\$ -	\$ -	\$ -	\$ 2,266,492	\$ -	\$ -	\$ -	\$ -	\$ 1,674,238	\$ 1,207,881
Subtotal - Construction Milestones			\$ 20,012,635	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,203,810	\$ 510,210	\$ 510,210	\$ 530,205	\$ 530,205	\$ 1,097,115	\$ 1,166,036	\$ 1,659,629
Grand Total			\$ 40,469,000	\$ 3,439,535	\$ 323,898	\$ 247,925	\$ 171,953	\$ 171,953	\$ 2,662,619	\$ 308,202	\$ 234,571	\$ 234,571	\$ 2,345,135	\$ 2,918,027	\$ 651,535	\$ 671,530	\$ 530,205	\$ 1,097,115	\$ 2,840,274	\$ 2,867,509

EXHIBIT H
FORM OF PERFORMANCE SECURITY

EXHIBIT H-1

FORM OF PERFORMANCE BOND

1

2

PERFORMANCE BOND

3

4

THE STATE OF TEXAS

§

5

§

KNOW ALL BY THESE PRESENTS:

6

COUNTY OF DENTON

§

7

8

That we, _____, known as

9

“Principal” herein and _____, a corporate

10 surety(sureties, if more than one) duly authorized to do business in the State of Texas, known as

11 “Surety” herein (whether one or more), are held and firmly bound unto the City of Denton, a

12 municipal corporation created pursuant to the laws of Texas, known as “City” herein, in the penal

13 sum of, _____ Dollars

14 (\$_____), lawful money of the United States, to be paid in Denton, Denton

15 County, Texas for the payment of which sum well and truly to be made, we bind ourselves, our

16 heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these

17 presents.

18

WHEREAS, the Principal has entered into a certain written contract with the City

19 awarded the ____ day of _____, 20____, which Contract is hereby referred to and

20 made a part hereof for all purposes as if fully set forth herein, to furnish all design, materials, equipment

21 labor and other accessories defined by law, in the prosecution of the Work, including any Change

22 Orders, as provided for in said Contract designated as . _____

24

NOW, THEREFORE, the condition of this obligation is such that if the said Principal

25 shall faithfully perform it obligations under the Contract and shall in all respects duly and

26 faithfully perform the Work, including Change Orders, under the Contract, according to the plans,

27 specifications, and contract documents therein referred to, and as well during any period of

28 extension of the Contract that may be granted on the part of the City, then this obligation shall be

29 and become null and void, otherwise to remain in full force and effect.

30

PROVIDED FURTHER, that if any legal action be filed on this Bond, venue shall lie in

31 Denton County, Texas or the United States District Court for the Eastern District of Texas,

32 Sherman Division.

This bond is made and executed in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute.

IN WITNESS WHEREOF, the Principal and the Surety have SIGNED and SEALED this instrument by duly authorized agents and officers on this the _____ day of _____, 20____.

PRINCIPAL:

BY: _____
Signature

ATTEST:

(Principal) Secretary

Name and Title

Address: _____

Witness as to Principal

SURETY:

BY: _____
Signature

Name and Title

Address: _____

Witness as to Surety

Telephone Number: _____

***Note:** If signed by an officer of the Surety Company, there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If Surety's physical address is different from its mailing address, both must be provided. The date of the bond shall not be prior to the date the Contract is awarded.

EXHIBIT H-2
FORM OF PAYMENT BOND

PAYMENT BOND

THE STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

COUNTY OF DENTON

§

That we, _____, known as
 “Principal” herein, and _____, a
 corporate surety (sureties), duly authorized to do business in the State of Texas, known as
 “Surety” herein (whether one or more), are held and firmly bound unto the City of Denton, a
 municipal corporation created pursuant to the laws of the State of Texas, known as “City” herein,
 in the penal sum of _____ Dollars
 (\$_____), lawful money of the United States, to be paid in Denton, Denton
 County, Texas, for the payment of which sum well and truly be made, we bind ourselves, our
 heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
 presents:

WHEREAS, Principal has entered into a certain written Contract with City, awarded the
 _____ day of _____, 20____, which Contract is hereby referred to and
 made a part hereof for all purposes as if fully set forth herein, to furnish all design, materials, equipment,
 labor and other accessories as defined by law, in the prosecution of the Work as provided for in
 said Contract and designated . _____.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if
 Principal shall pay all monies owing to any (and all) payment bond beneficiary (as defined in
 Chapter 2253 of the Texas Government Code, as amended) in the prosecution of the Work under
 the Contract, then this obligation shall be and become null and void; otherwise to remain in full
 force and effect.

This bond is made and executed in compliance with the provisions of Chapter 2253 of the
 Texas Government Code, as amended, and all liabilities on this bond shall be determined in
 accordance with the provisions of said statute.

1 **IN WITNESS WHEREOF**, the Principal and Surety have each SIGNED and SEALED
 2 this instrument by duly authorized agents and officers on this the _____ day of
 3 _____, 20____.

4

PRINCIPAL:

ATTEST:

BY: _____
 Signature

 (Principal) Secretary

 Name and Title
 Address: _____

 Witness as to Principal

SURETY:

ATTEST:

BY: _____
 Signature

 (Surety) Secretary

 Name and Title
 Address: _____

 Witness as to Surety

Telephone Number: _____

5

6 Note: If signed by an officer of the Surety, there must be on file a certified extract from the
 7 bylaws showing that this person has authority to sign such obligation. If Surety's physical
 8 address is different from its mailing address, both must be provided.

9

10 **THE DATE OF THE BOND SHALL NOT BE PRIOR**
 11 **TO THE DATE THE CONTRACT IS AWARDED.**

12

END OF SECTION

13

EXHIBIT H-3
FORM OF MAINTENANCE BOND

1

2

MAINTENANCE BOND

3

4

THE STATE OF TEXAS

§

5

§

KNOW ALL BY THESE PRESENTS:

6

COUNTY OF DENTON

§

7

That we _____, known as

8

“Principal” herein and _____, a corporate surety

9

(sureties, if more than one) duly authorized to do business in the State of Texas, known as

10

“Surety” herein (whether one or more), are held and firmly bound unto the City of Denton, a

11

municipal corporation created pursuant to the laws of the State of Texas, known as “City” herein,

12

in the sum of _____ Dollars

13

(\$ _____), lawful money of the United States, to be paid in Denton, Denton

14

County, Texas, for payment of which sum well and truly be made unto the City and its

15

successors, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly

16

and severally, firmly by these presents.

17

18

WHEREAS, the Principal has entered into a certain written contract with the City awarded

19

the _____ day of _____, 20____, which Contract is hereby

20

referred to and a made part hereof for all purposes as if fully set forth herein, to furnish all

21

design, materials, equipment labor and other accessories as defined by law, in the prosecution of the

22

Work, including any Work resulting from a duly authorized Change Order (collectively herein,

23

the “Work”) as provided for in said contract and designated as _____; and

25

26

WHEREAS, Principal binds itself to use such materials and to so construct the Work in

27

accordance with the plans, specifications and Contract Documents that the Work is and will

28

remain free from defects in design, materials, or workmanship for and during the period of **three (3) years**

29

after the date of Substantial Completion of the Work and any extension thereof as provided in the Contract (“Warranty Period”); and

30

31

WHEREAS, Principal binds itself to repair or reconstruct the Work in whole or in part

32

upon receiving notice from the City of the need therefor at any time within the Warranty

33

Period.

1 **NOW THEREFORE**, the condition of this obligation is such that if Principal shall
2 remedy any defective Work that arises during the Warranty Period, for which timely notice was provided by
3 City, to a completion
4 satisfactory to the City, then this obligation shall become null and void; otherwise to remain in
5 full force and effect.

6 **PROVIDED, HOWEVER**, if Principal shall fail so to repair or reconstruct any timely
7 noticed defective Work, it is agreed that the City may cause any and all such defective Work to
8 be repaired and/or reconstructed with all associated costs thereof being borne by the Principal and
9 the Surety under this Maintenance bond; and

10
11 **PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in
12 Denton County, Texas or the United States District Court for the Eastern District of Texas,
13 Sherman Division; and

14
15 **PROVIDED FURTHER**, that this obligation shall be continuous in nature and
16 successive recoveries may be had hereon for successive breaches.

1 **IN WITNESS WHEREOF**, the Principal and the Surety have each SIGNED and SEALED this
2 instrument by duly authorized agents and officers on this the _____ day of _____
3 _____, 20____.

4

5

6

7

8

9

10

11

12

13

PRINCIPAL:

BY: _____
Signature

ATTEST:

14 (Principal) Secretary

15

16

17

18

19

20 Witness as to Principal

21

22

23

24

25

26

27

28

29 ATTEST:

30

31

32 (Surety) Secretary

33

34

35 Witness as to Surety

36

37 *Note: If signed by an officer of the Surety Company, there must be on file a certified extract
 38 from the by-laws showing that this person has authority to sign such obligation. If
 39 Surety's physical address is different from its mailing address, both must be provided.
 40 The date of the bond shall not be prior to the date the Contract is awarded.

41

Name and Title

Address:

SURETY:

BY:

Signature

Name and Title

Address:

Telephone Number:

EXHIBIT I
FORM OF BI-WEEKLY PROGRESS REPORT



City of Denton

Hickory GIS Substation

BI-WEEKLY PROGRESS REPORT

Month / Year

BI-WEEKLY PROGRESS REPORT- MONTH / YEAR

TABLE OF CONTENTS

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7.0 COMMISSIONING & TESTING 6

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10.0 CRITICAL ACTION ITEMS..... 6

- APPENDIX A – PHOTOS**
- APPENDIX B – PROJECT SCHEDULE**

EXECUTIVE SUMMARY

This progress report covers the project execution activities for the design, procurement and construction of the Hickory GIS for the weeks of XYZ.

Safety:

Schedule:

Contractual:

1.0 SAFETY

In order to track our performance, we are tracking the following safety statistics; hours worked, first aid cases, property damage incidents and OSHA recordable incidents:

2.0 PERMITS

The permitting matrix was updated as follows:

ENGINEERING

Engineering progress for the month includes the following:

- X,Y,Z

PROCUREMENT

Procurement Packages awarded to date:

- CXYZ - 1

Procurement Packages currently in Bid & Procurement process:

- CXYZ - 2

3.0 CONSTRUCTION PROGRESS

Construction Progress for the week is as follows:

Civil

Structural

Mechanical

Electrical

Building

4.0 COMMISSIONING & TESTING

Update:

5.0 PROJECT CHANGES

Contractor Change Notices:

Potential Change Orders:

Executed Change Orders to date:

6.0 PROJECT SCHEDULE

The project schedule is included in Exhibit M.

7.0 CRITICAL ACTION ITEMS

The Action Item list is filled out and updated through our bi-weekly coordination meetings, however, below are Action Items that are either past due or need attention soon to avoid contract impacts:

None to report at this time.

* * * * *

BETA[®] Project Organization Chart

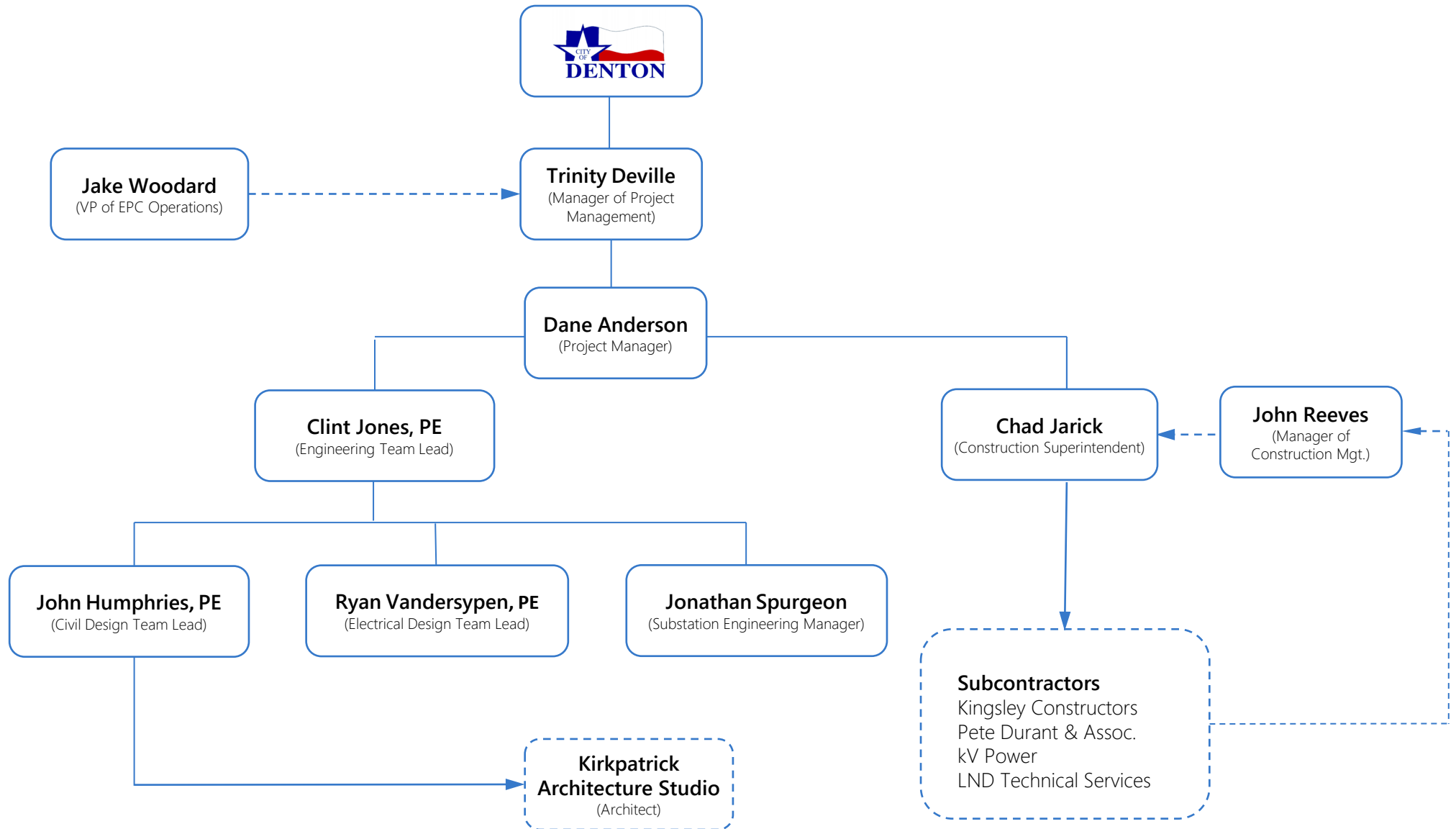


EXHIBIT K
GUARANTEES AND PERFORMANCE TESTS

Not Used

EXHIBIT L – Not Used

196



EXHIBIT N

Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
betaengineering.com

Classification	Rate Type	Unit of Measure	Rate
President	N/A	Hour	200
Vice President	N/A	Hour	200
Project Executive	N/A	Hour	185
Senior Project Manager	N/A	Hour	175
Project Manager III	N/A	Hour	160
Project Manager II	N/A	Hour	145
Project Manager I	N/A	Hour	130
Scheduling Specialist	N/A	Hour	120
Project Coordinator III	N/A	Hour	130
Project Coordinator II	N/A	Hour	115
Project Coordinator I	N/A	Hour	100
Administrative Assistant	N/A	Hour	65
Construction Manager IV	N/A	Hour	160
Construction Manager III	N/A	Hour	140
Construction Manager II	N/A	Hour	120
Construction Manager I	N/A	Hour	105
Procurement Agent III	N/A	Hour	85
Procurement Agent II	N/A	Hour	80
Procurement Agent I	N/A	Hour	75
Project Engineer	N/A	Hour	155
Engineer V	N/A	Hour	155
Engineer IV	N/A	Hour	145
Engineer III	N/A	Hour	130
Engineer II	N/A	Hour	115
Engineer I	N/A	Hour	105
Technician III	N/A	Hour	120
Technician II	N/A	Hour	110
Technician I	N/A	Hour	100
Designer III	N/A	Hour	85
Designer II	N/A	Hour	75
Drafter I	N/A	Hour	65

Classification	Rate Type	Unit of Measure	Rate
The above rates include all direct and indirect labor costs included but not limited to payroll taxes, benefits, insurance, workers compensation, overhead and profit.			
Overtime rates will be applied to the above hourly rates at 1.5 times for all hours above 10 hours per day or 40 hours per week and for any work on weekends and holidays.			
Level I Software: Structural Design, Foundation Design, AutoCAD, Vortex, Vibrec	N/A	Hour	10.00
Level II Software: Autodesk Revit, Navisworks, PLS-Cad, Autodesk Inventor, AutoCAD Electrical, AutoCAD Civil 3D, MicroStation	N/A	Hour	20.00
Level III Software: CDEGS, SYMCAP	N/A	Hour	30.00
Reproduction – Black & White Large Scale Drawings (D Size)	N/A	Each	1.50
Reproduction- Color Large Scale Drawings (D Size)	N/A	Each	10.00
Documents – Black & White Single-sided Copies 8 x 11, 8 x 14	N/A	Each	0.10
Documents – Black & White Single-sided Copies 11 x 17	N/A	Each	0.25
Documents – Black & White Double-sided Copies 8 x 11, 8 x 14	N/A	Each	0.15
Documents – Black & White Double-sided Copies 11 x 17	N/A	Each	0.38
Documents – Color Single-sided Copies 8 x 11, 8 x 14	N/A	Each	1.00
Documents – Color Single-sided Copies 11 x 17	N/A	Each	2.50
Documents – Color Double-sided Copies 8 x 11	N/A	Each	1.50
Documents – Color Double-sided Copies 11 x 17	N/A	Each	4.00
Other Expenses Associated with Outsourced Labor, Material or Equipment	N/A	Each	Cost + 10%

BETA ENGINEERING, LLC

DocuSigned by:
BY: George Brashear
E7E9E2A7A944F6
AUTHORIZED SIGNATURE

Printed Name: George Brashear

Title: Executive Vice President

318.730.4303

PHONE NUMBER

george.brashear@betaengineering.com

EMAIL ADDRESS

2021- 827510

**TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER**

CITY OF DENTON, TEXAS

DocuSigned by:
BY: Sara Hensley
5236DB296270423
**SARA HENSLEY
INTERIM CITY MANAGER**

**ATTEST:
ROSA RIOS, CITY SECRETARY**

DocuSigned by:
BY: Rosa Rios
1C6CA8C6E175403...

**APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY**

DocuSigned by:
BY: Marcella Lunn
4B070831B4AA438...

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

DocuSigned by:
Antonio Puente Antonio Puente
E3760944C2BE4B5...
SIGNATURE PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

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.

Beta Engineering, LLC

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

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

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

Name of Officer

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

George A. Brashear

August 19, 2021

Signature of vendor doing business with the governmental entity

Date

Certificate Of Completion

Envelope Id: D5F87594CD3A4C2C93CF7637E174F3B0

Status: Completed

Subject: Please DocuSign: City Council Contract 7670 Hickory GIS Substation Design Build

Source Envelope:

Document Pages: 125

Signatures: 5

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelope Stamping: Enabled

Denton, TX 76209

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

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

Holder: Christa Christian

Location: DocuSign

11/29/2021 12:16:47 PM

Christa.Christian@cityofdenton.com

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

Christa Christian

Completed

Sent: 11/29/2021 12:58:57 PM

christa.christian@cityofdenton.com

Viewed: 11/29/2021 12:59:09 PM

Senior Buyer

Signed: 11/29/2021 12:59:35 PM

City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 11/29/2021 12:59:38 PM

lori.hewell@cityofdenton.com

Viewed: 11/29/2021 2:43:16 PM

Purchasing Manager

Signed: 11/29/2021 2:44:26 PM

City of Denton

Signature Adoption: Pre-selected Style

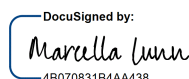
Security Level: Email, Account Authentication
(None)

Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 11/29/2021 2:44:29 PM

marcella.lunn@cityofdenton.com

Viewed: 11/29/2021 2:45:54 PM

Catherine Clifton, Interim City Attorney

Signed: 11/29/2021 5:26:10 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication
(None)

Using IP Address: 68.185.202.16

Signed using mobile

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

George Brashear



Sent: 11/29/2021 5:26:13 PM

george.brashear@betaengineering.com

Viewed: 11/29/2021 5:30:38 PM

Executive Vice President

Signed: 11/29/2021 8:30:12 PM

Beta Engineering, LLC

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication
(None)

Using IP Address: 76.88.4.158

Electronic Record and Signature Disclosure:

Accepted: 11/29/2021 5:30:38 PM

ID: f567f1ad-3a93-45f1-99e7-185388c031aa

Signer Events	Signature	Timestamp
<p>Antonio Puente</p> <p>Antonio.Puente@cityofdenton.com</p> <p>DME General Manager</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 11/29/2021 8:42:03 PM ID: e76b626b-ab78-4de6-9726-d7bcd34dd118</p>	<p>DocuSigned by: <i>Antonio Puente</i> E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 174.246.128.156 Signed using mobile</p>	<p>Sent: 11/29/2021 8:30:15 PM Viewed: 11/29/2021 8:42:03 PM Signed: 11/29/2021 8:42:33 PM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Contract Administrator</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 198.49.140.104</p>	<p>Sent: 11/29/2021 8:42:36 PM Viewed: 12/15/2021 8:15:34 AM Signed: 12/15/2021 8:16:03 AM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Interim City Manager</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by: <i>Sara Hensley</i> 5236DB296270423...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 12/15/2021 8:16:07 AM Viewed: 12/15/2021 8:18:11 AM Signed: 12/15/2021 8:18:17 AM</p>
<p>Rosa Rios</p> <p>rosa.rios@cityofdenton.com</p> <p>City Secretary</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by: <i>Rosa Rios</i> 1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 12/15/2021 8:18:20 AM Viewed: 12/15/2021 9:14:47 AM Signed: 12/15/2021 9:15:09 AM</p>
<p>Electronic Record and Signature Disclosure: Accepted: 12/15/2021 9:14:47 AM ID: d5f7d80b-dfaa-4af9-83ca-1bd9a6b27ef6</p>		

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
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Contract Administrator</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>COPIED</p>	<p>Sent: 11/29/2021 12:59:38 PM</p>

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 11/29/2021 8:42:35 PM Viewed: 11/30/2021 9:05:54 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:15:12 AM
Mark Zimmerer mark.zimmerer@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 11/23/2021 1:52:42 PM ID: 3bdd0863-bf0a-485f-a75b-0c586de97b56	COPIED	Sent: 12/15/2021 9:15:12 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	11/29/2021 12:58:57 PM
Certified Delivered	Security Checked	12/15/2021 9:14:47 AM
Signing Complete	Security Checked	12/15/2021 9:15:09 AM
Completed	Security Checked	12/15/2021 9:15:13 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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

ORDINANCE NO. 22-1540

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF CHANGE ORDER NO. 1 TO THE DESIGN-BUILD AGREEMENT BETWEEN THE CITY OF DENTON AND BETA ENGINEERING, LLC, FOR THE DESIGN AND CONSTRUCTION OF THE HICKORY GAS INSULATED SUBSTATION FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7670 – CHANGE ORDER NO. 1 IN THE NOT-TO-EXCEED AMOUNT OF \$811,000.00, FOR A TOTAL CONTRACT AWARD AGGREGATED TO \$41,280,000.00).

WHEREAS, on December 14, 2021, by Ordinance No. 21-2701, the Council awarded a contract to Beta Engineering, LLC, in the amount of \$40,469,000.00, for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric; and

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that a change order be authorized to amend such contract agreement with respect to the scope of work and an increase in the payment amount; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 1, increasing the amount of the contract between the City and Beta Engineering, LLC, which is on file in the office of the Purchasing Agent, in the amount of Eight Hundred Eleven Thousand and 0/100 (\$811,000.00) dollars, is hereby approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to \$41,280,000.00.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Jesse Davis and seconded by Brian Beck. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Vicki Byrd, District 1:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Brian Beck, District 2:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Jesse Davis, District 3:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Alison Maguire, District 4:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>
Chris Watts, At Large Place 6:	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>

PASSED AND APPROVED this the 16th day of August, 2022.



GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

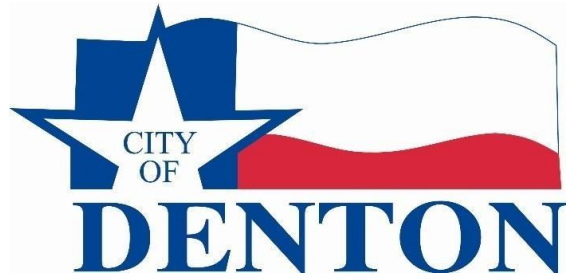
BY: 



APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: 

Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o,
ou=City of Denton,
email=marcella.lunn@cityofden
ton.com, c=US
Date: 2022.07.25 10:10:42
-05'00'



Docusign City Council Transmittal Coversheet

FILE	7670
File Name	Hickory GIS Substation, Change Order 1
Purchasing Contact	Christa Christian
City Council Target Date	AUGUST 16, 2022
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	22-1540



Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
betaengineering.com

June 30, 2022

Denton Municipal Electric
 1671 Spencer Road
 Denton, TX 76205

Attn: Mr. Mark Zimmerer, PE
 Subject: City of Denton Hickory GIS Substation Project
 Beta Project No. B661

Dear Mark,

This letter serves as a formal request for a Contract Amendment to incorporate scope changes in the Design Build Agreement for the Construction of the Hickory GIS Substation dated December 14th, 2021. The additional scope items have been separated into three categories as follows:

- A. **Items to be Included in the Contract Amendment** – Beta requests a Contract Amendment to incorporate the following scope changes as soon as possible so that these items can be incorporated in the project without delay.

Item	Description	Price
A1	<p>As a result of a force-majeure event outside of Beta's control, it is not possible to achieve the Contract Completion Date of October 24, 2024 with Beta-Purchased transformers GT-06111 and GT-06112 installed at the new Hickory GIS Substation.</p> <p>The new Hickory GIS Substation shall use Owner-Supplied transformers GT-01950 and GT-02289. Unless otherwise noted, only the work performed by Beta to complete integration of Owner-Supplied transformers to the new Hickory GIS Substation shall be subject to a 3-year warranty period.</p> <p>Owner-Supplied transformers GT-01950 and GT-02289 shall be inspected and tested at McKinney Substation prior to disassembly and relocation to the new Hickory GIS Substation. This testing shall be performed by Waukesha under supervision by Beta at no additional cost to the contract. Upon reassembly at the new Hickory GIS Substation, Owner-Supplied transformers GT-01950 and GT-02289 shall be re-tested by Waukesha under supervision by Beta at no additional cost to the contract.</p>	\$0
A2	<p>"Per the definitions and Section 5.3(b)(6) of our design build Agreement:</p> <p>""Adjusted Reference Price"" means the Reference Price for Copper, Steel and PVC Resin adjusted up or down five percent (5%), as applicable.""</p> <p>""Commodity Price Change Order"" means a change order pursuant to Section 5.3(b)(6) and shall be; (a) a credit to Owner for quantities of Copper, Steel and PVC Resin, if the Copper Index Price, the Steel Index Price or the PVC Resin Price is less than ninety five percent (95%) of the Reference Price for such commodity on the day such commodity is purchased by Contractor for the Work; and/or (b) a price increase to Contractor for the quantities of Copper,</p>	(\$9,000)

DME Hickory GIS Substation
 Beta Ref. No. B661-L001
 March 7, 2022
 Page 2

Steel and PVC Resin, if the Steel Index Price, the Cooper Index Price or the PVC Resin Price is greater than one hundred and five percent (105%) of the Reference Price on the day such commodity is purchased by Contractor for the Work. The Section 5.3(b)(6) Change Order shall be for the quantity of the commodity purchased (Copper, Steel or PVC Resin) multiplied by the difference between the Adjusted Reference Price and applicable Steel Index Price, Copper Index Price or PVC Resin Price. Contractor shall provide commercially reasonable documentation to Owner documenting the basis for the Commodity Price Change Order associated with each requested Change Order.""

""""Reference Price"" means \$4.74/lb for Copper, \$1,330/ton for PVC Resin and \$1,919/ton for Steel.""

Based on Reference Price for copper of \$4.74 per lb, the Adjusted Reference Price is \$4.503 per lb.

For the 138kV transmission cable, Beta's purchase order was based on a copper price of \$4.4659 per lb (please refer to the attached quote). Per the attached clarifications, the cable price per foot is adjusted based on fluctuations in the cost of copper as follows:

$$FP = BP - \{Wt_{cu} * (CP_{Bid} - CP_{Order})\} - \{Wt_{al} * (AP_{Bid} - AP_{Order})\}$$
 where

FP is Final Adjusted Price [\$/ft]

BP is Bid Price [\$/ft]

Wt_{cu} is Amount of Copper used in the cable construction [lbs/ft]

CP_{Bid} is Copper Price base in the quotation [\$/lb]

CP_{Order} is Copper price COMEX as per the hedge contract for the delivery month [\$/lb]

Wt_{al} is Amount of Aluminum used in the cable construction [lbs/ft]

AP_{Bid} is Aluminum price base in the quotation [\$/lb]

AP_{Order} is Aluminum Mid-West U.S. Transaction price as per the hedge contract for the delivery month [\$/lb]

Beta's purchase of 138kV cable was on a Bid Price of \$155.68/ft

The Final Adjusted Price at \$4.503/lb is \$156.3605/ft

This results in a cost savings of \$8,846 which will be credited back to DME as the Commodity Price Change Order."

DME Hickory GIS Substation
 Beta Ref. No. B661-L001
 March 7, 2022
 Page 3

A3	<p>"Per DME's direction given via Brian Ehsani email on 6/8/22 and subsequent meetings, Beta is proceeding with modifications to the single line diagrams (SOL and ROL drawings), panel elevations BOM drawings, and three line (TL and PT) drawings detailed in Brian's email. In addition, Beta will include two new ROL sheets that reflect only the MOD controls per B&V's comments to Engineering Submittal #2. These modifications will consist of rearranging the breaker numbering and bay positions on the one-lines and three-line diagrams to reflect the physical arrangement of the GIS to ensure optimum functionality for DME's operations team. This change will also require appropriately rearranging the protection and control relaying to accurately reflect the new arrangement of the bays. The panel elevation BOM drawings will be updated to reflect DME's ring bus standard where the breaker panel protects the descending asset.</p> <p>The additional hours for these modifications are as follows:</p> <p>Technician II – 66 hours Engineer III – 74 hours Engineer V – 42 hours"</p>	\$22,000
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- B. Items to be listed as “Optional” in the Contract Amendment** – The following items shall be listed as “Optional” items in the Contract Amendment. These items would not be incorporated Beta’s scope until accepted by DME. These optional items are valid for acceptance through April 3, 2022.

Item	Description	Price
B1	The Beta-purchased SPX transformers GT-06111 and GT-06112 shall be delivered to the McKinney Substation Site or Underwood Substation Site . Transformers shall be assembled and tested by Manufacturer under supervision by Beta. High/Medium voltage connections and control wiring to be installed and tested by others.	\$0
B2	<p>Owner-Supplied transformers GT-01950 and GT-02289 shall be disassembled and relocated to the new Hickory GIS Substation by DME.</p> <p>Reassembly, testing, and pre-commissioning of Owner-Supplied transformers at new Hickory GIS Site shall be performed by DME.</p> <p>Any additional work performed by Beta to complete integration of Owner-Supplied transformers to the new Hickory GIS Substation shall be subject to a 3-year warranty period.</p>	\$0

DME Hickory GIS Substation
 Beta Ref. No. B661-L001
 March 7, 2022
 Page 4

Item	Description	Price
B3	<p>Owner-Supplied transformers GT-01950 and GT-02289 shall be disassembled and relocated to the new Hickory GIS Substation by Beta.</p> <p>Reassembly, testing, and pre-commissioning of Owner-Supplied transformers at new Hickory GIS Site shall be performed by Beta. This work shall be subject to a 1-year warranty.</p> <p>Any additional work performed by Beta to complete integration of Owner-Supplied transformers to the new Hickory GIS Substation shall be subject to a 3-year warranty period.</p> <p>Owner supplied transformers shall be subject to section 2.20 "Owner-Supplied Equipment" and related Section 2.13 "Care, Custody and Control/Risk of Loss" shown in the Design Build Agreement.</p>	\$372,000
B4	<p>Per Siemens Energy quote and technical exceptions, the GIS equipment located inside the GIS Equipment Room is rated for a maximum temperature of 40 C.</p> <p>Based on our discussions, HVAC in the GIS Equipment Room had been previously considered but was removed from the project scope as unnecessary.</p> <p>Kirkpatrick Architecture Services has determined that an additional 60 tons of cooling capacity would be required to maintain a temperature of 85 F in the GIS Equipment Room. Five (5) 15-ton Bard Wall mount units are proposed with one (1) unit acting as a spare.</p> <p>This proposal is for the addition of the five (5) 15-ton Bard wall mount units, and associated GIS building electrical modifications, per the attached quote.</p> <p>No additional substation modification will be required for this addition.</p> <p>There is an estimated schedule impact of 2 weeks for revisions to the GIS Building construction drawings.</p> <p>There is a 30-week lead time for the additional A/C units and 2 weeks required for installation.</p>	\$426,000

Please issue a letter confirming acceptance of the "A" items included in this request and indication of the "B" items Beta should proceed with. We will add a single Milestone Payment for the "A" items. This Milestone Payment would be called "Change Order No. 1 – Commodity Change Order and Drawing Updates". We anticipate invoicing for 100% of this milestone in August 2022.

If you would like Beta to proceed with option B3, I would suggest the addition of a single Milestone Payment. Milestone Payment would be called "Changes Order No. 1 – Owner-Supplied Transformer Relocation". We anticipate invoicing for 100% of this milestone in February 2023, following the testing, disassembly, relocation, reassembly.

DME Hickory GIS Substation
Beta Ref. No. B661-L001
March 7, 2022
Page 5

If you would like Beta to proceed with option B4, I would suggest the addition of a single Milestone Payment. Milestone Payment would be called "Changes Order No. 1 – GIS Equipment Room AC Addition". We anticipate invoicing for 100% of this milestone in June 2023, following the installation of AC Units in the GIS Equipment Room.

Upon receipt of your response, I will prepare and submit the Change Order Form in accordance with Article V of the Design Build Agreement.

Please call me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeremy Katusak", is written over a horizontal line.

Jeremy Katusak, PE, PMP
Project Manager

EXHIBIT B
FORM OF CHANGE ORDER

CHANGE ORDER NO. 1 6/30/2022

In accordance with **Article V** of that certain Engineering, Procurement and Construction Agreement, dated December 14, 2021 (the "**Agreement**"), between Beta Engineering, LLC ("**Contractor**") and City of Denton ("**Owner**"), Contractor and Owner agree as follows:

Description of Change:

- A1. Use DME supplied transformers from McKinney Substation instead of two new units
Already purchased by Beta from Waukesha
- A2. Reduce cost of underground transmission cable due to copper index pricing changes
- A3. Cost to redesign relaying drawings after design was completed.
- B1. Direction to Beta to delivery two new Waukesha transformers to McKinney or Underwood Substation
- B3. Cost for Beta to disassemble, move, reassemble, and test the McKinney transformers. Beta has agreed to assume responsibility for these two transformers while they are in possession in accordance with Section 2.12 and 2.20 of the contract.
- B4. Cost to add air conditioning to GIS room to ensure GIS equipment and other electronics operate below maximum designed temperature.

Original Contract Price	\$ <u>40,469,000.00</u>
Previous Change Orders	\$ <u>0.00</u>
Amount of this Change Order	\$ <u>811,000.00</u>
New Contract Price	\$ <u>41,280,000.00</u>

This Change Order will modify the Contract Completion Date as follows:

_____ Increase _____ Decrease X No Effect _____ Calendar Days

Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement. Except as modified hereby, the Agreement shall remain in full force and effect and unmodified.

ACCEPTED BY CONTRACTOR

By: _____

Printed Name: JaKe Woodard

Its: Vice President

ACCEPTED BY OWNER

By: _____

Printed Name: Christa Christian

Its: Senior Buyer

DocuSigned by:

George Brashear

E7EBFE2AFAC44F0...

George Brashear Executive Vice President

B-1

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

DocuSigned by:
Antonio Puente
E3760944C2BE4B5...
SIGNATURE Antonio Puente
PRINTED NAME

DME General Manager
TITLE
Electric
DEPARTMENT

CITY OF DENTON, TEXAS

DocuSigned by:
Sara Hensley
5236DB296270423...
BY: SARA HENSLEY
CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

DocuSigned by:
Rosa Rios
1C5CA8C5E175493...
BY:

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn
4B070831B4AA438...
BY:

Certificate Of Completion

Envelope Id: 94F678F5D65D46A3BD42196B327FB50F

Status: Completed

Subject: Please DocuSign: City Council Contract 7670 - Change Order 1

Source Envelope:

Document Pages: 8

Signatures: 5

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

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

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

Holder: Christa Christian

Location: DocuSign

7/15/2022 11:20:34 AM

Christa.Christian@cityofdenton.com

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

Christa Christian

Completed

Sent: 7/15/2022 11:29:40 AM

christa.christian@cityofdenton.com

Viewed: 7/15/2022 11:29:52 AM

Senior Buyer

Signed: 7/15/2022 11:30:19 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

Tabitha Millsop



Sent: 7/15/2022 11:30:21 AM

tabitha.millsop@cityofdenton.com

Viewed: 7/18/2022 4:39:18 PM

Assistant Purchasing Manager

Signed: 7/18/2022 4:39:23 PM

City of Denton

Signature Adoption: Pre-selected Style

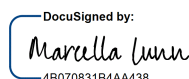
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Marcella Lunn



Sent: 7/18/2022 4:39:25 PM

marcella.lunn@cityofdenton.com

Viewed: 7/20/2022 2:28:45 PM

Deputy City Attorney

Signed: 7/20/2022 2:30:00 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication
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Electronic Record and Signature Disclosure:

Not Offered via DocuSign

George Brashear



Sent: 7/20/2022 2:30:02 PM

george.brashear@betaengineering.com

Viewed: 7/20/2022 3:07:31 PM

Executive Vice President

Signed: 7/20/2022 3:46:06 PM

Beta Engineering, LLC

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication
(None)

Using IP Address: 76.88.4.158

Electronic Record and Signature Disclosure:

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Signer Events	Signature	Timestamp
<p>Antonio Puente</p> <p>Antonio.Puente@cityofdenton.com</p> <p>DME General Manager</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p> <p><i>Antonio Puente</i></p> <p>E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 7/20/2022 3:46:09 PM</p> <p>Viewed: 7/20/2022 4:02:23 PM</p> <p>Signed: 7/20/2022 4:08:14 PM</p>

Electronic Record and Signature Disclosure:
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ID: bf8d1957-5603-4089-8914-6655971aac7f

Cheyenne Defee

cheyenne.defee@cityofdenton.com

Procurement Administration Supervisor

City of Denton

Security Level: Email, Account Authentication (None)

Completed

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Signed: 8/17/2022 8:25:17 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley

sara.hensley@cityofdenton.com

City Manager

City of Denton

Security Level: Email, Account Authentication (None)

DocuSigned by:

Sara Hensley

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Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

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Signed: 8/17/2022 8:26:34 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Rosa Rios

rosa.rios@cityofdenton.com

City Secretary

Security Level: Email, Account Authentication (None)

DocuSigned by:

Rosa Rios

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Signature Adoption: Pre-selected Style

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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee

cheyenne.defee@cityofdenton.com

Procurement Administration Supervisor

City of Denton

Security Level: Email, Account Authentication (None)

COPIED

Sent: 7/15/2022 11:30:21 AM

Electronic Record and Signature Disclosure:
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Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/20/2022 4:08:16 PM Viewed: 7/20/2022 4:16:09 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 8/17/2022 1:37:30 PM
Mark Zimmerer mark.zimmerer@cityofdenton.com Electric Engineering Supervisor Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 7/18/2022 1:28:41 PM ID: 79c223f8-d900-4558-9eb9-21104dba1e4e	COPIED	Sent: 8/17/2022 1:37:32 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Completed	Security Checked	8/17/2022 1:37:32 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

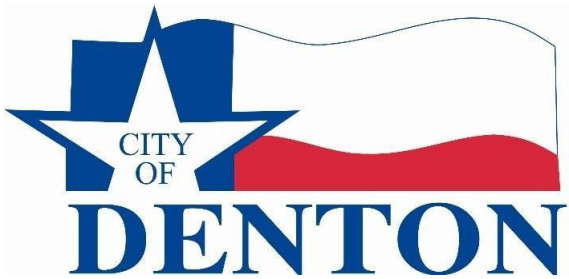
** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your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

Acknowledging your access and consent to receive materials electronically

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

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

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



DocuSign Transmittal Coversheet

File Name	7670 - Hickory GIS Substation , CO 2
Purchasing Contact	Christa Christian
Contract Expiration	10/6/23



Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
betaengineering.com

May 8, 2023

Denton Municipal Electric
 1671 Spencer Road
 Denton, TX 76205

Attn: Mr. Mark Zimmerer, PE
 Subject: City of Denton Hickory GIS Substation Project
 Beta Project No. B661

Dear Mark,

This letter serves as a formal request for a Contract Amendment to incorporate scope changes in the Design Build Agreement for the Construction of the Hickory GIS Substation dated December 14th, 2021. The additional scope items have been separated into two categories as follows:

- A. **Items to be Included in the Contract Amendment** – Beta requests a Contract Amendment to incorporate the following scope changes as soon as possible so that these items can be incorporated in the project without delay.

N/A

- B. **Items to be listed as “Optional” in the Contract Amendment** – The following items shall be listed as “Optional” items in the Contract Amendment. These items would not be incorporated Beta’s scope until accepted by DME. These optional items are valid for acceptance through May 31, 2023.

Item	Description	Price
B1	<p>During the relocation survey of the McKinney Substation transformers by Beta and Waukesha, it was discovered that unit GT-01950 had evidence of a gasket leak. Beta shall hire Waukesha to regasket the unit, including the following:</p> <p>Waukesha® Service will drain existing oil (est. 7,886 gal.) into Waukesha® Service supplied oil storage tanker. Follow oil removal with dry-air.</p> <ul style="list-style-type: none"> • Waukesha® Service to provide dry-air, purge tank, and perform confined space entry requirements prior to internal tank access. • Waukesha® Service to perform leak repair / re-gasket, per the following: <ul style="list-style-type: none"> o Remove existing 138kV HV bushings and turrets, install new gaskets, and re-install. o Remove existing 13.2kV LV & HO bushings and turrets, install new gaskets, and re-install o Remove radiators w/manifolds, install new gaskets, and re-install radiators. o Remove and regasket peripheral devices – gauges, PRD, SPR, etc. o Re-gasket manhole covers on lid and side manholes on tank wall. • Waukesha® Service to seal up transformer and perform pressure test (3 PSI) to ensure no leaks. • Waukesha® Service to perform vacuum oil filling / hot oil processing, per the 	\$37,000

DME Hickory GIS Substation
Beta Ref. No. B661-L001
March 7, 2022
Page 2

Item	Description	Price
	following procedure: <ul style="list-style-type: none">o Vacuum leak test the hoses and equipment.o Pull vacuum to 1 Torr or less and hold for 48 hrs.o Fill with heat oil to 50-60 deg C while holding a vacuum of 5 Torr or less.o Break vacuum and top off with nitrogen.o Check oil levels per nameplate. Beta Engineering/City of Denton to provide any make-up oil if required.	

Please issue a letter indicating if the “B1” item is accepted or rejected.

If you would like Beta to proceed with option B1, I would suggest the addition of a single Milestone Payment. Milestone Payment would be called “Changes Order No. 21 – Owner-Supplied Transformer GT-01950 Regasket”. We anticipate invoicing for 100% of this milestone in October 2023, following the repair, testing, disassembly, relocation, reassembly.

Upon receipt of your response, I will prepare and submit the Change Order Form in accordance with Article V of the Design Build Agreement.

Please call me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy Katusak', with a long horizontal line extending to the right.

Jeremy Katusak, PE, PMP
Project Manager

waukesha®

City of Denton/Beta Engineering

Service Quotation #9131976

RE: Waukesha Transformers at McKinney Substation in Denton,
TX

3/3/2022





Service Quotation

Date: 3/3/2022

Jeremy Katusak, PE, PMP

Project Manager

City of Denton/Beta Engineering

2520 E McKinney St

Denton, TX 76209

956.455.3419

jeremy.katusak@betaengineering.com

Quote Number

#9131976

RE:

Waukesha Transformer at McKinney Substation in Denton, TX



CONTACT INFORMATION

Business Development Manager

Sean Gallagher

Waukesha

MOB 214.548.2911

sean.gallagher@spx.com

Channel Partner

James De La Cruz

Keasler Associates

MOB 972.569.7084

james@keasler.com

Territory General Manager

Perry Reeder

GE Grid

MOB 262.349.0392







perry.reeder@ge.com

Confidentiality Notice:

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SCOPE OF WORK

Prolec-GE Waukesha, Inc. Service Group (referred to as Waukesha® Service throughout the rest of this proposal) is pleased to provide crew and equipment to perform the following scope of work:

Substation:	McKinney Substation, 2520 E McKinney St, Denton, TX 76209	
Equipment:	Waukesha Transformer	Waukesha Transformer
Unit ID#:	T1	T2
Serial Number:	GT-02289	GT-01950
Gallons of Oil:	7,320	7,886
Voltage:	138kV-13.2kV	138kV-13.2kV
MVA:	15/20/25	15/20/25

15/20/25 MVA Waukesha Transformer installation at McKinney Substation in TX

- Mobilize Waukesha® Service personnel and equipment to Beta Engineering/City of Denton station in Denton, TX. **Note:** Waukesha allows up to 2 hours of site orientation / site specific training at no cost. Additional training will be at additional costs at \$150/hr.

Origination Site

- Same SOW for both transformers.
- Mobilize Waukesha® Service personnel and equipment to McKinney Substation in Denton, TX. **Note:** Waukesha allows up to 2 hours of site orientation / site specific training at no cost. Additional training will be at additional costs at \$150/hr.
- Beta Engineering/City of Denton personnel will be responsible for de-energization, disconnection, isolation, and grounding of equipment, to include all bushings, bus work, connections, etc. (as required).
- Waukesha® Service to provide man lift, crane, test equipment, and confined space entry requirements (as necessary) on site.
- Perform the following transformer tests (as applicable) identified below. Additional tests are available upon request at time of service per T&M rates.
 - TTR – transformer turns ratio as found DETC and all LTC Tap positions
 - Core insulation resistance (if externally accessible)
 - SFRA
 - Power factor of winding insulation.
 - Single-phase excitation. As found DETC tap and LTC Positions 16R, 1R, N & 1L
 - Power factor and capacitance of bushing with test taps, Hot collar testing w/o test tap.
 - Power Factor Testing of Arrestors (transformer mounted)
 - Overall Power Factor of transformer windings & bushings
 - Winding Resistance
 - Core Ground (megger)
 - Insulation Resistance (megger)
 - Oil sample for DGA/oil quality testing
- Waukesha® Service will **not** drain existing oil, transformers will be moved oil filled.
- In preparation for transformer move, Waukesha® Service will remove the following ancillary parts:
 - 138kV high voltage bushings
 - 13.2kV low voltage bushings
 - Conservator tank and structure (as required)
 - Transformer cooler and/or radiator assemblies, bracing, manifolds/headers, and fans (as required)
 - Electrical control boxes/CT conduits (as required)
 - Any additional parts requiring removal per Beta Engineering/City of Denton provided shipping drawing
- Waukesha® Service will package/crate all ancillary parts in preparation for move
- Waukesha® Service will load all ancillary parts (bushings, radiators, fans, control boxes, conservator (as required)) onto transportation trucks in preparation for move
 - Waukesha® Service will provide all transportation for ancillary parts move
- Waukesha® Service will load transformer onto transportation trucks in preparation for move
 - Waukesha® Service will provide all transportation for main transformer move as per the Beta Engineering/City of Denton provided shipping drawing
 - Waukesha® Service will provide all crane and rigging to load main transformer on trailer in preparation for move as per the Beta Engineering/City of Denton provided shipping drawing



Destination Site

- Mobilize Waukesha® Service personnel and equipment to Beta Engineering/City of Denton Hickory Substation. **Note:** *Waukesha allows up to 2 hours of site orientation / site specific training at no cost. Additional training will be at additional costs at \$150/hr.*
- Waukesha® Service to provide man lift, crane, test equipment, and confined space entry requirements (as necessary) on site.
- Waukesha® Service will unload all ancillary parts (bushings, radiators, fans, control boxes, conservator (as required)) in preparation for transformer storage or assembly
 - If the transformer is placed in storage unassembled, Waukesha® Service will not un-package/un-crate all parts and will place in storage location as directed by Beta Engineering/City of Denton
 - If the transformer will be energized or will be stored fully assembled, Waukesha® Service will un-package/un-crate parts in preparation for transformer assembly
- Waukesha® Service will unload transformer from transportation trucks and place on pad as directed by Beta Engineering/City of Denton
 - Waukesha® Service will provide all crane and rigging to load main transformer on pad
- **See Regasket for GT-01950**
- To prepare to test and energize transformer, Waukesha® Service will install the following ancillary parts:
 - 138kV high voltage bushings
 - 13.2kV low voltage bushings
 - Conservator tank and structure (as required)
 - Transformer cooler and/or radiator assemblies, bracing, manifolds/headers, and fans (as required)
 - Electrical control boxes/CT conduits (as required)
 - Any additional parts requiring removal per Beta Engineering/City of Denton provided shipping drawing
- Waukesha® Service to seal up transformer and perform pressure test (3 PSI) to ensure no leaks.
- Waukesha® Service to check oil levels per nameplate. Beta Engineering/City of Denton to provide any make-up oil if required.
- Perform the following transformer tests (as applicable) identified below. Additional tests are available upon request at time of service per T&M rates.
 - TTR – transformer turns ratio as found DETC and all LTC Tap positions
 - Core insulation resistance (if externally accessible)
 - SFRA
 - Power factor of winding insulation.
 - Single-phase excitation. As found DETC tap and LTC Positions 16R, 1R, N & 1L
 - Power factor and capacitance of bushing with test taps, Hot collar testing w/o test tap.
 - Power Factor Testing of Arrestors (transformer mounted)
 - Overall Power Factor of transformer windings & bushings
 - Winding Resistance
 - Core Ground (megger)
 - Insulation Resistance (megger)
- Beta Engineering/City of Denton personnel will be responsible to perform reconnection, re-energization, ground removal, etc. (as required)
- If transformer will be placed in service, Waukesha® Service recommends minimum of 48 hours hold/soak period prior to re-energization.
- Waukesha® Service to demobilize personnel and equipment from site and provide final report w/test results.

REGASKET SOW FOR UNIT GT-01950

- Waukesha® Service will drain existing oil (est. 7,886 gal.) into Waukesha® Service supplied oil storage tanker. Follow oil removal with dry-air.
- Waukesha® Service to provide dry-air, purge tank, and perform confined space entry requirements prior to internal tank access.
- Waukesha® Service to perform leak repair / re-gasket, per the following:
 - Remove existing 138kV HV bushings and turrets, install new gaskets, and re-install.
 - Remove existing 13.2kV LV & HO bushings and turrets, install new gaskets, and re-install
 - Remove radiators w/manifolds, install new gaskets, and re-install radiators.
 - Remove and regasket peripheral devices – gauges, PRD, SPR, etc.
 - Re-gasket manhole covers on lid and side manholes on tank wall.
- Waukesha® Service to seal up transformer and perform pressure test (3 PSI) to ensure no leaks.
- Waukesha® Service to perform vacuum oil filling / hot oil processing, per the following procedure:
 - Vacuum leak test the hoses and equipment.
 - Pull vacuum to 1 Torr or less and hold for 48 hrs.
 - Fill with heat oil to 50-60 deg C while holding a vacuum of 5 Torr or less.
 - Break vacuum and top off with nitrogen.
 - Check oil levels per nameplate. Beta Engineering/City of Denton to provide any make-up oil if required.



PERFORMANCE

Work is quoted based upon Waukesha® Service crews working 7 days a week, 8–12 hours per day and 24 hours per day while oil is processing. Work scope is estimated to take *10 days* to complete, depending on weather conditions.

- Proposed Start Date: _____ Q1 2023 _____
- Availability of service personnel and equipment is subject to prior sale.



CLARIFICATIONS TO SCOPE OF WORK

Unless specifically addressed in scope of work, the following assumptions have been made in preparation of our offer:

- Purchaser shall be responsible for switching, lock out and grounding of any equipment necessary to establish safe work area.
- Purchaser shall provide suitable, free, clear, unlimited and compacted access route, roads and area around work location for access of service equipment.
- Purchaser shall disconnect and reconnect all external protection, control and relay wiring, as required.
- Purchaser shall disconnect and reconnect all external bushing terminations or bus work, as required.
- Purchaser shall disassemble and reassemble any deluge systems, as required.
- Waukesha will compile all crating and waste material in designated area; however, purchaser shall be responsible for disposal of solid wastes.
- Purchaser shall provide drum and dispose of all waste, flush and scrap oil generated in execution of work.
- Purchaser shall provide communication and sanitation facilities.
- No provisions have been included for secondary oil containment as may be required for compliance to local site SPCC programs.
- If required, purchaser shall provide a PCB report showing PCB concentration of the unit within 90 days prior to start of scheduled work.
 - If PCB concentration is higher than 49 PPM, Waukesha® Service will be unable to complete the work.
 - If PCB concentration is 1–49 PPM, an additional decontamination charge will be assessed. Proper disposal of the oil shall be the responsibility of the purchaser.
- When oil handling is part of work scope, Waukesha® Service prefers to have a metals-in-oil screen done prior to start of job to detect any potential silicone contamination. In the event that silicone is discovered during the processing, additional charges will apply for addition of anti-foaming compounds and a decontamination fee after completion of job.
- Waukesha® Service intends to utilize its own personnel and equipment; however, if scheduling conflicts occur, Waukesha® Service reserves the right to hire subcontractors to assist with the work.



SCHEDULE OF PRICING

The pricing for the work scope as defined above is \$343,721.00 for performance by Q1 2023.

Change Order 1 – Regasket

\$32,500.00

Payment terms and conditions are subject to credit approval.

Unless specifically noted, prices do not include:

- Any site specific or customer required access and/or safety training
- Any special and/or site-specific safety, PPE or environmental requirements
- Use of union labor
- Local Sales or Use tax

Requested changes to work scope or delays outside the control of Waukesha® Service shall be billed in accordance with Waukesha® Service Rate Schedule (included).

NOTE: Price is based on 4 Waukesha® Service technicians for 12 days (2 travel days, 10 days on site). The above price is provided on Fixed Priced basis, however, it is not a “not to exceed price”. If added time on site, parts or materials, added mob/demobs, additional oil processing / circulation / leak repair / etc., is required, this will be calculated & billed on a T&M basis, as applicable. Invoicing for any T&M adders will be calculated and billed on actual hours/expenses/materials.



COMMENTS/EXCEPTIONS TO CONTRACT DOCUMENTS

The price is contingent upon gaining valid shipping clearances at the time of shipment. If clearance is not available due to highway construction, changes in state regulations, changes in bridge limitations or other items beyond our control, Waukesha® Service will not be responsible for any additional shipping or handling charges. The purchaser is responsible for supplying suitable and compacted access route, roads and area around foundation.



TERMS & CONDITIONS STATEMENT

- Work shall be performed in accordance with Prolec-GE Waukesha, Inc. – Service & Components Division Terms and Conditions of Sale (attached)
- Bid is valid for a period of 60 days

Waukesha® Service thanks you for the opportunity to provide a quotation for this work. We look forward to your consideration of this offering and welcome any questions you may have regarding this quotation for your service requirements.

Best Regards,

A handwritten signature in black ink, appearing to read 'S. Gallagher'.

Sean Gallagher
Business Development Manager
Prolec GE Waukesha
Ph# 214.548.2911
E-mail: sean.gallagher@spx.com



CUSTOMER AUTHORIZATION

Customer hereby requests that Waukesha® Service perform the above-referenced Services in accordance with the provisions of this quotation #9131976, including all commercial terms and clarifications and forms the basis of contract with Prolec-GE Waukesha, Inc.

Customer's Authorization / Purchase Order Number for Accounting Purposes: Beta

Billing Address:
City of Denton
215 E McKinney St
Denton, TX 76201-4299 USA
Department - Accounts Payable

DocuSigned by:
By: Christa Christian
Name: Christa Christian
Title: Senior Buyer
Date: 5/12/2023

DocuSigned by:
George Brashear George Brashear
E7EBFE2AFAC44F0...
Executive Vice President 5/12/2023

DS
ME



Waukesha[®] Service

Service Technician & Specialist Rate Schedule

Waukesha[®] Service maintains a nationwide staff of trained and experienced field service specialists and technicians who are available to provide advisory assistance, installation, inspection, commissioning, testing, troubleshooting, start-up, technical studies and maintenance and repair services of electrical apparatus.

Technical professionals are classified in two categories, dependent on the degree of expertise and complexity of the service required:

Service Specialist

The Service Specialist has specific experiences and/or educational training along with factory training and experience in design, assembly, installation or testing. This expert is required for special diagnosis, repairs, inspection, failure analysis and complex technical evaluations. Typical scopes of work for these services involve LTCs, engineering services, project management, forensics analysis, condition assessments, electrical testing, etc.

Service Technician

The Service Technician has specialized factory training and experience. This Technician can act as a consultant for customer’s personnel with respect to correct installation, testing, maintenance or service requirements consistent with Waukesha[®] Service guidelines.

WAUKESHA[®] SERVICE SPECIALIST AND SERVICE TECHNICIAN RATES

CLASSIFICATION	HOURLY RATE	DAILY PER DIEM	HOURLY OVERTIME RATE	HOURLY SUNDAY & HOLIDAY RATE
Service Specialist	\$200	\$265	\$300	\$400
Service Technician	\$150	\$265	\$225	\$300

- 1. **Hourly** rate applies to all time worked or traveled during a workday.
- 2. **Overtime** rate applies to all hours worked in excess of eight hours on weekdays and all time worked or traveled on Saturdays.
NOTE: Our standard workday is 10–12 hours based on site conditions.
- 3. **Sunday and Holiday** rate applies to all hours worked or traveled on Sundays and/or holidays.

In lieu of Per Diem, charges for travel and living expenses will be billed at cost plus an 18% handling charge.

Per Diem

Unless requested otherwise from the purchaser, a daily per diem rate will be billed for each day required for project execution along with travel days to/from the project. Per Diem rates exclude the cost of airfare to/from the job site.

Traveling Time

Billing for traveling time will be done at the applicable rate based on actual time traveled.

Traveling time and expenses for each technical professional will include leaving and returning to the employee’s headquarters.

Minimum Billing

Minimum billing for one day’s service will be charged for each day or fraction thereof that a technical professional spends on the customer’s premises.

Standby Time

When technical professionals are on the customer’s premises but are unable to perform the services requested because of circumstances beyond the control of Waukesha[®] Service personnel, the purchaser will be charged at the applicable rate.



WAUKESHA® SERVICE TECHNICIAN & SPECIALIST RATE SCHEDULE (CONTINUED)

OTHER CHARGES

The following charges will be in addition to the service rates stated previously:

- A. Expendable Small Tools**
When a particular job requires the furnishing of small expendable tools not normally carried by the technical professional, a charge for such tools will be billed at the cost of acquisition.
- B. Material Furnished by Waukesha® Service**
All Waukesha® Service material used on the job will be billed at current prices.
- C. Material Purchased from Subcontractors or Other Vendors**
When the job requires the purchase of materials or services from subcontractors or other vendors, such items will be billed at cost plus an 18% handling charge.
- D. Special Tools and Equipment Furnished by Waukesha® Service**
Rental charge shall be made for all specialized tools, equipment and instruments. Refer to Waukesha® Service Equipment Rental Rate Schedule.
- E. Company Vehicle Mileage Rate**
Cost of mileage for standard company vehicles to travel to and from the standard job site will be billed at a rate of \$0.95 per mile. Any vehicle requiring a CDL endorsement to drive shall be billed at a rate of \$2.50 per mile for travel to and from the job site.

PRODUCT WARRANTY WORK

Product warranty work on Waukesha® Service-supplied equipment will be performed F.O.B. factory or at the customer’s site, at Waukesha® Service’s option. Work at the customer’s site will be accomplished during a normal eight-hour straight time day. If the purchaser requests that product warranty work be performed during any other time period, purchaser will be invoiced for the premium time portion of the work, i.e. the difference between the applicable rate and the overtime rate for the services performed.

TERMS OF PAYMENT

Net 30 days from date of invoice.

TERMS AND CONDITIONS

See Prolec-GE Waukesha, Inc. – Service & Components Division Terms and Conditions of Sale.



PROLEC-GE WAUKESHA, INC./SERVICE AND COMPONENTS DIVISION
STANDARD TERMS AND CONDITIONS OF SALE
(Rev. 1/31/22)

1. **ACCEPTANCE AND GOVERNING PROVISIONS.** No orders for services and/or goods (individually and collectively, "Work,") are binding upon Seller until accepted in writing by an authorized representative of Seller. Seller's acceptance of Buyer's order is conditioned upon Buyer's acceptance of these terms and conditions (the "Terms") and Buyer's agreement to be bound by and comply with these Terms. These Terms and the terms of Seller's quotation, and all referenced attachments constitute the entire agreement between Buyer and Seller, and no amendment or modification shall be binding on Seller unless signed by an authorized representative. Seller's failure to object to provisions contained in any purchase order or other document of Buyer shall not be construed as a waiver by Seller of these Terms or an acceptance of any such provisions. Any conflicting or additional terms or conditions set forth by Buyer in a purchase order or other document are not binding upon Seller, and Seller expressly objects to them.

2. **LIMITED WARRANTY.** (a) For a period of one (1) year from the date of performance of services or delivery of goods under the order accepted by Seller, Seller warrants, to the original purchaser, the services performed by or on behalf of Seller to be free from defects in workmanship and the goods manufactured by Seller to be free from defects in title, material, and workmanship. (b) If within such period it shall be proven to Seller's reasonable satisfaction that any services or goods are defective, then such services shall be corrected and, at Seller's option, such goods repaired or replaced or substitute goods obtained. Buyer shall bear the costs of any removal, decontamination, and reinstallation of the goods and adjacent structures, equipment, and other obstructions not directly included in the warrantable goods. Seller's obligation is conditioned upon Seller's receipt of written notice of any alleged nonconformity or defect within 10 days after its discovery and, with respect to goods, at Seller's option, return of such goods to Seller's factory, with all freight and insurance to and from the repair facility to be at Buyer's expense. With respect to goods not manufactured by Seller, Seller makes no warranty other than good title and agrees to transfer to Buyer the original manufacturer's warranty, which shall provide the exclusive remedy for any defect. (c) The foregoing warranties state Seller's entire warranty and Buyer's sole and exclusive remedy related to the Work. EXCEPT AS EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. (d) This warranty shall not apply to any loss or damage resulting from: (i) normal wear and tear; (ii) alteration, neglect, misuse, abuse, or improper installation, operation, maintenance, or storage by Buyer or a third party; (iii) accident, fire, flood, or acts of God; or (iv) inaccurate or incomplete information or data supplied or approved by Buyer. Buyer shall defend and indemnify Seller for any loss or damage of Seller arising out of clauses (i) through (iv) above and any breach by Buyer of its covenants and obligations under these Terms.

3. **PATENTS AND TRADEMARKS.** (a) If notified promptly by Buyer in writing and provided with authority, information, and assistance, Seller shall defend or may at any time settle, at Seller's option, any suit or proceeding alleging that any goods designed and sold by Seller pursuant to the order accepted by Seller infringe any U.S. patent or trademark. Seller shall pay any damages awarded in such suit or proceeding up to the amount of the depreciated purchase price of such goods. In the event any such goods are held to constitute such infringement and the use of the goods is enjoined, Seller shall, at its option and expense: (i) procure for Buyer the right to continue using the goods; (ii) replace the goods with non-infringing goods; (iii) modify the goods so that they become non-infringing; or (iv) remove the goods and return the depreciated purchase price. The foregoing constitutes the entire liability of Seller and the sole and exclusive remedy of Buyer for patent or trademark infringement related to the goods. (b) Notwithstanding the foregoing, section (a) above shall not apply to any suit or proceeding alleging infringement resulting from or related to Seller's compliance with the instructions, specifications or design of Buyer or the use of goods of Seller in combination with other goods or materials. Buyer shall defend and pay any damages awarded in such suit or proceeding.

4. **DELIVERY AND DELAY.** (a) Unless otherwise agreed to in a writing signed by Seller: (i) goods shall be delivered FCA Seller's Premises, with delivery to the initial carrier constituting delivery to Buyer (Incoterms® 2010); (ii) title to the goods and risk of damage or loss shall pass to Buyer upon delivery to the initial carrier; (iii) transportation costs shall be paid by Buyer; and (iv) Buyer shall have sole responsibility for filing any claims with any carrier for delay, loss, or damage. If Seller selects the freight forwarder, then Buyer authorizes Seller to clear the goods for export under U.S. Export Regulations, including CFR 15, Part 30. If Buyer selects the freight forwarder, then Buyer shall authorize its freight forwarder to file the EEI and export clearance documentation required by US law, and Buyer assumes all responsibility for export clearance. (b) Dates of delivery or other performance are estimates and are based on timely receipt from Buyer of accurate and complete approved drawings and technical data. Seller shall not be liable for any delay beyond its reasonable control or caused by accident; bad weather; embargo; act of Buyer or third parties; labor disputes; national emergency; riots; non-delivery of suppliers; delays of carriers or delivery agents; inability to obtain labor, materials, or manufacturing facilities; acts of God; or government restrictions, prohibitions, or requirements. In the event of any such delay, Seller's time period for delivery or performance shall be extended accordingly. Regardless of the cause, Seller shall have no liability for penalties of any nature as a result of a delay. During any period of shortage due to the stated or similar causes, Seller may prorate its supply of material among its internal demand and its customers in whatever manner it chooses. (c) Buyer shall provide, at its own expense, ready and sufficient routes and access for Seller's vehicles and equipment to all site(s) for services and delivery point(s) for goods, free of any and all obstructions, conditions, and insufficiencies that would impede or prevent the performance of services and/or the delivery of goods.

5. **LIMITATION OF LIABILITY.** (a) Except to the extent specifically provided under Section 3 above, Seller shall not be liable under any theory of relief, including, without limitation, breach of warranty, breach of contract, tort (including negligence), strict liability, or otherwise, arising out of or related to an order or Seller's acts or omissions for: (i) incidental, special, punitive, or consequential damages of any nature, including, without limitation, economic loss or damages, whether for loss of revenue and/or profits, increased operating costs, loss of use, cost of capital or substitute facilities and services, downtime costs, delay costs, claims of any third parties for any of the above, or otherwise; or (ii) any damage or loss in excess of the purchase price actually paid by Buyer. (b) Any action by Buyer must be commenced within one (1) year after the cause of action has accrued.



6. **CHANGES, SUBSTITUTIONS, AND CANCELLATION.** (a) Any changes requested by Buyer are not effective unless accepted in writing by an authorized representative of Seller at Seller's corporate offices or factory. Any changes accepted by Seller that affect the specifications or scope of work of an order shall entitle Seller to an adjustment to the price, delivery schedule, or other terms affected by such change, as appropriate. (b) Seller may furnish suitable substitutes for materials unobtainable due to regulations of governmental authorities or unavailability of materials from suppliers. Details of design and construction in any quotation are approximate and subject to revision by Seller. If changes in performance of services or in materials, design, layout, or arrangement of goods are desired or required by conditions of which Seller was unaware or that were unforeseen by Seller, the price is subject to revision. (c) Buyer may cancel an order only with the written consent of Seller and upon payment of cancellation charges. In the event Seller accepts such cancellation of all or any part of the Work, Buyer shall be liable for the higher of: (i) 25% of the purchase price; (ii) any loss incurred by Seller, including, without limitation, costs of engineering, reconditioning, labor, materials, and Seller's margin; or (iii) costs required by any cancellation and delay policy of Seller.

7. **APPROVALS, INSPECTION, AND ACCEPTANCE.** (a) Buyer's approval, or failure to disapprove, of drawings submitted under an order constitutes Buyer's acceptance of equipment design, specifications, and other data contained in Seller's submittals. (b) Inspection of goods at Seller's factory by Buyer, or Buyer's representatives, will be permitted insofar as such inspection does not interfere with Seller's production and provided that complete written details of such inspection are submitted to Seller 10 days in advance. (c) Work shall be deemed accepted, and any claim of Buyer against Seller with respect to an order shall be waived and not enforceable, unless: (i) Buyer has promptly inspected the Work, and written notice from Buyer of any defect has been received by Seller within 48 hours of rejection of any goods inspected at Seller's factory or, if no factory inspection has taken place, then within 30 days following any performance of services and/or delivery of goods; and (ii) Buyer has given Seller reasonable advance notice and authorization to attend any tests designed to demonstrate that Seller's performance is nonconforming or goods are defective, and the test conditions are mutually agreed to by Buyer and Seller. (d) Goods may not be returned without obtaining written authorization and shipping instructions from an authorized representative of Seller.

8. **PRICES, PAYMENT, AND CREDIT.** (a) Unless other terms have been expressly stated by Seller in writing, Seller's prices: (i) are FCA Seller's Premises (Incoterms® 2010); (ii) do not include customs duties or any domestic or foreign sales, use, excise, VAT, or similar taxes under existing or future laws (with Buyer to be charged for same, unless Buyer has provided Seller with an appropriate tax exemption certificate); (iii) are valid for 30 days from the quotation date; and (iv) do not include costs for installation of goods. All quoted prices are in U.S. Dollars and are subject to correction for clerical errors. (b) Unless otherwise agreed in writing and subject to credit approval, payment terms shall be net 30 days from completion of services performed within the continental U.S. and/or from the date of shipment for goods sold within the U.S. Unless otherwise agreed in writing, payment shall be cash in advance or letter of credit for all services performed outside the continental U.S. and all export sales of goods from the U.S.; and no later than 60 days prior to the schedule start date for services and each scheduled shipment date for goods, Buyer shall wire transfer funds to Seller's account or cause to be issued for Seller's benefit an irrevocable letter of credit in U.S. Dollars in the full amount of the purchase price, plus prepaid freight if applicable, such letter of credit (i) to be issued or confirmed by a prime U.S. bank acceptable to Seller; (ii) to be subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 500) and to be otherwise acceptable in form and substance to Seller; and (iii) to provide for payment to Seller of the full amount of the purchase price plus prepaid freight in U.S. Dollars, on presentation by Seller of sight drafts, Seller's invoice, and such other documents as shall be reasonably required by the letter of credit. All banking and other charges for such letter of credit are for the account of Buyer. (c) Partial payments shall become due with partial performance of services or partial shipments of goods. Seller will charge 1½% per month (or such lower percentage as required by applicable law) of the unpaid invoice balance, commencing 30 days following completion of services or the shipment date of goods. Any delay in performance of services or delivery of an installment of goods shall not relieve Buyer of its obligation to accept and make payment for remaining performance or installments. If Buyer is notified by Seller that the goods are ready for shipment and there is an unreasonable delay in shipment for reasons beyond Seller's control (including Buyer's failure to provide shipping instructions), the completion date of the goods shall be treated as the date of shipment for payment purposes, and completed goods shall be held at Buyer's risk of loss or damage, with Buyer paying all storage and insurance expenses. (d) Seller may, at its option, decline to provide services or deliver goods, except for cash in advance, or stop goods in transit whenever, for any reason, Seller doubts Buyer's financial responsibility.

9. **GOODS FOR RE-EXPORT.** If the ultimate destination of Work is outside the U.S., then Buyer shall designate such country on its purchase order. In the event that Buyer purchases Work for re-export without so notifying Seller, Buyer shall have sole liability and shall defend and indemnify Seller for any loss or damage (including, without limitation, claims of governmental authorities) arising from the export from the U.S. or import into another country of such Work, including, without limitation, those related to packaging, labeling, marking, warranty, contents, use, or documentation of the goods. Seller shall have sole responsibility for obtaining any required export licenses. Buyer shall neither take, nor solicit Seller to take, any action that would violate any anti-boycott, anti-corruption, or any export or import statutes or regulations of the U.S. or other governmental authorities and shall defend and indemnify Seller for any loss or damage arising out of or related to such action.

10. **PROPRIETARY INFORMATION.** Seller retains title to all engineering and production prints, drawings, technical data, and other information and documents that relate to the services and goods sold to Buyer. Unless advised by Seller in writing to the contrary, all such information and documents disclosed or delivered by Seller to Buyer are to be deemed proprietary to Seller and shall be used by Buyer solely for the purpose of inspection, installation, and maintenance and not used or disclosed by Buyer for any other purpose.

11. **EXCLUSIONS.** In no event shall Seller have any obligation (a) to identify or correct any defective wiring or equipment, to identify or correct any code violations, or to remove from Buyer's premises any defective equipment unless expressly stated in the applicable scope of work; or (b) to identify, correct, abate, clean up, control, or remove from Buyer's premises any toxic or hazardous material.

12. **MISCELLANEOUS.** All rights and remedies of Seller under these Terms are in addition to its rights at law and in equity. Any delegation or assignment by Buyer of any of its responsibilities or rights without Seller's prior written consent shall be void. The validity, performance, and interpretation of these Terms and any referenced attachment shall be governed by the law of the State of Wisconsin, U.S.A., including the United Nations Convention on Contracts for the International Sale of Goods when applicable, without reference to principles of conflicts of laws. The invalidity or illegality of any provision of these Terms shall not render invalid or illegal any other provision. Seller's failure at any time to require performance by Buyer of any of these Terms shall not serve as a waiver or diminish Seller's right to demand strict compliance with such provision or with other of these Terms.



Beta EngineeringCity of Denton

2520 E McKinney St, Denton, TX 76209

INSURANCE REQUIREMENTS

Certificates of insurance must be on file with Beta EngineeringCity of Denton (“Company”) prior to commencement of Work, and such coverage must remain in effect for the duration of this Agreement. Waukesha shall provide thirty (30) days' written notice to Company prior to cancellation or non-renewal of any of the insurance policies required herein. Failure of Company to enforce the insurance requirements listed below will not relieve Contractor of responsibility for maintaining these coverages.

POLICIES	LIMITS
Workers’ Compensation:	Statutory
Employer’s Liability: Each Accident:	\$1,000,000
Employer’s Liability Disease Each Employee:	\$1,000,000
Employer’s Liability Disease Policy Limit	\$1,000,000
Commercial General Liability: coverage for products/completed operations, contractual liability and personal injury.	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate
Automobile Liability: Combined Single Limit, for all owned, non-owned and hired automobiles.	\$1,000,000

ADDITIONAL ENDORSEMENTS REQUIRED AND TO BE STATED ON CERTIFICATES OF INSURANCE:

Company must be included as additional insureds for the Work on a primary and non-contributory basis, with respect to General Liability.

All policies applicable to the Work must contain a waiver of subrogation in favor of Company.

Certificate Of Completion

Envelope Id: E67B18498EE44E89BF18AAA2D542E299

Status: Completed

Subject: ***Purchasing Approval*** 7670 - Hickory GIS Substation Design Build CO 2

Source Envelope:

Document Pages: 17

Signatures: 2

Certificate Pages: 5

Initials: 1

AutoNav: Enabled

Enveloped Stamping: Enabled

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

Envelope Originator:

Christa Christian

901B Texas Street

Denton, TX 76209

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

5/12/2023 10:36:56 AM

Holder: Christa Christian

Christa.Christian@cityofdenton.com

Location: DocuSign

Signer Events

Christa Christian

christa.christian@cityofdenton.com

Senior Buyer

City of Denton

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:



6A8263DE08F4429...

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.104

Timestamp

Sent: 5/12/2023 10:48:27 AM

Viewed: 5/12/2023 10:48:37 AM

Signed: 5/12/2023 10:48:42 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

George Brashear

george.brashear@betaengineering.com

Executive Vice President

Beta Engineering, LLC

Security Level: Email, Account Authentication
(None)

DocuSigned by:



E7EBFE2AFAC44F0...

Signature Adoption: Pre-selected Style

Using IP Address: 76.88.4.158

Sent: 5/12/2023 10:48:44 AM

Viewed: 5/12/2023 10:49:37 AM

Signed: 5/12/2023 12:15:28 PM

Electronic Record and Signature Disclosure:

Accepted: 5/12/2023 10:49:37 AM

ID: 4ec1115c-d2d5-4923-b4a6-b5b76c361fb2

Mark Zimmerer

mark.zimmerer@cityofdenton.com

Electric Engineering Supervisor

Security Level: Email, Account Authentication
(None)

DS



Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Sent: 5/12/2023 12:15:30 PM

Viewed: 5/12/2023 12:35:00 PM

Signed: 5/12/2023 12:35:41 PM

Electronic Record and Signature Disclosure:

Accepted: 5/12/2023 12:35:00 PM

ID: 6d92d257-6841-4bdb-b3ff-ea272da73330

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)	<div>COPIED</div>	Sent: 5/12/2023 12:35:43 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

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	5/12/2023 10:48:28 AM
Certified Delivered	Security Checked	5/12/2023 12:35:00 PM
Signing Complete	Security Checked	5/12/2023 12:35:41 PM
Completed	Security Checked	5/12/2023 12:35:44 PM

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

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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

Change Request Proposal

Project:
(name and address) B661 / Hickory GIS Substation
2600 W. Hickory St.
Denton, TX

Customer: City of Denton

Change request number: 1007

Description: Addition of conduit run from PME for HK213 to Owner-Supplied padmount transformer for street lighting, installation of porches at riser poles, additional parking lot repair (removed in Rev 2), and credit for Owner-Supplied distribution materials

Notice to Proceed

Submitted date:
Received date:
Rough order of magnitude: 0.00

Status: Proposed
Origination date: 08/07/23

Quotation

Submitted date: 08/23/23
Due date:
Submitted amount: -1,325.61
Requested days delay: 0

Notes

Revision 2 dated 9/6/2023 removes the additional parking lot repair. This will be moved to a separate change request for your consideration.

Revision 1 dated 8/23/2023

This change request is for:

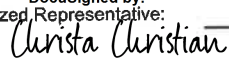
- (1) The addition of conduit from PME for HK213 to an Owner-Supplied padmount transformer and pad intended to power the street light circuit. This change is needed as a result of the request to power the street lighting from outside the substation. Engineering cost accounts for 8 additional manhours by Engineer III and 16 hours by Technician III. Please refer to the attached sketch, subcontractor proposal, and Exhibit N of the Design Build Agreement dated as of December 14th, 2021.
- (2) The installation of porches for the risers was based on the riser drawings received post-award and the clarification email on the porch design/responsibility. Please refer to attached subcontractor proposal.
- (3) Additional parking lot repair. The owner of the apartment complex next to the new Hickory GIS Substation has requested parking lot repairs outside of the area of work to reduce the aesthetic impact of our work (i.e. eliminating the appearance of patchwork repairs). This includes the stippling, approaches, and the Southern half of the parking lot.
- (4) Credit to Owner for supply the following Distribution materials: 4' x 6' Pull Box - Qty 2, 300 KVA 120/240 Delta - Qty 1, 50 KVA 120/240 Pad mount - Qty 1, Single Phase PCC - Qty 3, Transformer pad concrete 83x83x8 - Qty 1, Single phase pad fibercrete - Qty 1

Revenue Detail

Billing Item	Description	Revenue
CO3.1	Street Light XFMR Conduit	35,934.40
CO3.2	Street Light XFMR Conduit Eng	2,960.00
CO3.3	Porch Installation	26,603.70
CO3.4	Distribution Material Credit	-66,823.71
Total Revenue For CR 1007		-1,325.61

Approvals

Customer: City of Denton
Authorized Representative: Christa Christian

By: 
6A0269DE00F4429...
Date: 9/14/2023

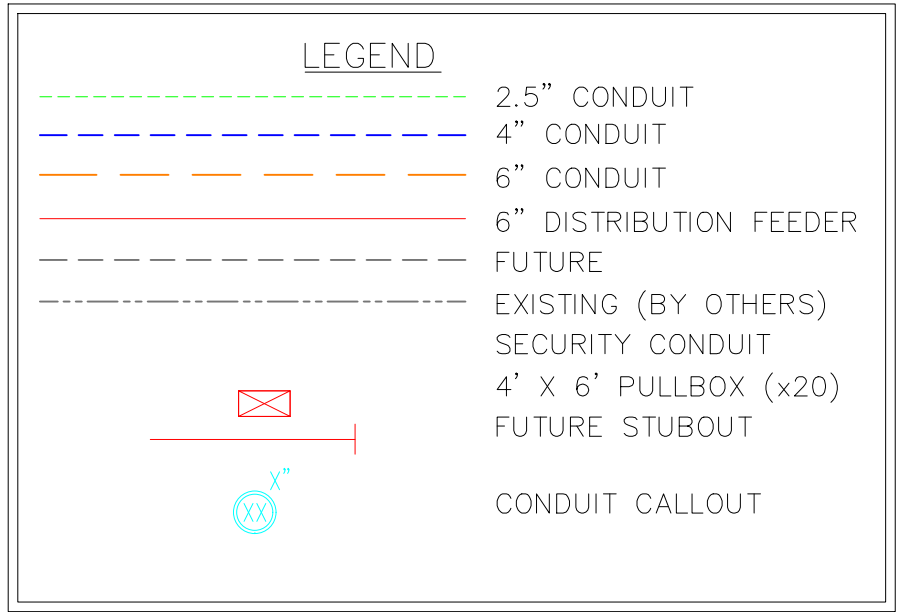
Contractor: Beta Engineering, LLC

By: 

Date: 09/07/23

DS

MZ



HK-CD02



EXHIBIT N

Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
betaengineering.com

Classification	Rate Type	Unit of Measure	Rate
President	N/A	Hour	200
Vice President	N/A	Hour	200
Project Executive	N/A	Hour	185
Senior Project Manager	N/A	Hour	175
Project Manager III	N/A	Hour	160
Project Manager II	N/A	Hour	145
Project Manager I	N/A	Hour	130
Scheduling Specialist	N/A	Hour	120
Project Coordinator III	N/A	Hour	130
Project Coordinator II	N/A	Hour	115
Project Coordinator I	N/A	Hour	100
Administrative Assistant	N/A	Hour	65
Construction Manager IV	N/A	Hour	160
Construction Manager III	N/A	Hour	140
Construction Manager II	N/A	Hour	120
Construction Manager I	N/A	Hour	105
Procurement Agent III	N/A	Hour	85
Procurement Agent II	N/A	Hour	80
Procurement Agent I	N/A	Hour	75
Project Engineer	N/A	Hour	155
Engineer V	N/A	Hour	155
Engineer IV	N/A	Hour	145
Engineer III	N/A	Hour	130
Engineer II	N/A	Hour	115
Engineer I	N/A	Hour	105
Technician III	N/A	Hour	120
Technician II	N/A	Hour	110
Technician I	N/A	Hour	100
Designer III	N/A	Hour	85
Designer II	N/A	Hour	75
Drafter I	N/A	Hour	65

KINGSLEY CONSTRUCTORS, INC.

25250 Borough Park Dr., Ste 106
The Woodlands, Texas 77380

Phone 281-363-1979
Fax 281-363-1993

CHANGE REQUEST

KCI CO#: 3

TO: Beta Engineering, LLC
4725 Highway 23 East
Pineville, LA 71360

Attn:	Jeremy Katusak	DATE:	8/23/2023
JOB NAME/LOCATION: Hickory Substation			
KCI JOB NUMBER: 222050			

THE FOLLOWING WORK IS HEREBY DIRECTED BY THIS CHANGE ORDER:

The below proposal is to cover the costs of installing additional conduit running from the Tranformer to the PME.

KCI Assumed Material: \$5,639.54

- (100) LF of 3" Sch 40 Conduit
- (6) Ea 3" Sch 40 90° Elbows
- (2) Ea 3" Sch 40 45° Elbows
- (10) CY of Concrete,
- Lumber

SubContractor: \$615.00

- (1) Density Test
- (1) Concrete Testing

Labor & Equipment: \$24,992.76

- (1) Superintendent
- (1) Foreman
- (3) Skilled Laborer
- (1) Excavator
- (1) Trench Roller
- (3) Days

Installation of Porches - this line item is to cover the installation of porches for the risers. Details provided in April 2023.

Pecan Grove Apartment Paking Lot

Total = \$83,475.90

* Provision & Installation of the 15KV cable will be completed by others.

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL AMOUNT
ADDITIONS					
1	Street Light Transformer Conduit Runs	1	LS	\$ 31,247.30	\$ 31,247.30
2	Installation of Porches	7	EA	\$ 3,304.80	\$ 23,133.60
3	Pecan Grove Parking Lot	1	LS	\$ 29,095.00	\$ 29,095.00
		NET CHANGE ORDER AMOUNT			\$ 83,475.90

THIS CHANGE ORDER BECOMES PART OF THE ABOVE REFERENCED EXISTING CONTRACT AND IS SUBJECT TO THE SAME TERMS AND CONDITIONS UNLESS STIPULATED OTHERWISE. NO OTHER WORK IS AUTHORIZED UNLESS ITEMIZED IN PRIOR OR SUBSEQUENT CHANGE ORDERS. COMMENCEMENT OF THE ABOVE LISTED WORK SHALL CONSTITUTE ACCEPTANCE PER THE ORIGINAL CONTACT TERMS

OWNER APPROVAL BY:	ISSUED BY:
TITLE: _____ DATE: _____	Brandon Britt
	TITLE: _____
	Sr Project Manager 8/23/2023

Jeremy Katusak

From: Jeremy Katusak
Sent: Wednesday, August 23, 2023 8:56 AM
To: Zimmerer, Mark J
Cc: Tenorio, Cody R; Noah Rebouche; Logan Barton; Jake Woodard; B661Contract
Subject: RE: B661 - Known Change Requests

Good morning Mark,

Schneider Engineering has clarified that the pole mount transformer is being relocated from one pole to another. I'll proceed with putting together the change request to include the following:

- Include the Porch Install Cost
- Include Street Light Transformer
- Include Parking Lot Repair
- Include DME supplied Material Credit previously submitted

Thank you,



Jeremy Katusak, PE, PMP

Project Manager

956.455.3419

Jeremy.Katusak@betaengineering.com

From: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>

Sent: Wednesday, August 23, 2023 7:53 AM

To: Jeremy Katusak <jeremy.katusak@betaengineering.com>

Cc: Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>

Subject: RE: B661 - Known Change Requests

From External Sender

Jeremy,

For this change order, I would like to propose:

- Include the Porch Install Cost
- Include Street Light Transformer
- Include Parking Lot Repair
- Include DME supplied Material Credit
- Include the DME supplied pole mounted transformer. We should have this in stock so I would like to get it now before it is used on other projects.

Let me know your thoughts.

Thanks,
Mark Zimmerer, P.E.
Electric Engineering Supervisor
1671 Spencer Road
Denton, TX 76205
Denton Municipal Electric
Office: (940) 349-7169

From: Jeremy Katusak <jeremy.katusak@betaengineering.com>
Sent: Tuesday, August 22, 2023 5:55 PM
To: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>
Subject: B661 - Known Change Requests
Importance: High

This message has originated from an **External Source**. Please be cautious regarding links and attachments.

Good Afternoon Mark,

Per our discussion today, I've put together 2 spreadsheets covering all known/anticipated Change Requests.

1. Installation of porches at riser poles
2. Additional pull box material and installation based on distribution clarifications
3. Additional engineering and material to add Owner-supplied transformer outside of Screen Wall as power source for street lights
4. Parking lot repair requested by apartment owner
5. Credit for distribution materials that may be provided by DME
6. Redesign of distribution due to City delays in easement acquisition
7. Additional credit for pole mounted transformer

As noted in the spreadsheets, Beta does not currently have an estimate on the impact of the distribution redesign. This is pending Schneider Engineering's sketch, DME approval, City approval, and the necessary supplier/subcontractor quotes to determine the financial impact of the change.

We are also awaiting additional information from Schneider Engineering to proceed with the request for the pole mounted transformer.

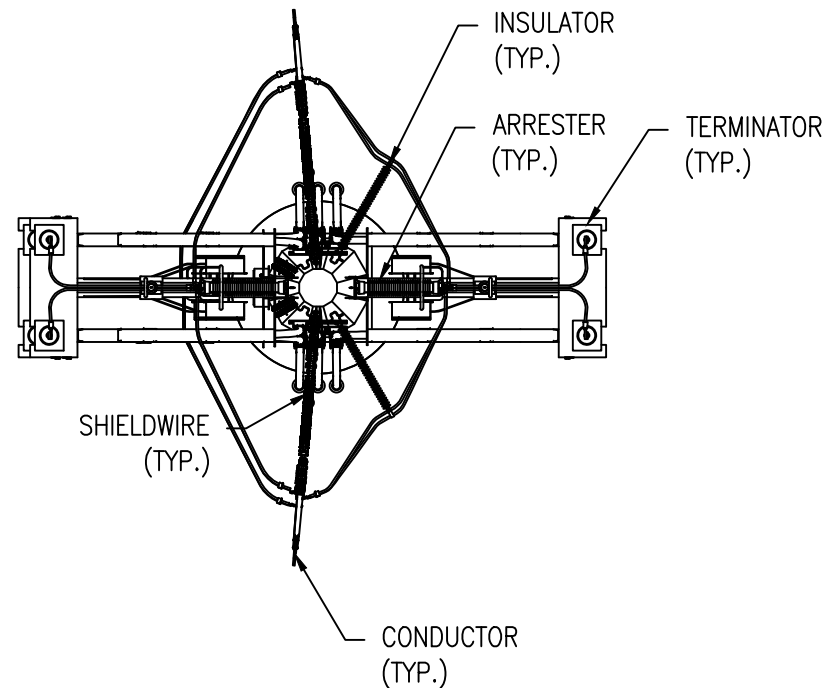
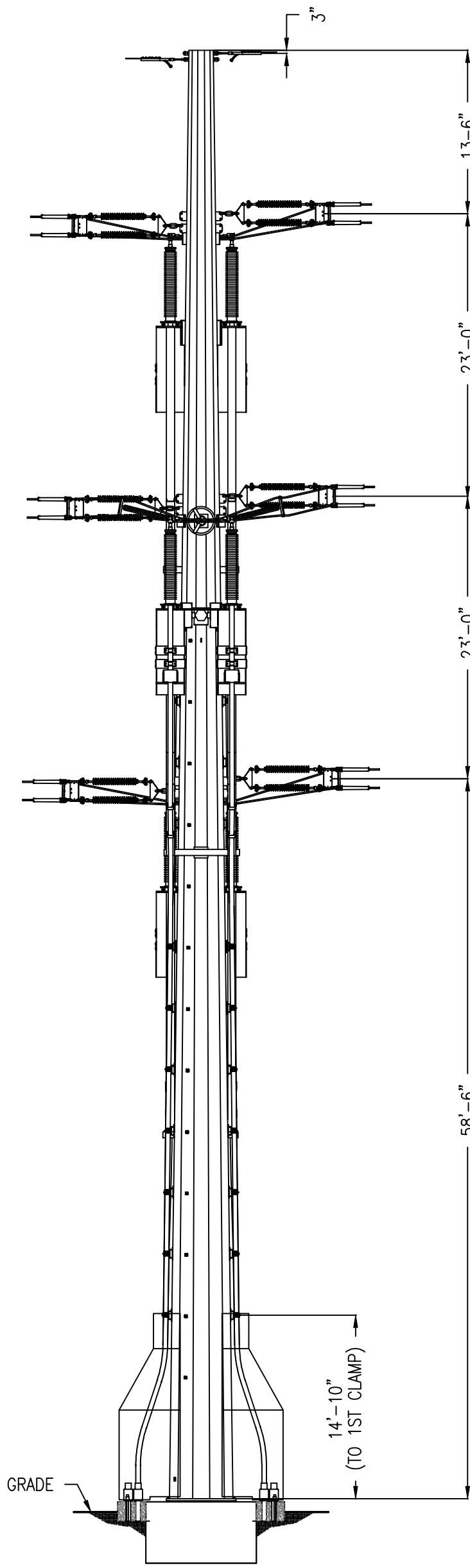
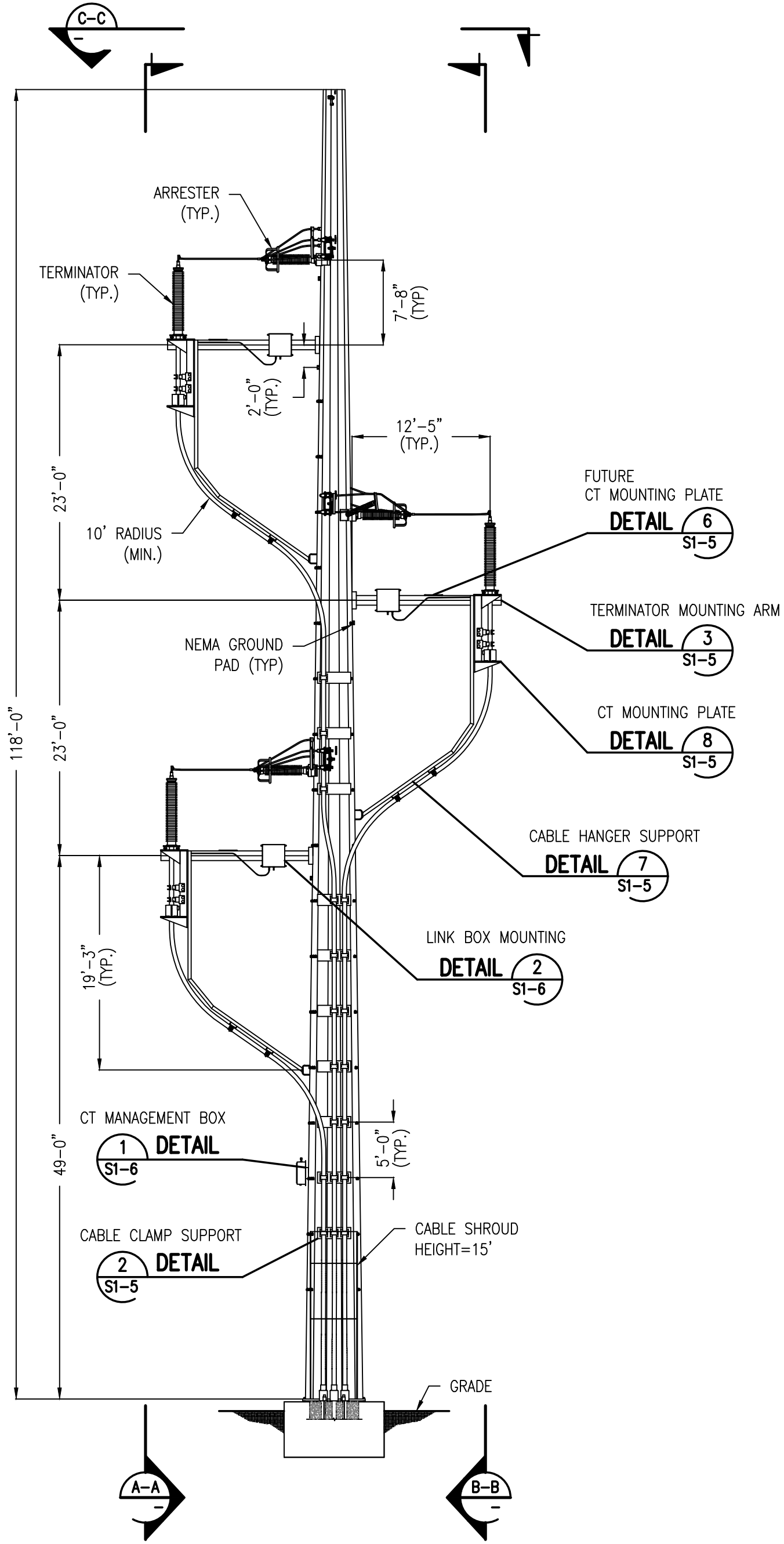
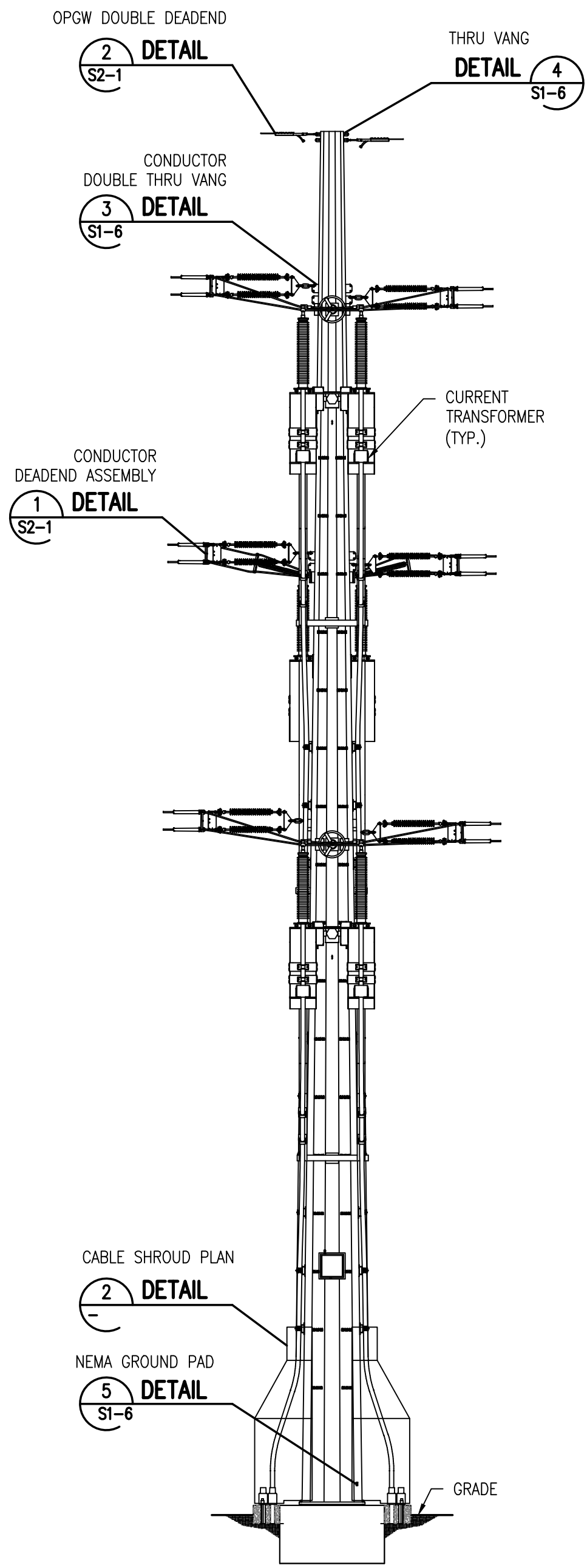
In the spreadsheet titled "B661_20230822 Change Request_Proposed", I've highlighted in green which Change Requests I'd suggest we move forward with at this time. These changes include:

- Installation of porches at riser poles
- Additional engineering and material to add Owner-supplied transformer outside of Screen Wall as power source for street lights
- Credit for distribution materials that may be provided by DME
 - a. Please note that we are still waiting for Schneider Engineering's confirmation on the nameplates

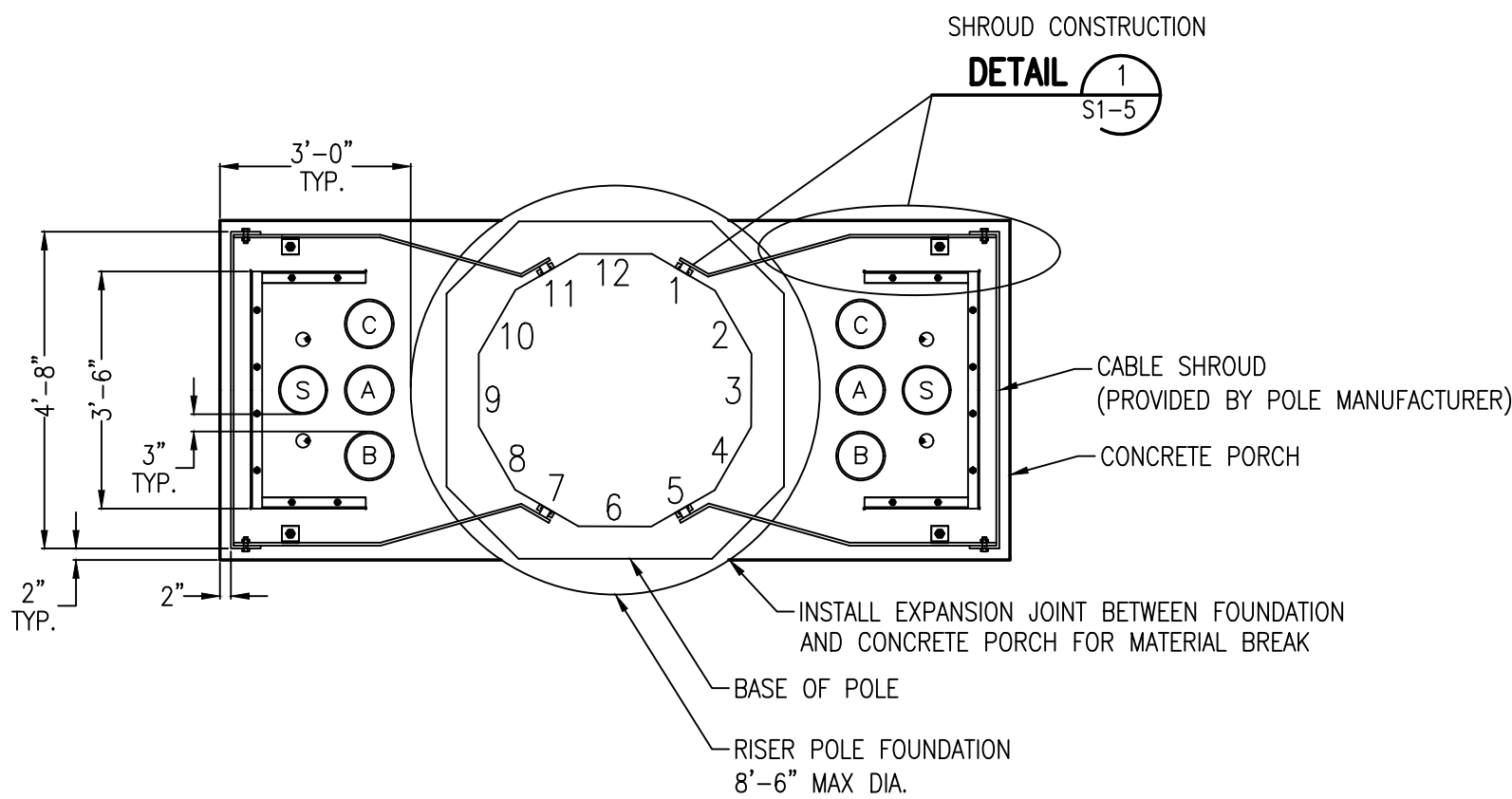
The net impact to the contract value for these 3 changes would be \$940.13 in DME's favor. Please let me know if I can put together the formal paperwork for approval.

Thank you,

143357 U2-1 Denton Risers 1-21.dwg



STRUCTURE TABLE	
STRUCTURE #	APPROX. LINE ANGLE (Ø)
RISER #1	10°



- NOTES:
- FABRICATOR SHALL VERIFY MOUNTING PLATES, DIMENSIONS, AND ATTACHMENTS PRIOR TO MANUFACTURING. FABRICATOR MAY PROPOSE STRUCTURAL DETAILS DIFFERENT THAN THOSE SHOWN TO SIMPLIFY FABRICATION.
 - BOTTOM OF BASE PLATE SHALL BE NO MORE THAN 1" PLUS LEVELING NUT HEIGHT ABOVE CONCRETE FOUNDATION.
 - CABLE SHROUD TO EXTEND TO CONCRETE PORCH.
 - ALL NUTS WELDED TO THE STEEL POLE SHALL HAVE A HOLE DRILLED THROUGH THE STEEL POLE WITH A DIAMETER 1/8" LARGER THAN THE NUT. DRILLED HOLES SHALL BE CONCENTRIC TO THE WELDED NUT.
 - DIMENSIONS AND DETAILS MAY REQUIRE ADJUSTMENT AFTER ATTACHED EQUIPMENT IS FINALIZED.
 - FABRICATOR SHALL USE THROUGH VANGS AS CONNECTION SUPPORTS FOR ARMS.
 - OVERHEAD CONTRACTOR TO PROVIDE DOWNLEAD CLAMPS FOR OPGW & ADSS FIBER.
 - OVERHEAD CONTRACTOR TO COIL SOFT OF OPGW ON COIL BRACKET.
 - FABRICATOR TO PROVIDE (5) GROUNDING NUTS PER FACE FROM 5'-0" FROM BASE OF POLE TO TOP IN 5FT INTERVALS ON FACES 7&11.

THIS DRAWING WAS PREPARED BY POWER ENGINEERS, INC. FOR A SPECIFIC PROJECT, TAKING INTO CONSIDERATION THE SPECIFIC AND UNIQUE REQUIREMENTS OF THE PROJECT. REUSE OF THIS DRAWING OR ANY INFORMATION CONTAINED IN THIS DRAWING FOR ANY PURPOSE IS PROHIBITED UNLESS WRITTEN PERMISSION FROM BOTH POWER AND POWER'S CLIENT IS GRANTED.

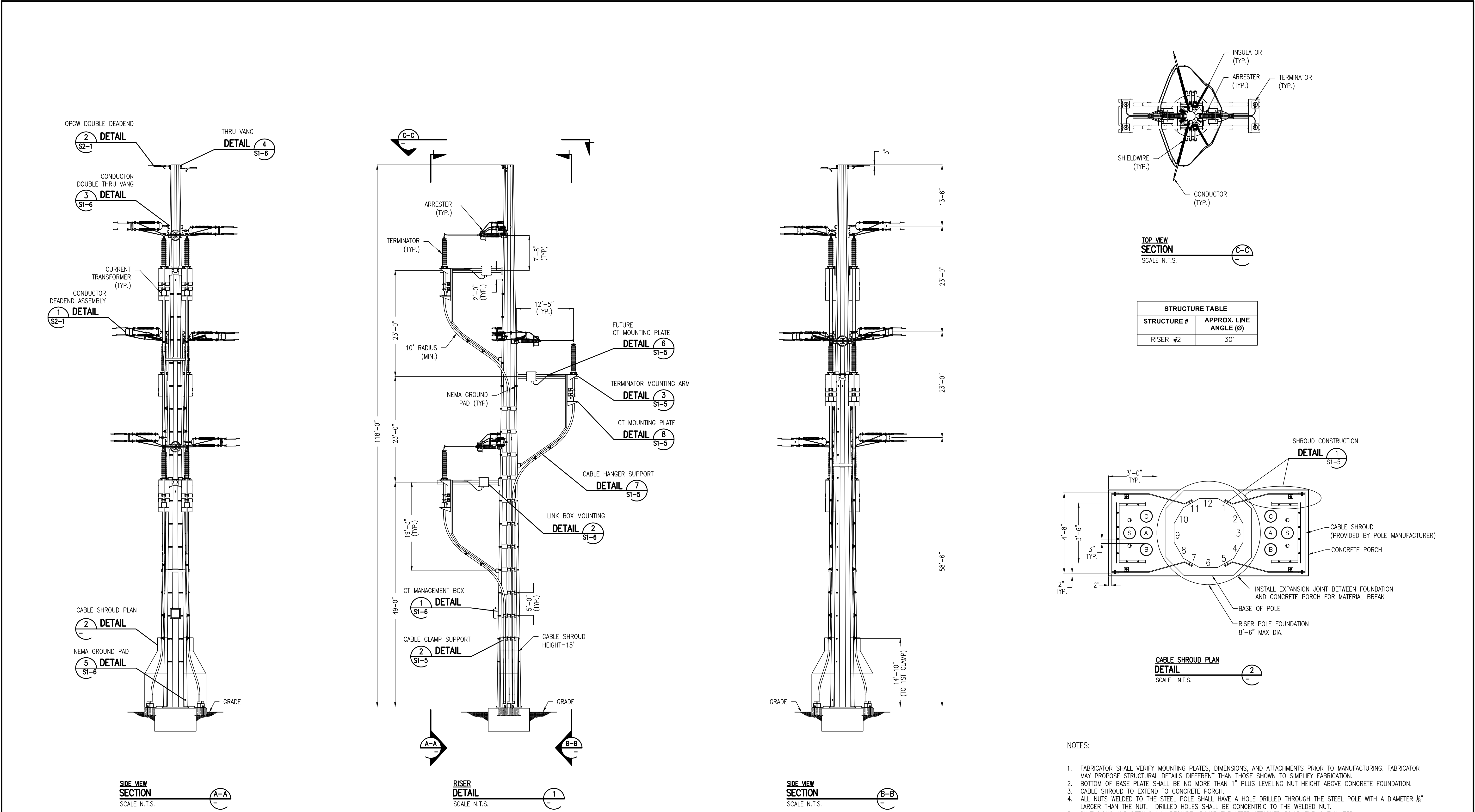
REV	REVISIONS	DATE	DRN	DSGN	CKD	APPD	REFERENCE DRAWINGS
C	ISSUED FOR BID	01/24/2020	JRO	DJ	CJS		
B	ISSUED FOR REVIEW UPDATED CT	02/08/2019	JRO	DJ	CJS		
A	ISSUED FOR REVIEW	01/17/2018	JRO	DJ	CJS		

DSGN	DJ	12/01/2017
DRN	JRO	12/01/2017
CKD	CJS	12/01/2017
SCALE:		NTS
FOR 22x34 DWG ONLY		





DENTON MUNICIPAL ELECTRIC	JOB NUMBER	REV
HICKORY SUBSTATION	143357	C
138kV TRANSITION RISER STRUCTURE #1	DRAWING NUMBER	S1-1

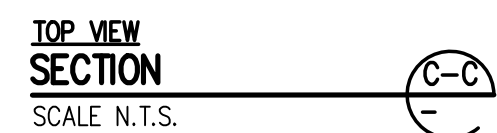
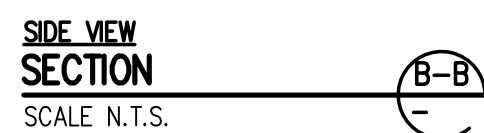
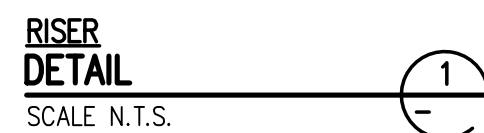
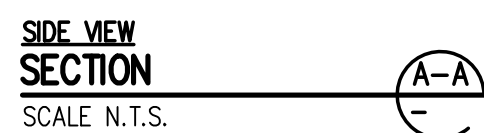
143357 U2-1 Denton Risers 1-21.dwg



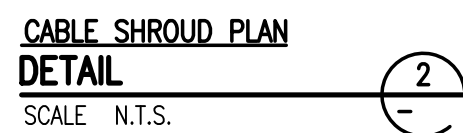
FOR REFERENCE

THIS DRAWING WAS PREPARED BY POWER ENGINEERS, INC. FOR A SPECIFIC PROJECT. TAKING INTO CONSIDERATION THE SPECIFIC AND UNIQUE REQUIREMENTS OF THE PROJECT. REUSE OF THIS DRAWING OR ANY INFORMATION CONTAINED IN THIS DRAWING FOR ANY PURPOSE IS PROHIBITED UNLESS WRITTEN PERMISSION FROM BOTH POWER AND POWER'S CLIENT IS GRANTED.								DSGN	DJ	12/01/2017		DENTON MUNICIPAL ELECTRIC	JOB NUMBER	REV
								DRN	JRO	12/01/2017		HICKORY SUBSTATION	143357	
								CKD	CJS	12/01/2017			DRAWING NUMBER	
								SCALE: NTS				138kV TRANSITION RISER STRUCTURE #2	S1-2	
	REV	REVISIONS		DATE	DRN	DSGN	CKD	APPD	REFERENCE DRAWINGS		FOR 22x34 DWG ONLY			

C	ISSUED FOR BID		01/24/2020	JRO	DJ	CJS								
B	ISSUED FOR REVIEW UPDATED CT		02/08/2019	JRO	DJ	CJS								
A	ISSUED FOR REVIEW		01/17/2018	JRO	DJ	CJS								



STRUCTURE TABLE	
STRUCTURE #	APPROX. LINE ANGLE (θ)
RISER #3	0°




1. FABRICATOR SHALL VERIFY MOUNTING PLATES, DIMENSIONS, AND ATTACHMENTS PRIOR TO MANUFACTURING. FABRICATOR MAY PROPOSE STRUCTURAL DETAILS DIFFERENT THAN THOSE SHOWN TO SIMPLIFY FABRICATION.
2. BOTTOM OF BASE PLATE SHALL BE NO MORE THAN 1" PLUS LEVELING NUT HEIGHT ABOVE CONCRETE FOUNDATION.
3. CABLE SHROUD TO EXTEND TO CONCRETE PORCH.
4. ALL NUTS WELDED TO THE STEEL POLE SHALL HAVE A HOLE DRILLED THROUGH THE STEEL POLE WITH A DIAMETER $\frac{1}{8}$ " LARGER THAN THE NUT. DRILLED HOLES SHALL BE CONCENTRIC TO THE WELDED NUT.
5. DIMENSIONS AND DETAILS MAY REQUIRE ADJUSTMENT AFTER ATTACHED EQUIPMENT IS FINALIZED.
6. FABRICATOR SHALL USE THROUGH WANGS AS CONNECTION SUPPORTS FOR ARMS.
7. OVERHEAD CONTRACTOR TO PROVIDE DOWNLEAD CLAMPS FOR OPGW & ADSS FIBER.
8. OVERHEAD CONTRACTOR TO COIL 50FT OF OPGW ON COIL BRACKET.
9. FABRICATOR TO PROVIDE (5) GROUNDING NUTS PER FACE FROM 5'-0" FROM BASE OF POLE TO TOP IN 5FT INTERVALS ON FACES 1&11.

THIS DRAWING WAS PREPARED BY POWER ENGINEERS, INC. FOR A SPECIFIC PROJECT, TAKING INTO CONSIDERATION THE SPECIFIC AND UNIQUE REQUIREMENTS OF THE PROJECT. REUSE OF THIS DRAWING OR ANY INFORMATION CONTAINED IN THIS DRAWING FOR ANY PURPOSE IS PROHIBITED UNLESS WRITTEN PERMISSION FROM BOTH POWER AND POWER'S CLIENT IS GRANTED.

C	ISSUED FOR BID	01/24/2020	JRO	DJ	CJS				
B	ISSUED FOR REVIEW UPDATED CT	02/08/2019	JRO	DJ	CJS				
A	ISSUED FOR REVIEW	01/17/2018	JRO	DJ	CJS				
REV	REVISIONS	DATE	DRN	DSGN	CKD	APPD		REFERENCE	DRAWINGS

DSGN	DJ	12/01/2017
DRN	JRO	12/01/2017
CKD	CJS	12/01/2017
SCALE:		NTS
FOR 22x34 DWG ONLY		



DENTON MUNICIPAL ELECTRIC	JOB NUMBER 143357	
HICKORY SUBSTATION		
138kV TRANSITION RISER STRUCTURE #3	DRAWING NUMBER S1-3	

Jeremy Katusak

From: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Sent: Tuesday, August 22, 2023 1:42 PM
To: Jeremy Katusak; Key, Randy A
Cc: Noah Rebouche; B661Contract; Chad Jarick; Tenorio, Cody R; Tenorio, Cody R; Tenorio, Cody R
Subject: RE: Junction box

Yes sir.

They are \$6,937.00 each.

Thanks,
Mark Zimmerer, P.E.
Electric Engineering Supervisor
1671 Spencer Road
Denton, TX 76205
Denton Municipal Electric
Office: (940) 349-7169

From: Jeremy Katusak <jeremy.katusak@betaengineering.com>
Sent: Tuesday, August 22, 2023 1:16 PM
To: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>; Key, Randy A <Randy.Key@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>; Chad Jarick <chad.jarick@betaengineering.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>
Subject: RE: Junction box

Thank you, Mark.

Do you still have any 4'x6' pull boxes in stock?

Thank you,



betaengineering.com

Jeremy Katusak, PE, PMP

Project Manager

956.455.3419

Jeremy.Katusak@betaengineering.com

From: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Sent: Tuesday, August 22, 2023 1:12 PM
To: Jeremy Katusak <jeremy.katusak@betaengineering.com>; Key, Randy A <Randy.Key@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>;

Chad Jarick <chad.jarick@betaengineering.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>

Subject: RE: Junction box

Jeremy/Noah,

Please see below pricing and attached nameplates for your review. We do have this material in stock. Please let us know if you would like to proceed.

300 KVA 120/240 Delta - \$39,011.58
50 KVA 120/240 Pad mount - \$9,846.32
Single Phase PCC - \$615.00 x 3 = \$1,845
Transformer pad concrete 83x83x8 - \$1861.28
Single phase pad fibercrete - \$385.53

Totaling - \$52,949.71

Thanks,
Mark Zimmerer, P.E.
Electric Engineering Supervisor
1671 Spencer Road
Denton, TX 76205
Denton Municipal Electric
Office: (940) 349-7169

From: Jeremy Katusak <jeremy.katusak@betaengineering.com>

Sent: Friday, August 18, 2023 2:31 PM

To: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>; Key, Randy A <Randy.Key@cityofdenton.com>

Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>;

Chad Jarick <chad.jarick@betaengineering.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>

Subject: RE: Junction box

Good Afternoon Mark,

Please see attached. I've highlighted the material in question on Schneider's BOM and have attached the reference material I currently have available. Not shown on this BOM are the two pull boxes Kingsley had also requested. Please let me know if any of this material is available and how much credit we would apply for each.

Kingsley is hoping we'll be able to at least get the (2) pull boxes early next week. I've attached the Pull Box Details to this email; they're the same 4' x 6' boxes that they were originally supposed to purchase from you. Please let me know if this would be possible.

Thank you,



Jeremy Katusak, PE, PMP

Project Manager

956.455.3419

Jeremy.Katusak@betaengineering.com

From: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Sent: Friday, August 4, 2023 1:12 PM
To: Jeremy Katusak <jeremy.katusak@betaengineering.com>; Key, Randy A <Randy.Key@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>;
Chad Jarick <chad.jarick@betaengineering.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>
Subject: RE: Junction box

Jeremy,

We need more details on what is needed. Can you provide a BOM to help clarify?

Thanks,
Mark Zimmerer, P.E.
Electric Engineering Supervisor
1671 Spencer Road
Denton, TX 76205
Denton Municipal Electric
Office: (940) 349-7169

From: Jeremy Katusak <jeremy.katusak@betaengineering.com>
Sent: Friday, August 4, 2023 8:51 AM
To: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>;
Chad Jarick <chad.jarick@betaengineering.com>
Subject: FW: Junction box

This message has originated from an **External Source**. Please be cautious regarding links and attachments.

Good morning Mark,

In addition to the pull boxes that Kingsley needs, I was wondering if DME happened to have (3) junction boxes per the detail below for the distribution scope that Beta could purchase.

We're also looking at options for single phase transformer (50kVA, 120/240V) and three phase transformer (300kVA, 120/240) called out in Schnieder's drawing and the associated pads. Does DME have this material?

As you suggested, Beta would put together a change request showing a billing line item that is a credit back to DME for the purchase.

Thank you,



betaengineering.com

Jeremy Katusak, PE, PMP

Project Manager

956.455.3419

Jeremy.Katusak@betaengineering.com

From: Greg W. Baumbach <gbaumbach@se-texas.com>

Sent: Thursday, July 20, 2023 9:57 AM

To: Jeremy Katusak <jeremy.katusak@betaengineering.com>

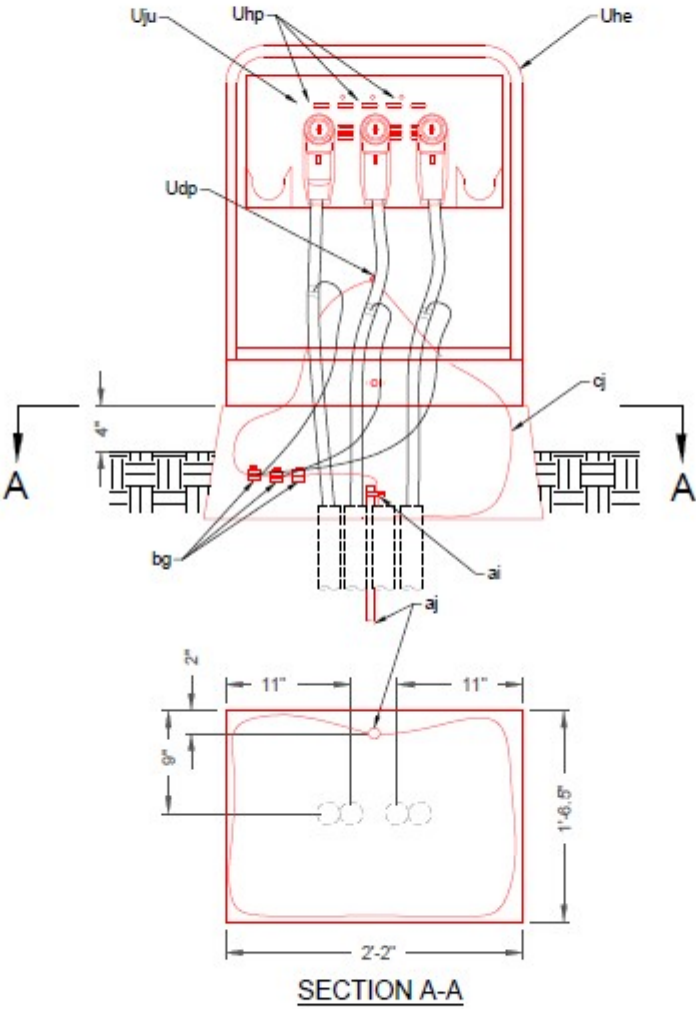
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; Chad Jarick <chad.jarick@betaengineering.com>



Subject: RE: Junction box

Jeremy,

Denton uses the following standard for the junction box. I do not have their approved manufacturers for their warehouse numbers, but I am sure they can provide it to us. Or they might be willing to provide the equipment, which is what I thought was happening for some of this equipment such as the service transformers, etc.

- NOTES:
1. PLACE ONE ARRESTOR (#28732000) ON JUNCTION IF NOT ALL SPOTS ARE USED.



 PIKE ELECTRIC #43957	 NORTH ELECTRIC	JUNCTION ENCLOSURE, 1 PHASE	DPCC-1
PURNAME: DPCC-1.FLD	DRAWN BY: GUY O'NEILL, LLC	APPROVED:	SCALE: 1" = 1'-0"
REVISED:	DATE: 03/03/2023		

PARTS LIST -			
ITEM	QTY.	DESCRIPTION	WAREHOUSE#
ai	1	CLAMP, GROUND ROD, 5/8"	28772040
aj	1	ROD, GROUND, CU, 5/8" X 8'	28540000
bg	3	CONN, 1-BOLT, #1/0 - #8 STR	28773685
cj	10	WIRE, BARE #2 CU SD	28016160
Udp	1	LUG, TRF GRD STUD, 6SOL-1/0STR	28773680
Uhe	1	CABINET, PRI CONN, 1PH	28584315
Uhp	3 OR 4	ELBOW, LOADBREAK, 200A	AS REQUIRED
Uju	1	JUNCTION, 4PT, 200A	28732175
Uju	1	JUNCTION, 3PT, 200A	28775700
	1	CLEANER, CABLE	28718000
	1	SILICONE, GREASE 2 OZ. TUBE	40524000

GREG BAUMBACH, P.E.

gbaumbach@se-texas.com



Schneider Engineering, LLC

TX Reg. #F-1594

191 Menger Springs Parkway – Boerne, TX 78006

O: 830.249.3887 | C: 830.660.1471

www.se-texas.com



From: Jeremy Katusak <jeremy.katusak@betaengineering.com>

Sent: Thursday, July 20, 2023 9:14 AM

To: Greg W. Baumbach <gbaumbach@se-texas.com>

Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; Chad Jarick <chad.jarick@betaengineering.com>

Subject: FW: Junction box

From External Sender

Greg,

Please see below. Is this the same type of junction box we'll need for JB1 and JB2?

Thank you,



betaengineering.com

Jeremy Katusak, PE, PMP

Project Manager

956.455.3419

Jeremy.Katusak@betaengineering.com



Certificate Of Completion

Envelope Id: 61E3D18FB6444BEDA54F28ACDD715A08

Status: Completed

Subject: 7670 hickory GIS Substation Design Build Change Order 3 - SOW Reduction

Source Envelope:

Document Pages: 15

Signatures: 1

Certificate Pages: 5

Initials: 1

AutoNav: Enabled

Envelope Stamping: Enabled

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

Envelope Originator:

Christa Christian

901B Texas Street

Denton, TX 76209

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

9/14/2023 2:43:26 PM

Holder: Christa Christian

Christa.Christian@cityofdenton.com

Location: DocuSign

Signer Events

Christa Christian

christa.christian@cityofdenton.com

Purchasing Supervisor

City of Denton

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:



6A8263DE08F4429...

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Timestamp

Sent: 9/14/2023 2:47:40 PM

Viewed: 9/14/2023 2:47:50 PM

Signed: 9/14/2023 2:48:00 PM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Mark Zimmerer

mark.zimmerer@cityofdenton.com

Electric Engineering Supervisor

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Sent: 9/14/2023 2:48:09 PM

Viewed: 9/14/2023 2:53:43 PM

Signed: 9/14/2023 2:53:50 PM

Electronic Record and Signature Disclosure:

Accepted: 9/14/2023 2:53:43 PM

ID: 0890ffb4-4aca-419b-9910-6e08d0956ed6

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**

George Brashear

george.brashear@betaengineering.com

Executive Vice President

Beta Engineering, LLC

Security Level: Email, Account Authentication
(None)

Sent: 9/14/2023 2:54:00 PM

Electronic Record and Signature Disclosure:

Accepted: 5/12/2023 10:49:37 AM

ID: 4ec1115c-d2d5-4923-b4a6-b5b76c361fb2

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 9/14/2023 2:54:00 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

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	9/14/2023 2:47:40 PM
Certified Delivered	Security Checked	9/14/2023 2:53:43 PM
Signing Complete	Security Checked	9/14/2023 2:53:50 PM
Completed	Security Checked	9/14/2023 2:54:00 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

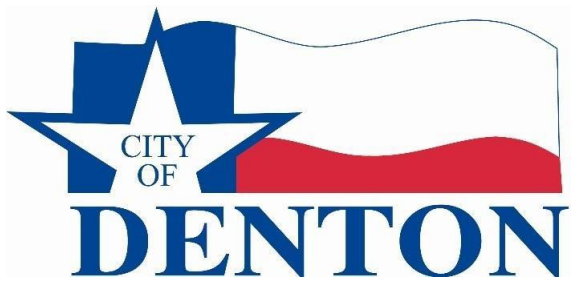
** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your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

Acknowledging your access and consent to receive materials electronically

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

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Docusign Transmittal Coversheet

File Name	7670 - Hickory GIS Substation, Change Order 4
Purchasing Contact	Christa Christian
Contract Expiration	12/30/2099

Change Request Proposal

Project:
(name and address)

B661 / Hickory GIS Substation
2600 W. Hickory St.
Denton, TX

Change request number:
Description:

1011
B661 55Ft Wooden Pole Credit- DME to supply poles

Customer: City of Denton

Notice to Proceed

Submitted date:
Received date:
Rough order of magnitude: 0.00

Status: Proposed
Origination date: 02/27/24

Quotation

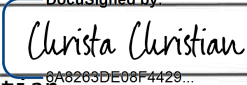

Submitted date: 02/27/24
Due date:
Submitted amount: -13,102.00
Requested days delay: 0

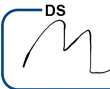
Revenue Detail

Billing Item	Description	Revenue
		-13,102.00
Total Revenue:		-13,102.00

Contractor Pricing

Phase Code / Description	Cost Type	Quantity	UM	Amount
250-00-003 15kV Pole Equip & Mat'l 55Ft Class 1 QTY 6	P Procurement		Lot	-10,818.00
250-00-003 15kV Pole Equip & Mat'l 55Ft Class H2 QTY 1	P Procurement		Lot	-2,284.00
Contractor Pricing Total:				-13,102.00
Total:				-13,102.00
Mark-up:				0.00
Total Contractor Price for CR 1011				-13,102.00

Approvals	
<div>DocuSigned by:  Customer: City of Denton Authorized Representative: Christa Christian By: _____ Date: 3/7/2024</div>	<div>Contractor: Beta Engineering, LLC  By: _____ Date: 3-4-23</div>



Certificate Of Completion

Envelope Id: A06A39F1753C4F3AA01D4CBFA9B8F74B

Status: Completed

Subject: ***Purchasing Approval*** 7670 Hickory GIS Substation CO #4

Source Envelope:

Document Pages: 2

Signatures: 1

Certificate Pages: 5

Initials: 1

AutoNav: Enabled

Enveloped Stamping: Enabled

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

Envelope Originator:

Christa Christian

901B Texas Street

Denton, TX 76209

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

3/7/2024 8:53:29 AM

Holder: Christa Christian

Christa.Christian@cityofdenton.com

Location: DocuSign

Signer Events

Christa Christian

christa.christian@cityofdenton.com

Purchasing Supervisor

City of Denton

Security Level: Email, Account Authentication
(None)**Signature**

DocuSigned by:



6A8263DE08F4429...

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Timestamp

Sent: 3/7/2024 9:01:00 AM

Viewed: 3/7/2024 9:01:07 AM

Signed: 3/7/2024 9:01:15 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Mark Zimmerer

mark.zimmerer@cityofdenton.com

Electric Engineering Supervisor

Security Level: Email, Account Authentication
(None)

Signature Adoption: Drawn on Device

Using IP Address: 47.190.47.120

Signed using mobile

Sent: 3/7/2024 9:01:16 AM

Viewed: 3/7/2024 9:22:33 AM

Signed: 3/7/2024 9:22:55 AM

Electronic Record and Signature Disclosure:

Accepted: 3/7/2024 9:22:33 AM

ID: 8b6f8557-2d8d-47b9-900a-0ccbc9f86346

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)

Sent: 3/7/2024 9:22:56 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Donna K Anderson Donna.Anderson@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 10/23/2023 3:48:14 PM ID: 32fe7853-a016-43a6-b681-773432167429	COPIED	Sent: 3/7/2024 9:22:57 AM
Dane Anderson dane.anderson@betaengineering.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 3/7/2024 9:22:58 AM
George Brashear george.brashear@betaengineering.com Executive Vice President Beta Engineering, LLC Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/12/2023 10:49:37 AM ID: 4ec1115c-d2d5-4923-b4a6-b5b76c361fb2	COPIED	Sent: 3/7/2024 9:22:58 AM Viewed: 3/7/2024 9:42:17 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/7/2024 9:01:00 AM
Certified Delivered	Security Checked	3/7/2024 9:22:33 AM
Signing Complete	Security Checked	3/7/2024 9:22:55 AM
Completed	Security Checked	3/7/2024 9:22:58 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF CHANGE ORDER NO. 5 TO THE DESIGN-BUILD AGREEMENT BETWEEN THE CITY OF DENTON AND BETA ENGINEERING, LLC, FOR THE DESIGN AND CONSTRUCTION OF THE HICKORY GAS INSULATED SUBSTATION FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7670 – CHANGE ORDER NO. 5 IN THE NOT-TO-EXCEED AMOUNT OF \$248,569.09, FOR A TOTAL CONTRACT AWARD AGGREGATED TO \$41,551,141.48).

WHEREAS, on December 14, 2021, by Ordinance No. 21-2701, the City Council awarded a contract to Beta Engineering, LLC, in the amount of \$40,469,000 for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric; and

WHEREAS, on August 16, 2022, City Council awarded a Change Order No. 1 to Beta Engineering, LLC, in the amount of \$811,000.00; and

WHEREAS, on May 12, 2023, Purchasing awarded a Change Order No. 2 to Beta Engineering, LLC; in the amount of \$37,000.00; and

WHEREAS, on September 14, 2023, Purchasing awarded a Change Order No. 3 to Beta Engineering, LLC, to reduce the contract in the amount of \$1,325.61; and

WHEREAS, on March 7, 2024, Purchasing awarded a Change Order No. 4 to Beta Engineering, LLC, to reduce the contract in the amount of \$13,102.00; and

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

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that a change order be authorized to amend such contract agreement with respect to the scope of work and an increase in the payment amount; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 5, increasing the amount of the contract between the City and Beta Engineering, LLC, which is on file in the office of the Purchasing Agent, in the amount of Two Hundred Forty-Eight Thousand Five Hundred Sixty-Nine and 09/100 (\$248,569.09) dollars, is hereby approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to \$41,551,141.48.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

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

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

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Benjamin N. Samples, II



Docusign City Council Transmittal Coversheet

RFP	7670
File Name	Hickory GIS Substation, Change Order 5
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

DME Hickory GIS Substation

June 10, 2024

Page 2



Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
 betaengineering.com

June 30, 2022

Denton Municipal Electric
 1671 Spencer Road
 Denton, TX 76205

Attn: Mr. Mark Zimmerer, PE
 Subject: City of Denton Hickory GIS Substation Project
 Beta Project No. B661

Dear Mark,

This letter serves as a formal request for a Contract Amendment to incorporate scope changes in the Design Build Agreement for the Construction of the Hickory GIS Substation dated December 14th, 2021. The additional scope items have been separated into three categories as follows:

- A. **Items to be Included in the Contract Amendment** – Beta requests a Contract Amendment to incorporate the following scope changes as soon as possible so that these items can be incorporated in the project without delay.

Item	Description	Price
A1	48Ft. Conduit Run around Apartment Complex Labor & Equipment - (3) days - (1) Operator - Skid Steer - Hydrovac Trailer - Walk Behind Trencher - (1) Pusher - (2) Skilled Laborer	\$16,691.07

DME Hickory GIS Substation

June 10, 2024

Page 3

A2	<p>HK 221, HK 223, and HK 232 South Conduit runs</p> <p>Additional Scope of Work:</p> <ul style="list-style-type: none"> -Demolition of additional asphalt, sidewalk & curb -Installation of Curb for approx. 102 LF -Installation of Sidewalk & Ramps approx. 102 LF -Additional Asphalt approx. 102 LF -Additional Demolition & Haul off of Asphalt -Slowed production due to working in the street -Additional Flowable Fill -original bid included 178 cy and the new route includes 468 cy in addition to concrete pricing escalation. -Additional time for excavation to dig 10' 10" deep x 48" wide per the IFC profile 	\$157,193.52
A3	<p>Anti-Graffiti Wall Covering for Exterior Screen Wall per DME request</p> <p>Sherwin Williams Anti-Graffiti 1K siloxane to the exterior of the screen wall.</p>	\$74,684.50

Upon receipt of your response, I will prepare and submit the Change Order Form in accordance with Article V of the Design Build Agreement.

Please call me if you have any questions.

Sincerely,



Kevin Vercher

Project Manager

EXHIBIT B
FORM OF CHANGE ORDER

In accordance with **Article V** of that certain Engineering, Procurement and Construction Agreement, dated December 14, 2021 (the "**Agreement**"), between Beta Engineering, LLC ("**Contractor**") and City of Denton ("**Owner**"), Contractor and Owner agree as follows:

Description of Change:

- A1. Extra 48ft. conduit run around neighboring Apartment complex
- A2. Extra work associated with HK 221, HK 223, and HK 232 South Conduit runs
- A3. Anti-Graffiti Wall Covering for Exterior Screen Wall per DME request

Original Contract Price	\$ <u>40,469,000.00</u>
Previous Change Orders	<u>\$833,572.39</u>
Amount of this Change Order	\$ <u>248,569.09</u>
New Contract Price	\$ <u>41,551,141.48</u>

This Change Order will modify the Contract Completion Date as follows:

_____ Increase _____ Decrease _____ No Effect X Calendar Days

Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement. Except as modified hereby, the Agreement shall remain in full force and effect and unmodified.

Accepted By Contractor

By: 

Printed Name: Jake Woodward

Its: 7/2/24

Accepted By Owner

By:

Printed Name:

Its:

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

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

DocuSigned by:

B6F331381089478...
SIGNATURE

Terrance Naulty
PRINTED NAME

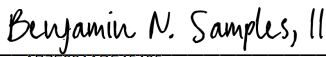
Asst. GM Denton Municipal Electric
TITLE

Denton Municipal Electric
DEPARTMENT

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

AB7F931ADF45405...
BY: _____

Certificate Of Completion

Envelope Id: D36C86C6A9C24333BB2E7665C7EDF640

Status: Sent

Subject: Please DocuSign: City Council Contract 7670 Hickory GIS Substation, Change Order 5

Source Envelope:

Document Pages: 5

Signatures: 2

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelopel 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

7/2/2024 11:17:42 AM

Christa.Christian@cityofdenton.com

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

Christa Christian

Completed

Sent: 7/2/2024 11:21:09 AM

christa.christian@cityofdenton.com

Viewed: 7/2/2024 11:21:17 AM

Purchasing Supervisor

Signed: 7/2/2024 11:21:30 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 7/2/2024 11:21:32 AM

lori.hewell@cityofdenton.com

Viewed: 7/2/2024 11:54:02 AM

Purchasing Manager

Signed: 7/2/2024 11:54:14 AM

City of Denton

Signature Adoption: Pre-selected Style

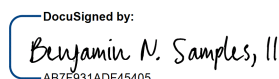
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Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Benjamin N. Samples, II



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Benjamin.Samples@cityofdenton.com

Viewed: 7/2/2024 11:55:23 AM

Security Level: Email, Account Authentication
(None)

Signed: 7/2/2024 11:57:24 AM

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Accepted: 7/2/2024 11:55:23 AM

ID: ef98d7c7-3612-4612-9024-af41d7870452

Terrance Naulty



Sent: 7/2/2024 11:57:25 AM

Terrance.Naulty@cityofdenton.com

Resent: 7/2/2024 2:56:51 PM

Asst. GM Denton Municipal Electric

Viewed: 7/2/2024 2:58:25 PM

City of Denton

Signed: 7/2/2024 3:00:03 PM

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

Signer Events	Signature	Timestamp
<p>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</p>		Sent: 7/2/2024 3:00:05 PM
<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		
<p>Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		

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

<p>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</p>	<div>COPIED</div>	<p>Sent: 7/2/2024 11:21:31 AM</p>
<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 7/2/2024 3:00:05 PM Viewed: 7/2/2024 3:18:28 PM</p>
<p>City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		

Carbon Copy Events	Status	Timestamp
Mark Zimmerer mark.zimmerer@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/28/2024 12:35:14 PM ID: 86efe65c-e67f-4380-aca6-fa87063d585e		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	7/2/2024 2:56:51 PM
Envelope Updated	Security Checked	7/2/2024 2:56:51 PM
Envelope Updated	Security Checked	7/2/2024 2:56:51 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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



City of Denton

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

Legislation Text

File #: PUB24-132, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc., for design services for Neighborhood 5B & Oakland Drainage for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8377-003 - Professional Services Agreement for design services awarded to Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc., in the not-to-exceed amount of \$4,512,215.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: July 8, 2024

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 Professional Services Agreement with Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc., for design services for Neighborhood 5B & Oakland Drainage for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8377-003 – Professional Services Agreement for design services awarded to Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc., in the not-to-exceed amount of \$4,512,215.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

Neighborhood 5B portion of the project contains 17 street segments associated with the 2019 Street Reconstruction Bond Program. The project scope includes approximately 8,300 linear feet of street reconstruction, 4,850 linear feet of water distribution main replacement, 2,700 linear feet of wastewater collection main replacement, various sidewalk improvements, and a photometric study. The Oakland Drainage portion of the project includes the installation of a 48-inch drainage pipe and a new 9' x 7' drainage box along Oakland Street and Austin Street. The project also includes installing a detention pond with culvert improvements. The Capital Projects Department is focusing on a holistic approach aimed at limiting future construction disruptions by replacing other aging public infrastructure within the limits of the project area and enhancing coordination during the delivery of the 2019 & 2023 Bond Program. Neighborhood 5B & Oakland Drainage is being delivered as the fifth Construction Manager at Risk (CM@R) project in the City of Denton (City) for horizontal construction. This delivery method leans heavily on collaboration among the City, the design engineer, and the CM@R during the design process to allow for the best schedule coordination, cost modeling, and community engagement.

Statements of qualifications were sent to the City's prequalified list of engineers requesting experience designing projects using alternative delivery methods, specifically CM@R, availability, and workload. Upon ranking the received information, staff found Peloton Land Solutions, Inc. to have the most relevant CM@R experience, has current CM@R work in progress in Texas, including the City of Denton, and available staff to complete the project within the schedule. Based on Westwood Professional Services, Inc.'s knowledge, project team experience, and availability, staff has selected Peloton Land Solutions, Inc. as the best choice for Neighborhood 5B & Oakland Drainage design.

Request for Qualifications for state certified engineers for professional engineering services for various capital infrastructure-related projects within the City of Denton for the Capital Improvements Department was solicited using the City’s formal solicitation process. City Council approved a pre-qualified list of professional service firms on February 20, 2024 (Ordinance 24-276).

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On February 20, 2024, City Council approved RFQ 8377 for state certified engineers for professional engineering services for various capital infrastructure-related projects within the City of Denton for the Capital Improvements Department (Ordinance 24-276).

RECOMMENDATION

Award a contract with Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc., for design services for Neighborhood 5B & Oakland Drainage for the Capital Projects Department, in a not-to-exceed amount of \$4,512,215.

PRINCIPAL PLACE OF BUSINESS

Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc.
Fort Worth, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval of the design and CM@R contracts with a completion date by Q4 2027.

FISCAL INFORMATION

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

2019 GO Bond - Sidewalks	250136473.1360.20100	\$61,009.00
Water Projects Fund	630536523.1360.20100	254,193.25
Wastewater Projects Fund	640518545.1360.20100	248,443.25
2023 GO Bond - Streets	650152475.1360.20100	3,891,289.50
DME	605515500.1360.3730	57,280.00
Total:		\$4,512,215.00

Requisition #165175 has been entered into the Purchasing software system in the amount of \$4,512,215. The budgeted amount for this item is \$4,512,215.

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: Taylor Holt, 940-349-7324.

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH WESTWOOD PROFESSIONAL SERVICES, INC. DBA PELOTON LAND SOLUTIONS, INC., FOR DESIGN SERVICES FOR NEIGHBORHOOD 5B & OAKLAND DRAINAGE FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8377-003 – PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES AWARDED TO WESTWOOD PROFESSIONAL SERVICES, INC. DBA PELOTON LAND SOLUTIONS, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$4,512,215.00).

WHEREAS, on February 20, 2024, the City Council approved a pre-qualified professional services list of state certified Transportation Engineers for various improvements and public safety-related projects within the City of Denton (Ordinance 24-276), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

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

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc., to provide professional design services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

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

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

PASSED AND APPROVED this the _____ day of _____, 2024.

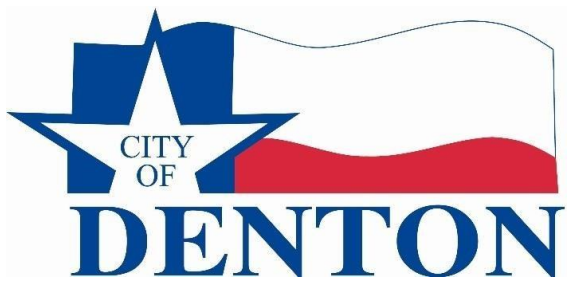
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Marcella Lunn*



Docusign City Council Transmittal Coversheet

PSA	8377-003
File Name	Neighborhood 5B & Oakland Drainage
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Westwood Professional Services, Inc. dba Peloton Land Solutions, Inc., a Westwood Company, with its corporate office at 2805 North Dallas Parkway, Suite 150, Plano, TX 75093 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: 8377-003 Neighborhood 5B & Oakland Drainage(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 Exhibit 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 \$4,512,215 in the manner and in accordance with the fee schedule as set forth in Exhibit B. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Exhibit 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 Exhibit C.

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 Exhibit C 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 Exhibit 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 Exhibit 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 Exhibit B.
- (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 \$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 \$1,000,000 combined single limit. 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 limit 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 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 otherwise acceptable to

CITY, 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 Exhibit C 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 Exhibit C.

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 and without liability or legal exposure to ENGINEER. 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, pandemic, epidemic 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 THIRD PARTY 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, 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, LIABILITIES, OR LOSSES CAUSED BY VIOLATIONS OF THIS PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ENGINEER, shall have the

right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

L. Prohibition on Contracts with Companies Boycotting Israel

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

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

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

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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

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

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

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

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

Q. 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 23-1165 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.

R. 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 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.

S. 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:

Exhibit A – Scope of Services

Exhibit B – Compensation and Method of Payment; Detailed Fee Breakdown; and Rates Schedule

Exhibit C – Schedule

Exhibit D – Project Limits 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.

The parties agree to transact business electronically. Any statutory requirements that

certain terms be in writing will be satisfied using electronic documents and signing.
Electronic signing of this document will be deemed an original for all legal purposes.

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

BY:
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:
ENGINEER
Peloton Land Solutions, Inc., a Westwo
Company

DocuSigned by:
Brian Oneill Senior Director, Public
71B791D326BA455...
Authorized Agent, Title

Full Name: Brian Oneill

2024-1174223

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

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

David Chan, PMP
7B46FEAB11BC4F2...

Signature

Director of Capital Projects

Title

Capital Projects

Department

Date Signed: _____

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn
4B070821B4AA438...
BY: _____



April 12, 2024
Project No.: 0052050.00

Mr. Seth Garcia
Deputy Director of Capital Projects
CITY OF DENTON
401 North Elm Street
Denton, Texas 76209

Re: Professional Civil Engineering Services
Neighborhood 5B & Oakland Drainage
Denton, Denton County, Texas

Dear Mr. Garcia:

Westwood Professional Services, Inc. d/b/a Peloton Land Solutions a Westwood Company. is pleased to submit this proposal to provide professional civil engineering services relating to the Neighborhood 5B & Oakland Drainage. The projects consists of reconstruction of public streets within the Neighborhood Section 5B as well as replacement of select sections of water and wastewater infrastructure, sidewalks, and illumination. In addition, the project will upgrade the drainage systems within the Neighborhood Section 5B with improvements to the storm infrastructure and installation of a detention pond upstream of site.

Based on our preliminary discussions and the information received to date, our perception of the project is described in the attached documents:

- EXHIBIT A - Scope of Services
- EXHIBIT B - Compensation and Method of Payment; Detailed Fee Breakdown; Rates Schedule
- EXHIBIT C - Schedule
- EXHIBIT D - Project Limits Map

Westwood Professional Services, Inc. d/b/a Peloton Land Solutions a Westwood Company is pleased to have this opportunity to submit this proposal and look forward to working with you on this project. If the proposed agreement is acceptable to you as presented, please execute one copy of the agreement form and return one original copy to our office. If you have any questions or would like any additional information, please do not hesitate to call us at your convenience.

Sincerely,

A handwritten signature in blue ink that reads "Paul Hodges".

Paul Hodges, P.E.
Project Manager

A handwritten signature in blue ink that reads "Brian Haynes".

Brian Haynes, P.E., CFM
Program Manager

EXHIBIT A to Agreement between the City of Denton, Texas (“Client”) and Westwood Professional Services, Inc. d/b/a Peloton Land Solutions a Westwood Company (“Westwood”) for Consulting Services

EXHIBIT ‘A’ – SCOPE OF SERVICES

NEIGHBORHOOD 5B & OAKLAND DRAINAGE

PROJECT DESCRIPTION:

The project consists of reconstruction of public streets within the Neighborhood Section 5B as well as replacement of select sections of water and wastewater infrastructure, sidewalks, and illumination. In addition, the project will upgrade the drainage systems within the Neighborhood Section 5B with improvements to the storm infrastructure and installation of a detention pond upstream of site. Refer to Exhibit ‘E’ for Project Limits Map.

A. Project Management, Coordination, & Permitting

1. Manage the Team:

- Lead, manage and direct design team activities.
- Ensure quality control is practiced in performance of the work.
- Communicate internally among team members.
- Allocate team resources.

2. Communications and Reporting:

- Attend a pre-design project kickoff meeting with Client staff to confirm and clarify scope, understand Client objectives, and ensure economical and functional designs that meet Client requirements.
- Conduct review meetings with the Client at the end of each design phase.
- Attend public meetings with stakeholders. City will host meetings and Westwood will provide exhibits and technical support for the meetings.
- Prepare and submit monthly invoices in the format acceptable to the Client.
- Prepare and submit monthly progress reports.
- Prepare and submit baseline Project Schedule initially and Project Schedule updates.
- Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure and provide and obtain information needed to prepare the design.
- With respect to coordination with permitting authorities, Westwood shall communicate with permitting authorities such that their regulatory requirements are appropriately reflected in the designs. Westwood shall work with regulatory authorities to work towards approval of the designs and permitting.

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Inc. d/b/a Peloton Land Solutions a
Westwood Company (“Westwood”)
for Consulting Services

3. Franchise Utility Coordination:

- Westwood will consult with the Client, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. Westwood will design Client facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs.
- Westwood will coordinate with utility owners related to the relocation efforts of franchise utilities that remain in conflict with the proposed construction. Franchise utility will be responsible for preparing utility relocation plans.

4. Construction Manager at Risk (“CMAR”) Services:

Westwood shall provide the following Pre-Construction Engineering Services to support delivery of the project by CMAR. Westwood will assist the CMAR with Pre-Construction Services which include:

- Attend design workshops with CMAR and Client to review plan progress, provide value engineering, and constructability. Design workshops will include in-person meetings consisting of Westwood team, CMAR, and Client. These meetings will be held at project milestones (Project Kick-Off, 10%, 30% ,60%, and 90% Submittals) and in-between as agreed to between Westwood, CMAR, and Client.
- Attend up to Two (2) Traffic Control design workshops to discuss project sequencing, phasing, and construction timelines.
- Westwood will document and summarize CMAR and Client comments during design workshops by preparing comment resolutions and response matrix.
- Westwood will modify/update engineering design plans in conjunction with input from the CMAR. Proposed changes to the plans will be evaluated by Westwood before development of updated plans, for benefit to the project to gain efficiency, reduced time, and/or cost.
- Westwood will assist the CMAR to prepare conceptual, preliminary, and final plans, specifications, and quantities for the construction bid packages.
- Prepare design exhibits to analyze alternative design options as needed in conjunction with input from CMAR.
- Prior to the 60% percent review meeting with the CMAR and Client, Westwood shall schedule and attend a project site visit with the CMAR and Client to walk the project. Westwood shall summarize the comments from the field visit and submit this information to the Client in writing.

Assumptions:

- One (1) pre-design project kick-off meeting.
- This project will be delivered through a Construction Manager at Risk (CMAR) process. It is assumed the CMAR will start the beginning of design process. Coordination with the CMAR will begin at project design kick-off.

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- The Project Design phase is estimated to be Sixteen (16) months and the Project Construction phase is anticipated to take up to Twenty-Two (22) months for a total project duration of Thirty-Six (36 Months).
- Four (4) milestone plan review meetings (10%, 30%, 60%, and 90%). The four (4) milestone meetings are included in the CMAR Constructability Review meetings as part of the Pre-Construction phase services.
- Thirty-Two (32) bi-weekly design team meetings will be held over Sixteen (16) month design duration.
- Attendance for up to Two (2) public meetings and the preparation of exhibits and documents for meetings. Anticipated stakeholders include Texas Woman’s University and property owners within the Neighborhood 5B vicinity.
- All submittals to the CMAR and Client will go through a Quality Control & Quality Assurance process prior to submission.
- Monthly Project Status Reports will be provided with monthly invoice updates. Thirty-six (36) invoices are anticipated for this project, based on total project duration.

B. Conceptual Design Study (10% Submittal)

The Conceptual Design shall be submitted to Client per the approved Project Schedule. The Conceptual Design will include data collection of existing conditions, preparation of refined drainage study, and conceptual design alternative analysis. The purpose of the conceptual design is for Westwood to:

- Study the project.
- Identify and develop alternatives.
- Present (through the defined deliverables) alternatives to the Client.
- Recommend the alternatives that successfully address the design problem.
- Obtain the Client’s endorsement of the selected concept.

Westwood will develop the conceptual design of the infrastructure as follows.

1. Data Collection:

- In addition to data obtained from the Client, Westwood will research proposed improvements in conjunction with any other planned future improvements known by the Client that may influence the project.
- Westwood will also identify and seek to obtain data for existing conditions that may impact the project including but not limited to; utilities, agencies (TxDOT, TCEQ, FEMA and USACE), Client Master Plans, and property ownership as available from the Tax Assessor's office.
- Collect information and schedule of nearby construction projects to ensure closures/construction do not interfere with each other.
- Westwood will prepare existing constraints base file (CAD) by combining collected topo, SUE, boundary, utility locates, record drawing information and other collected information. This base file will be used for design of improvements and exhibits.

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2. Prepare Refined Drainage Study:

- Westwood will prepare refined drainage study of the Pecan Creek basin to verify and analyze previous study and establish working models for drainage improvements. Westwood will utilize existing Pecan Creek and Oakland Street drainage studies and hydraulic models, prepared by Halff Associates, as baseline for refined drainage study analysis.
- Westwood will refine the hydrologic analysis and hydraulic models for existing conditions based on current data collection, field survey and field observations.
- Examine N. Pecan Creek channel adjacent to Marshall St. and analyze improvements. Potential improvements may include channel improvements, and crossings at Oakland St. and Austin St. Both bridge and culvert improvement alternatives crossings will be considered and examined.
- Oakland Street drainage improvements from previous study will be evaluated for feasibility and alternative options will be explored, as needed.
- Examine conceptual Quakertown Park N. Pecan Creek natural channel revitalization alternatives.
- Westwood will analyze and consider additional alternative design concepts (if any are determined during study) and present alternatives to the Client.
- Preparation of concept design exhibits for drainage improvements (including detention ponds, culverts, and channel improvements) will be developed for Right-Of-Way and planning purposes.
- Execute Models/Analyze Results.
- Prepare Refined Drainage Study Report.

3. Conceptual Design Exhibits and Alternatives Analysis:

- Alternative design concepts (if any are determined) will be analyzed, considered for strengths, weaknesses, and cost benefit for each, and presented to the Client.
- Mitigation issues shall be identified, and viable solutions must be approved during the Conceptual Design Phase.
- Westwood will analyze alternative typical sections of streets and prepare exhibits for client to review and select.
- Analyze sanitary sewer crossing at N. Pecan Creek and prepare re-routing alternatives.
- Drainage improvement analysis will include Oakland Street storm drainage trunklines, N. Pecan Creek culverts or bridges, conceptual Marshall Street channel improvements between Austin Street and Oakland Street, conceptual Quakertown Park N. Pecan Creek natural channel revitalization, preliminary detention pond sizing and location, and proposed shopping center culverts alignment.
- Conceptual plans shall include H&H analysis to confirm the Proposed Design does not cause adverse downstream water surface elevation (WSEL) and Velocity impacts.
- Preliminary phasing of construction.
- Documentation of key design decisions.

Pre-Construction CMAR Services:

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- Prepare an estimate of construction quantities and develop the preliminary opinion of probable construction costs (OPCC) per task A.4.
- Attend Design Workshops for Project Kick-Off and 10% submittals per task A.4.

Deliverables:

1. Refined Drainage Study Report
2. Conceptual Design Layouts
3. Utility Conflict Plan PDF and Matrix
4. CAD Files for Survey and SUE
5. Preliminary Jurisdictional Determination Report
6. Environmental Sensitive Area Assessment
7. Cultural Resource Assessment
8. CLOMR (if required)

C. Conceptual Packages (30% Construction Plans)

At such time Westwood is directed by Client for selected alternatives from conceptual design study, Westwood shall prepare Conceptual Design Packages. The project is split into two separate engineering packages based on location and proximity of improvements; Streets Package consisting of improvements within the street project limits, and the Drainage Package consisting of detention site and culvert improvements within the drainage project limits.

Street Package Improvement Limits:

Oakland Street (Northern N. Locust St. intersection to Southern N. Locust St. intersection)

Austin Street (Oakland St. to Congress St.)

Texas Street (Oakland St. to Bell St.)

Withers Street (Oakland St. to Bell St.)

Marshall Street (Locust St. to Oakland St.) – Channel Improvements

Drainage Package Improvement Limits:

Detention Site (Empty tract west of North Texas Fair and Rodeo)

Denton Shopping Center Parking Lot – Culvert Improvements

1. Drainage Package:

The 30% drainage package will include engineering sheets showcasing existing conditions and proposed improvements:

- Cover Sheet
- Index
- Project Layout
- Removal Plans
- Preliminary Grading Plans
- Preliminary Paving Plan Sheet
- Preliminary Drainage Area Maps
- Preliminary Drainage Plan & Profiles
- Preliminary Utility Adjustment Layouts

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2. Streets Package:

The 30% streets package will include engineering sheets of each street showcasing existing conditions and proposed improvements.

- Cover Sheet
- Index
- Project Layout
- Traffic Control Plan
- Removal Plans
- Preliminary Plan & Profile
- Preliminary Typical Sections
- Preliminary Drainage Area Maps
- Preliminary Drainage Plan & Profile
- Preliminary Water Layout
- Preliminary Sewer Plan & Profile
- Preliminary Retaining Wall Layout
- Preliminary Bridge Layout (as needed)
- Preliminary Culvert Layout (as needed)
- Marshall Street Channel Improvement Layouts (as needed)

Pre-Construction CMAR Services:

- Assist CMAR in developing construction quantities and develop the preliminary opinion of probable construction costs for both packages per task A.4.
- Attend Design Workshops for TCP and 30% submittals per task A.4.

Deliverables:

1. Conceptual Design Packages with QAQC Documentation. Submit two (2) full sized 22”x34” sets, and two (2) half sized 11”x17” sets of drainage and streets packages.
2. Utility Conflict Plans for franchise utility review
3. Geotechnical Report
4. Opinions of Probable Construction Cost
5. Public Meeting Exhibits (as required per Client request)
6. Phase 1 Environmental Site Assessment (If required)
7. ALTA Survey (If required)
8. TCEQ Submittal

D. Preliminary Design (60% Construction Plans)

At such time Westwood is directed by Client, Westwood shall prepare preliminary design plans. The requirements for preliminary plans will be in accordance with the City of Denton Design Criteria Standards. Westwood will prepare preliminary construction plan sets (60%) for each package.

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1. Drainage Package:

Westwood shall prepare preliminary drainage package consisting of the following:

- Cover Sheet
- Index
- General Notes
- Quantity Sheet
- Project Layout
- Survey Control Sheet
- Typical Sections
- Sequence of Construction
- Traffic Control Plan Phasing
- Detour Layouts
- Removal Plans
- Grading Plans
- Paving Plan & Profile Sheets
- Drainage Area Maps
- Hydraulic Calculations
- Drainage Plan & Profiles Sheets
- Sewer Relocation Plan & Profile Sheets
- Water Relocation Plan & Profile Sheets
- Erosion Control Plans
- Structural Details (if applicable)
- Tree Protection and Mitigation Plans
- Construction Detail sheets

2. Streets Package:

Westwood shall prepare preliminary streets package consisting of the following:

- Cover Sheet
- General Notes
- Quantity Sheet
- Project Layout
- Survey Control Sheet
- Typical Sections
- Sequence of Construction
- Traffic Control Plan Phasing
- Detour Layouts
- Removal plan sheets
- Roadway plan and profile sheets
- Retaining Wall Plan & Profile Sheets
- Signing & Pavement Markings
- Drainage Area Maps
- Drainage plan and profile sheets
- Water (12” diameter or larger) plan and profile sheets
- Water (smaller than 12” diameter) plan sheets

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- Sanitary Sewer plan and profile sheets
- Cross Sections (At 50’ Intervals, Cross Streets & Driveways)
- Bridge Layout & Details (if applicable)
- Structural Details (if applicable)
- Culvert Layouts (if applicable)
- Illumination Layouts & Details
- Erosion Control Plans
- Tree Protection and Mitigation Plans
- Construction Detail sheets

Pre-Construction CMAR Services:

- Assist CMAR in developing construction quantities and develop the preliminary opinion of probable construction costs for both packages per task A.4.
- Assist CMAR in developing standard construction contract documents and technical specifications per task A.4.
- Attend constructability review site visit with CMAR and Client.
- Attend Design Workshops for TCP and 60% submittals per task A.4.

Deliverables:

1. Preliminary Design Packages with QAQC Documentation. Submit two (2) full sized 22”x34” sets, and two (2) half sized 11”x17” sets of drainage and streets packages.
2. Utility Conflict Plans for franchise utility review
3. Opinions of Probable Construction Cost
4. Preliminary Project Specifications Manual
5. Right-Of-Way and Easement Documents
6. Public Meeting Exhibits (as needed per client request)
7. TCEQ Submittal

E. Final Design (90% & 100% Submittals)

At such time Westwood is directed by Client, Westwood shall prepare final design plans (90% & 100%). The requirements for final plans will be in accordance with the City of Denton Design Criteria Standards. Westwood will prepare final construction plan sets (90% and 100%) for each package. Finalized plans shall include:

- Revise preliminary plans incorporating comments from the CMAR and Client for both drainage and street packages.
- Incorporate final Client review comments into the plans and construction contract documents to finalize construction plans for proposed improvements.
- Finalize construction contract documents including Client standard specifications, special technical specifications and special conditions (if any).

Pre-Construction CMAR Services:

- Assist CMAR in developing construction quantities and develop the preliminary opinion of probable construction costs for both packages per task A.4.

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- Assist CMAR in developing standard construction contract documents and technical specifications per task A.4.
- Attend Design Workshops for 90% submittals per task A.4.

Deliverables:

1. Final Design Packages with QAQC Documentation. Submit two (2) full sized 22”x34” sets, and two (2) half sized 11”x17” sets of drainage and streets packages
2. Final Utility Conflict Plans for franchise utility review
3. Final Opinions of Probable Construction Cost
4. Final Project Specifications Manual
5. TCEQ Submittal

F. Bid Phase Services

Westwood will support the bid phase of the project as follows.

1. Bid Advertisement:
 - Westwood shall assist in preparation and submittal of draft Bid Advertisement for publishing by the Client/CMAR.
2. Bid Document Distribution:
 - Westwood shall assist with distribution of construction plans and contract bid documents.
3. Bidder Assistance:
 - Westwood will receive and answer bidders’ questions and requests for additional information. The procedures shall include a log of all significant bidders’ questions and requests, and the response thereto. Westwood will provide technical interpretation of the contract bid documents and will prepare proposed responses to all bidders’ questions and requests, in the form of addenda.
 - Attend the prebid conference in support of the Client/Construction Manager.
 - Attend the bid opening in support of the Client/Construction Manager.
4. Bid Analysis and Recommendation of Award:
 - Westwood shall assist with tabulation and review of bids received for the construction project, assist the Client/Construction Manager in evaluating bids, and recommend award of the contract.
 - Westwood will assist the Client/Construction Manager in determining the qualifications and acceptability of prospective contractors, subcontractors, and suppliers.
 - Westwood shall make a recommendation of award to the Client/Construction Manager if requested.
5. Conformed Construction Documents:
 - Upon award of a contract by the Client, Westwood shall assist with the execution, assembly and distribution of the conformed construction contract documents for the Project.

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G. Construction Administration

Construction administration scope of work assumes the duration of construction for this project will be twenty-two (22) months. We are assuming the City of Denton will provide construction inspection and review and approve the contractor’s pay applications.

- 1. Preconstruction Conference:**
 - Westwood shall attend the preconstruction conference.
- 2. Site Visits:**
 - Westwood shall visit the project site at appropriate intervals as construction proceeds to observe and report on progress. It is estimated that one (1) visit per month will be made by Westwood. This proposal assumes construction duration will be up to twenty-two (22) months.
- 3. Construction Meetings:**
 - Westwood will attend a monthly construction meeting via conference call and bi-weekly in-person meetings during construction duration. This proposal assumes construction duration will be up to twenty-two (22) months.
- 4. Shop Drawing and Lab Report Review:**
 - Westwood shall review shop drawings submitted by the contractor for compliance with design concepts. Westwood shall review laboratory, shop, and mill test reports on materials and equipment.
- 5. Instructions to Contractor:**
 - The Engineer shall provide necessary interpretations and clarifications of contract documents, review change orders and make recommendations as to the acceptability of the work, at the request of the Client.
- 6. Final Inspection:**
 - The Engineer shall attend final inspection of the Project with representatives of the Client and the construction contractor.
- 7. Record Drawings:**
 - Prepare construction “Record Drawings” based upon mark-ups and information provided by the construction contractor(s). Submit one (1) set of the record drawings (with “record drawing stamp” bearing the signature of the Engineer and the date) to the Client on a CD-ROM disk or flash drive containing scanned 22”x34” black and white PDF images.

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H. Field Investigations

1. Field Survey

Establish Survey Control:

Establish survey control along each street or intersecting streets as necessary. These control points will be established based on and tied to established City horizontal and vertical control points. The horizontal control for each street in the project will be established on the State Plane Coordinate System (NAD'83 Surface Coordinates) from Client monumentation. Control points will be established using 5/8" iron rods, 18" long. These control points will be established using GPS and conventional surveying methods.

Benchmark Loop:

A benchmark circuit will be established, based on the vertical control points provided. These benchmarks will be located outside of the construction limits and put in such a place so that they may be easily found for future use. Benchmarks will be located at about 1,000' intervals and will be referenced. Benchmarks shall be looped in accordance with good surveying practice prior to field surveys. All control leveling work will be performed using appropriate modified second order procedures with closed loops into the project vertical control.

Existing Streets, Driveways and Right-of-Way:

Existing streets, driveways and right-of-way will be profiled and cross-sectioned at 50' intervals and to a point at least 20' outside of the Right-of-Way line. Low points, high points and other unique features will be noted. Pavement surfacing will be determined by visual inspection only. Intersecting streets will be profiled and cross-sectioned to a point at least 50' beyond the roadway being replaced.

Existing Drainage Channels and Drainage Area Verification:

Existing drainage channels and swales will be profiled and cross sectioned within the immediate vicinity of the project, 100' upstream and downstream. Low points, high points and any other unique features will be noted. Additional surveying may be necessary to verify the limits of drainage areas.

Existing Underground and/or Overhead Utilities:

Utility owner's will be contacted, on an as-needed basis, and requested to assist in locating existing utilities identified for the project. Above ground features of existing utilities within the proposed Right-of-Way for the limits of the project will be field located, including elevations of sanitary and storm sewer manhole flowlines and water/gas valve stems. The location of utilities between above ground features will be determined from visual inspection, utility records, and/or from locations determined by the respective utility companies. The utilities will be tied to the project control points and depths determined in sufficient detail to identify potential conflicts with proposed construction. The excavation and other

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costs required to expose or probe the underground utilities will be the responsibility of others.

Right-of-Way:

Right-of-Way lines along the project will be located. This information will be included on the project’s plan sheets.

Existing Storm Sewers and Culverts:

The size of existing culverts will be measured and tied along with existing headwalls, channels and aprons. The size, length, and flowline elevation of existing storm sewers will be surveyed. Drainage areas contributing to the PROJECT or conveying water from the project will be determined through field investigations, existing studies, and available topographic mapping.

Temporary Signs, Traffic Control, Flags, Safety Equipment, Etc.

The Surveyor will exercise care in completing this surveying assignment by using traffic control devices, flags and safety equipment when necessary.

2. Environmental Investigations

Waters of the US Delineation with Jurisdictional Determination Report

Westwood will conduct a delineation of potential waters of the U.S within project limits. While on-site, Westwood biologists will also assess the likelihood of state- and federal-listed species occurrence based on the habitats within the site. The delineation will be conducted in accordance with U.S. Army Corps of Engineers (USACE) guidance, including the 1987 manual, the Great Plains Regional Supplement, and other pertinent guidance. The delineation would be conducted via pedestrian surveys on the subject tract to identify potential waters of the U.S.

The information gathered during the site visit will be incorporated into a Preliminary Jurisdictional Determination (PJD) report, which could subsequently be submitted to the USACE for verification and Section 404 permitting if that proves necessary as a result of proposed project plans. The PJD report will be prepared in accordance with Section 404 of the Clean Water Act and current USACE guidance.

Phase 1 ESA

The Phase I ESA reports will be conducted to identify, to the extent feasible pursuant to American Society for Testing and Materials Practice E1527-21 and Title 40 of the Code of Federal Regulations, Part 312 (40 CFR 312), recognized environmental conditions that are present or likely to be present on the detention site property. The purpose of the Phase I ESA is to permit the user to satisfy one of the requirements to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser limitations of the Comprehensive Environmental Response, Compensation and Liability Act, also known as landowner liability protections.

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City of Denton Environmental Sensitive Area Assessment

Westwood biologist will prepare an Environmental Sensitive Area Assessment of the detention site in accordance with the City of Denton standards. Information collected from the remote sensing and site visit task will be compiled into an environmentally sensitive areas assessment report. The report will include a written narrative for the project, a description of the environmentally sensitive areas, and an assessment of the environmentally sensitive areas (i.e., a determination of areas that do not meet the criteria of an environmentally sensitive area).

Protected Species Habitat Assessment

A protected species habitat assessment of the detention site, including a site visit, will be conducted by a Westwood biologist. Westwood biologist will coordinate with the Texas Parks and Wildlife Department to obtain a copy of the Natural Diversity Database (NDD) as well as the U.S. Fish and Wildlife Service iPAC database. A Threatened and Endangered species report for the site will be prepared with a description of field observations and conclusions.

Cultural Resources Assessment

A cultural resources desktop assessment will be conducted on the detention site to evaluate the site in accordance with Section 106 of the National Historic Preservation Act (NHPA) and the Antiquities Code of Texas as appropriate. This work will be performed through our archeological sub-consultant. A letter report summarizing the findings of the desktop cultural assessment and recommendation for additional work if necessary. Please note: A site visit is not included and will not be conducted for the purpose of the cultural resource review: should a regulatory agency require a site visit and/or work beyond a desktop review, an intensive-level investigation may be necessary.

3. Geotechnical Investigation

Through a qualified subcontractor, Westwood shall:

- Eighteen (18) borings will be drilled within the alignment of the proposed street reconstruction to depths of about 10 feet below the existing grades.
- Ten (10) additional borings will be drilled within the areas of the proposed detention pond and embankments to depths of 30 feet below existing grade.
- If determined to be needed, two (2) additional borings will be drilled at the locations of the bridge crossings (one at each crossing) to depths of 35 feet, or 10 feet into competent bedrock, whichever occurs first, below the existing grades.
- Perform soil investigations, including field and laboratory tests, borings, related engineering analysis and recommendations for determining soil conditions will be made. Results will be documented in Report.
- A pavement section design will be prepared based on the results.
- Recommendations for detention pond and embankment construction, including the appropriateness of using the excavated materials in the proposed pond area to be used as embankment fill

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- Recommendations for bridge foundation type, depth and allowable loading, uplift considerations, and Seismic Site Class (2018 IBC).
- Recommendations regarding design of trench safety and below ground structure, and suitability of pipe materials and construction technologies will be prepared based on the results.

4. Subsurface Utility Engineering

Through a qualified subcontractor, Westwood shall provide Subsurface Utility Engineering (S.U.E.) The S.U.E. will be performed to ASCE standard guidelines (ASCE 38-02). The deliverables for this project will be electronic files only in AutoCAD format. All Right-of-Entry Coordination is to be provided by Client. Non-Routing Traffic Control Measures are not included in the scope of services. As described in the publication, four levels have been established to describe the quality of utility location and attribute information used on plans. The four quality levels are as follows:

- Quality Level D (QL”D”) – Information derived from existing utility records.
- Quality Level C (QL”C”) – QL”D” information supplemented with information obtained by surveying visible above-ground utility features such as valves, hydrants, meters, manhole covers, etc.
- Quality Level B (QL”B”) – Two-dimensional (x, y) information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as “designating” this quality level provides the horizontal position of subsurface utilities within approximately one foot.
- Quality Level A (QL”A”) – Three dimensional (x, y, z) utility information obtained utilizing non-destructive vacuum excavation equipment to expose utilities at critical points which are then tied down by surveying. Also known as “locating”, this quality level provides precise horizontal and vertical positioning of utilities within approximately 0.05 feet.

The scope of this proposal includes Quality Level (QL) “A” and “B” SUE. Utilities to be designated include gas, telecommunications, electric, traffic signals, storm, water and sanitary sewer. Designating will be performed within the existing ROW of the project limits. Up to Twenty (20) QL “A” test holes will be included in the budget. Test hole locations will be determined by Westwood and sub-consultant once the QL “B” SUE deliverable has been reviewed. Sub-consultant will have all designating marks and test holes surveyed using project control point data provided by Westwood.

I. Permitting

Westwood will provide coordination with the USACE, TxDOT, TCEQ, FEMA or other required agency for Permitting of the proposed infrastructure construction.

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1. Floodplain Permitting:

Conditional Letter of Map Revision (CLOMR)

If required, Westwood shall update the effective FEMA models for North Pecan Creek with proposed capital drainage improvements. FEMA CLOMR submittal documentation and coordination will be performed to receive approval for proposed improvements.

Letter of Map Revision (LOMR)

If required, shall update the effective FEMA models for North Pecan Creek with constructed capital drainage improvements. FEMA submittal documentation and coordination will be performed to receive approval for constructed improvements.

Assumptions:

- Westwood will perform an “As-Built” Survey of the completed improvements.
- Westwood will be responsible for any FEMA review or submittal fees.

2. TCEQ Dam Safety Permitting:

Due to the anticipated height, volume, and downstream hazard conditions for the proposed detention pond, the embankment will fall under jurisdiction of the Texas Commission on Environmental Quality (TCEQ) Dam Safety section. This will require coordination and submittal of the plans for review, and approval by TCEQ will be required prior to commencement of construction on the embankment.

Westwood proposes to meet with TCEQ staff at the beginning of the project, during the 30% design phase, to present the concept and identify any potential complications early. Plans will be submitted to the TCEQ at the 60% phase and resubmitted at the 100% phase.

3. USACE Permitting:

Nationwide Permit 43 Application – Detention Pond Site

Westwood) will prepare and submit the current USACE NWP 43 permit form, which integrates the requirements of the Nationwide Permit Program for the Fort Worth District, along with the preliminary jurisdictional determination report that was previously prepared. The NWP 43 permit form will be prepared in accordance with current USACE Fort Worth District guidance.

Assumptions:

- The submittal of a permit application to the USACE does not guarantee the authorization or approval of a permit.
- If a Nationwide Permit 43 authorization or a waiver is refused by the USACE, then an Individual Permit would be necessary for impacts. In that case, Westwood will perform the permitting under a separate scope and fee. Individual Permits involve much more coordination than NWPs and include a multi-agency review as well as public notices and involvement. Therefore, the

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timeframe to obtain authorization under an Individual Permit, as well as the consulting cost, would go up if the project were to require an Individual Permit.

- If a cultural resources desktop review is not sufficient for the project area upon review by the USACE, an on-site cultural resources evaluation would be necessary and would be considered an additional service.

Nationwide Permit Application – Channel Improvements at Austin & Oakland

Westwood will prepare and submit the current USACE NWP permit form, which integrates the requirements of the Nationwide Permit Program for the Fort Worth District, along with the preliminary jurisdictional determination report that was previously prepared. The NWP permit form will be prepared in accordance with current USACE Fort Worth District guidance.

Assumptions:

- The submittal of a permit application to the USACE does not guarantee the authorization or approval of a permit.
- If a Nationwide Permit authorization or a waiver is refused by the USACE, then an Individual Permit would be necessary for impacts. In that case, Westwood will perform the permitting under a separate scope and fee. Individual Permits involve much more coordination than NWPs and include a multi-agency review as well as public notices and involvement. Therefore, the timeframe to obtain authorization under an Individual Permit, as well as the consulting cost, would go up if the project were to require an Individual Permit.
- If a cultural resources desktop review is not sufficient for the project area upon review by the USACE, an on-site cultural resources evaluation would be necessary and would be considered an additional service.

J. Right-of-Way & Easements:

1. Right-Of-Way & Easement Documents

Westwood shall prepare up to ten (10) right-of-way or easement exhibits as necessary for project improvements. Documents include preparation of separate instrument metes & bounds and map of right-of-way or easement. Setting monumentation is not included in this scope of work.

2. ALTA Survey

Westwood shall prepare a land survey for the pre-developed conditions of the 19.85-acre tract located at 2100 Hinkle Drive in Denton, TX, in compliance with the 2021 Minimum Standard Detail Requirements for an ALTA/ACSM Land Title Survey as adopted by the American Land Title Association and National Society of Professional Surveyors.

3. Acquisition Services

Through a qualified subcontractor, Westwood shall perform Right-of-Way and Easement acquisition services for up to ten (10) parcels. Services are provided at fixed price per parcel, which includes, consultation with project manager and client, property ownership verification, market appraisal analysis, property

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negotiation, and coordination for legal ownership/rights transfer to Client. Eminent Domain assistance for up to three (3) of the anticipated ten (10) parcels is also included at a fixed price per parcel.

K. Structural Engineering

Westwood will perform structural engineering services on various structures as needed for the design of the project. Structural services are intended to be identified by the 30% conceptual submittal, and structural engineering drawings will be provided at the 60%, 90% and final 100% design submittals.

1. Austin Street Bridge (at N. Pecan Creek)
2. Oakland Street Bridge (at N. Pecan Creek)

Bridge Layouts

- The Engineer shall prepare a bridge layout plan sheet. The Engineer shall determine the location of each soil boring needed for foundation design in accordance with the TxDOT Geotechnical Manual.
- The Engineer shall comply with all relevant sections of the latest edition of the TxDOT Bridge Design Manual - LRFD, TxDOT Bridge Project Development Manual, TxDOT Bridge Detailing Guide, and AASHTO LRFD Bridge Design Specifications, and respective checklists. Each bridge/wall layout sheet must include bridge/wall typical sections, structural dimensions, abutment and bent locations, and superstructure and substructure types. The Engineer shall locate and plot all soil borings and utilities, show proposed retaining walls, and, for staged construction, indicate limits of existing bridge for removal and reconstruction.

Bridge Structural Details

The Engineer shall prepare each structural design and develop detailed structural drawings of all required details in compliance with above-listed manuals and guidelines. The Engineer shall assemble and complete all applicable State Standard Details sheets.

Additionally, the Engineer shall:

- Perform calculations for design of bridge abutments and bents;
- Perform calculations for bridge slab design;
- Perform calculations to determine elevations of bridge substructure and super structure elements;
- Perform calculations for bridge superstructure design;
- Prepare necessary foundation details and plan sheets;
- Prepare plan sheets for abutment design;
- Prepare plan sheets for additional abutment details;
- Prepare framing plan and slab plan sheets;
- Compute and prepare tables for slab and bearing seat elevations, dead load deflections, etc.;
- Design beams and prepare beam design tables; and
- Prepare special provisions and special specifications in accordance with the above-listed manuals and guidelines.

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Bridge Construction Plans

Westwood will prepare construction documents that include the following:

- Quantity Sheet
- Bridge Plan & Profile Sheets (Included at 30%)
- Bridge Typical Sections (Included at 30%)
- Foundation Layouts
- Foundation Details
- Abutment/Bent Plan & Elevation Sheets
- Abutment/Bent Detail Sheets
- Superstructure Detail Sheets
- Boring Logs
- Standard Drawings
- Modified Standard Drawings

Assumptions:

- There are no utilities interfacing the bridges
- The design involves no architectural features
- There are no custom or unique lighting, architectural, landscaping, or planting features included in this scope. These items can be coordinated with the bridge design for an additional fee
- All “items to be provided by other disciplines for structural design” will be provided to the Engineer
- Freeboard requirements will be met with proposed grades, any channel modifications, and typical TxDOT superstructure depths

3. Channel Improvement Design – Rectangular Concrete Section

Westwood will provide structural details for one (1) rectangular concrete channel section that runs between Oakland St and N Austin St. The structure is assumed to retain earth from the adjacent roadway and properties. It is assumed a traffic barrier will be embedded into the top of wall along Marshall St.

Westwood will prepare construction documents which include:

- Structure Detail Sheets
 - Relevant Typical Sections
 - Reinforcement Detailing with bar sizes, spacing, and lengths
 - Concrete dimensions, with shear keys, blockouts, and connections (as required)
- Supporting Calculations (as required)

4. Non-Standard Junction Box Design

Westwood will provide structural details for one (1) custom concrete junction box. The junction box is assumed to connect large multi-box culverts. We are assuming the box will not have to be prestressed and can be designed with typical mild reinforcement. If the structure type differs significantly from our assumptions a fee modification may be required.

Westwood will prepare construction documents which include:

- Structure Detail Sheets

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- Relevant Typical Sections
- Reinforcement Detailing with bar sizes, spacing, and lengths
- Concrete dimensions, with shear keys, blockouts, and connections (as required)
- Supporting Calculations (as required)

5. Detention Pond Outfall Structure

Westwood will provide structural details for one (1) outfall structure. The exact type of structure is unknown at this level of design. We have assumed a concrete wall type weir structure for our fee estimate. If the structure type differs significantly a fee modification may be required.

Westwood will prepare construction documents which include:

- Structure Detail Sheets
 - Relevant Typical Sections
 - Reinforcement Detailing with bar sizes, spacing, and lengths
 - Concrete dimensions, with shear keys, blockouts, and connections (as required)
- Supporting Calculations (as required)

6. Sidewalk Retaining Wall

Westwood will provide structural details for one (1) sidewalk wall with a maximum retained height of up to 5’.

Westwood will prepare construction documents which include:

- Structure Detail Sheets
 - Relevant Typical Sections
 - Reinforcement Detailing with bar sizes, spacing, and lengths
 - Concrete dimensions, with shear keys, blockouts, and connections (as required)
- Supporting Calculations (as required)

7. Miscellaneous Structural Design

An additional miscellaneous structural line item to cover any other miscellaneous structural items that may be needed on the project. This will only be used with authorization from Client.

Westwood will prepare construction documents which include:

- Structure Detail Sheets
 - Relevant Typical Sections
 - Reinforcement Detailing with bar sizes, spacing, and lengths
 - Concrete dimensions, with shear keys, blockouts, and connections (as required)
- Supporting Calculations (as required)

Applicable to All Structural Designs

Westwood will develop supporting calculations prepared in accordance with the latest version of: AASHTO LRFD Bridge Design Specifications; ACI 318; IBC; and TxDOT Standard Specifications for Construction of Highways, Streets, and

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Bridges. Construction related services such as temporary shoring or soil stability during construction are specifically EXCLUDED from this scope.

L. Texas Accessibility Standards (TAS)

1. Through a qualified Registered Accessibility Specialist (RAS) subcontractor, Westwood shall perform the following Texas Accessibility Standards (TAS) review and inspection:
 - Perform a review of construction plans to make sure they are in conformance with the latest Texas Accessibility Standards (TAS).
 - Includes revisions to plans per TAS comments.
 - This fee included the \$175 project filing fee with TDLR.
 - Perform a post-construction inspection of the project to make sure the constructed improvements conform to the Texas Accessibility Standards (TAS).

Services not included in this contract:

- *Construction inspection services*
- *As-built surveys of constructed improvements*
- *Public hearings or City Council/Commission meetings*
- *Reset property corner monumentation disturbed or removed during or after construction.*
- *Phase II Environmental Site Assessments*
- *Storm Water Pollution Prevention Plans (SWPPP)*
- *Preliminary and final platting*
- *Zoning change assistance*
- *Site Plan layout*
- *Traffic and parking studies*
- *Design of screening walls, transformer or generator pads, hardscape features, pavers and/or site signage*
- *Detailed layout of walks and hardscape areas, including scoring patterns*
- *Design of any underfloor drainage systems or grading*
- *Design of french drain systems around the building perimeters.*
- *Landscape Plan and Irrigation Plan*
- *Off-site roadway, drainage, and utility extensions/improvements*
- *LEED pursuit*
- *Construction staking*
- *Property Acquisition Services*
- *Title Research*
- *USACE Individual Permit (for impacts to waters of the US)*

END OF EXHIBIT ‘A’

EXHIBIT B to Agreement between the City of Denton, Texas (“Client”) and Westwood Professional Services, Inc. d/b/a Peloton Land Solutions a Westwood Company (“Westwood”) for Consulting Services

EXHIBIT ‘B’ – COMPENSATION AND METHOD OF PAYMENT

NEIGHBORHOOD 5B & OAKLAND DRAINAGE

COMPENSATION:

For all professional services included in EXHIBIT ‘A’, Scope of Services, Westwood shall be compensated as a lump sum and hourly fee as noted in summary below. A Manhour Detail is provided in EXHIBIT ‘B-1’ for breakdown of the fee and a Westwood Fee Rate Schedule is provided in EXHIBIT ‘B-2’. The total fee shall be considered full compensation for the services described in EXHIBIT ‘A’, including all labor materials, supplies, and equipment necessary to deliver the services.

Fee Summary		
Services	Fee	Fee Type
A. Project Management		
A.1 Team Management	\$ 81,280.00	Hourly
A.2 Communications and Reporting	\$ 237,670.00	Hourly
A.3 Franchise Utility Coordination	\$ 28,400.00	Hourly
A.4 Construction Manager at Risk (CMAR) Services	\$ 382,940.00	Hourly
B. Conceptual Design Study (10% Submittal)		
B.1 Data Collection	\$ 48,480.00	Lump Sum
B.2 Refined Drainage Study	\$ 110,640.00	Lump Sum
B.3 Conceptual Design Exhibits & Alternative Analysis		
Roadway & Drainage	\$ 88,760.00	Lump Sum
Wastewater	\$ 18,880.00	Lump Sum
C. Conceptual Packages (30% Construction Plans)		
C.1 Drainage Package		
Drainage	\$ 223,680.00	Lump Sum
Water	\$ 5,040.00	Lump Sum
Wastewater	\$ 7,950.00	Lump Sum
C.2 Streets Package		
Roadway & Drainage	\$ 297,320.00	Lump Sum
Water	\$ 34,280.00	Lump Sum
Wastewater	\$ 23,160.00	Lump Sum
C.3 Marshall Street Channel Improvements		
Roadway & Drainage	\$ 43,360.00	Lump Sum ¹

EXHIBIT B to Agreement between the City of Denton, Texas (“Client”) and Westwood Professional Services, Inc. d/b/a Peloton Land Solutions a Westwood Company (“Westwood”) for Consulting Services

Fee Summary		
Services	Fee	Fee Type
D. Preliminary Design (60% Construction Plans)		
D.1 Drainage Package		
Drainage	\$ 312,040.00	Lump Sum
Water	\$ 5,040.00	Lump Sum
Wastewater	\$ 7,950.00	Lump Sum
D.2 Streets Package		
Roadway & Drainage	\$ 355,580.00	Lump Sum
Water	\$ 34,280.00	Lump Sum
Wastewater	\$ 23,160.00	Lump Sum
Illumination	\$ 28,640.00	Lump Sum
D.3 Marshall Street Channel Improvements		
Roadway & Drainage	\$ 47,060.00	Lump Sum ¹
E. Final Design (90% & 100% Construction Plans)		
E.1 Drainage Package		
Drainage	\$ 312,040.00	Lump Sum
Water	\$ 5,040.00	Lump Sum
Wastewater	\$ 7,950.00	Lump Sum
E.2 Streets Package		
Roadway & Drainage	\$ 348,180.00	Lump Sum
Water	\$ 34,280.00	Lump Sum
Wastewater	\$ 23,160.00	Lump Sum
Illumination	\$ 28,640.00	Lump Sum
E.3 Marshall Street Channel Improvements		
Roadway & Drainage	\$ 47,060.00	Lump Sum ¹
F. Bid Phase Services		
F.1 Bid Phase Services	\$ 34,500.00	Hourly
G. Construction Administration		
G.1 Construction Administration	\$ 165,470.00	Hourly
H. Field Investigations		
H.1 Design Survey	\$ 152,940.00	Lump Sum
H.2 Environmental Investigations	\$ 41,060.00	Lump Sum
H.3 Geotechnical Engineering	\$ 74,910.00	Lump Sum
H.4 Subsurface Utility Engineering		
Level B SUE	\$ 130,387.50	Lump Sum
Level A SUE (Up to 20 Test Holes)	\$ 32,775.00	Lump Sum ¹

EXHIBIT B to Agreement between the City of Denton, Texas (“Client”) and Westwood Professional Services, Inc. d/b/a Peloton Land Solutions a Westwood Company (“Westwood”) for Consulting Services

Fee Summary		
Services	Fee	Fee Type
I. Permitting		
I.1 Floodplain Permitting	\$ 128,980.00	Hourly
I.2 TCEQ Dam Safety Permitting	\$ 25,600.00	Hourly
I.3 USACE Permitting	\$ 50,880.00	Hourly
J. Right-of-Way & Easements		
J.1 ROW & Easement Documents (up to 10)	\$ 26,270.00	Hourly
J.2 ALTA Survey	\$ 10,360.00	Hourly
J.3 Acquisition Services	\$ 145,187.50	Lump Sum ¹
K. Structural Design		
K.1 Structural Design	\$ 230,000.00	Lump Sum ¹
L. Texas Accessibility Standards (TAS)		
L.1 TAS Review & Inspection	\$ 10,955.00	Lump Sum
Total Lump Sum	\$ 2,794,422.50	
Total Hourly	\$ 1,172,350.00	
Total Lump Sum (Additional Services)¹	\$ 545,442.50	
Total Fee	\$ 4,512,215.00	
Notes:		
1. Considered "Additional Services" and will be done <u>as needed</u> for the project.		

Monthly statements for reimbursable services performed by sub consultants will be based upon the actual cost to Westwood plus fifteen percent (15%). Direct Expenses are included in the lump sum fees and are usual and customary expenses normally incurred during performance of the services described. These expenses could include courier delivery charges, copies of existing engineering plans and/or maps, printing and reproduction (either in-house or by reproduction company) and mileage.

METHOD OF PAYMENT:

Westwood shall be paid monthly payments as described in Article 3 of the AGREEMENT. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of Westwood.

END OF EXHIBIT ‘B’

Detailed Fee Breakdown

EXHIBIT B-1

Project: Neighborhood 5B & Oakland Drainage
Client: City of Denton
Date: 04/05/2024

Tasks	Hourly Rate (\$)	Sr. Project Manager	Project Manager	Sr. Civil Engineer	Civil Engineer	Graduate Engineer	Sr. Engineering Tech	Engineering Tech	Traffic Engineer	Traffic Graduate Engineer	Structural Engineer	Survey RP/LS	Survey Tech	Research Manager	Researcher	Survey Field (Crew Chief)	Survey Field (Instrument Operator)	Sr. Env. Scientist	Env. Scientist	Admin	Total Hours	Labor Cost	Direct Cost	Sub Cost	Total (\$)
		\$270	\$230	\$260	\$210	\$160	\$180	\$140	\$230	\$170	\$240	\$270	\$175	\$160	\$95	\$130	\$90	\$220	\$130	\$105					
A. Project Management																									
A.1 Team Management																									
Weekly Status Meetings (16 months @ 1hr per)		64	64	64	64	64		64													384	\$81,280.00			\$81,280.00
A.2 Communications and Reporting																									
Pre-Design Meetings		12	12	12	12	12															60	\$13,560.00	\$225.00		\$13,785.00
Project Kick-Off Meeting		8	8	8	8	8															40	\$9,040.00			\$9,040.00
Public Stakeholder Meetings (2 Meetings)		16	16	16	16	16															80	\$18,080.00	\$450.00		\$18,530.00
Public Stakeholder Exhibits Preparation		80	80	80	80	80															400	\$90,400.00	\$1,000.00		\$91,400.00
Bi-Weekly Coordination Meetings (Assume 16 months)		32	32	32	32	32															160	\$36,160.00	\$1,000.00		\$37,160.00
Project Coordination with Agencies/Entities/Stakeholders (Up to 20 meetings @ 2 hr per)		40	40	40	40	40															200	\$45,200.00	\$1,000.00		\$46,200.00
Project Invoicing/Status Update Summary (Up to 36 months)		36	36																36		108	\$21,780.00			\$21,780.00
Sub-Total		224	224	188	188	188	0	0	0	0	0	0	0	0	0	0	0	0	0	36	1048	\$234,220.00	\$3,450.00	\$0.00	\$237,670.00
A.3 Franchise Utility Coordination																									
Utility Coordination Meetings (Up to 20 @ 2 hr per)		40	40		40																120	\$28,400.00			\$28,400.00
A.4 Construction Manager at Risk (CMAR) Services																									
Project Documents (Manual, Specifications, Etc.)		40	40		40																120	\$28,400.00			\$28,400.00
Opinion of Probable Cost		40	40	40	40	40															200	\$45,200.00			\$45,200.00
Design Workshops (Workshop @ Kick-Off, 10%, 30%, 60%, 90%)		200	200	200	200	200															1000	\$226,000.00	\$1,500.00		\$227,500.00
TCP Design Workshops		40	40	40	40	40															200	\$45,200.00	\$500.00		\$45,700.00
Site Constructability Review		16	16	16	16	16															80	\$18,080.00	\$300.00		\$18,380.00
Sub-Total		336	360	296	360	320	0	24	0	0	0	0	0	0	0	0	0	0	0	0	1696	\$380,640.00	\$2,300.00	\$0.00	\$382,940.00
Total		664	688	548	652	572	0	88	0	0	0	0	0	0	0	0	0	0	0	36	3248	\$724,540.00	\$5,750.00	\$0.00	\$730,290.00
B. Conceptual Design Study (10% Submittal)																									
B.1 Data Collection																									
		24	24		48	88		88													272	\$48,480.00			\$48,480.00
B.2 Refined Drainage Study																									
Hydrologic and Hydraulic Analysis		32			112	176															320	\$60,320.00			\$60,320.00
Report Preparation		8			56	120		80													264	\$44,320.00			\$44,320.00
QA/QC		12	12																		24	\$6,000.00			\$6,000.00
Sub-Total		52	12	0	168	296	0	80	0	0	0	0	0	0	0	0	0	0	0	0	608	\$110,640.00	\$0.00	\$0.00	\$110,640.00
B.3 Conceptual Design Exhibits & Alternative Analysis																									
Preliminary Typical Sections (Alternatives Analysis)			8		8	24		24													64	\$10,720.00			\$10,720.00
Preliminary Plan Layouts			24		40	60		60													184	\$31,920.00			\$31,920.00
Sanitary Sewer Route Alternative			8		24	40		40													112	\$18,880.00			\$18,880.00
Design Alternative Exhibit Preparation			24		24	24		24													96	\$17,760.00			\$17,760.00
Park Channel Revitalization Exhibits		16			24	24															64	\$13,200.00			\$13,200.00
Conceptual TCP Exhibit			8		16	16															40	\$7,760.00			\$7,760.00
Franchise Utility Conflict Exhibits			4		8	16		16													44	\$7,400.00			\$7,400.00
Sub-Total		0	76	0	120	180	0	164	0	0	0	0	0	0	0	0	0	0	0	0	540	\$107,640.00	\$0.00	\$0.00	\$107,640.00
Total		76	112	0	336	564	0	332	0	0	0	0	0	0	0	0	0	0	0	0	1420	\$266,760.00	\$0.00	\$0.00	\$266,760.00
C. Conceptual Packages (30% Construction Plans)																									
C.1 Drainage Package																									
General Plan Production (Cover, Index, Layout, Removals)		3	12		27	43		43													128	\$22,140.00			\$22,140.00
Pavement Design (Typ. Sections, P&P, Cross Sections)		8	11		36	44		43													142	\$25,310.00			\$25,310.00
Drainage Design (DMAP, H&H Calcs, Det. Calcs, Grading Storm P&P, Details)		30	35		278	344		269													956	\$167,230.00			\$167,230.00
Water Conflict/Relocation Plan Sheets		2			6	8		14													30	\$5,040.00			\$5,040.00
Sanitary Sewer Conflict/Relocation Plan Sheets		3			14	14		14													45	\$7,950.00			\$7,950.00
QA/QC & Submittal		16	16																		32	\$8,000.00	\$1,000.00		\$9,000.00
Sub-Total		62	74	0	361	453	0	383	0	0	0	0	0	0	0	0	0	0	0	0	1333	\$235,670.00	\$1,000.00	\$0.00	\$236,670.00
C.2 Streets Package																									
General Plan Production (Cover, Index, Layout, Removals)			14		40	56		56													15	\$28,420.00			\$28,420.00
Traffic Control Plan (Sequence, Phasing, Detours)			56		80	64		64													264	\$48,880.00			\$48,880.00
Roadway Design (Typ. Sections, P&P, Cross Sections)			70		208	212		204													694	\$122,260.00			\$122,260.00
Drainage Design (DMAP, H&H Calcs, Storm P&P)			24		144	152		152													472	\$81,360.00			\$81,360.00
Water Plan & Profiles			16		60	60		60													196	\$34,280.00			\$34,280.00
Sewer Plan & Profiles			12		40	40		40													132	\$23,160.00			\$23,160.00
QA/QC & Submittal		16	16																		32	\$8,000.00			\$8,000.00
Franchise Utility Conflict Exhibits Sheets			4		8	16		16													44	\$7,400.00	\$1,000.00		\$8,400.00
Sub-Total		16	212	0	580	600	0	592	0	0	0	0	0	0	0	0	0	0	0	0	1849	\$353,760.00	\$1,000.00	\$0.00	\$354,760.00
C.3 Marshall Street Channel Improvements																									
Roadway Design (Typ. Sections, Removals, P&P, Sign & Pav Mark, Cross Sections)			11		44	44		44													143	\$24,970.00			\$24,970.00
Drainage Design (DMAP, H&H Calcs, Storm P&P)			9		32	32		32													105	\$18,390.00			\$18,390.00
Sub-Total		0	20	0	76	76	0	76	0	0	0	0	0	0	0	0	0	0	0	0	248	\$43,360.00	\$0.00	\$0.00	\$43,360.00
Total		78	306	0	1017	1129	0	1051	0	0	0	0	0	0	0	0	0	0	0	0	3430	\$632,790.00	\$2,000.00	\$0.00	\$634,790.00

Detailed Fee Breakdown

EXHIBIT B-1

Tasks	Hourly Rate (\$)	Sr. Project Manager	Project Manager	Sr. Civil Engineer	Civil Engineer	Graduate Engineer	Sr. Engineering Tech	Engineering Tech	Traffic Engineer	Traffic Graduate Engineer	Structural Engineer	Survey RPLS	Survey Tech	Research Manager	Researcher	Survey Field (Crew Chief)	Survey Field (Instrument Operator)	Sr. Env. Scientist	Env. Scientist	Admin	Total Hours	Labor Cost	Direct Cost	Sub Cost	Total (\$)
		\$270	\$230	\$260	\$210	\$160	\$180	\$140	\$230	\$170	\$240	\$270	\$175	\$160	\$95	\$130	\$90	\$220	\$130	\$105					
D. Preliminary Design (60% Construction Plans)																									
D.1 Drainage Package																									
General Plan Production (Cover, Index, Gen Notes, Std Details, Layout & Control, Removals)	7	28		47	75		51					8	24								240	\$43,700.00			\$43,700.00
Traffic Control Plan (Sequence, Phasing, Detours)		12		24	24		24														84	\$15,000.00			\$15,000.00
Pavement Design (Typ. Sections, P&P, Sign & Pav Mark, Cross Sections)	8	11		36	44		43														142	\$25,310.00			\$25,310.00
Drainage Design (DMAP, H&H Calcs, Det. Calcs, Grading Storm P&P, Details)	30	35		278	344		269														956	\$167,230.00			\$167,230.00
Water Conflict/Relocation Plan Sheets	2			6	8		14														30	\$5,040.00			\$5,040.00
Sanitary Sewer Conflict/Relocation Plan Sheets	3			14	14		14														45	\$7,950.00			\$7,950.00
Erosion & Landscape (ECP, Tree Protection & Mitigation Sheets)	14	14		80	80		80														268	\$47,800.00			\$47,800.00
QA/QC & Submittal	24	24																			48	\$12,000.00	\$1,000.00		\$13,000.00
Sub-Total	88	124	0	485	589	0	495	0	0	0	8	24	0	0	0	0	0	0	0	0	1813	\$324,030.00	\$1,000.00	\$0.00	\$325,030.00
D.2 Streets Package																									
General Plan Production (Cover, Index, Gen Notes, Std Details, Layout & Control, Removals)		36		60	92		72					10	32								75	\$53,980.00			\$53,980.00
Traffic Control Plan (Sequence, Phasing, Detours)		56		80	64		64														264	\$48,880.00			\$48,880.00
Roadway Design (Typ. Sections, P&P, Sign & Pav Mark, Cross Sections)		70		208	212		204														694	\$122,260.00			\$122,260.00
Drainage Design (DMAP, H&H Calcs, Storm P&P)		24		144	152		152														472	\$81,360.00			\$81,360.00
Water Plan & Profiles		16		60	60		60														196	\$34,280.00			\$34,280.00
Sewer Plan & Profiles		12		40	40		40														132	\$23,160.00			\$23,160.00
Illumination Design	8							56	80												144	\$28,640.00			\$28,640.00
Erosion & Landscape (ECP, Tree Protection & Mitigation Sheets)		10		40	60		60														170	\$28,700.00			\$28,700.00
QA/QC & Submittal	24	24																			48	\$12,000.00			\$12,000.00
Franchise Utility Conflict Exhibits Sheets		4		8	16		16														44	\$7,400.00	\$1,000.00		\$8,400.00
Sub-Total	32	252	0	640	696	0	668	56	80	0	10	32	0	0	0	0	0	0	0	0	2239	\$440,660.00	\$1,000.00	\$0.00	\$441,660.00
D.3 Marshall Street Channel Improvements																									
Roadway Design (Typ. Sections, Removals, P&P, Sign & Pav Mark, Cross Sections)		11		44	44		44														143	\$24,970.00			\$24,970.00
Drainage Design (DMAP, H&H Calcs, Storm P&P)		9		32	32		32														105	\$18,390.00			\$18,390.00
Erosion & Landscape (ECP, Tree Protection & Mitigation Sheets)		2		4	8		8														22	\$3,700.00			\$3,700.00
Sub-Total	0	22	0	80	84	0	84	0	0	0	0	0	0	0	0	0	0	0	0	0	270	\$47,060.00	\$0.00	\$0.00	\$47,060.00
Total	120	398	0	1205	1369	0	1247	56	80	0	18	56	0	0	0	0	0	0	0	0	4322	\$811,750.00	\$2,000.00	\$0.00	\$813,750.00
E. Final Design (90% & 100% Construction Plans)																									
E.1 Drainage Package																									
General Plan Production (Cover, Index, Gen Notes, Std Details, Layout & Control, Removals)	7	28		47	75		51					8	24								240	\$43,700.00			\$43,700.00
Traffic Control Plan (Sequence, Phasing, Detours)		12		24	24		24														84	\$15,000.00			\$15,000.00
Pavement Design (Typ. Sections, P&P, Sign & Pav Mark, Cross Sections)	8	11		36	44		43														142	\$25,310.00			\$25,310.00
Drainage Design (DMAP, H&H Calcs, Det. Calcs, Grading Storm P&P, Details)	30	35		278	344		269														956	\$167,230.00			\$167,230.00
Water Conflict/Relocation Plan Sheets	2			6	8		14														30	\$5,040.00			\$5,040.00
Sanitary Sewer Conflict/Relocation Plan Sheets	3			14	14		14														45	\$7,950.00			\$7,950.00
Erosion & Landscape (ECP, Tree Protection & Mitigation Sheets)	14	14		80	80		80														268	\$47,800.00			\$47,800.00
QA/QC & Submittal	24	24																			48	\$12,000.00	\$1,000.00		\$13,000.00
Sub-Total	88	124	0	485	589	0	495	0	0	0	8	24	0	0	0	0	0	0	0	0	1813	\$324,030.00	\$1,000.00	\$0.00	\$325,030.00
E.2 Streets Package																									
General Plan Production (Cover, Index, Gen Notes, Std Details, Layout & Control, Removals)		36		60	92		72					10	32								75	\$53,980.00			\$53,980.00
Traffic Control Plan (Sequence, Phasing, Detours)		56		80	64		64														264	\$48,880.00			\$48,880.00
Roadway Design (Typ. Sections, P&P, Sign & Pav Mark, Cross Sections)		70		208	212		204														694	\$122,260.00			\$122,260.00
Drainage Design (DMAP, H&H Calcs, Storm P&P)		24		144	152		152														472	\$81,360.00			\$81,360.00
Water Plan & Profiles		16		60	60		60														196	\$34,280.00			\$34,280.00
Sewer Plan & Profiles		12		40	40		40														132	\$23,160.00			\$23,160.00
Illumination Design	8							56	80												144	\$28,640.00			\$28,640.00
Erosion & Landscape (ECP, Tree Protection & Mitigation Sheets)		10		40	60		60														170	\$28,700.00			\$28,700.00
QA/QC & Submittal	24	24																			48	\$12,000.00	\$1,000.00		\$13,000.00
Sub-Total	32	248	0	632	680	0	652	56	80	0	10	32	0	0	0	0	0	0	0	0	2195	\$433,260.00	\$1,000.00	\$0.00	\$434,260.00
E.3 Marshall Street Channel Improvements																									
Roadway Design (Typ. Sections, Removals, P&P, Sign & Pav Mark, Cross Sections)		11		44	44		44														143	\$24,970.00			\$24,970.00
Drainage Design (DMAP, H&H Calcs, Storm P&P)		9		32	32		32														105	\$18,390.00			\$18,390.00
Erosion & Landscape (ECP, Tree Protection & Mitigation Sheets)		2		4	8		8														22	\$3,700.00			\$3,700.00
Sub-Total	0	22	0	80	84	0	84	0	0	0	0	0	0	0	0	0	0	0	0	0	270	\$47,060.00	\$0.00	\$0.00	\$47,060.00
Total	120	394	0	1197	1353	0	1231	56	80	0	18	56	0	0	0	0	0	0	0	0	4278	\$804,350.00	\$2,000.00	\$0.00	\$806,350.00
F. Bid Phase Services																									
F.1 Bid Phase Services																									
Bid Advertisement (up to 2)	8	8																			16	\$4,000.00			\$4,000.00
Bid Document Distribution	8	8																			16	\$4,000.00			\$4,000.00
Bidder Assistance	4	8		24	48		24														108	\$19,000.00			\$19,000.00
Bid Analysis and Recommendation of Award	8	8																			16	\$4,000.00			\$4,000.00
Conformed Construction Plans	4	4																			8				

Detailed Fee Breakdown

EXHIBIT B-1

Tasks	Hourly Rate (\$)	Sr. Project Manager	Project Manager	Sr. Civil Engineer	Civil Engineer	Graduate Engineer	Sr. Engineering Tech	Engineering Tech	Traffic Engineer	Traffic Graduate Engineer	Structural Engineer	Survey RPLS	Survey Tech	Research Manager	Researcher	Survey Field (Crew Chief)	Survey Field (Instrument Operator)	Sr. Env. Scientist	Env. Scientist	Admin	Total Hours	Labor Cost	Direct Cost	Sub Cost	Total (\$)
		\$270	\$230	\$260	\$210	\$160	\$180	\$140	\$230	\$170	\$240	\$270	\$175	\$160	\$95	\$130	\$90	\$220	\$130	\$105					
G. Construction Administration																									
G.1 Construction Administration																									
Pre-Construction Conference (up to 2)		8	8																		16	\$4,000.00			\$4,000.00
Site Visit (1 per month)			88		88																176	\$38,720.00	\$2,000.00		\$40,720.00
Construction Meetings (Conference Call Monthly)		22	22		22																66	\$15,620.00			\$15,620.00
Construction Meetings (Bi-Weekly In-Person)			180			80															260	\$54,200.00	\$3,400.00		\$57,600.00
Shop Drawing and Lab Report Review		8	16		16																40	\$9,200.00			\$9,200.00
Instruction to Contractor		8	32		64																104	\$22,960.00			\$22,960.00
Final Inspection		8	8		8	8															32	\$6,960.00	\$250.00		\$7,210.00
Record Drawings		2	8		8		8	16												4	46	\$8,160.00			\$8,160.00
Total		56	362	0	206	88	8	16	0	0	0	0	0	0	0	0	0	0	0	4	740	\$159,820.00	\$5,650.00	\$0.00	\$165,470.00
H. Field Investigations																									
H.1 Design Survey																									
Preparation and Posting Door Hanger Notification Letters			1									2		2	40					4	9	\$1,510.00	\$100.00		\$1,610.00
Research for Right-of-Way and Easements												8	40	16	40						104	\$15,520.00			\$15,520.00
Establish Horizontal and Vertical Control												16	24			54	54				148	\$20,400.00			\$20,400.00
Field Work for Design Survey												32	24			216	216				488	\$60,360.00	\$1,600.00		\$61,960.00
Data Reduction and Analysis												24	50								74	\$15,230.00			\$15,230.00
Design Survey Drafting												40	84								124	\$25,500.00			\$25,500.00
QA/QC Review												12	24			24	24				84	\$12,720.00			\$12,720.00
Sub-Total		0	1	0	0	0	0	0	0	0	0	134	246	18	40	294	294	0	0	4	1031	\$151,240.00	\$1,700.00	\$0.00	\$152,940.00
H.2 Environmental Investigations																									
Waters of the US Delineation			2															24	32		58	\$9,900.00	\$100.00		\$10,000.00
Phase 1 ESA			2															24	32		58	\$9,900.00	\$100.00		\$10,000.00
Environmentally Sensitive Areas Assessment			2															24	32		58	\$9,900.00	\$100.00		\$10,000.00
Protected Species Habitat Assessment			2															10	16		28	\$4,740.00	\$100.00		\$4,840.00
Cultural Resource Assessment			2															12	24		38	\$6,220.00			\$6,220.00
Sub-Total		0	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	94	136	0	240	\$40,660.00	\$400.00	\$0.00	\$41,060.00
H.3 Geotechnical Engineering																									
Pavement Improvements		2	4		4																10	\$2,300.00		\$27,945.00	\$30,245.00
Detention Pond and Embankment		2	4		4																10	\$2,300.00		\$29,785.00	\$32,085.00
Bridge Borings		2	4								8										14	\$3,380.00		\$9,200.00	\$12,580.00
Sub-Total		6	12	0	8	0	0	0	0	0	8	0	0	0	0	0	0	0	0	0	34	\$7,980.00	\$0.00	\$66,930.00	\$74,910.00
H.4 Subsurface Utility Engineering																									
Level B SUE		2	4		8																14	\$3,140.00		\$127,247.50	\$130,387.50
Level A SUE (Up to 20 Test Holes)																					0	\$0.00		\$32,775.00	\$32,775.00
Sub-Total		6	4	8	8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14	14	\$3,140.00	\$0.00	\$160,022.50	\$163,162.50
Total		12	27	8	16	0	0	0	0	0	8	134	246	18	40	294	294	94	136	18	1319	\$203,020.00	\$2,100.00	\$226,952.50	\$432,072.50
I. Permitting																									
I.1 Floodplain Permitting																									
Conditional Letter of Map Revision (CLOMR)		20	40			188		56													304	\$52,520.00			\$52,520.00
Submittal & Review Fee (CLOMR)																							\$6,500.00		\$6,500.00
Letter of Map Revision (LOMR)		24	48			188		56				2	4			24	24				370	\$61,960.00			\$61,960.00
Submittal & Review Fee (LOMR)																							\$8,000.00		\$8,000.00
Sub-Total		44	88	0	0	376	0	112	0	0	0	2	4	0	0	24	24	0	0	0	674	\$114,480.00	\$14,500.00	\$0.00	\$128,980.00
I.2 TCEQ Dam Safety Permitting		40			40	40															120	\$25,600.00			\$25,600.00
I.3 USACE Permitting																									
Nationwide Permit 43 - Detention Pond			8															60	80		148	\$25,440.00			\$25,440.00
Nationwide Permit - Channel Improvements			8															60	80		148	\$25,440.00			\$25,440.00
Sub-Total		0	16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	120	160	0	296	\$50,880.00	\$0.00	\$0.00	\$50,880.00
Total		84	104	0	40	416	0	112	0	0	0	2	4	0	0	24	24	120	160	0	1090	\$190,960.00	\$14,500.00	\$0.00	\$205,460.00
J. Right-of-Way & Easements																									
J.1 ROW & Easement Documents (up to 10)		12	12			12						24	40	8	16	8	8			2	142	\$26,170.00	\$100.00		\$26,270.00
J.2 ALTA Survey		4	8									12	24								48	\$10,360.00			\$10,360.00
J.3 Acquisition Services																									
Appraisal (\$3,500ea) (up to 10)																					0	\$0.00		\$40,250.00	\$40,250.00
Title (\$500ea) (up to 10)																					0	\$0.00		\$5,750.00	\$5,750.00
Initial Easement (\$2,750ea) (up to 10)																					0	\$0.00		\$31,625.00	\$31,625.00
Additional Easement (\$1,375ea) (up to 10)																					0	\$0.00		\$15,812.50	\$15,812.50
Eminent Domain Assistance (\$15,000ea) (up to 3)																					0	\$0.00		\$51,750.00	\$51,750.00
Sub-Total		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0.00	\$0.00	\$145,187.50	\$145,187.50
Total		16	20	0	0	12	0	0	0	0	0	36	64	8	16	8	8	0	0	2	190	\$36,530.00	\$100.00	\$145,187.50	\$181,817.50
K. Structural Design																									
K.1 Structural Design																							\$230,000.00	\$0.00	\$230,000.00
Total		0	284	0	0	842	0	200	0	0	0	0	0	0	0	0	0	0	0	0	1326	\$230,000.00	\$0.00	\$0.00	\$230,000.00
L. Texas Accessibility Standards (TAS)																									
L.1 TAS Review & Inspection		4	8		8	16															36	\$7,160.00		\$3,795.00	\$10,955.00
Total		4	8	0	8	16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	36	\$7,160.00	\$0.00	\$3,795.00	\$10,955.00
Totals		1,262	2,739	556	4,701	6,409	8	4,301	112	160	8	208	426	26	56	326	326	214	296	60	21,563	\$4,100,680.00	\$35,600.00	\$375,935.00	\$4,512,215.00
Percentage of Total Hours		5.9%	12.7%	2.6%	21.8%	29.7%	0.0%	19.9%	0.5%	0.7%	0.0%	1.0%	2.0%	0.1%	0.3%	1.5%	1.5%	1.0%	1.4%	0.3%	100.0%				

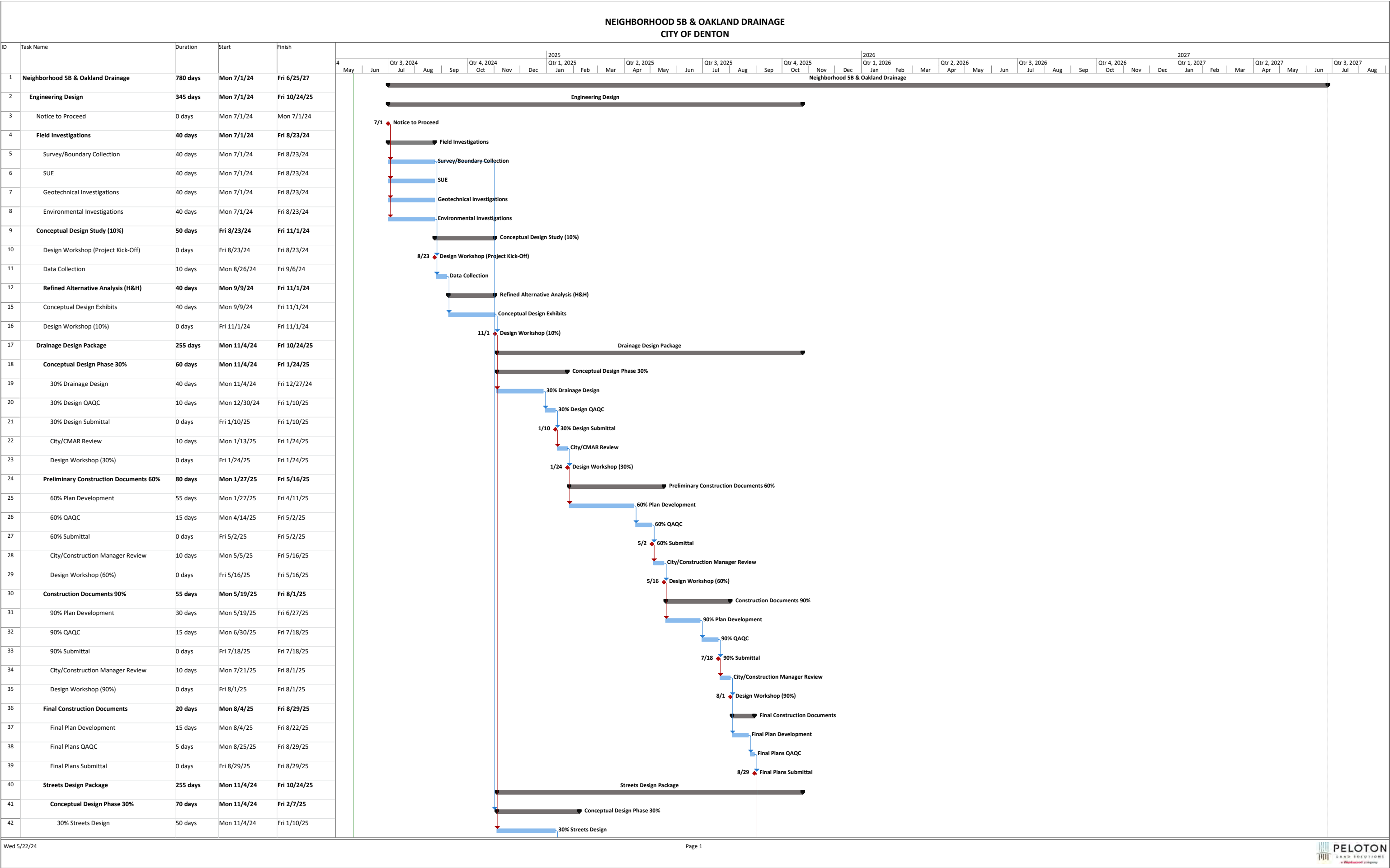


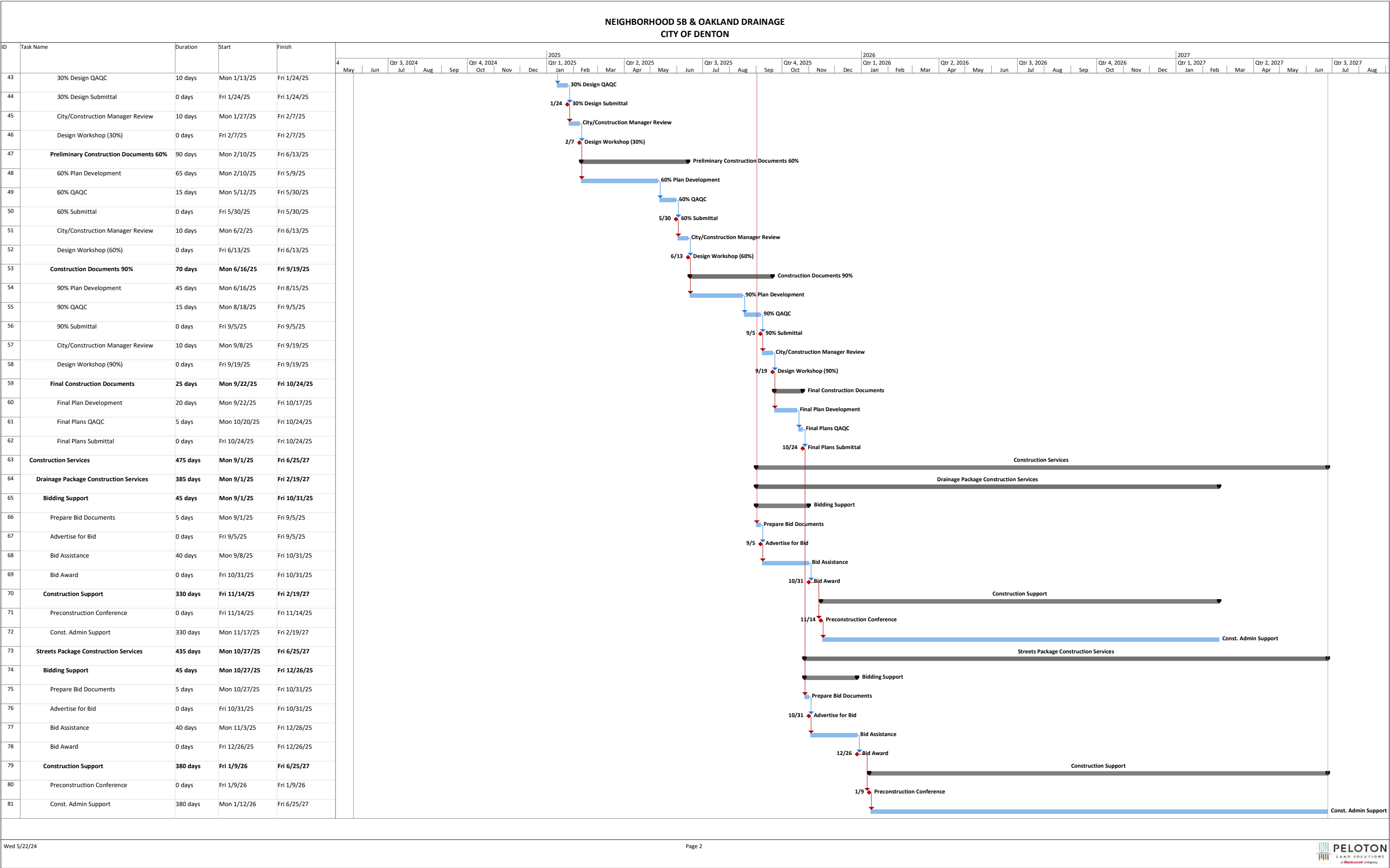
EXHIBIT 'B-2'
FEE SCHEDULE FOR PUBLIC INFRASTRUCTURE SERVICES

2024 – South

The following is the fee schedule for all work performed under an hourly agreement.

Classification	Hourly Rate
Survey Tech I – Survey Tech VI	\$125.00 – \$205.00
Survey Field I – Survey Field VII	\$70.00 – \$160.00
Graduate Surveyor I – Graduate Surveyor III	\$145.00 – \$175.00
Surveyor I – Surveyor VI	\$190.00 – \$265.00
Remote Sensing Field Tech I – Remote Sensing Field Tech VIII.....	\$105.00 – \$185.00
Remote Sensing Field Manager	\$200.00
Remote Sensing Tech I – Remote Sensing Tech V	\$130.00 – \$185.00
Remote Sensing Manager	\$215.00
Engineering Technician I – Engineering Tech VII	\$125.00 – \$200.00
Graduate Engineer I – Graduate Engineer IV	\$145.00 – \$185.00
Engineer I – Engineer VII	\$190.00 – \$270.00
Dust Monitor	\$75.00
Construction Observer I – Construction Observer V	\$115.00 – \$175.00
Environmental Scientist I – Environmental Scientist VIII	\$120.00 – \$240.00
Environmental Field I – Environmental Field III	\$80.00 – \$115.00
GIS I – GIS VIII	\$100.00 – \$205.00
Graduate Landscape Architect I – Graduate Landscape Architect III.....	\$120.00 – \$150.00
Landscape Architect I – Landscape Architect VI	\$155.00 – \$240.00
Project Processor I – Project Processor II.....	\$85.00 – \$95.00
Project Coordinator I – Project Coordinator II	\$130.00 – \$140.00
Senior Project Coordinator I – Senior Project Coordinator II	\$155.00 – \$175.00
Admin I – Admin V	\$85.00 – \$135.00
Intern I – Intern III	\$75.00 – \$105.00
Assistant Project Manager I – Assistant Project Manager III	\$180.00 – \$205.00
Project Manager I – Project Manager VII	\$ 195.00 – \$290.00
Expert Witness – Court Appearance/Deposition.....	2 x rate
Westwood Current™ (Geospatial Project Management Tool) Setup and Licensing	\$600.00+
Specialized Geospatial Equipment – Per Day Use	\$200.00 – \$3,000.00
Charges for Other Direct Costs, Outside Services, and facilities furnished by Westwood are computed on the basis of actual cost plus 15 percent.	







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.

westwood Professional Services, Inc. dba Peloton Land Solutions, Inc. a Westwood Company

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

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

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

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

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

Brian O'Neill

6/17/2024

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: 5D51E33D03F0495491E3968B00349482

Status: Sent

Subject: Please DocuSign: City Council Contract 8377-003 Neighborhood 5B & Oakland Drainage

Source Envelope:

Document Pages: 53

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Erica Garcia

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

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

erica.garcia@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

Holder: Erica Garcia

Location: DocuSign

6/17/2024 8:18:44 AM

erica.garcia@cityofdenton.com

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

Erica Garcia

Completed

Sent: 6/17/2024 8:21:26 AM

erica.garcia@cityofdenton.com

Viewed: 6/17/2024 8:21:34 AM

Senior Buyer

Signed: 6/17/2024 8:23:18 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 6/17/2024 8:23:21 AM

lori.hewell@cityofdenton.com

Viewed: 6/17/2024 8:48:29 AM

Purchasing Manager

Signed: 6/17/2024 8:48:39 AM

City of Denton

Signature Adoption: Pre-selected Style

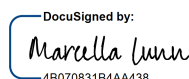
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Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 6/17/2024 8:48:42 AM

marcella.lunn@cityofdenton.com

Viewed: 6/17/2024 8:49:41 AM

Senior Deputy City Attorney

Signed: 6/17/2024 8:53:14 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

Brian Oneill



Sent: 6/17/2024 8:53:16 AM

brian.oneill@westwoodps.com

Viewed: 6/17/2024 9:02:34 AM

Senior Director, Public Infrastructure

Signed: 6/17/2024 3:45:20 PM

Security Level: Email, Account Authentication
(None)

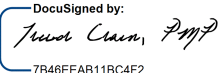
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Electronic Record and Signature Disclosure:

Accepted: 6/17/2024 9:02:34 AM

ID: 16e78909-e29d-4cb4-812b-537ea9b85e12

Signer Events	Signature	Timestamp
<p>Trevor Crain, PMP</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p>  <p>7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 6/17/2024 3:45:23 PM</p> <p>Viewed: 6/17/2024 3:47:57 PM</p> <p>Signed: 6/17/2024 3:48:39 PM</p>

Electronic Record and Signature Disclosure:
Accepted: 6/17/2024 3:47:57 PM
ID: c9abd392-e59f-4ed5-a4a4-4ed5171872a1

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

Sent: 6/17/2024 3:48:43 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley
sara.hensley@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lauren Thoden
lauren.thoden@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

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

COPIED

Sent: 6/17/2024 8:23:20 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Gretna Jones
gretna.jones@cityofdenton.com
Legal Secretary
City of Denton
Security Level: Email, Account Authentication (None)

COPIED

Sent: 6/17/2024 3:48:43 PM
Viewed: 6/18/2024 2:54:15 PM

Carbon Copy Events	Status	Timestamp
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Taylor Holt taylor.holt@cityofdenton.com Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Accepted: 6/4/2024 2:12:29 PM ID: 2a3a6d49-500d-4095-b744-3987eb5c8e5e		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/17/2024 8:21:26 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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



City of Denton

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

Legislation Text

File #: PUB24-133, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with ReSolved Energy Consulting, LLC, for the supply of Energy Management Office Regulatory Advisement Services for Denton Municipal Electric as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8392 - Professional Services Agreement for energy management office regulatory advisement services awarded to ReSolved Energy Consulting, LLC, in the three (3) year not-to-exceed amount of \$715,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: July 8, 2024

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 Professional Services Agreement with ReSolved Energy Consulting, LLC, for the supply of Energy Management Office Regulatory Advisement Services for Denton Municipal Electric as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8392 – Professional Services Agreement for energy management office regulatory advisement services awarded to ReSolved Energy Consulting, LLC, in the three (3) year not-to-exceed amount of \$715,000.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Foster Economic Opportunity and Affordability.

INFORMATION/BACKGROUND

Denton Municipal Electric (DME), the City of Denton's wholly owned electric utility, is operationally subject to regulations administered by several regulatory bodies and governments. These include but are not limited to the State of Texas, the Public Utility Commission of Texas (PUCT), the Electric Reliability Council of Texas (ERCOT), the Texas Department of Environmental Quality (TDEQ), the North American Reliability Corporation (NERC) and its regional entity, the Texas Reliability Entity (TRE).

In particular, the PUCT and the ERCOT have a direct hand in the Texas Electric market and how it operates. The market regulations, rules, and the interpretation of them by these organizations have potential financial impacts in the hundreds of millions of dollars.

ERCOT as an organization is stakeholder-based. DME is one of hundreds of stakeholders. ERCOT has several Boards, Committees, sub-committees, Working Groups, and Task Forces that all require the participation of market participants like DME. Some of the important meeting groups are the ERCOT Board, Technical Advisory Committee ("TAC"), Wholesale Market Subcommittee ("WMS"), and Protocol Revisions Subcommittee ("PRS"). These groups and others meet, discuss, deliberate, and vote on market rules and operational procedures that can have a direct financial impact on DME and its ratepayers.

Some of DME's Municipal Utility peers have several persons on their government affairs and regulatory staffs. DME has a comparatively small staff that cannot cover all of the meetings to provide stakeholder representation, nor does it have the capacity to participate in all market participant and stakeholder

discussions and considerations. To augment its staff, DME has utilized Austin-based consulting groups that attend most of the key ERCOT group meetings that DME cannot. This service provides valuable analysis and feedback on important regulations that are being developed in the lower working groups so that DME representatives can be engaged in informed participation when considering these new rule changes at the Subcommittee and Committee levels where DME has elected representation.

Similarly, the PUCT has several rulemaking, market design/operation, and transmission cost dockets filed throughout the year. Monitoring and communicating how these regulatory filings might impact DME is an important function that DME could not handle with its smaller staff. These dockets have strict response time windows that cannot be ignored, and it is important to be aware of them as soon as possible should a response be needed.

Without the utilization of outside regulatory consultants, DME will be less able to engage in the ERCOT and PUCT regulatory activities that have enormous potential financial impact on DME and its ratepayers.

Request for Qualifications (RFQ) for professional surveying services was sent to 1,651, prospective firms, including 83 Denton firms, for these services. In addition, the RFQ was placed on the Procurement website for prospective respondents to download, and advertised in the local newspaper. One (1) statement of qualifications (SOQ) was received. The SOQ was evaluated based on published criteria including identification and understanding of the City's requirements, past performance and experience, qualifications of key personnel, and schedule to complete tasks. Based upon this evaluation, the recommended award is to Resolved Energy Consulting, LLC, and is determined to be the most qualified firm for the City.

NIGP Code Used for Solicitation:	918, 925, 958, 961, 962, 963
Notifications sent for Solicitation sent in IonWave:	1,651
Number of Suppliers that viewed Solicitation in IonWave:	54
HUB-Historically Underutilized Business Invitations sent out:	199
SBE-Small Business Enterprise Invitations sent out:	651
Responses from Solicitation:	1

RECOMMENDATION

Award a contract with Resolved Energy Consulting, LLC, for the supply of Energy Management Office Regulatory Advisement Services for Denton Municipal Electric, in a three (3) year not-to-exceed amount of \$715,000.

PRINCIPAL PLACE OF BUSINESS

Resolved Energy Consulting, LLC
Austin, TX

ESTIMATED SCHEDULE OF PROJECT

This is a three (3) year contract.

FISCAL INFORMATION

The services will be funded from the DME project account 60003.7854.5750A. Requisition #163873 has been entered into the Purchasing software system in the amount of \$250,000. The budgeted amount for this item is \$715,000.

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: Stephen Johnson, 940-349-7516.

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH RESOLVED ENERGY CONSULTING, LLC, FOR THE SUPPLY OF ENERGY MANAGEMENT OFFICE REGULATORY ADVISEMENT SERVICES FOR DENTON MUNICIPAL ELECTRIC AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8392 – PROFESSIONAL SERVICES AGREEMENT FOR ENERGY MANAGEMENT OFFICE REGULATORY ADVISEMENT SERVICES AWARDED TO RESOLVED ENERGY CONSULTING, LLC, IN THE THREE (3) YEAR NOT-TO-EXCEED AMOUNT OF \$715,000.00).

WHEREAS, ReSolved Energy Consulting, LLC, the professional services provider (the “Provider”) set forth in this ordinance, is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

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

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is authorized to enter into the service contract attached hereto with ReSolved Energy Consulting, LLC, for the supply of Energy Management Office Regulatory Advisement Services for Denton Municipal Electric.

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

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

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

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

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

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

PASSED AND APPROVED this the _____ day of _____, 2024.

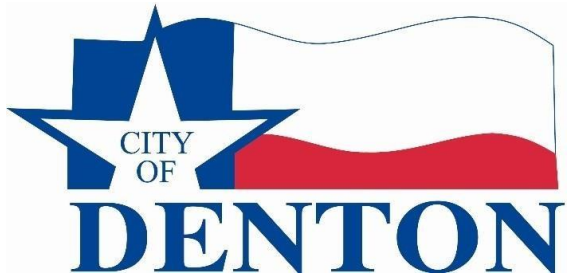
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

RFQ	8392
File Name	Regulatory Advisement Services
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND RESOLVED ENERGY CONSULTING, LLC
(CONTRACT 8392)**

THIS CONTRACT is made and entered into this date _____, by and between ReSolved Energy Consulting, LLC, a Texas limited liability company, whose address is 11044 Research Blvd., A420, Austin, Texas 78759, 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 8392 Energy Management Office (EMO) Regulatory Advisement Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's RFP 8392 (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Insurance Requirements (**Exhibit "D"**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit "E"**);
- (f) Contractor's 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

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

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, Supplier certifies that Supplier’s signature provides written verification to the City that Supplier, pursuant to Chapter 2252, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Termination Right for 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.

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

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

DME General Manager
TITLE
Electric
DEPARTMENT

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
BY: Marcella Lunn
4B070831B4AA438...

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

CONTRACTOR

DocuSigned by:
BY: Bill Starnes
AUTHORIZED SIGNATURE

Date: 5/30/2024

Printed Name: Bill Starnes

Title: vice-President

512-331-4949
PHONE NUMBER

bstarnes@RESOLVEDENERGY.COM
EMAIL ADDRESS

2024- 1136628
TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY
CITY MANAGER

Date: _____

Exhibit A

Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed \$715,000. Pricing shall be per Exhibit F attached.

2. Contract Terms

The contract term will be three (3) years, effective from date of award or notice to proceed 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.

3. 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.

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 noting the solicitation number.

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

4. 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.

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 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 Supplemental Terms and Conditions. Unless otherwise stated in the 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 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.

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 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

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

Contract # 8392

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 Respondent 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. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received

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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. The City may withhold or set off the entire payment or part of any payment otherwise due 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 damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with 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 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. 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 Contract # 8392

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: 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

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in the Solicitation, 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.

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, the warranty period shall be at least one 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.

22. WARRANTY – SERVICES: The Contractor warrants and represents that all services to be provided 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.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. 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

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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 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, 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 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.

28. TERMINATION WITHOUT CAUSE: The City shall have the right to terminate the Contract, in whole or in part, without cause 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 Contract # 8392

eCity 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.

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, 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, 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

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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 D** 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 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.

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.

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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 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. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

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) (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 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 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 38 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 38 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 37 above.

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 Contract # 8392

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 Contract # 8392

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
Contract # 8392

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 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.

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 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.

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".

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 Contract # 8392

supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

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 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 Respondent 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 Respondent 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: Respondent 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. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent 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 Respondent'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. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent 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 Respondent 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 Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use Contract # 8392

commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent 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.

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 Respondent 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 Respondent 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 Respondent 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.

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 documents**
- 3. City's standard terms and conditions**
- 4. Purchase order**
- 5. Supplier terms and conditions**

Exhibit D – 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:

1. 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.

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/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line.
(EX: **Contract 8392 – 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 F**FEES FOR SERVICES**

Professional and support services shall be billed at the following rates:

Title	Hourly Rate
Managing Director	\$280.00
Executive Consultant	\$260.00
Sr. Management Consultant	\$240.00
Management Consultant	\$220.00
Sr. Consultant	\$205.00
Consultant	\$190.00
Assistant Consultant	\$175.00
Technical Assistant	\$140.00
Research Assistant	\$110.00
Data Specialist	\$100.00
Administrative Assistant	\$ 75.00

The above rates shall be adjusted each year, commencing January 1, 2025, to reflect the change in rates officially established by ReSolved Energy Consulting.

Reproduction, printing, communications, computer services, and other miscellaneous support services shall be billed at rates for such services as determined from time to time and officially established by ReSolved Energy Consulting.

All travel, food, lodging, and other work-related expenses, except automobile mileage, associated with the provision of services hereunder shall be billed at cost. Automobile mileage shall be billed at the mileage rate as published by the Internal Revenue Service from time to time.

Client shall pay to ReSolved Energy Consulting any applicable sales tax, if in fact there is any sales tax lawfully owing, which arises from, and becomes due and owing regarding services performed by Resolved Energy Consulting.

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.RESOLVED ENERGY CONSULTING, LLC**2** ☐ Check this box if you are filing an update to a previously filed questionnaire.

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

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

Name of Officer

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** Bill [Signature]
Signature of vendor doing business with the governmental entity12/15/2023
Date

Certificate Of Completion

Envelope Id: F09F79AAC2EF44308C92BEAA789881B2

Status: Sent

Subject: Please DocuSign: City Council Contract 8392 Regulatory Advisement Services

Source Envelope:

Document Pages: 30

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelope 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

5/29/2024 9:59:56 AM

Christa.Christian@cityofdenton.com

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

Christa Christian

Completed

Sent: 5/29/2024 10:14:16 AM

christa.christian@cityofdenton.com

Viewed: 5/29/2024 10:14:27 AM

Purchasing Supervisor

Signed: 5/29/2024 10:14:37 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 5/29/2024 10:14:40 AM

lori.hewell@cityofdenton.com

Viewed: 5/29/2024 1:33:57 PM

Purchasing Manager

Signed: 5/29/2024 1:34:20 PM

City of Denton

Signature Adoption: Pre-selected Style

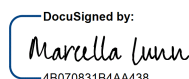
Security Level: Email, Account Authentication
(None)

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 5/29/2024 1:34:21 PM

marcella.lunn@cityofdenton.com

Viewed: 5/29/2024 5:35:54 PM

Senior Deputy City Attorney

Signed: 5/29/2024 5:39:00 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication
(None)

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Bill Starnes



Sent: 5/29/2024 5:39:04 PM

bstarnes@RESOLVEDENERGY.COM

Viewed: 5/30/2024 7:37:12 AM

Vice-President

Signed: 5/30/2024 7:54:44 AM

Security Level: Email, Account Authentication
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 23.126.222.129

Electronic Record and Signature Disclosure:

Accepted: 5/30/2024 7:37:12 AM

ID: 0c867403-6243-4322-bf8c-c9b2dc74ab1b

Signer Events	Signature	Timestamp
Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	<div>DocuSigned by: <i>Antonio Puente, Jr.</i> E3760944C2BF4B5...</div> Signature Adoption: Pre-selected Style Using IP Address: 47.184.67.14	Sent: 5/30/2024 7:54:47 AM Viewed: 5/30/2024 8:11:15 AM Signed: 5/30/2024 8:11:46 AM

Electronic Record and Signature Disclosure:
Accepted: 5/30/2024 8:11:15 AM
ID: ea553357-c3cf-4ea7-a45b-e7118054be48

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

Sent: 5/30/2024 8:11:49 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley
sara.hensley@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lauren Thoden
lauren.thoden@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Gretna Jones
gretna.jones@cityofdenton.com
Legal Secretary
City of Denton
Security Level: Email, Account Authentication (None)

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Stephen Johnson		
Stephen.Johnson@dmepower.com		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure:		
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To contact us by email send messages to: purchasing@cityofdenton.com

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

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

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

Required hardware and software

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

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

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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

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

Legislation Text

File #: PUB24-134, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Construction Manager at Risk contract with Sundt Construction, Inc., for pre-construction services of the Mingo Ruddell Roadway and Quiet Zone project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8490 - awarded to Sundt Construction, Inc., in the not-to-exceed amount of \$585,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: July 8, 2024

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 Construction Manager at Risk contract with Sundt Construction, Inc., for pre-construction services of the Mingo Ruddell Roadway and Quiet Zone project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8490 – awarded to Sundt Construction, Inc., in the not-to-exceed amount of \$585,000.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The Mingo Ruddell Roadway and Quiet Zone project is associated with the 2023 Bond Program located in the Texas Woman's University area and surrounding residential neighborhoods. The project scope includes approximately 15,500 linear feet of roadway reconstruction (to include storm drainage improvements and pedestrian/bicycle improvements); 8,600 linear feet of 6-inch through 12-inch water main replacement; 4,800 linear feet of 8-inch through 15-inch wastewater main replacement; drainage study; sidewalk enhancements; and various lighting improvements. In addition, there will be one (1) new railroad crossing for Ruddell Road at Union Pacific Railroad (UPRR) and six (6) existing railroad crossings to be either upgraded or closed to create the Mingo-Quiet Zone.

This project is being delivered as a Construction Manager at Risk (CM@R) project for horizontal construction. This delivery method leans heavily on collaboration among the City, the design engineer, and the CM@R during the design process to allow for the best schedule coordination, cost modeling, and community engagement.

The purpose of this contract is for Sundt Construction, Inc. to provide preconstruction services during the design phase for constructability review of the design as it is developed in collaboration with the City of Denton, and the design consultant Kimley-Horn and Associates, Inc. After the design is finalized, staff will request the Public Utilities Board and City Council to approve a subsequent contract with Sundt Construction, Inc. for construction phase services of Neighborhood 2 & 6.

Request for Proposals was sent to 613 prospective suppliers of this item. including 42 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Four (4) proposals were received, references were checked, and proposals

were evaluated based upon published criteria including qualifications and experience, project specific delivery approach, pre-construction phase services approach, safety, quality assurance and control, CMAR preconstruction fee, CMAR construction fee, and CMAR general conditions cost. Based upon this evaluation, Sundt Construction, Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	913 - (Service Only) - Construction Services, Heavy (Incl. Maintenance and Repair Services)
Notifications sent for Solicitation sent in IonWave:	613
Number of Suppliers that viewed Solicitation in IonWave:	14
HUB-Historically Underutilized Business Invitations sent out:	64
SBE-Small Business Enterprise Invitations sent out:	192
Responses from Solicitation:	4

RECOMMENDATION

Award a contract with Sundt Construction, Inc., for pre-construction services of the Mingo Ruddell Roadway and Quiet Zone project for the Capital Projects Department, in the not-to-exceed amount of \$585,000.

PRINCIPAL PLACE OF BUSINESS

Sundt Construction, Inc.
Irving, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval of the design and CM@R contracts with a projected completion date of Q4 2027, subject to change due to coordination with state and federal entities.

FISCAL INFORMATION

This contract will be funded from Streets/Traffic G.O. account 360180467.1360.21100. Requisition #165401 has been entered into the Purchasing software system in the amount of \$495,000. The budgeted amount for this item is \$585,000.

EXHIBITS

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

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

For information concerning this acquisition, contact: Tracy L. Beck, 940-349-8925.

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

Exhibit 2**RFP 8490 - Pricing Evaluation for CMAR for Mingo Ruddell Quiet Zones**

Respondent's Business Name:	Sundt Construction, Inc.	Archer Western Construction LLC	McCarthy Building Companies, Inc.	Flatiron Constructors Inc.
Principal Place of Business (City and State):	Irving, TX	Irving, TX	Dallas, TX	San Marcos, TX

Line #	Description				
1	CMAR COST PROPOSAL				
2	Total CMAR Pre-Construction Fee	\$585,000.00	\$1,245,962.00	\$569,166.00	\$749,471.31

Evaluation					
Item #	Scoring Criteria	Sundt Construction, Inc.	Archer Western Construction LLC	McCarthy Building Companies, Inc.	Flatiron Constructors Inc.
1	Qualification and Experience of the Firm - 20%	17.60	20.00	15.20	12.80
2	Project Specific Delivery Approach - 25%	22.00	21.00	19.00	16.00
3	Pre-Construction Phase Services Approach - 15%	13.80	12.60	11.40	11.40
4	Quality Assurance and Quality Control - 15%	13.20	11.40	10.80	10.20
5	Safety Questionnaire - 5%	3.80	4.20	4.20	3.40
6	CMAR Preconstruction Fee - 5%	4.87	2.28	5.00	3.80
7	CMAR Construction Fee - 10%	10.00	9.58	9.58	8.85
8	CMAR General Conditions Cost - 5%	4.71	2.05	5.00	4.45
Total Score:		89.98	83.12	80.18	70.90

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION MANAGER AT RISK CONTRACT WITH SUNDT CONSTRUCTION, INC., FOR PRE-CONSTRUCTION SERVICES OF THE MINGO RUDDELL ROADWAY AND QUIET ZONE PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8490 – AWARDED TO SUNDT CONSTRUCTION, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$585,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for pre-construction services of the Mingo Ruddell Roadway and Quiet Zone project for the Capital Projects 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>
8490	Sundt Construction, Inc.	\$585,000.00

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

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

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

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

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

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

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, 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 _____, 2024.

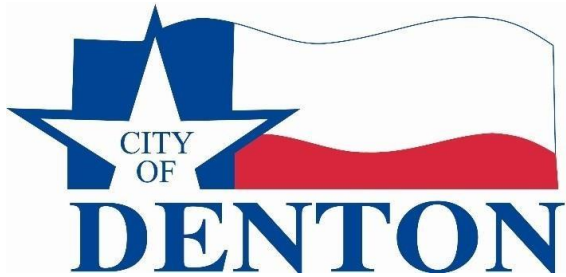
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

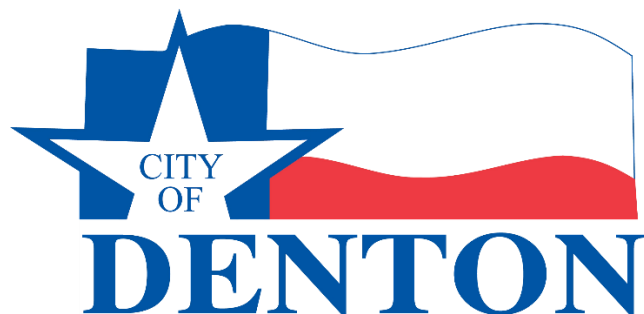
APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



Docusign City Council Transmittal Coversheet

RFP	8490
File Name	CMAR Pre-Construction Services for Mingo-Ruddell Quiet Zones
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	



CITY OF DENTON, TEXAS

CONSTRUCTION MANAGER AT RISK FOR MINGO RUDELL QUIET ZONES

**CONSTRUCTION MANAGER AT RISK
PRECONSTRUCTION PHASE SERVICES**

CONTRACT NO. 8490

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**CONSTRUCTION MANAGER AT RISK FOR MINGO RUDELL QUIET ZONES
CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES**

PROJECT NO. 240009

CONTRACT NO. 8490

THIS CONTRACT, made and entered into this by and between City of Denton, Texas, hereinafter designated the "CITY" and Sundt Construction, Inc., hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CM@Risk."

RECITALS

- A. The City Manager of the City of Denton, Texas, or an appointed designee, is authorized and empowered by provisions of the City Charter to execute contracts for professional services and construction services.
- B. The City intends to construct improvements for Mingo Road, Ruddell Street, and Mingo Road Quiet Zones as described in Exhibit A attached, hereinafter referred to as the "Project".
- C. To undertake the design of said Project the City has entered into a contract with Kimley-Horn and Associates, Inc., hereinafter referred to as the "Design Professional."
- D. The CM@Risk has represented to the City the ability to provide design phase services and to construct the Project.
- E. Based on this representation, the City intends to enter into a contract with the CM@Risk for the design phase services identified in this contract. At the end of the design phase, at the City's discretion, the City may enter into a separate construction contract with the CM@Risk for construction phase services.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM@Risk as follows:

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda - Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement (also known as the Contract) – This written document signed by the City and CM@Risk covering the Design Phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract. Notwithstanding the above, the Construction Phase Agreement is not made a part of this Contract.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce both first cost and operational costs while still delivering a quality and functional Project that meets City requirements.

Application for Payment – See definition for Payment Request.

Architect—The qualified, licensed person, firm or corporation who furnishes architectural services required for the Project.

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the City and CM@Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount (if any); the extent of the adjustment to the Contract Time (if any); and/or modifications of other contract terms.

City (Owner) - The City of Denton, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of Denton Development Services, Fire, Engineering, Facilities, Municipal Electric and Planning Departments or any other City department are not subject to the responsibilities of the City under this Agreement.

City's Designated Project Manager – The City of Denton representative who is designated as project manager for the Project.

Contract - Refers to this Agreement when used elsewhere in the Contract Documents.

Contract Documents - Refers to, without limitation, this Agreement, the Drawings and Specifications, Proposal Requests, formal Requests for Information, and other information as so defined elsewhere, or any documents that may be referenced and/or incorporated by reference into this Agreement, the Drawings and Specifications, Proposal Requests, or formal Requests for Information.

Construction Contract Time(s) - The number of days or the dates, as may be increased or decreased during the course of the Project, related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.

Construction Documents – The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

Construction Fee – The CM@Risk's administrative costs, home office overhead, and profit, whether at the CM@Risk's principal or branch offices, and other off-site costs.

Construction Manager at Risk (CM@Risk) – The firm, corporation, or other approved legal entity with whom the City has entered into this Contract.

Construction Management Plan – Formal documentation prepared and maintained by the CM@Risk describing the scope, process, sequence and duration of the activities to accomplish the Work within the Contract Time including but not limited to those items set forth in Section 2.2.

Construction Phase Agreement – The proposed Owner-CM@Risk Agreement to be used during construction, as mutually agreed to be modified before its use. It is provided for reference only, and is not made a part of this Contract.

Contingency, Preconstruction – A fund to cover cost growth during the Project before Notice to Proceed for Construction driven by discovery of scope items unknown at the outset of design; requirements of Authorities Having Jurisdiction (AHJs) over the Project; or similar changes during the Design Phase. When used, the amount of the Preconstruction Contingency will be negotiated as a separate line item in each GMP Proposal.

Contingency, Marketplace Risk – A fund to cover the costs of cost escalation, supply chain interruptions, and buyout decisions made for the City's benefit that may experience more marketplace uncertainty during the course of the Project. When used, the amount of the Marketplace Risk Contingency will be negotiated as a separate line item in each GMP Proposal.

Contingency, CM@Risk's – A fund to cover cost growth during the Project used at the discretion of the CM@Risk usually for costs that result from Project circumstances. The amount of the CM@Risk's Contingency will be negotiated as a separate line item in each GMP Proposal.

Contingency, Owner's – A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by the City and will be in addition to the project costs included in the CM@Risk's GMP Proposal.

Contract Amount – The cost for services for this Contract as identified in Article 4.

Contract Documents – means the following items and documents in descending order of precedence executed by the City and the CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

Contract Time(s) – The number of days or the dates stated in this Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Architect's or Engineer's written recommendation of final payment.

Control Estimate – Also referred to as a baseline cost model, an estimate provided by the CM@Risk on the basis of the design provided, typically at a major design deliverable, that serves as the basis for decision making about design progress and design requirements to the next major design deliverable.

Cost of the Work – The direct costs or stipulated rates necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by City), materials testing, General Conditions Costs, and related items. The Cost of the Work shall not include the CM@Risk's Construction Fee.

Critical Path Schedule – The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

Day – Calendar day unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CM@Risk in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by the CM@Risk during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Documents - Design Documents are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design Professional and their consultants under their respective professional services agreements. Design Documents may include, without limitation, the basis of design documents, studies, surveys, models, sketches, Drawings, Specifications, the Project Manual and other similar materials.

Design Professional – The qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project. The Design Professional may be the Engineer or the Architect for the Project, or other such similar licensed professional or firm.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and the City. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but *“not for construction”*. Shop Drawings are not Drawings as so defined.

Engineer —The qualified, licensed person, firm or corporation who furnishes engineering services required for the Project.

Float - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

General Conditions Costs – Includes but is not limited to the types of costs identified Exhibit Y - General Conditions Costs in the Construction Phase Agreement.

Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the Work, the CM@Risk's Construction Fee, and CM@Risk Contingency.

GMP Plans and Specifications – The plans and specifications provided pursuant to paragraph 2.6.5 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.

Laws and Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Milestones - A principal event in the performance of the Work that the Contract requires CM@Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

Notice of Intent to Award — The written notice by City to a respondent to the City's solicitation of the Project of City's intent to accept a certain respondent's proposal.

Notice to Proceed (NTP) Letter - A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this Contract.

Owner Activities – Activities required by the City staff, City vendors or other resources under the direct or indirect control of the City required for successful completion of the Project.

Payment Request (also known as an Application for Payment) - The form that is accepted by the City and used by the CM@Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the City.

Project - The complete and operational asset needed by the City, of which this Work is a part. The Work to be completed in the execution of this Contract as described in the Recitals above and Exhibit "A" attached is a key component of the Project, and its timely completion is essential to its operation.

Project Budget - The amount budgeted by the City for the Project, and which contains within it the budget for the Work of this Contract.

Project Schedule - A schedule, prepared and maintained by CM@Risk, describing the sequence and duration of the activities comprising the CM@Risk's plan to accomplish the Work within the Contract Times.

Project Team – Design phase services team consisting of the Design Professional, CM@Risk, City's Project Manager, City's Client Department representatives and other stakeholders who are responsible for making decisions regarding the Project.

Related Parties – For purposes of this Agreement, the term "Related Party" shall mean any party or entity related to or affiliated with the CM@Risk or in which the CM@Risk has direct or indirect ownership or control, including without limitation: (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager;

(2) any entity in which any stockholder in, or officer, director, partner or employee of, the CM@Risk or holds any entity owned by the Construction Manager has any direct or indirect interest in; (3) any party with an excess of ten percent (10%) interest in the CM@Risk in the aggregate; (4) any entity which has the right to control the business or affairs of the CM@Risk; or (5) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the CM@Risk.

Schedule of Values (SOV) – Document specified in the construction phase Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. All contingencies that are to be utilized during the Construction Phase Agreement shall receive a separate line item and shall be tracked throughout the Project. The SOV may or may not be output from the Project Schedule depending on whether the Project Schedule is cost-loaded or not.

Submittals - All drawings, diagrams, schedules, samples, and other materials specifically prepared for the Work by the CM@Risk or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Submittals are not Contract Documents.

Site – The land or premises on which the Project is located.

Specifications - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subconsultant - A person, firm or corporation having a contract with the CM@Risk at any tier to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor - An individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.7 of this Contract.

Substantial Completion - When the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by City Fire Marshall and local, state and other authorities having jurisdiction, unless such approval is not granted for reasons beyond CM@Risk's responsibility or control; (ii) all systems in place, functional, and displayed to the City or its representative; (iii) all materials and equipment installed; (iv) all systems reviewed and accepted by the Design Professional and City; (v) draft O&M manuals and record documents reviewed and accepted by the Design Professional and City; (vi) City operation and maintenance training complete and documented, if any; (vii) landscaping and site work; (viii) final cleaning; and (ix) other requirements that are specified in the Construction Contract. These generic conditions of Substantial Completion will be customized in the Owner-CM@R Construction Phase Agreement as mutually agreed to be applicable to the specific scope of the Work in that Contract. Those conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed letter pursuant to that Construction Phase contract.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CM@Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

Work – The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor, services and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

ARTICLE 2 – BASIC DESIGN PHASE SERVICES

2.1 GENERAL

- 2.1.1 The CM@Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City's Designated Project Manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Denton, Texas would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.
- 2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@Risk will provide to the City and Design Professional a written evaluation of the Project and Project Budget, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: The CM@Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.

- 2.1.4 The CM@Risk will provide design phase services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM@Risk, when requested by the City, will attend, make presentations, and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM@Risk will prepare a Construction Management Plan (CMP), which shall include the CM@Risk's professional opinions concerning: (a) safety and logistics planning and associated training requirements; (b) Project Milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project; (c) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities; (d) alternate strategies for fast-tracking and/or phasing the construction; (e) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction; (f) permitting strategy; (g) construction quality control; (h) a commissioning program; (i) the cost management plan, control estimates, schedule of values, and basis of the model; (j) information management systems; and, (k) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CM@Risk may add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional, or the CM@Risk; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way; (d) the fast-tracking if any of the construction, or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment (if any) and/or materials; and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, plan, coordinate, and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.
- 2.3.2 The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
 - 2.3.2.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
 - 2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities, with no constraints (only schedule logic) driving dates and the Critical Path.
 - 2.3.2.3 The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work. Further, activities shall be included for, without limitation, any and all City franchised or private utilities required to be temporarily or permanently demolished, relocated or installed; design, procurement, furnishing and installing of equipment, information technology systems, security systems, furnishings, and other City improvements (whether installed by the CM@Risk or the City) required for the Work to be completely functional as intended. These Owner Activities will be shown in the schedule with the appropriate precursor and successor activities necessary for monitoring and evaluating the progress of the Owner Activities
 - 2.3.2.4 The CPM diagram schedule shall be based upon activities which would coincide with the schedule of values, but the Project Schedule is not required to be cost-loaded.

- 2.3.2.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 2.3.2.6 The schedule shall show Milestones, including Milestones for all City-furnished information, utilities and improvements when those Milestones are interrelated with the CM@Risk activities.
- 2.3.2.7 The schedule shall include a critical path activity that reflects anticipated weather delays during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.
- 2.3.3 The Project Schedule shall consider the City's and the other stakeholders' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 2.3.4 Float time shall be as prescribed below:
 - 2.3.4.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
 - 2.3.4.2 The CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.
 - 2.3.4.3 Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 2.3.5 The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM@Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6 Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CM@Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.
- 2.4.2 The CM@Risk will recommend, in conjunction with the Project Team, those additional observations and testing of existing improvements; as well as environmental, surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM@Risk to construct the Project. Before initiating construction operations, the CM@Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the existing improvements and site condition information and data made available with the Construction Documents.
- 2.4.3 The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will familiarize itself with the evolving documents through the various design phases. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@Risk will furthermore maintain a project decision and trend log as design develops and advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.
- 2.4.4 The CM@Risk will routinely conduct constructability and biddability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of

Subcontractors and Suppliers.

- 2.4.4.1 Constructability Reviews: The CM@Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design are prepared to facilitate fabrication, transport and installation; (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions; (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable; and (g) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown, and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 2.4.4.2 Biddability Reviews: The CM@Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations; (c) Specifications include alternatives in the event a requirement cannot be met in the field; and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
- 2.4.4.3 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications, and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CM@Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.
- 2.4.5 Notification of Variance or Deficiency: It is the CM@Risk's responsibility to assist the Design Professional in ascertaining that, in the CM@Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project construction costs and operational costs, while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.
- 2.4.6.1 For major Alternative System Evaluations, the CM@Risk is encouraged to provide (1) a detailed description of the difference between the requirements of the current design and the proposed changes, and comparative advantages and disadvantages of each; (2) the impact of the proposal upon construction plus operational costs and the CM@Risk's schedule; (3) a list of the projects to the extent known, where the proposal was previously used in similar circumstances, and the owner's results of that experience; and (4) any other information reasonably necessary to fully evaluate the proposal.
- 2.4.6.2 One of the City's goals is an energy efficient, sustainable Project, and therefore the CM@Risk shall participate in interactive work sessions when scheduled by the Design Professional for the purpose of identifying the viable, environmentally responsible alternatives for the Work, evaluating the relative merits of each, and assisting the City with selecting the preferred alternative(s) to be incorporated into the Project.

2.5 COST ESTIMATES

- 2.5.1 CM@Risk will work with the Design Professional to provide an initial, baseline cost model/estimate for the project within forty-five (45) Days after NTP. Unless otherwise agreed by both parties, within fourteen (14) Days after receipt of the documents for the various phases of design/milestones shown in the most current Project Schedule, the CM@Risk shall provide a complete and detailed cost estimate and a written review of the documents. Each cost estimate should include all cost categories necessary for delivery of a fully functional Project except items agreed to be furnished and installed by the City, and the Owner's Contingency included in the GMP Proposal identified in Exhibit "C" attached. This estimate will be referred to as the Control Estimate. In addition, each Control Estimate shall include the following:
- 2.5.1.1 A list of all documents used in preparation of the Control Estimate, identified by title, date and originator;
- 2.5.1.2 A list of the clarifications and assumptions made by the CM@Risk in the preparation of the Control Estimate, including assumptions made, to supplement the information provided by Design Professional and contained in the Drawings and Specifications;

- 2.5.1.3 A summary of the estimated Cost of the Work organized by trade categories or systems (as mutually agreed in advance);
- 2.5.1.4 A summary report showing variances of the current summary line item totals from those in the previous Control Estimate (if any);
- 2.5.1.5 A detailed estimate of the Cost of the Work in the same format as the previous Control Estimate (if any); and
- 2.5.1.6 A detailed report showing variances of quantities, unit costs and line item totals from the previous Control Estimate (if any).
- 2.5.2 The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed Control Estimate for that phase of design. If no consensus is reached, the City will make the final determination. If any Control Estimate submitted to the City exceeds previously accepted Control Estimate, or the City's then current Project Budget, the CM@Risk shall make appropriate recommendations of methods and materials to the City and Design Professional that it can demonstrate will bring the project back in line with the Project Budget.
- 2.5.3 In between Control Estimates, the CM@Risk shall periodically provide a cost tracking report which identifies, by line item, the order of magnitude of cost impact(s) due to, without limitation, design development, value engineering, scope changes, or changes in the marketplace. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the trend changes in costs relative to the most recently approved Control Estimate and the City's budget.
- 2.5.4 If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon the latest Control Estimate and the most current CM@Risk's schedule to assist the City in the financing process.

2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

- 2.6.1 GMP Proposal Format and Timing
 - 2.6.1.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit "C" attached). CM@Risk must verify with the City the current Exhibit C requirements and procedures when entering into these services.
 - 2.6.1.2 The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CM@Risk will be based on and consistent with the most current Control Estimate and cost tracking report at the time of the request, and include updated information for any new clarifications or new assumptions upon which the GMP Proposal(s) are based.
- 2.6.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.
 - 2.6.2.1 The Cost of the Work is a fixed lump sum.
 - 2.6.2.2 The General Conditions Costs are a firm fixed lump sum amount included as a Cost of the Work and that will include bonds and insurance premiums based on the full contract price for construction.
 - 2.6.2.3 The Construction Fee is 5.75 % of the Cost of the Work.
 - 2.6.2.4 CM@Risk's Contingency is an amount the CM@Risk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission. Under no circumstance is the CM@Risk's Construction Contingency to be used by the Owner for increases in the scope, quality or quantity of the Work; nor by the CM@Risk for correcting nonconforming Work; Work items discovered during the Construction Phase not to be coordinated among the Subcontractor's scope of work due to an oversight of the CM@Risk; or similar CM@Risk's errors or omissions.
 - 2.6.2.5 Taxes, if applicable, are deemed to include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are included as a Cost of the Work.
- 2.6.3 Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@Risk, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@Risk at the time that Owner's Contingency is used.
- 2.6.4 GMPs are cumulative including CM@Risk Contingency. The amount of CM@Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@Risk's risk from that point in the project forward.
- 2.6.5 The CM@Risk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the

most current completed plans and specifications at that time. The CM@Risk shall provide a list of drawings and specifications upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications.

- 2.6.6 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.6.7 Allowances and/or CM@Risk's Contingency savings resulting from a lower actual project cost than anticipated by the CM@Risk remaining at the end of the project will revert to City.
- 2.6.7.1 GMP Proposal(s) Review and Approval
- 2.6.7.2 The CM@Risk will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of the statement of basis, the CM@Risk shall identify and justify any costs that are significantly different than the latest cost estimate provided by the CM@Risk. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.6.7.3 The City upon receipt of any GMP proposal from the CM@Risk, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.
- 2.6.7.4 If the CM@Risk GMP Proposal is greater than the independent third party or Design Professional's estimate, the City may require the CM@Risk to reconfirm its GMP Proposal. The CM@Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his GMP or present a report within seven days of a written request to the City identifying, explaining, and substantiating the differences. The CM@Risk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City. At that time, the City may do one of the following.
 - (a) Accept the CM@Risk original or revised GMP Proposal, if within the City's budget, without comment.
 - (b) Accept the CM@Risk original or revised GMP Proposal that exceeds the City's budget and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences.
 - (c) Reject the CM@Risk's original or revised GMP Proposal because it exceeds the City's budget, and/or the independent third parties or Design Professional's estimate, in which event, the City may terminate this Contract and/or elect to not enter into a separate contract with the CM@Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal.
- 2.6.7.5 If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

2.7 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 2.7.1 The selection of major Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CM@Risk. In any case, the CM@Risk is solely responsible for the performance of the selected Subcontractors/Suppliers.
- 2.7.1.1 The CM@Risk will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be pre-qualified by qualifications and competitive bid in accordance with Section 2.7.2 and subcontractor trades will not be pre-qualified through a formalized qualifications-based selection process (competitively bid only). The subcontractor selection plan must be consistent with the selection requirements included in this Contract and the provisions of Chapter 2269 of the Texas Government Code.
- 2.7.2 Selection by qualifications and competitive bid - The CM@Risk shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major Subconsultants and major Suppliers shall then be competitively bid to the prequalified Subcontractors. Competitive bids may occur prior to or after the GMP Proposal(s).
- 2.7.2.1 The CM@Risk will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CM@Risk may request approval by the City to submit less than three names. Without prior written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.

- 2.7.2.2 If the City objects to any nominated Subcontractor/Supplier or to any recommended self-performed Work bidding opportunities for good reason, the CM@Risk will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
- 2.7.2.3 The CM@Risk will advertise and distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.
- 2.7.2.4 If the CM@Risk or a Related Party desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CM@Risk's bid will be due to the City one full business day before the date and time specified for the other subcontractors' bids to be due, and then evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule and/or cost, or if a Subcontractor is terminated the CM@Risk may self-perform Work without re-bidding the Work.
- 2.7.2.5 If after the CM@Risk having followed the stipulations in this Agreement, any of the costs to be reimbursed are contemplated to arise from a transaction between the CM@Risk and a Related Party, the CM@Risk shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the CM@Risk shall procure the Work, equipment, goods, or service, from the Related Party, as a Subcontractor. If the Owner fails to authorize the transaction in writing, the CM@Risk shall procure the Work, equipment, goods, or service from some person or entity other than a Related Party.
- 2.7.2.6 The CM@Risk shall request the pre-qualified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead or the CM@Risk's bid form, shall contain sufficient information (i.e. assumptions, clarifications, exclusions and/or unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CM@Risk shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CM@Risk, in addition to bid price, may consider the following factors: past performance on similar projects, financial soundness; qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the City Representative in attendance to observe and witness the process. The CM@Risk will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
- 2.7.2.7 Any portion of the CM@Risk's evaluation of Subcontractor and supplier bids by the CM@Risk may be attended by the Design Professional and City, at their option, and they will be given complete access to all aspects of the process. Such participation by the Design Professional and City, or their receipt of copies of Subcontractors' and suppliers' bids and proposals shall not impose any burden of review or analysis on them or relieve the CM@Risk of its sole responsibility for the CM@Risk's, Subcontractors' and suppliers' performance under this Agreement.
- 2.7.3 The CM@Risk will be required to prepare two different reports on the subcontracting process.
- 2.7.3.1 Within fifteen Days after each major Subcontractor/Supplier bid opening process, the CM@Risk will prepare a report for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each Subcontractor, and (d) trade work and its cost that the CM@Risk intends to self-perform, if any.
- 2.7.3.2 Upon completion of the Subcontractor/Supplier bidding process, the CM@Risk shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received, and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- 2.7.4 The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 2.7.5 If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor or Supplier, preferably, if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the City, the CM@Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.
- 2.7.6 Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CM@Risk and other Project Team members. At the pre-award conference, the CM@Risk will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CM@Risk's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CM@Risk Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date

of commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

ARTICLE 3 – PERIOD OF SERVICES

- 3.1 The design phase services described in this Contract will be performed by CM@Risk in accordance with the most current update/revised Project Schedule. Failure on the part of the CM@Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.
- 3.1.1 Upon failure to adhere to the approved schedule, City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Denton time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 Based on the design phase services fee proposal submitted by the CM@Risk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CM@Risk a lump sum fee in the amount of \$495,000.00.

Additional services and allowances, as described in subsection 4.3: \$90,000

Total Contract Amount, not to exceed, **\$585,000**

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CM@Risk for design phase services will be submitted in a form acceptable to the City and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.
- 4.2.2 The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 10 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay more than 95 percent of the Contract Amount until final acceptance of all design phase services, and award of the final approved GMP for the entire Project by City Council.
- 4.2.3 **THE CM@RISK AGREES THAT NO CHARGES OR CLAIMS FOR COSTS OR DAMAGES OF ANY TYPE WILL BE MADE BY IT FOR ANY DELAYS OR HINDRANCES BEYOND THE REASONABLE CONTROL OF THE CITY DURING THE PROGRESS OF ANY PORTION OF THE SERVICES SPECIFIED IN THIS CONTRACT. SUCH DELAYS OR HINDRANCES, IF ANY, WILL BE SOLELY COMPENSATED FOR BY AN EXTENSION OF TIME FOR SUCH REASONABLE PERIOD AS MAY BE MUTUALLY AGREED BETWEEN THE PARTIES. IT IS UNDERSTOOD AND AGREED, HOWEVER, THAT PERMITTING THE CM@RISK TO PROCEED TO COMPLETE ANY SERVICES, IN WHOLE OR IN PART AFTER THE DATE TO WHICH THE TIME OF COMPLETION MAY HAVE BEEN EXTENDED, WILL IN NO WAY ACT AS A WAIVER ON THE PART OF THE CITY OF ANY OF ITS LEGAL RIGHTS HEREIN.**
- 4.2.4 If any service(s) executed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL DESIGN PHASE SERVICES

- 4.3.1 The following additional services may be required for the successful completion of this Project. If approved by the City, the project may be broken into multiple GMP's. The cost for additional services required for multiple GMP's will be a lump sum fee in the amount of \$90,000.00 for each additional GMP package. CM@Risk recognizes that City might have to obtain City Council approval for additional amounts.
- 4.3.2 If additional services are not used, remaining funds will revert back to the City.

ARTICLE 5 - CITY'S RESPONSIBILITIES

- 5.1 The City, at no cost to the CM@Risk, will furnish the following information:
 - 5.1.1 One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
 - 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
 - 5.1.3 The name of the City employee or City's representative who will serve as the Project Manager during the term of this Contract. The Project Manager has the authority to administer this Contract and will monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.
- 5.2 The City additionally will:
 - 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@Risk for its information. The CM@Risk will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.
 - 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk except for those copies whose cost has been reimbursed by the City.
 - 5.2.3 Provide the CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project.
 - 5.2.4 Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.
 - 5.2.5 Notify the CM@Risk of changes affecting the budget allocations or schedule.
- 5.3 The City's Project Manager will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the City's Project Manager deems appropriate to the CM@Risk.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, Computer Aided Drafting and Design (CADD) digital files, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the City agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Project Documents.
- 6.1.2 CM@Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@Risk, but will remain available for use by the City for this Project under the terms of this Contract.
- 6.1.3 License to City for Reasonable Use: The CM@Risk hereby grants, and will require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Documents, then paragraph 6.1.1 applies.
- 6.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@Risk and its Subconsultants will endorse by a Texas professional seal all plans, works, and Deliverables prepared by them for this Contract.

6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

- 6.2.1 The CM@Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own

expense correct its work or Deliverables. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the CM@Risk to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CM@Risk in Denton, Texas would exercise under similar conditions. The fact that the City has accepted or approved the CM@Risk's work or Deliverables will in no way relieve the CM@Risk of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design Professional.

6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 In the event an alteration or modification in the character of Work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the Work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified Work begins, a Change Order or amendment will be approved and executed by the City and the CM@Risk. Such Change Order or amendment will not be effective until approved by the City.
- 6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.
- 6.3.3 No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole jeopardy, cost, and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

6.4 DATA CONFIDENTIALITY

- 6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence, and any other similar documents or information prepared by or obtained by the CM@Risk in the performance of this Contract.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract is confidential and proprietary information belonging to the City to the extent allowed by Texas law.
- 6.4.3 The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
 - 6.4.3.1 Data which was known to the CM@Risk prior to its performance under this Contract unless such data was acquired in connection with work performed for the City.
 - 6.4.3.2 Data which was acquired by the CM@Risk in its performance under this Contract and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or
 - 6.4.3.3 Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court, including but not limited to the Texas Public Information Act, Texas Government Code Chapter 552.
- 6.4.4 In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other contract with the City, the CM@Risk will first notify the City as set forth in this Article of the request or demand for the data. The CM@Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.
- 6.4.5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the City. All data will continue to be subject to the confidentiality agreements of this Contract.
- 6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

- 6.5.1 Prior to the start of any work or Deliverable under this Contract, the CM@Risk will submit to the City, an organization chart

for the CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@Risk desires to change such key personnel from performing such services under this Contract, the CM@Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

- 6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

6.6 INDEPENDENT CONTRACTOR

- 6.6.1 The CM@Risk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

6.7 SUBCONSULTANTS

- 6.7.1 Prior to beginning the work or Deliverable, the CM@Risk will furnish the City for approval, the names of all Subconsultants, if any, to be used on this Project. Subsequent changes are subject to the approval of the City.

6.8 TERMINATION

- 6.8.1 At the time of City Council has authorized all construction phase services for this Project, this Preconstruction Phase Contract shall terminate.
- 6.8.2 The City and the CM@Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@Risk.
- 6.8.3 In the event the City abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.
- 6.8.4 The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.
- 6.8.5 The CM@Risk will appraise the work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CM@Risk's work or Deliverable to appraise the work completed.
- 6.8.6 The CM@Risk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable costs and expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract and will be an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty Days after the CM@Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTES

- 6.9.1 In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the City Manager or their designee.

6.10 WITHHOLDING PAYMENT

- 6.10.1 The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CM@Risk, until such time that a settlement on those claims has been reached.

6.11 RECORDS/AUDIT

- 6.11.1 Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project, and records of accounts between the City and CM@Risk will be kept on a generally recognized accounting basis and shall be available

for up to three years following final completion of the Project. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.

- 6.11.2 The CM@Risk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

6.12 INDEMNIFICATION

CM@RISK AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF DENTON, ITS OFFICERS, AGENTS AND EMPLOYEES, AND ANY JURISDICTION OR AGENCY ISSUING PERMITS FOR ANY WORK INCLUDED IN THE PROJECT, THEIR OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, (HEREINAFTER REFERRED TO AS "INDEMNITEES", FROM ALL SUITS AND CLAIMS, INCLUDING ATTORNEY'S FEES AND COST OF LITIGATION, ACTIONS, LOSS, DAMAGE, EXPENSE, COST OR CLAIMS OF ANY CHARACTER OR ANY NATURE ARISING OUT OF THE WORK DONE IN FULFILLMENT OF THE TERMS OF THE CONTRACT DOCUMENTS OR ON ACCOUNT OF ANY ACT, CLAIM OR AMOUNT ARISING OR RECOVERED UNDER WORKER'S COMPENSATION LAW OR ARISING OUT OF THE FAILURE OF THE CM@RISK, ITS OFFICERS, EMPLOYEES, AGENTS, OR ITS SUBCONTRACTORS OR THE SUBCONTRACTORS' OFFICERS, EMPLOYEES OR AGENTS, TO CONFORM TO ANY STATUTES, ORDINANCES, REGULATION, LAW OR COURT DECREE. IT IS AGREED THAT THE CM@RISK WILL BE RESPONSIBLE FOR PRIMARY LOSS INVESTIGATION, DEFENSE, AND JUDGMENT COSTS WHERE THIS INDEMNIFICATION PROVISION APPLIES. IN CONSIDERATION OF THE AWARD OF THIS CONTRACT, THE CM@RISK AGREES TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST THE CITY, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FOR LOSSES ARISING FROM THE WORK PERFORMED BY THE CM@RISK, ITS OFFICERS, EMPLOYEES, AGENTS, OR ITS SUBCONTRACTORS OR THE SUBCONTRACTORS' OFFICERS, EMPLOYEES OR AGENTS, OR ITS SUBCONTRACTORS FOR THE CITY. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EXCEPT TO THE EXTENT THAT THE DAMAGES BEING SOUGHT WERE CAUSED, IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE AND WILLFUL MISCONDUCT OF THE CITY.

6.13 NOTICES

- 6.13.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	City of Denton Purchasing Manager – File 8490 901B Texas Street Denton, TX 76201
To CM@Risk	Sundt Construction, Inc. Jeff Grigsby 8445 Freeport Parkway Suite 240 Irving, TX 75063
Copy to: Design Professional (if applicable)	Kimley-Horn and Associates, Inc. Abhishek Acharya, P.E. (TX, MA), PTOE 801 Cherry Street, Suite 1300, Unit 11 Fort Worth, TX 76102

Or to other such place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

6.14 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

- 6.14.1 The CM@Risk will comply with the provisions of this Contract, pertaining to discrimination and accepting applications or hiring employees. The CM@Risk will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. The CM@Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action will include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract. The CM@Risk further agrees that this clause will be incorporated in all Subcontracts, and Subconsultants and Suppliers contracts associated with the Project and entered into by the CM@Risk.

6.15 COMPLIANCE WITH FEDERAL LAWS

- 6.15.1 The CM@Risk understands and acknowledges the applicability of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these and all laws in performing this Contract and to permit the City to verify such compliance.

6.16 CONFLICT OF INTEREST

- 6.16.1 To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Denton
Attn: Purchasing Manager – Contract 8490
Purchasing
901B Texas Street
Denton, TX 76209

- 6.16.2 Actions considered to be adverse to the City under this Contract include but are not limited to:

- (a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City.
- (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
- (c) Using data to produce income for the CM@Risk or its employees independently of performing the services under this Contract, without the prior written consent of the City.

- 6.16.3 The CM@Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CM@Risk under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.

- 6.16.4 The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

6.17 CONTRACTOR'S LICENSE

- 6.17.1 Prior to award of the Contract, the CM@Risk must provide to the City's Project Manager, its Contractor's License Classification and number, if any, and its Federal Tax I.D. number.

6.18 SUCCESSORS AND ASSIGNS

- 6.18.1 The City and the CM@Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CM@Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

6.19 FORCE MAJEURE

- 6.19 The City of Denton, the CM@Risk, and any Subcontractors shall not be responsible for performance under this 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, the CM@Risk, and any Subcontractors. In the event of an occurrence under this Section, the City of Denton, the CM@Risk, and any Subcontractors will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the City of Denton, the CM@Risk, and any Subcontractors continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The CM@Risk and any Subcontractors shall immediately notify the City of Denton Project Manager by telephone (such telephone notice to be confirmed in writing within two (2) calendar days of the inception of such occurrence). A detailed report describing at a reasonable level of detail the circumstances causing the non-performance or delay in performance shall follow not later than five (5) calendar days from the first telephone notice to the City.

6.20 COVENANT AGAINST CONTINGENT FEES

- 6.20.1 The CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Denton has any interest, financially, or otherwise, in the firm. The City of Denton will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

6.21 NON-WAIVER PROVISION

- 6.21.1 The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

6.22 JURISDICTION

- 6.22.1 This Contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Texas, without regard to the conflicts or choice of law provisions thereof. Under the provisions of Chapter 272 of the Texas Local Government Code, the City has waived its immunity by entering into this Contract. However, the City's sovereign immunity is waived only to the extent set forth by statute. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought and tried in the State District Courts located in Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court.

6.23 SURVIVAL

- 6.23.1 All warranties, representations, and indemnifications by the CM@Risk will survive the completion or termination of this Contract.

6.24 MODIFICATION

- 6.24.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

6.25 SEVERABILITY

- 6.25.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be

enforceable to the fullest extent permitted by law.

6.26 INTEGRATION

- 6.26.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

6.27 TIME IS OF THE ESSENCE

- 6.27.1 Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

6.28 THIRD PARTY BENEFICIARY

- 6.28.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM@Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM@Risk and not for the benefit of any other party.

6.29 COOPERATION AND FURTHER DOCUMENTATION

- 6.29.1 The CM@Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

6.30 CONFLICT IN LANGUAGE

- 6.30.1 All work or Deliverables performed will conform to all applicable City of Denton codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

6.31 CITY'S RIGHT OF CANCELLATION

- 6.31.1 All parties hereto acknowledge that this Contract is subject to cancellation by the City of Denton pursuant to the provisions of Texas Local Government Code Chapters 252 and 272, Texas Government Code Chapter 2269, and the general laws of the State of Texas.

6.32 CONFIDENTIALITY OF PLANS & SPECIFICATIONS

- 6.32.1 Any plans or specifications received by the CM@Risk regarding this project are for official use only. The CM@Risk may not share them with others except as required to fulfill contract obligations with the City of Denton.

- 6.32.2 Any plans the CM@Risk generates must include the following statement in the Title Block on every page: "These plans are for Official use only and may not be shared with others except as required to fulfill the obligations of CM@Risk's contract with the City of Denton. This document must be kept secure at all times."

- 6.33 **Immigration Nationality Act.** CM@Risk 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, CM@Risk shall provide City with copies of all I-9 forms and supporting eligibility documentation for each CM@Risk employee who performs work under this Agreement. CM@Risk 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 CM@Risk employee who is not legally eligible to perform such services. **CM@RISK SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CM@Risk's EMPLOYEES.** City, upon written notice to CM@Risk, shall have the right to immediately terminate this Agreement for violations of this provision by CM@Risk.

- 6.34 **Prohibition on Contracts with Companies Boycotting Israel.** CM@Risk 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, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (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.

- 6.35 **Prohibition on Contracts with Companies Boycotting Certain Energy Companies.** CM@Risk acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. **By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (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.

- 6.36 **Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations.** CM@Risk 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, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (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.
- 6.37 **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, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk, 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.
- 6.38 **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.

ARTICLE 7 – INSURANCE REQUIREMENTS

The CM@Risk, Subcontractors and Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CM@Risk, its agents, representatives, employees, or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the work under this Contract by the CM@Risk, his agents, representative, employees, or Subconsultants. CM@Risk is free to purchase such additional insurance as may be determined necessary.

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

7.1.1 CM@Risk will provide coverage at least as broad and with limits of liability not less than those stated below.

7.1.1.1 Commercial General Liability-Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- (a) The policy shall be endorsed to include the following additional insured language: "The City of Denton shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk". Policy shall contain waiver of subrogation against the City of Denton.

7.1.1.2 Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
-----------------------------	-------------

- (a) The policy shall be endorsed to include the following additional insured language: "The City of Denton shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk", including automobiles owned, leased or hired or borrowed by the CM@Risk".

7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

- (a) Policy shall contain waiver of subrogation against the City of Denton.

7.2 ADDITIONAL INSURANCE REQUIREMENTS

- 7.2.1 The policies shall include, or be endorsed to include, the following provisions.

- 7.2.2 The CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

- 7.2.3 Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Contract.

7.2.4 PROFESSIONAL LIABILITY INSURANCE

If CONTRACTOR, SUBCONTRACTOR, or SUBCONSULTANT is a licensed or certified person who renders professional services, then Professional Liability Insurance to provide coverage against any claim which the CONTRACTOR, SUBCONTRACTOR, or SUBCONSULTANT 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.

7.3 SUBCONSULTANT INSURANCE

- 7.3.1 CM@Risk's certificate(s) shall include all subcontractors as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the CM@Risk.

7.4 NOTICE OF CANCELLATION

- 7.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent by certified mail, return receipt requested and sent directly to the City's Purchasing Manager at:

City of Denton
Attn: Purchasing Manager – Contract 8490
Purchasing
901B Texas Street
Denton, TX 76209

7.5 ACCEPTABILITY OF INSURERS

- 7.5.1 Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Texas, and with an "A.M. Best" rating of not less than A-. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

7.6 VERIFICATION OF COVERAGE

- 7.6.1 The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

- 7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

- 7.6.3 All certificates required by this Contract will be sent directly to the Engineering and Architectural Services Department Contracts Administration Section contracts officer for this Project. The City project/contract number and project description

shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

7.7 APPROVAL

7.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the Law Department, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on _____.

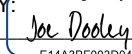
CITY OF DENTON, TEXAS

BY: _____

Printed Name

Title

CM@Risk

BY: DocuSigned by:


E14A3BF003D04A2...
Joe Dooley

Printed Name
Senior Vice President

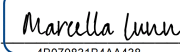
Title
2024-1175526

Texas Ethics Commission
Certificate Number

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
BY: 
4B070831B4AA438...

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

DocuSigned by:
 Trevor Crain
SIGNATURE PRINTED NAME

Director of Capital Projects
TITLE

Capital Projects
DEPARTMENT

EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the design phase service services specified in this Contract are to be performed:

Improvements to Mingo Road, Ruddell Street, and multiple UPRR crossings to increase safety and operations along Mingo Road and Ruddell Street; provide walkability to Texas Woman's University, Downtown City of Denton, and DCTA; extend Ruddell Street to the south and create a new crossing with UPRR; and create a quiet zone compliant section along Mingo Road. The following is a summary of key scope items:

1. Ruddell Street Improvements (by TWU) (approximately 2,100 LF)
 - Limits: From US 380 To Mingo Road
 - Proposing 3-lane roadway north of Mingo (one lane each direction with center turn lane)
 - Bike & pedestrian infrastructure
 - Street lighting
 - Replace aging utilities (Ruddell and Mingo combined = 8,600 LF of 6" thru 12" water main and 4,800 LF of 8" thru 15" wastewater main replacement)
 - Alignment with 2022 Mobility Plan update
 - Confirm no Drainage issues
2. Ruddell Street Extension/UPRR Crossing (by Service Center) (approx. 2,000 LF)
 - Extension of Ruddell Street with a new alignment crossing UPRR south of Mingo
 - New traffic signal at the intersection of Mingo and Ruddell
 - Bike & pedestrian infrastructure crossing UPRR
 - Street lighting
 - Replace/Relocate aging utilities
 - Alignment with 2022 Mobility Plan update
 - Address drainage coming to the new Ruddell Street extension and outfall
3. Mingo Road Improvements (approximately 11,200 LF)
 - 3-lane roadway (one lane each direction with center turn lane)
 - Bike & pedestrian infrastructure
 - Installation of a drainage system. Mingo Road will need parallel drainage system and cross drainage structures.
 - Street lighting
 - Replacement of aging utilities
 - Alignment with 2022 Mobility Plan update
 - Alignment with 2022 Parks, Recreation, and Trails System Master Plan
4. Mingo Quiet Zones
 - Quiet Zone implementation at UPRR crossings along Mingo Road from Mockingbird to Frame St.
 - Includes new lights, gates, raised medians, traffic signal preemption
 - Bike & pedestrian infrastructure crossing UPRR
 - Quiet Zone Locations:
 - a. Mockingbird Lane
 - b. Private Crossing
 - c. Nottingham Drive
 - d. Pertain Street (Close as needed)
 - e. Ruddell Street (New)
 - f. Willis Street (Close as needed)
 - g. Frame Street

EXHIBIT B – HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM@Risk and its Subconsultants follow and are based on the approved proposal submitted to the City.

LIST OF CLASSIFICATIONS:

<u>Classification</u>	<u>Direct Labor Rate</u>	<u>Total Labor Rate</u>
Project Manager	\$139.24	\$148.91
Precon Services Lead	\$184.27	\$197.07
Lead Estimator	\$136.41	\$145.89
Lead Scheduler	\$122.34	\$130.84
Senior Estimator	\$127.98	\$136.87

EXHIBIT C – SUBMITTAL REQUIREMENTS FOR THE GMP**GMP submittal, one copy for review.**

One printed, signed original copy and a digital copy in searchable PDF format will be requested by the City of Denton prior to contract execution.

Table of Contents:

1. Scope of Work
 2. Summary of the GMP
 3. Schedule of Values – summary spreadsheet and backup documents
 4. List of Plans and Specifications used for GMP Proposal
 5. List of clarification and assumptions
 6. Project Schedule
1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that the CM@Risk and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
 2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

The general conditions fee includes bond and insurance cost. All costs should be listed individually for future use.

PROJECT #:**DATE:****PROJECT NAME:**

GMP Summary					AMOUNT
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)				\$
B.	CM@Risk's Contingency				\$
C.	Additional Marketplace Risk Contingency				\$
INDIRECT COSTS					RATE
D.	Construction Fee				% \$
E.	General Conditions				\$
	E1	Payment and Performance Bond	\$		
	E2	Insurance	\$		
	E3	Two Year Maintenance Bond	\$		
				G. TOTAL GMP	\$
				H. Owner's Contingency	\$
I. Contract Amount					\$

Substantial Completion **XXX** **Calendar Days**

Final Completion **XXX** **Calendar Days**

(Do not acquire bond or insurance until notified by the City of Denton Project Manager.)

3. Schedule of Values – Spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM@Risk's construction phase fee. The supporting documents for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification s and assumptions used for each of the particular bid item listed on the schedule of values, if applicable.
4. A final variance report shall also be provided, showing the delta between the CM@Risk's most recent Control Estimate and the proposed GMP items a level of detail acceptable to the City and their consultants.
5. A final variance report shall also be provided, showing the delta between the CM@Risk's most recent Control Estimate and the proposed GMP items a level of detail acceptable to the City and their consultants.
6. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CM@Risk, Design Consultant, and Project Manager using the format below.

Plans Used For Preparation of GMP No.	
CM@Risk	Date
Design Consultant	Date
Project Manager	Date

7. A list of the clarifications and assumptions made by the CM@Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.
8. A Critical Path Method (CPM) diagram construction schedule.
9. The CM@Risk shall provide any of the above submittals in their native file format (e.g. .docx, .xls, .xer, etc.) before GMP approval, when requested by the City or their consultants.
10. The CM@Risk shall provide any of the above submittals in their native file format (e.g. .docx, .xls, .xer, etc.) before GMP approval, when requested by the City or their consultants.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final GMP submittal will consist of the following:

1. One printed copy of the GMP and one digital copy in searchable PDF format.
2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Professional, CM@Risk and City's Project Manager).

For questions regarding the submittal requirements, please contact City of Denton Project Manager.

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.

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

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

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

5 DocuSigned by:

Joe Dooley

6/18/2024

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

- (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
- (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: BD2BBF8CACFE464FA312AC93DBDFEDF0

Status: Sent

Subject: Please DocuSign: City Council Contract 8490 CMAR for Mingo Ruddell Quiet Zones

Source Envelope:

Document Pages: 32

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

Holder: Cori Power

Location: DocuSign

6/17/2024 8:01:32 AM

cori.power@cityofdenton.com

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

Cori Power

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cori.power@cityofdenton.com

Viewed: 6/17/2024 8:47:01 AM

Purchasing Supervisor

Signed: 6/17/2024 8:47:39 AM

City of Denton

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Security Level: Email, Account Authentication
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Lori Hewell



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lori.hewell@cityofdenton.com

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Purchasing Manager

Signed: 6/17/2024 8:49:41 AM

City of Denton

Signature Adoption: Pre-selected Style

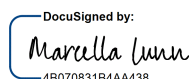
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(None)

Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:

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Marcella Lunn



Sent: 6/17/2024 8:49:46 AM

marcella.lunn@cityofdenton.com

Viewed: 6/17/2024 11:55:18 AM

Senior Deputy City Attorney

Signed: 6/17/2024 11:59:08 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:

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Joe Dooley



Sent: 6/17/2024 11:59:12 AM

jeddooley@sundt.com

Viewed: 6/18/2024 11:09:27 AM

Senior Vice President

Signed: 6/18/2024 11:25:12 AM

Security Level: Email, Account Authentication
(None), Login with SSO

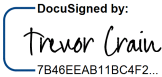
Signature Adoption: Pre-selected Style

Using IP Address: 155.190.8.4

Electronic Record and Signature Disclosure:

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Signer Events	Signature	Timestamp
<p>Trevor Crain</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p>  <p>7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 6/18/2024 11:25:17 AM</p> <p>Viewed: 6/18/2024 1:05:09 PM</p> <p>Signed: 6/18/2024 1:05:36 PM</p>

Electronic Record and Signature Disclosure:
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<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	Sent: 6/18/2024 1:05:40 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley

sara.hensley@cityofdenton.com

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lauren Thoden

lauren.thoden@cityofdenton.com

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Procurement Administration Supervisor</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<div>COPIED</div>	Sent: 6/17/2024 8:47:43 AM
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<p>Gretna Jones</p> <p>gretna.jones@cityofdenton.com</p> <p>Legal Secretary</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<div>COPIED</div>	<p>Sent: 6/18/2024 1:05:40 PM</p> <p>Viewed: 6/18/2024 4:32:24 PM</p>
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Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	6/17/2024 8:46:48 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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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.

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Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

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To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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



City of Denton

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

Legislation Text

File #: PUB24-141, **Version:** 1

AGENDA CAPTION

Consider approval of the June 24, 2024 minutes.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
June 24, 2024

After determining that a quorum was present of the Public Utilities Board of the City of Denton, convened in a Regular Meeting on Monday, June 24, 2024, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Lee Riback, Thomas Plock, and Aaron Newquist

Also present: Assistant City Manager Christine Taylor and Deputy City Attorney Susan Keller

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

There were no presentations from the public.

2. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB24-123 Consider approval of the June 10, 2024 minutes.

Board Member Taylor moved to recommend adoption of agenda item 2A. Motion seconded by Board Member Rayner; motion carried.

YES (7): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Lee Riback, Thomas Plock, and Aaron Newquist

NO (0):

B. PUB24-124 Management Reports

1. Future Agenda Items
2. New Business Action Items

3. CONCLUDING ITEMS

None

WORK SESSION

A. PUB24-015 Receive a report, hold a discussion, and give staff direction regarding the Fiscal Year 2024-25 preliminary utility forecasts for Solid Waste, Water, Wastewater/Drainage, Electric and Customer Service.

Matt Hamilton started the presentation. There were questions by the Board Members that Brian Boerner, Terry Naulty, Crista Foster and Kyle Pedigo answered.

CLOSED MEETING

A. PUB24-122 Deliberations Regarding Certain Public Power Utilities: Competitive Matters – Under Texas Government Code Section 551.086.

Receive information from staff regarding financial matters regarding the Denton Municipal Electric FY 2023-24 and 2024-25 operating and capital budgets to the extent such projects are confidential under Texas Government Code Section 551.086; discuss, deliberate, and provide direction to staff regarding same.

There was no closed meeting.

With no further business, the meeting was adjourned at 10:17 AM.

SUSAN PARKER
CHAIR
CITY OF DENTON, TEXAS

KIM MANKIN
ADMIN MANAGER
CITY OF DENTON, TEXAS

Minutes approved on: July 8, 2024.



City of Denton

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

Legislation Text

File #: PUB24-138, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, Texas establishing the schedule of rates for electric service to be effective August 1, 2024, and adjusting the energy cost adjustment (ECA) rate to reflect actual ECA revenues, expenses and forecast; providing severability and repealer clauses; and providing an effective date.



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Cassey Ogden

DATE: July 8, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, Texas establishing the schedule of rates for electric service to be effective August 1, 2024, and adjusting the energy cost adjustment (ECA) rate to reflect actual ECA revenues, expenses and forecast; providing severability and repealer clauses; and providing an effective date.

INFORMATION/BACKGROUND

Consistent with Ordinance 24-463, approved by City Council on March 19, 2024, DME has assessed the adequacy of the current ECA rate of \$.0447 cents/kWh to maintain an ECA account balance over the next five months between +/- \$5 million. That analysis projects at the current ECA rate of \$.0447 cents/kWh, the ECA account balance will exceed the lower limit of negative \$5 million without a modest increase. The ECA is a direct pass through of purchase power expenses incurred by DME to serve all customers. Consistent with the ECA rate schedule, DME and the Finance & Accounting departments will review the ECA balance and rates again in September 2024 and recommend any required adjustments.

RECOMMENDATION

DME General Manager and Finance recommends adoption and approval of the Ordinance increasing the Energy Cost Adjustment rate to \$.0515 cents effective August 1, 2024.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Rate Ordinance Redline
- Exhibit 3: Ordinance
- Exhibit 4: Presentation

Respectfully submitted:
Jessica Williams
Chief Financial Officer

Prepared By:
Vis Bouaphanthavong
Assistant Director of Finance

SCHEDULE ECA

ENERGY COST ADJUSTMENT

(Effective ~~08~~/01/24)

Deleted: 04

The Energy Cost Adjustment (ECA) Rate shall be set to recover the net cost of energy delivered to Customers and to maintain the City's electric utility in a financially sound position.

NET MONTHLY RATE

(1) **Energy Cost Adjustment Charge** **\$0~~.05~~15 per kWh**

Deleted: 0447

ENERGY COST ADJUSTMENT BALANCING ACCOUNT CALCULATION

The ECA Balancing Account shall be calculated using the following formula:

$$\text{ECA Balancing Account} = (\text{Beginning ECA Account Balance}) - (\text{Projected Net Energy Cost})$$

Where:

Projected Net Energy Cost = For the next fiscal quarter, the electric utility's projected cost of electric load purchases from ERCOT plus all projected electric utility power/energy related costs for that same period including, but not limited to, power production (excluding the Denton Energy Center debt); purchased power; applicable transmission services, losses and congestion; other ERCOT charges; renewable energy credits; and financial and/or physical power/energy trades (including natural gas); less all projected revenue to be received by the electric utility for power/energy related sales and/or trades.

ENERGY COST ADJUSTMENT CALCULATION

$$\text{ECA} = [(\text{Projected Net Energy Cost}) - (\text{ECA Balancing Account})] / (\text{Projected kWh sales})$$

ENERGY COST ADJUSTMENT CHARGE

The Energy Cost Adjustment Charge shall be based on actual kWh consumption during the billing period. Energy Cost Adjustment Charge = kWh × ECA Rate

The General Manager of the City's electric utility or their designee shall calculate the ECA Balancing Account monthly. In the event that the ECA Balancing Account calculated during the last month of each fiscal quarter (December, March, June, and September) is projected to be over/under collected by \$5,000,000 or more during the next two quarters, the General Manager or their designee may recommend to the PUB and City Council a revision to the ECA to maintain the City's electric utility in a financially sound position. Any change to the ECA will be placed on the City Council's consent agenda.

ORDINANCE NO. 24-_____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS ESTABLISHING THE SCHEDULE OF RATES FOR ELECTRIC SERVICE TO BE EFFECTIVE AUGUST 1, 2024, AND ADJUSTING THE ENERGY COST ADJUSTMENT (ECA) RATE TO REFLECT ACTUAL ECA REVENUES, EXPENSES, AND FORECAST; PROVIDING SEVERABILITY AND REPEALER CLAUSES, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton (“City”) owns and operates an electric utility which provides electric energy and related services to all customers of Denton Municipal Electric;

WHEREAS, a Schedule of Rates was adopted on September 23, 2023 effective October 1, 2023;

WHEREAS, the Energy Cost Adjustment (ECA) rate that is applicable to all DME customers is designed to pass through the cost of purchased power incurred to meet the electric demands of DME customers;

WHEREAS, a new Schedule of Rates with an amended Energy Cost Adjustment (ECA) rate was approved on March 19, 2024 with an amended ECA rate to be effective April 1, 2024;

WHEREAS, the wholesale price of electric energy in the ERCOT market has increased and is forecasted to remain at elevated levels relative to historical prices;

WHEREAS, pursuant to the Denton City Council approved ECA rate, the ECA account balance is targeted to remain within +/- \$5 million; and

WHEREAS, without an adjustment to the ECA rate, the ECA account balance would exceed the lower limit of the target. NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations contained in the preamble of this ordinance are incorporated herein by reference as findings of the City Council.

SECTION 2. The City Manager is hereby authorized to expend funds to authorize credits to Customers on their electric service bills and further to authorize cash incentives for the installation of photovoltaic systems in accordance with the form and type set forth in Schedule GIP, as the installation of energy efficient upgrades is in the best interest of the City, as such will reduce energy demand and consumption, reduce the peak load of the City’s electric system, reduce emissions in the state, and promote energy conservation, which are all public purposes of the City.

SECTION 3. The City Council approves a new Energy Cost Adjustment (ECA) of \$.0515 per kilowatt-hour.

SECTION 4. A new Schedule of Rates for electrical services as provided for in Chapter 26 of the City of Denton Code of Ordinances is attached hereto as Exhibit A, incorporated herein in its entirety, and is hereby adopted.

SECTION 5. Ordinance Number 24-463 is hereby repealed effective August 1, 2024.

SECTION 6. If any section, subsection, paragraph, sentence, clause, phrase or word in this ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas, hereby declares it would have enacted such remaining portions despite any such invalidity.

SECTION 7. All ordinances or parts of ordinances in force when the provisions of this ordinance became effective which are inconsistent, or in conflict with the terms or provisions contained in this ordinance are hereby repealed to the extent of any such conflict. For the avoidance of doubt, any previous electric service rate ordinances are hereby repealed in their entirety.

SECTION 8. This ordinance and the rates herein adopted shall become effective, charged, and applied to all electric services rendered by the City, and all energy usage by Customers of the City effective with the first billing issued on and after August 1, 2024; and a copy of said rates shall be maintained on file in the Office of the City Secretary of the City of Denton, Texas.

The motion to approve this ordinance was made by [_____] and seconded by [_____].

The ordinance was passed and approved by the following vote [__ – __ – __]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, 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 _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Susan Keller

ELECTRIC RATE SCHEDULES

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RES Residential Service	2
GS General Service Small	4
GM General Service Medium	6
GL General Service Large	8
TG General Service Time Of Use	10
GOS Local Government Service Small	12
GOM Local Government Service Medium	14
GOL Local Government Service Large	16
T1 Temporary Service	18
AF Athletic Field	20
LS Street Lighting	22
LT Traffic Lighting	23
UFL Unmetered School Zone/Crossing Flashers	24
USC Unmetered Security Camera	25
UWF Unmetered Wi-Fi Devices	26
LO Other Lighting	27
DD Security Lighting	28
DSL Non-Standard Street Lighting	30
EGR Economic Growth Rider	32
GIP GreenSense Incentive Program	34
ECA Energy Cost Adjustment	35
RCA Renewable Cost Adjustment	37
TCRF Transmission Cost Recovery Factor	38
DGR Distributed Generation From Renewable Sources Rider	40
SFR Special Facilities Rider	42
PAF Pole Attachment Fee	43
BIF Banner Install Fee	45
WNA Wireless Node Attachments	46
EVCR Electric Vehicle Charging Rate	48

RESIDENTIAL ELECTRIC SERVICE
(Effective 08/01/24)

APPLICATION

Applicable to any Customer for all electric service used for residential purposes in an individual private dwelling or an individually metered apartment, supplied at one point of delivery and measured through one meter. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1)	Facility Charge	Per Bill
	Single-Phase Service (R2)	\$ 8.67
	Three-Phase Service (R2)	\$17.33
	Prepaid Service (P2)	\$16.02

plus;

(2)	Usage Charge	Per kWh
	Winter (Billing months of November through April):	
	Tier 1: First 600 kWh	\$0.0684
	Tier 2: Additional kWh	\$0.0455
	Summer (Billing months of May through October):	
	Tier 1: All kWh	\$0.0684

plus;

(3)	Energy Cost Adjustment Charge	See Schedule ECA
-----	-------------------------------	------------------

plus;

(4)	Transmission Cost Recovery Factor	See Schedule TCRF
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MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge as a minimum, regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

Winter (Billing months of November through April):

$$\text{Usage Charge} = \begin{array}{l} \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{array}$$

Summer (Billing months of May through October):

$$\text{Usage Charge} = \text{All kWh} \times \text{Tier 1 Rate per kWh}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GS

GENERAL SERVICE SMALL
(Effective 08/01/24)

APPLICATION

Applicable to any commercial customer having a maximum demand of less than 21 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand is equal to or exceeds 21 kW in two consecutive months, account will be adjusted to bill under General Service Medium (GM) and the Customer must remain on the GSM rate for a minimum of twelve (12) billing periods. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

	(1) Facility Charge	Per Bill
	Single-Phase	\$16.60
	Three-Phase	\$22.17
plus;		
	(2) Usage Charge	Per kWh
	Tier 1: First 2,500 kWh	\$0.0852
	Tier 2: Additional kWh	\$0.0446
plus;		
	(3) Energy Cost Adjustment Charge	See Schedule ECA
plus;		
	(4) Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge as a minimum, regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned}\text{Usage Charge} = & \quad \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \quad \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable}\end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GM

GENERAL SERVICE MEDIUM
(Effective 08/01/24)

APPLICATION

Applicable to any commercial customer having a maximum demand that meets or exceeds 21 kW but less than 240 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand is equal to or exceeds 240 kW in two consecutive months, account will be adjusted to bill under General Service Large (GSL), and the Customer must remain on the GSL rate for a minimum of twelve (12) billing periods.

Applicable to GSM Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(GM2)**

Applicable to GSM Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(GM3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

plus;	(1)	Facility Charge	Per Bill
		Single-Phase	\$16.60
		Three-Phase	\$22.17
plus;	(2)	Demand Charge	Per kW
		All kW	\$4.78
	(3)	Usage Charge	Per kWh
plus;	GM	Tier 1: First 6,000 kWh	\$0.0523
		Tier 2: Additional kWh	\$0.0432
	GM2	Tier 1: First 6,000 kWh	\$0.0513
		Tier 2: Additional kWh	\$0.0422
	GM3	Tier 1: First 6,000 kWh	\$0.0493
		Tier 2: Additional kWh	\$0.0402

plus;	(4) Energy Cost Adjustment Charge	See Schedule ECA
	(5) Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) the actual monthly kW demand as measured during the fifteen (15) minute period of maximum use each month; or (2) 21 kW; or (3) seventy percent (70%) of the maximum monthly actual demand for any month during the previous billing months of May through October in the twelve (12) months ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned} \text{Usage Charge} = & \quad \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \quad \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GL

GENERAL SERVICE LARGE
(Effective 08/01/24)

APPLICATION

Applicable to any commercial customer having a minimum demand of 240 kW for all electric service supplied at one point of delivery and measured through one meter. Customers who elect to discontinue service under this Rate are ineligible for service under this Rate for twelve (12) months.

Applicable to GSL Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(GL2)**

Applicable to GSL Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(GL3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1) Facility Charge		Per Bill
Three-Phase		\$69.06
plus;		
(2) Demand Charge		Per kVA
All kVA		\$10.80
plus;		
(3) Usage Charge		Per kWh
GL	Tier 1: First 200,000 kWh	\$0.0245
	Tier 2: Additional kWh	\$0.0140
GL2	Tier 1: First 200,000 kWh	\$0.0235
	Tier 2: Additional kWh	\$0.0130
GL3	Tier 1: First 200,000 kWh	\$0.0215
	Tier 2: Additional kWh	\$0.0110
plus;		

plus;	(4) Energy Cost Adjustment Charge	See Schedule ECA
	(5) Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) the actual monthly kVA demand as measured during the fifteen (15) minute period of maximum use each month; or (2) 250 kVA; or (3) seventy percent (70%) of the maximum monthly kVA actual demand for any month during the previous billing months of May through October in the twelve (12) month period ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned} \text{Usage Charge} = & \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE TG

GENERAL SERVICE TIME OF USE
(Effective 08/01/24)

APPLICATION

Applicable to any Customer having a minimum demand of 240 kW for all electric service supplied at one point of delivery and measured through one meter. Customers electing this Rate must remain on this Rate for a minimum of twelve (12) continuous billing months. If the Customer is new or does not have a history of on-peak use for June through September, and elects to accept service on the TGS Rate, the Customer's demand shall be billed at the GSL Demand Rate until the Customer establishes a separate on-peak and off-peak demand during an on-peak month.

Applicable to TGS Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(TG2)**

Applicable to TGS Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(TG3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1) Facility Charge		Per Bill
Three-Phase		\$80.54
plus;		
(2) Demand Charge		Per kVA
On-Peak		\$13.76
Off-Peak		\$ 2.72
plus;		
(3) Usage Charge		Per kWh
TG	All kWh	\$0.0082
TG2	All kWh	\$0.0072
TG3	All kWh	\$0.0052
plus;		

- plus;
- | | | |
|-----|--|--------------------------|
| (5) | Energy Cost Adjustment Charge | See Schedule ECA |
| (6) | Transmission Cost Recovery Factor | See Schedule TCRF |

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the On-Peak and Off-Peak Demand Charges, regardless of actual energy usage.

DEFINITION OF TIME OF USE HOURS

The City's on-peak hours, for the purpose of this rate schedule, are designated as being from 2:00 P.M. to 7:00 P.M. each Monday through Friday, for the months of June through September excluding Independence Day and Labor Day. The City's on-peak hours may be changed from time to time.

The City's off-peak hours, for the purpose of this rate schedule, shall be all hours not designated as on-peak hours.

DETERMINATION OF DEMAND

On-Peak Demand Charge for the billing period shall be the greater of: (1) the kVA actual demand supplied during the fifteen (15) minute period of maximum use each month during on-peak hours as recorded by the City's demand meter; or (2) 250 kVA; or (3) one hundred percent (100%) of the actual maximum on-peak demand similarly determined during the billing months of June through September in the twelve (12) months immediately preceding the current month. The On-Peak Demand Charge will be applied to each billing period.

Off-Peak Demand Charge for the billing period shall be the greater of: (1) the kVA actual demand supplied during the fifteen (15) minute period of maximum use each month during on-peak hours as recorded by the City's demand meter; or (2) 250 kVA. The Off-Peak Demand Charge will be applied to each billing period.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \text{All kWh} \times \text{Rate per kWh}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GOS

LOCAL GOVERNMENT SERVICE SMALL (Effective 08/01/24)

APPLICATION

Applicable to any local City, County or School District customer having a maximum demand of less than 21 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand equals or exceeds 21 kW in two consecutive months, account will be adjusted to bill under Local Government Service Medium (GOM), and the Customer must remain on the GOM Rate for a minimum of twelve (12) billing periods. This Rate is not applicable to resale service in any event, or to temporary, standby or supplementary service.

NET MONTHLY RATE

	(1) Facility Charge	Per Bill
	Single-Phase	\$16.60
	Three-Phase	\$22.17
plus;		
	(2) Usage Charge	Per kWh
	Tier 1: First 2,500 kWh	\$0.0852
	Tier 2: Additional kWh	\$0.0446
plus;		
	(3) Energy Cost Adjustment Charge	See Schedule ECA
plus;		
	(4) Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge as a minimum, regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \text{All kWh} \times \text{Rate per kWh}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE GOM

LOCAL GOVERNMENT SERVICE MEDIUM
(Effective 08/01/24)

APPLICATION

Applicable to any local City, County, or School District customer having a maximum demand that meets or exceeds 21 kW but less than 240 kW in each of the previous twelve (12) months for all electric service supplied at one point of delivery and measured through one meter. If the demand is equal to or exceeds 240 kW in two consecutive months, account will be adjusted to bill under Local Government Service Large (GOL), and the customer must remain on the GOL rate for a minimum of twelve (12) billing periods. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

NET MONTHLY RATE

plus;	(1)	Facility Charge	Per Bill
		Single-Phase	\$16.60
		Three-Phase	\$22.17
plus;	(2)	Demand Charge	Per kW
		All kW	\$4.78
	(3)	Usage Charge	Per kWh
plus;		Tier 1: First 6,000 kWh	\$0.0523
		Tier 2: Additional kWh	\$0.0432
	(4)	Energy Cost Adjustment Charge	See Schedule ECA
plus;	(5)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) The actual kW demand supplied during the fifteen (15) minute period of maximum use each month; or (2) fifty percent (50%) of the maximum monthly actual demand for any month during the previous billing months of May through October in the twelve (12) months ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \begin{array}{l} \text{kWh in Tier 1 kWh} \times \text{Rate per kWh} \\ \text{kWh in Tier 2 kWh} \times \text{Rate per kWh, if applicable} \end{array}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

The due date for the payment of the bill for utility services shall not be less than ten (10) business days after issuance.

SCHEDULE GOL

LOCAL GOVERNMENT SERVICE LARGE
(Effective 08/01/24)

APPLICATION

Applicable to any local City, County, or School District customer having a minimum demand of 240 kW for all electric service supplied at one point of delivery and measured through one meter. Customers who elect to discontinue service under this Rate are ineligible for service under this Rate for twelve (12) months.

Applicable to GOL Customers utilizing City owned and operated facilities and transformation equipment and who are metered at primary voltage. **(GO2)**

Applicable to GOL Customers that own, operate, and maintain all facilities necessary to receive three-phase primary voltage service and all transformation facilities required for conversion to utilization voltage. **(GO3)**

This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service.

MONTHLY RATE

(1)	Facility Charge	Per Bill
	Three-Phase	\$69.06
plus;		
(2)	Demand Charge	Per kVA
	All kVA	\$10.80
plus;		
(3)	Usage Charge	Per kWh
	GOL Tier 1: First 200,000 kWh Tier 2: Additional kWh	\$0.0245 \$0.0140
	GO2 Tier 1: First 200,000 kWh Tier 2: Additional kWh	\$0.0235 \$0.0130
	GO3 Tier 1: First 200,000 kWh Tier 2: Additional kWh	\$0.0215 \$0.0110
plus;		

plus;	(4) Energy Cost Adjustment Charge	See Schedule ECA
	(5) Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge plus the Demand Charge, regardless of actual energy usage.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the greater of: (1) the actual monthly kVA demand as measured during the fifteen (15) minute period of maximum use each month; or (2) fifty percent (50%) of the maximum monthly kVA actual demand for any month during the previous billing months of May through October in the twelve (12) month period ending with the current month.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\begin{aligned} \text{Usage Charge} = & \text{kWh in Tier 1} \times \text{Tier 1 Rate per kWh} \\ & \text{kWh in Tier 2} \times \text{Tier 2 Rate per kWh, if applicable} \end{aligned}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE T1

TEMPORARY SERVICE
(Effective 08/01/24)

APPLICATION

Applicable to short term or temporary electric service where a Customer has received a permit. This Rate is not applicable after the certificate of occupancy or building final inspection has been issued.

NET MONTHLY RATE

plus;	(1) Facility Charge	Per Bill
	Single-Phase	\$16.61
	Three-Phase	\$22.19
plus;	(2) Usage Charge	Per kWh
	All kWh	\$0.0854
plus;	(3) Energy Cost Adjustment Charge	See Schedule ECA
	(4) Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge regardless of actual energy usage.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \text{All kWh} \times \text{Rate per kWh}$$

ADDITIONAL TEMPORARY SERVICE CHARGES

Labor	Regular time or overtime labor hourly rates in effect at the time the work is performed for all personnel performing the work. Labor charges shall be based on a one (1) hour minimum with all additional time above the minimum to be measured to the nearest one-quarter hour.
Transportation	To be billed by hours or miles, as applicable, according to the estimated cost of operating the required equipment.
Material	Material that cannot be salvaged shall be billed at the City's Warehouse cost plus twenty five percent (25%), plus applicable sales tax. At the time a temporary service is removed or converted, any loss of the installed material due to negligence or willful action by the Customer will be billed separately to the Customer at replacement cost plus twenty five percent (25%), plus applicable sales tax.
Administrative Fee	Ten percent (10%) of the total labor, transportation, and material costs.

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE AF

ATHLETIC FIELD
(Effective 08/01/24)

APPLICATION

Applicable to all electric service metered at one point for use to light specified areas for athletic events. This Rate is not applicable to resale service in any event, or to temporary, standby, or supplementary service except in conjunction with applicable rider.

NET MONTHLY RATE

plus;	(1)	Facility Charge	Per Bill
		Single-Phase	\$22.75
		Three-Phase	\$34.11
plus:	(2)	Demand Charge	Per kW
		On-Peak	\$6.06
		Off-Peak	\$1.44
plus;	(3)	Usage Charge	Per kWh
		On-Peak	\$0.0977
		Off-Peak	\$0.0489
plus;	(4)	Energy Cost Adjustment Charge	See Schedule ECA
	(5)	Transmission Cost Recovery Factor	See Schedule TCRF

MINIMUM BILLING

For each billing period, the Customer shall be obligated to pay the Facility Charge, regardless of actual energy usage.

DEFINITION OF ON-PEAK AND OFF-PEAK HOURS

The City's on-peak hours, for the purpose of this rate schedule, are designated as being from 2:00 P.M. to 7:00 P.M., for the months of June through September. The City's on-peak hours may be changed from time to time.

The City's off-peak hours, for the purpose of this rate schedule, shall be all hours not designated as on-peak hours.

DETERMINATION OF DEMAND

The demand used in calculating the Demand Charge for the billing period shall be the actual kW demand supplied during the fifteen (15) minute period of maximum use during the current billing period as determined by the City's demand meter.

USAGE CHARGE

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

$$\text{Usage Charge} = \begin{array}{l} \text{On-Peak kWh} \times \text{Rate per kWh} \\ \text{Off Peak kWh} \times \text{Rate per kWh} \end{array}$$

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE LS

STREET LIGHTING
(Effective 08/01/24)

APPLICATION

Applicable to all street lighting owned and maintained by the City.

NET MONTHLY RATE

(1)	Facility Charge	Per Bill
	<u>Luminaire Style Type</u>	
	100 W Sodium Cobra (LSA)	\$6.08
	250 W Sodium Cobra (LSB)	\$8.62
	400 W Sodium Cobra (LSC)	\$10.86
	100 W LED Cobra (LSD)	\$6.08
	250 W LED Cobra (LSE)	\$8.62
	400 W LED Cobra (LSF)	\$10.86
	85 W LED Post (LSG)	\$10.86

plus;

(2)	Energy Cost Adjustment Charge	See Schedule ECA
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ENERGY COST ADJUSTMENT CHARGE

Current ECA multiplied by respective kWh based on the following Bulb Wattage Factors:

<u>Luminaire Type</u>	<u>Bulb Wattage Factor</u>
100 W Sodium(LSA)	48 kWh
250 W Sodium (LSB)	105 kWh
400 W Sodium (LSC)	159 kWh
100 W LED (LSD)	25 kWh
250 W LED (LSE)	96 kWh
400 W LED (LSF)	148 kWh
85 W LED (LSG)	23 kWh

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

TRAFFIC LIGHTING
(Effective 08/01/24)

APPLICATION

Applicable to State and Local Government agencies that operate and maintain their own traffic signals.

METERED TRAFFIC LIGHTING NET MONTHLY RATE (LT)

plus;	(1)	Usage Charge	\$0.0664 per kWh
	(2)	Energy Cost Adjustment Charge	See Schedule ECA
	(3)	Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Metered Traffic Lighting Usage Charge shall be based on actual kWh consumption during the billing period. Usage Charge = All kWh x Rate per kWh

UNMETERED TRAFFIC LIGHTING NET ANNUAL RATE (ULT)

plus;	(1)	Usage Charge	\$0.0664 per kWh
	(2)	Energy Cost Adjustment Charge	See Schedule ECA
	(3)	Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Unmetered Traffic Lighting Usage Charge shall be based on historical recorded annual kWh consumption. Usage Charge = All kWh x Rate per kWh

Annual Usage = 904 kWh per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE UFL

UNMETERED SCHOOL ZONE/CROSSING FLASHERS
(Effective 08/01/24)

APPLICATION

Applicable to local government agencies that operate and maintain their own unmetered school zone/crossing flashers.

NET ANNUAL RATE

plus;	(1) Usage Charge	\$0.0664 per kWh
plus;	(2) Energy Cost Adjustment Charge	See Schedule ECA
	(3) Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Usage Charge shall be based on historical recorded annual kWh consumption. The total billed usage divided by number of school zone/crossing flashers will determine the average kWh usage. This average consumption will be billed for each school zone/crossing flasher once every twelve (12) months at the end of the fiscal year. Any accounts that are added during the year will be billed on prorated consumption.

Usage Charge = All kWh × Rate per kWh

Annual Usage = 48 kWh per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE USC

UNMETERED SECURITY CAMERA
(Effective 08/01/24)

APPLICATION

Applicable to Local Government agencies that operate and maintain their own unmetered security cameras.

NET ANNUAL RATE

plus;	(1) Facility Charge	\$17.82 per bill
plus;	(2) Usage Charge	\$0.0664 per kWh
plus;	(3) Energy Cost Adjustment Charge	See Schedule ECA
	(1) Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Usage Charge shall be based on technical information of installed equipment. This calculated consumption will be billed for each camera once every twelve (12) months at the end of the fiscal year. Any accounts that are added during the year will be billed on prorated consumption.

Usage Charge = annual kWh per camera × kWh Rate

Annual Usage = 300 kWh per camera per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE UWF

UNMETERED WI-FI DEVICES
(Effective 08/01/24)

APPLICATION

Applicable to local government agencies that operate and maintain their own unmetered Wi-Fi devices.

NET ANNUAL RATE

plus;	(1) Facility Charge	\$17.82 per bill
plus;	(2) Usage Charge	\$0.0664 per kWh
plus;	(3) Energy Cost Adjustment Charge	See Schedule ECA
	(4) Transmission Cost Recovery Factor	See Schedule TCRF

USAGE CHARGE

Billing for the Usage Charge shall be based on technical information of installed equipment. This calculated consumption will be billed for each device once every twelve (12) months at the end of the fiscal year. Any accounts that are added during the year will be billed on prorated consumption.

Usage Charge = annual kWh per device × kWh Rate

Annual Usage = 300 kWh per device per account

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE LO

OTHER LIGHTING (Effective 08/01/24)

APPLICATION

Applicable to Texas Department of Transportation unmetered and metered safety lighting systems and continuous lighting systems as those terms are defined in Texas Administrative Code, Title 43, Part 1, Chapter 25, Subchapter A, Rule §25.11.

METERED LIGHTING NET MONTHLY RATE (LOB)

plus;	(1) Usage Charge	\$0.0664 per kWh
	(2) Energy Cost Adjustment Charge	See Schedule ECA

METERED LIGHTING USAGE CHARGE (LOB)

Billing for the Usage Charge shall be based on actual kWh consumption during the billing period.

Usage Charge = All kWh × Rate per kWh

UNMETERED LIGHTING NET MONTHLY RATE (LOA)

plus;	(1) Usage Charge	\$0.0664 per kWh
	(2) Energy Cost Adjustment Charge	See Schedule ECA

UNMETERED LIGHTING USAGE CHARGE (LOA)

Billing for the Usage Charge shall be based on estimated kWh consumption during the billing period.

Usage Charge = (kWh Rate x Bulb Wattage/1000) x (Hours of Operation per Billing Period)

Hours of Operation per Billing Period = 333 hours

Bulb Wattage is the rated wattage of the luminaire bulb

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE DD

SECURITY LIGHTING
(Effective 08/01/24)

APPLICATION

Applicable to all outdoor area lighting when such lighting facilities are operated as an extension of the City's distribution system.

NET MONTHLY RATE

(1)	Facility Charge	Per Bill
	<u>Luminaire Type</u>	
	100 W Sodium Vapor (DSA)	\$ 9.61
	250 W Sodium Vapor (DSB)	\$12.71
	400 W Sodium Vapor (DSC)	\$15.32
	250 W Metal Halide (DHA)	\$14.95
	400 W Metal Halide (DHB)	\$17.82
	100 W Equivalent LED (DSD)	\$ 9.61
	250 W Equivalent LED (DSE)	\$12.71
	400 W Equivalent LED (DSF)	\$15.32

plus;

(2)	Energy Cost Adjustment Charge	See Schedule ECA
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ENERGY COST ADJUSTMENT CHARGE

Current ECA multiplied by respective kWh based on the following Bulb Wattage Factors:

<u>Luminaire Type</u>	<u>Bulb Wattage Factor</u>
100 W Sodium Vapor (DSA)	48 kWh
250 W Sodium Vapor (DSB)	105 kWh
400 W Sodium Vapor (DSC)	159 kWh
250 W Metal Halide (DHA)	105 kWh
400 W Metal Halide (DHB)	159 kWh
100 W Equivalent LED (DSD)	25 kWh
250 W Equivalent LED (DSE)	96 kWh
400 W Equivalent LED (DSF)	148 kWh

TYPE OF SERVICE

The City shall furnish, install, maintain and deliver electric service to automatically controlled lighting fixtures conforming to the City's standards and subject to its published rules and regulations.

Where necessary for proper illumination or where existing poles are inadequate, the City will install or cause to be installed, one (1) wood pole with the necessary lighting hardware and overhead conductor for each installed light, at a distance not to exceed eighty (80') feet from existing lines, at no charge to the Customer. Additional contractual arrangements between the City and the Customer are subject to the Special Facilities Rider.

TERM OF CONTRACT

A two (2) year contract shall be agreed to and signed by each Customer desiring security lighting service authorizing fixed monthly charges, which may be reviewed annually, and to be applied to the Customer's monthly municipal utilities bill. In the event that a Customer requests the removal of the unit or discontinuance of the service prior to completion of two (2) years, the remainder of the contract period shall become due and payable. After the end of the initial two (2) year contract, service shall continue on a month-to-month basis and may be canceled by either party upon thirty (30) days' notice.

SPECIAL FACILITIES

All services which require special facilities in order to meet Customer's service requirements shall be provided, subject to Special Facilities Rider.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE DSL

NON-STANDARD STREET LIGHTING
(Effective 08/01/24)

APPLICATION

Applicable to street lighting owned and maintained by the Customer. Availability of this service is contingent on the existence of an executed Special Facilities Rider between the legally responsible party and the City under which the legally responsible party accepts all responsibilities, both legal and financial, related to operation and maintenance of the subject lights, including but not limited to payment of all applicable energy charges.

NET MONTHLY RATE

plus;	(1) Facility Charge	\$9.18 per bill
	(2) Usage Charge	\$0.0664 per kWh
plus;		
	(3) Energy Cost Adjustment Charge	See Schedule ECA

USAGE CHARGE

Current usage charge and ECA rates are multiplied by respective kWh based on the following Bulb Wattage Factors:

<u>Luminaire Type</u>	<u>Bulb Wattage Factor</u>
100 W Sodium Vapor (DLSA)	48 kWh
250 W Sodium Vapor (DLSB)	105 kWh
400 W Sodium Vapor (DLSC)	159 kWh
250 W Metal Halide (DLHA)	105 kWh
400 W Metal Halide (DLHB)	159 kWh

ADDITIONAL SERVICE CHARGES

If the City is required to maintain the privately owned lights to ensure public safety, the owner of the lights may be subject to additional service charges. The additional service charges shall be the actual cost of performing any work required to perform the necessary maintenance including but not limited to:

EXHIBIT A
Electric Rate Schedules Effective 08/01/24

Labor	Regular time or overtime labor hourly rates in effect at the time the work is performed for all personnel performing the work. Labor charges shall be based on a one (1) hour minimum with all additional time above the minimum to be measured to the nearest one-quarter hour.
Transportation	To be billed by hours or miles, as applicable, according to the estimated cost of operating the required equipment.
Material	Any material needed to repair and/or maintain facilities will be billed at City Warehouse cost plus twenty five percent (25%).
Administrative Fee	Ten percent (10%) of the total labor, transportation, and material costs.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE EGR

ECONOMIC GROWTH RIDER (Effective 08/01/24)

PURPOSE

The purpose of this Rider is to facilitate local economic growth and expand the ad valorem tax base of the City.

AVAILABILITY

This Rider is available to the Customers who:

- (1) Receive service from Rate Schedules GSL or TGS; and
- (2) Pay City ad valorem tax; and
- (3) Receive no electric service discounts other than those specifically defined in the GSL or TGS Rate Schedules.

APPLICATION

This Rider is available to electric service supplied at any one location. It is for firm electric service applicable to new and existing customers as described below, over a five (5) year period. This Rider is available to the following classes of customers:

- (1) New Customers whose electric service represents demand not previously served by the City at any location in the City's service area in the last twelve (12) months, where such metered demand will be in excess of 1,000 kVA and customer load factor must be greater than the City's electric system load factor, as estimated and mutually agreed upon by the General Manager of the City's electric utility and the Customer.
- (2) Existing Customers served under Rate Schedules GSL or TGS who increase their prior existing metered demand by 1,000 kVA and customer load factor must be greater than the City's electric system load factor. This increase shall be verified by sub-metering (at the Customer's expense) the additional load. If sub-metering is not possible, at the discretion of the General Manager of the City's electric utility, the increase may be verified by comparing a three-month rolling average of the new level of demand to the prior demand averaged for corresponding months. During periods in which this verification method cannot be applied, the General Manager and the Customer may develop a mutually agreed-upon formula to estimate the base and additional demand levels.

EXHIBIT A
Electric Rate Schedules Effective 08/01/24

In light of additional costs associated with the Economic Growth Rider and to mitigate potential risk to ratepayers, any participant in the Economic Growth Rider must be, at the time this Rider is applied for and continuing while such Rider is in effect, a Customer in good standing of all City utilities, including solid waste services. Unless legal review procedures have been invoked in good faith regarding the obligation, a Customer in good standing for the purpose of this Rider is defined as a Customer not owing any unpaid utility or solid waste debt obligation that is over forty-five (45) days past due to the City during the previous twelve (12) months.

NET MONTHLY RATE

The Customer shall be charged under the appropriate applicable rate schedules with the exception that the monthly billing demand (for the GSL Rate) or system demand and on-peak demand (for the TGS Rate) will be adjusted in accordance with the following table:

<u>Time Period</u>	<u>Reduction to Billing Demand</u>
First Year	50%
Second Year	40%
Third Year	30%
Fourth Year	20%
Fifth Year	10%

CONTRACT PERIOD

The term of the contract will be for five (5) years.

SCHEDULE GIP

GREENSENSE INCENTIVE PROGRAM (Effective 08/01/24)

PROGRAM SUMMARY

The objective of the GreenSense Incentive Program (“Program”) is to reduce energy demand and consumption by promoting energy conservation, thereby reducing the utility bills of City Customers, reducing the peak load of the City’s electric system, reducing emissions in the state, and promoting energy conservation. The Program offers incentives, that may be distributed in the form of credits on the electric service bills or cash incentive to City retail customers.

Any participant in the GreenSense Incentive Program must be, at the time this program is applied for and continuing while such program is in effect, a Customer in good standing of all City utilities, including solid waste services. Unless legal review procedures have been invoked in good faith regarding the obligation, a Customer in good standing for the purpose of this Program is defined as a Customer not owing any unpaid utility or solid waste debt obligation that is over forty-five (45) days past due to the City during the previous twelve (12) months.

Program applicants will be able to qualify for multiple incentives simultaneously, unless specified in the individual guidelines. A separate application may be necessary for each incentive. The Program will be in effect each fiscal year beginning on October 1, until the allotted funding is depleted or until cancellation of the program by the City. At the time the funds are depleted, no additional applications for participation will be accepted until the next fiscal year.

Qualifying applicants must receive electric service from the City. The program guidelines and payment provisions are subject to change by the City without prior notice. The City may, at any time, discontinue the Program without prior notice. The current program guidelines may be found in the GreenSense Incentive Program Manual located at www.cityofdenton.com.

SCHEDULE ECA

ENERGY COST ADJUSTMENT (Effective 08/01/24)

The Energy Cost Adjustment (ECA) Rate shall be set to recover the net cost of energy delivered to Customers and to maintain the City's electric utility in a financially sound position.

NET MONTHLY RATE

(1) Energy Cost Adjustment Charge	\$0.0515 per kWh
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ENERGY COST ADJUSTMENT BALANCING ACCOUNT CALCULATION

The ECA Balancing Account shall be calculated using the following formula:

ECA Balancing Account = (Beginning ECA Account Balance) – (Projected Net Energy Cost)

Where:

Projected Net Energy Cost = For the next fiscal quarter, the electric utility's projected cost of electric load purchases from ERCOT plus all projected electric utility power/energy related costs for that same period including, but not limited to, power production (excluding the Denton Energy Center debt); purchased power; applicable transmission services, losses and congestion; other ERCOT charges; renewable energy credits; and financial and/or physical power/energy trades (including natural gas); less all projected revenue to be received by the electric utility for power/energy related sales and/or trades.

ENERGY COST ADJUSTMENT CALCULATION

$$ECA = [(Projected\ Net\ Energy\ Cost) - (ECA\ Balancing\ Account)] / (Projected\ kWh\ sales)$$

ENERGY COST ADJUSTMENT CHARGE

The Energy Cost Adjustment Charge shall be based on actual kWh consumption during the billing period. Energy Cost Adjustment Charge = kWh × ECA Rate

The General Manager of the City's electric utility or their designee shall calculate the ECA Balancing Account monthly. In the event that the ECA Balancing Account calculated during the last month of each fiscal quarter (December, March, June, and September) is projected to be over/under collected by \$5,000,000 or more during the next two quarters, the General Manager or their designee may recommend to the PUB and City Council a revision to the ECA to maintain the City's electric utility in a financially sound position. Any change to the ECA will be placed on the City Council's consent agenda.

SCHEDULE RCA

RENEWABLE COST ADJUSTMENT
(Effective 08/01/24)

Applicable to any Customer receiving City electric service that owns an on-site distributed generation powered by a renewable resource which is interconnected with the City's electric system.

The Renewable Cost Adjustment (RCA) Rate shall be set by the Public Utilities Board ("PUB"). The RCA Rate shall be reviewed on a quarterly basis and adjusted as defined below to reflect an economically neutral value of distributed generation energy.

NET MONTHLY RATE

(1)	Renewable Cost Adjustment	\$0.0381 per kWh
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RENEWABLE COST ADJUSTMENT CALCULATION

The RCA shall be calculated using the nodal market price and renewable hourly output factor:

$$\text{RCA} = (\text{Nodal Market Price}) \times (\text{Renewables Hourly Output}) / (\text{Total Annual Renewables Production})$$

RENEWABLE COST ADJUSTMENT CREDIT

The Renewable Cost Adjustment Charge shall be based on actual kWh delivered from Customer to the City's electric system during the billing period.

$$\text{Renewable Cost Adjustment Credit} = \text{kWh} \times \text{RCA Rate}$$

SCHEDULE TCRF

TRANSMISSION COST RECOVERY FACTOR
(Effective 08/01/24)

The Transmission Cost Recovery Factor (TCRF) Rate shall be set to recover the costs of transmission service paid by DME to other transmission owners within the boundaries of the Electric Reliability Council of Texas (“ERCOT”) region. The TCRF shall be reviewed on a quarterly basis and adjusted as defined below. The TCRF will pass-through these charges to customers in order to maintain the City’s electric utility in a financially sound position.

NET MONTHLY RATE **\$0.0135 Per kWh**

Residential
General Service Small
Local Government Service Small
Temporary Service
Athletic Field
Traffic Lighting
Unmetered Traffic Lighting
Unmetered School Zone/Crossing
Unmetered Security Camera
Unmetered Wi-Fi Devices

NET MONTHLY RATE **\$3.8536 Per kW**

General Service Medium
Local Government Service Medium

NET MONTHLY RATE **\$5.3357 Per kVA**

General Service Large
Local Government Service Large
General Service Time Of Use

TRANSMISSION COST RECOVERY FACTOR BALANCING ACCOUNT CALCULATION

The TCRF shall be calculated using the following formula:

TCRF Annual Billing = (Actual monthly net TCOS billing amounts charged by ERCOT transmission service providers to the City) + (Projected increases or decreases pursuant to PUCT-approved TCOS billing amount charges to ERCOT utilities)

During the last month of each fiscal year quarter (December, March, June, and September), the General Manager of the City’s electric utility or their designee shall calculate the TCRF Balancing Account. The TCRF charge will be developed by the City for each applicable customer billing schedule herein, based on projected kWh sales for billing schedules without a demand component and on monthly peak kW for billing schedules with a demand component. Any change to the ECA will be placed on the City Council’s consent agenda.

SCHEDULE DGR

DISTRIBUTED GENERATION FROM RENEWABLE SOURCES RIDER (Effective 08/01/24)

APPLICATION

This Rider is available to retail Customers receiving electric service under a City electric rate schedule who owns and operates an on-site generating system powered by a renewable resource capable of producing power, and which is interconnected with the City's electric system. Renewable energy technology is any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly or indirectly from the sun or wind. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

This Rider applies to a Customer-owned generating system that primarily offsets all or part of the Customer's electric service provided by the City. If the Customer-owned generating system is sized such that it produces energy in excess of a Customer's electric consumption, special arrangements and a contract may be necessary. The current interconnection guidelines may be found in the Distributed Generation Manual located at www.cityofdenton.com.

In light of additional costs associated with the Distributed Generation From Renewable Sources Rider and to mitigate potential risk to ratepayers, any participant in the Distributed Generation From Renewable Sources Rider must be, at the time this Rider is applied for and continuing while such Rider is in effect, a Customer in good standing of all City utilities, including solid waste services. Unless legal review procedures have been invoked in good faith regarding the obligation, a Customer in good standing for the purpose of this Rider is defined as a Customer not owing any unpaid utility or solid waste debt obligation that is over forty-five (45) days past due to the City during the previous twelve (12) months.

CONDITIONS OF SERVICE

All charges, character of service, and terms and conditions of the electric rate schedule under which the Customer receives service shall apply except as expressly altered by this Rider.

The Customer shall comply with the City's current technical requirements for distributed generation interconnection. The Customer shall obtain approval from the City prior to the installation of the on-site generating system. The Customer shall submit to the City a completed interconnection application form and signed Agreement for Interconnection and Parallel Operation of Distributed Generation before the system installation. The minimum term of an agreement under this Rider is one year, extended automatically unless terminated by either party with sixty (60) days advance written notice.

The Customer is responsible for the costs of interconnecting with the City's electric system, including transformers, service lines, or other equipment determined necessary by the City for safe installation and operation of the Customer's equipment with the City's electric system. The Customer is responsible for any costs associated with required inspections and permits.

METERING

Metering under this Rider shall be performed by a single meter capable of registering the flow of electricity in two directions (delivered by the City's electric system to the Customer and delivered to the City's electric system by the Customer's system) to determine the Customer's net energy flow.

RATE

Beginning in the billing period after a Customer receives approval from the City, to interconnect the Customer's on-site generating system; all energy generated by the Customer's system and delivered to the City's electric system will be considered renewable energy. The Customer shall be billed for all energy delivered by the City to the Customer under the approved rates.

For any generation delivered by the Customer's system to the City's electric system up to the amount of energy delivered by the City to the Customer, the City shall credit the Customer's account for the energy generated as follows:

$$\text{Generation Credit} = [(\text{kWh delivered from the Customer's approved system}) \\ \times (\text{Customer's base electric service rate})] + [(\text{kWh delivered from the Customer's approved system}) \times (\text{RCA Rate})]$$

For all energy delivered by the Customer's system to the City's electric system that exceeds the amount of energy delivered by the City to the Customer, the City shall credit the Customer's account for the energy generated as follows:

$$\text{Excess Generation Credit} = (\text{kWh delivered from the Customer's system}) \times \text{RCA Rate}$$

Any Billing Period Credit shall be applied to the utility charges due from the Customer to the City for the billing period.

INDEMNIFICATION

The Customer operating the renewable distributed generation system indemnifies the City and holds the City harmless for all damages and injuries to the City, the Customer, or others arising out of Customer's use, ownership or operation of Customer's distributed generation facilities in parallel with the City's system. Customer is solely responsible for providing adequate protection for operating in parallel with the City's system in such a manner that faults or other disturbances on the City's system do not cause damage to the Customer's distributed generation equipment.

SCHEDULE SFR

SPECIAL FACILITIES RIDER
(Effective 08/01/24)

- (1) All service shall be offered from available facilities. If a Customer's service characteristics require facilities and devices not normally and readily available at the location where the Customer requests service, the total cost incurred by the City for all facilities installed, buried, relocated and/or removed shall be the responsibility of the Customer and subject to a contract entered into between the City and the Customer. This contract shall be signed by both parties prior to the City providing service to the Customer.
- (2) Any contract under this rider is subject to the following approvals:
 - (a) If the total value of the contract is less than \$100,000, the contract may be approved by the City Manager, or his designee. If a contract under this subsection is not approved by the City Manager, or his designee, then it must be recommended for approval by the Public Utilities Board and approved by the City Council.
 - (b) If the total value of the contract is equal to or greater than \$100,000, the contract must be recommended for approval by the Public Utilities Board and approved by the City Council.

SCHEDULE PAF

POLE ATTACHMENT FEE
(Effective 08/01/24)

APPLICATION

This Rate is available to a licensee who desires to access designated poles or conduits owned by the City for the purpose of installing and maintaining their facilities and associated equipment to provide services to the public. An agreement between such entity and the City shall be executed separate from, but will reference, the following rate schedule:

NET ANNUAL RATE

	(1)	Annual Pole Attachment (“APA”)	\$15.57 per attachment
plus;	(2)	On-Pole Conduit Rate	\$15.57 per linear foot
plus;	(3)	In-Ground Conduit Rate	Rate specified pursuant to Schedule SFR
plus;	(4)	Riser Rate	\$160 per riser
plus;	(5)	Miscellaneous Attachments	\$100 per miscellaneous attachment

Note: Annual Rates (2) and (3) listed above are not available on all poles nor in all areas across the City.

APPLICATION PROCESSING COSTS

(1)	Application Filing Fee (per submittal)	\$100 per application
(2)	Per pole cost (review & inspection)	\$25.00 per pole
(3)	Per pole cost (mileage)	\$5.00 per pole

All application processing costs are non-refundable.

If an application being processed is identified as inaccurate or with errors, the licensee will need to resubmit the application and pay the application filing fee again.

MISCELLANEOUS

(1)	The City or City Contractor Performing Analysis	\$225 per pole
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EXHIBIT A
Electric Rate Schedules Effective 08/01/24

(2)	Unauthorized Attachment Penalty	\$1,000 per attachment per pole
(3)	Undefined Work or Expense	Rate pursuant to Schedule SFR

MAKE READY COSTS

Licensees will be required to pay for any work done or contracted by the City, including but not limited to make ready work and any installed, used or maintained facilities in violation of the Agreement that the licensee has not corrected. The City will invoice licensee, and licensee must pay, for identified expenses as needed before any work will begin and shall include all reasonable fully loaded material (including any applicable overhead), labor, engineering, transportation and administrative costs.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE BIF

BANNER INSTALL FEE (Effective 08/01/24)

APPLICATION

Applicable to any person who has completed an application and received approval from the City to have a banner installed on facilities owned by the City for the purpose of marketing and publicizing community events shall be assessed a fee based on the following schedule:

NET ANNUAL RATE

Over the Street Banner Install	\$100.00 per banner
Pole One Time Banner Install	\$15.00 per banner
Pole Seasonal Banner Install	\$27.00 per banner

TERMS AND CONDITIONS OF SERVICE

Persons requesting the City install an Over the Street Banner must provide the City with a banner that is no more than three (3) feet tall by thirty-five (35) feet in length with six (6) feet of rope. All Over the Street Banners must be made out of mesh only (fish net type material). A sample of the banner material is recommended for approval. The City's Building Inspections Department requires an application and permit fee of sixty (60) dollars for installation of an Over the Street Banner which needs to be completed prior to contacting the City's electric utility.

Persons requesting the City install a Pole Banner must provide the City's electric utility with a banner that is no more than thirty (30) inches tall by eighty (80) inches in length with openings of two (2) inches. Pole Banners are required to be made of weather beater or vinyl material only. The appropriate application for each type of banner must be completed prior to installation and returned to a representative of the City's Electric Operations and Maintenance Division along with applicable fees listed above, a digital image of the banner, and location requests. The City's electric utility will determine install locations depending on availability. Any banners that promote sponsors or advertisement are strictly prohibited.

PAYMENT

Payment is required to the City at the time the banners are given for installation. Permit fees, when applicable, are due to Building Inspections in order to reserve specific dates.

SCHEDULE WNA

WIRELESS NODE ATTACHMENTS
(Effective 08/01/24)

APPLICATION

This Rate is available to a licensee who desires to install and maintain their wireless nodes and associated equipment to provide services to the public. An agreement between such entity and the City shall be executed separate from, but will reference, the following rate schedule:

NET ANNUAL RATE

	(1)	Facility Charge	\$17.82 per node
plus;	(2)	Usage Charge	\$0.0664 per kWh
plus;	(3)	Energy Cost Adjustment Charge	See Schedule ECA
plus;	(4)	Transmission Cost Recovery Factor	See Schedule TCRF

METERED USAGE CHARGE

Billing for the Metered Usage Charge shall be based on actual kWh consumption for each device once every twelve (12) months at the end of the fiscal year.

$$\text{Usage Charge} = \text{All kWh per device} \times \text{Rate per kWh}$$

UNMETERED USAGE CHARGE

Billing for the Unmetered Usage Charge shall be based on 1) kWh consumption from similarly installed metered equipment; or 2) technical information of installed equipment provided by licensee, if similar equipment is not already metered. This calculated consumption will be billed for each device once every twelve (12) months at the end of the fiscal year.

$$\text{Usage Charge} = \text{Annual kWh per device} \times \text{Rate per kWh}$$

$$\text{Annual Usage} = 2,000 \text{ kWh per device per account (or calculated consumption based on technical information provided by licensee)}$$

MISCELLANEOUS

(1)	Unauthorized Attachment Penalty	\$1,000 per attachment
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(2) Undefined Work or Expense

Rate pursuant to Schedule SFR

MAKE READY COSTS

Licensees will be required to pay for any work done or contracted by the City, including but not limited to make ready work and any installed, used or maintained facilities in violation of the Agreement that the licensee has not corrected. The City will invoice licensee, and licensee must pay, for identified expenses as needed before any work will begin and shall include all reasonable fully loaded material (including any applicable overhead), labor, engineering, transportation and administrative costs.

PAYMENT

Bills are due when rendered and become past due if not paid within fifteen (15) calendar days from date of issuance.

SCHEDULE EVCR

ELECTRIC VEHICLE CHARGING RATE
(Effective 08/01/24)

APPLICATION

Applicable to vehicles that utilize charging services from City of Denton owned and operated Level 2 EV chargers.

NET ANNUAL RATE

(1)	Usage Charge	\$0.04 per minute
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USAGE CHARGE

Billing for the Usage Charge shall be based on actual charging time incurred. The billing service will be provided by a third-party vendor

Usage Charge = EV Charging duration × Rate per Minute



Quarterly Energy Cost Adjustment (ECA)

Vis Bouaphanthavong

Assistant Director of Finance

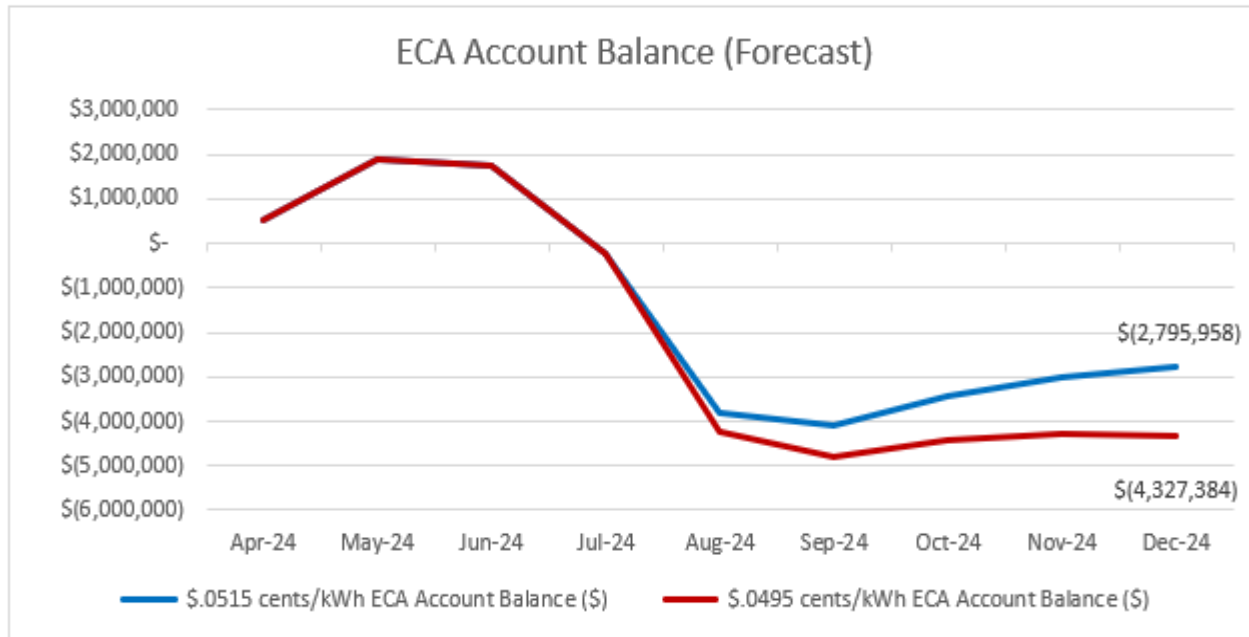
Energy Cost Adjustment (ECA)

- **March 19, 2024 City Council Ordinance 24-463**
 - Gave authority to DME General Manager to recommend ECA rate adjustments on a quarterly basis to maintain the financial integrity of the utility
 - ECA rate adjustment recommended to keep the ECA account balance at +/- \$5 million during forecast period.
 - Changes to ECA will be effective on the first day of the following month, after notification to Council.
 - Council will be notified of any changes via a Consent Agenda Ordinance.
- **Recovery of pass-through purchase power costs**
 - 2 months of actuals + 7 months of forecasted expenses



ECA Forecasted Account Balances

Month	Year	\$.0515 cents/kWh ECA Account Balance (\$)	\$.0495 cents/kWh ECA Account Balance (\$)
Apr-24	2024	\$ 538,009	\$ 538,009
May-24	2024	\$ 1,891,688	\$ 1,891,688
Jun-24	2024	\$ 1,769,845	\$ 1,769,845
Jul-24	2024	\$ (250,289)	\$ (250,289)
Aug-24	2024	\$ (3,834,225)	\$ (4,222,092)
Sep-24	2024	\$ (4,081,519)	\$ (4,784,658)
Oct-24	2024	\$ (3,448,598)	\$ (4,429,656)
Nov-24	2024	\$ (3,028,722)	\$ (4,267,105)
Dec-24	2024	\$ (2,795,958)	\$ (4,327,384)



- DME General Manager and finance recommends moving the ECA from \$.0447 cents/kWh to \$.0515 cents/kWh with a forecasted under-collection of \$2.80 million by December



Recommendations

- DME General Manager and the Finance Department recommends an increase of \$.0068/kWh for an ECA rate of \$.0515/kWh

Rate Class	Average Monthly Increase (\$)		Average Monthly	
ECA Rate (cents/kWh)	\$0.0515	\$0.0495	\$0.0515	\$0.0495
Residential	\$ 6.80	\$ 4.80	4.8%	3.4%
Non-Residential Small	\$ 7.49	\$ 5.28	4.1%	2.9%
Non-Residential Medium	\$ 93.28	\$ 65.84	5.2%	3.8%
Non-Residential Large	\$ 2,328.36	\$ 1,643.55	6.0%	4.3%

Residential Avg. @ 1,000 kWh

Non-Residential Small Avg. @ 1,101 kWh

Non-Residential Medium Avg. @ 13,717 kWh

Non-Residential Large Avg. @ 342,406 kWh



Questions





City of Denton

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

Legislation Text

File #: PUB24-142, **Version:** 1

AGENDA CAPTION

Management Reports

1. Future Agenda Items
2. New Business Action Items

Future Public Utilities Board Agenda Items

Note: This is a working draft of pending PUB items and is subject to change without notice.

Meeting Date	Item	Dept
July 8, 2024	Recommends approval Utility rate changes and ordinances Recommends approval Electric, Water, Wastewater, Drainage and Solid Waste budgets	Finance Finance
July 22, 2024		
August 12, 2024		
August 26, 2024		
September 9, 2024		
September 23, 2024		
October 14, 2024		
October 28, 2024		
November 18, 2024		
December 9, 2024		

Codes: Work Session WS, Consent Agenda CA, Individual Consideration IC

PUBLIC UTILITIES BOARD - NEW BUSINESS ACTION ITEMS

	DATE REQUESTED	REQUESTOR	ITEM	DEPT	STATUS
1.	10/23/23	Taylor	Would like a comparison of our experience with EVs vs Combustion Engine cars and trucks.	Fleet	10/28/24



City of Denton

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

Legislation Text

File #: PUB24-126, **Version:** 1

AGENDA CAPTION

Receive a report, hold a discussion, and give staff direction regarding the Value of Solar Study.



AGENDA INFORMATION SHEET

DEPARTMENT: Denton Municipal Electric

CM/DCM/ACM: Antonio Puente, Jr., DME General Manager

DATE: July 8, 2024

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding the Value of Solar Study.

BACKGROUND

The City of Denton (City) has offered energy efficiency and solar rebates through the GreenSense and Solar Programs since 2003 and 2009 respectively. During this time, many DME customers took advantage of these incentives to improve the energy efficiency of their homes and businesses. Customers also took advantage of these programs to install Solar Photovoltaic (PV) systems on their houses and businesses. Since then, there have been a lot of changes to both the energy efficiency measures that are available and relevant to today's housing stock as well as substantial reductions to the cost of PV. In an effort to quantify the value of solar being sold back to DME and to mitigate any cross subsidy from the rest of the DME customers to Solar DG customers, DME hired NewGen to conduct a detailed analysis of our program and provide a report.

RECOMMENDATION

Staff Recommends:

1. Implementing the avoided cost method based on DME Solar PPAs rate of \$0.0379/kWh effective 10/1/2024.
2. Transferring estimated annual savings of \$463,069 to GreenSense Incentives program. GreenSense budget will increase from \$1 Million to \$1.46 Million.

PRIOR ACTION/REVIEW

Sustainability Framework Advisory Committee heard the presentation and had discussion June 7. The SFAC voted unanimously (4-0) on;

1. Accepting the avoided cost method if the rate used was the average of both the DME PPA Avoided Cost rate and the ERCOT Market Avoided Cost rate. The average rate using this approach is \$0.05405/kWh.
2. Transferring the estimated annual savings of \$350,364 to the GreenSense Incentives program budget.
3. Wanted further discussion to take place regarding Grandfathering.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Value of Solar Presentation
Exhibit 3: Value of Solar Report

Respectfully submitted:
Bill Shepherd
DME Executive Manager of Business Services



July 8, 2024 | City of Denton | Value of Solar

DENTON MUNICIPAL ELECTRIC VALUE OF SOLAR STUDY



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OBJECTIVES

- Methodologies
- Avoided Cost Findings
- Societal Benefits Findings
- Policy Driven Incentives Findings
- Summary of Findings
- Bill Impacts – Average Residential vs. Solar
- Staff Recommendation
- Questions



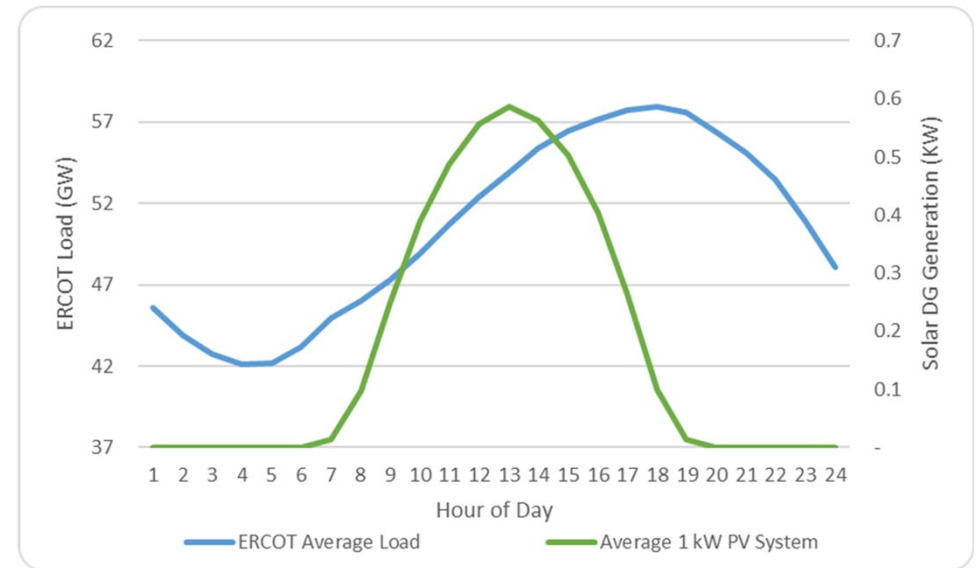
Avoided Cost	Societal Benefits	Policy Driven Incentives
Cost DME avoids by not having to generate or purchase power	Theoretical benefits to society of rooftop solar, including avoidance of GHGs and other emissions associated with fossil fuels	Can be considered to encourage the adoption of rooftop solar
Energy Costs: DME's Solar PPAs	DME is 100% Renewable	Local, State, and Federal Policies can be leveraged
Energy Costs: ERCOT market based pricing	No Fed or State Market for GHGs although there have been some proxies developed; \$0.01 to \$0.08 per kWh depending on the study source	City Policy drove the goal for DME to be 100% Renewable
Capacity Costs: Building new equipment to meet load		DME incentivized rooftop solar growth through aggressive rebate and net billing programs over the last 14 years

VALUE OF SOLAR METHODOLOGY

Represents energy purchased from a customer that is valued above the Avoided Cost based on the utility's policies

AVOIDED COST FINDINGS

Avoided Cost Component	Avoided Cost: ERCOT Mkt (\$/kWh)	Avoided Cost: DME Solar PPAs (\$/kWh)
ERCOT Energy	\$0.0524	N/A
ERCOT Ancillary	\$0.0044	N/A
Solar PPA	N/A	\$0.0244
ERCOT Transmission	\$0.0135	\$0.0135
Generation Capacity	\$0.0000	\$0.0000
Distribution Capacity	<u>\$0.0000</u>	<u>\$0.0000</u>
Avoided Cost for Solar DG	\$0.0702	\$0.0379



SOCIETAL BENEFITS FINDINGS

- Proxy Range:
 - \$14.88 to \$190 per ton depending on the study.
 - Equivalent to \$0.01 to \$0.08 per kWh.
- DME purchases 100% renewable power.
 - The DME cost of carbon is already being mitigated with DME's power supply strategy of 100% renewables.
 - DG does not offer any additional value in this context.
- Recommendations:
 - Recommend the Societal Benefit for solar DG for DME be set to \$0.00/kWh.
 - City Council may make the policy decision to include societal benefits in the Value of Solar rate.

POLICY DRIVEN INCENTIVES FINDINGS

- Federal Policies: Inflation Reduction Act
- State Policies: Property tax exemption
- City of Denton and DME Policies do not require local solar
- Recommendations:
 - No requirement for local renewable generation.
 - Recommend the Incentive for solar DG for DME be set to \$0.00/kWh.
- Options to support local renewables, outside of the Value of Solar:
 - Streamline the installation process, permits, and inspections.
 - Waive application or connection fees.
 - Provide grants or rebates to customers.
 - Provide low-cost loans for installation.

SUMMARY OF FINDINGS

- **Avoided Costs:**
 - Range of \$0.0379 to \$0.0702 per kWh is reasonable.
 - DME’s current Renewable Cost Adjustment (RCA) at \$0.0381 per kWh is reasonable.
- **Societal Benefits:**
 - Policy Decision for City Council (to incentivize solar DG).
 - Current DME carbon emissions are neutralized by 100% renewable energy.
- **Policy Driven Incentives:**
 - Policy Decision for City Council (to incentivize solar DG).
 - Current adopted policies do not require local solar generation.

Components	Avoided Cost: ERCOT Mkt (\$/kWh)	Avoided Cost: DME Solar PPAs (\$/kWh)
Avoided Cost	\$0.0702	\$0.0379
Societal Benefits	\$0.0000	\$0.0000
Policy Driven Incentives	<u>\$0.0000</u>	<u>\$0.0000</u>
Total	\$0.0702	\$0.0379

BILL IMPACTS

Average Residential Customer (2023)	Units	Non-Solar Customer	Net Billing Customer	Avoided Cost: DME PPA	Avoided Cost: ERCOT Mkt
Usage					
Bi-Directional Net Energy Used	kWh	1,365	1,365	1,365	1,365
Bi-Directional Net Energy Sold	kWh	N/A	(390)	(390)	(390)
Rates					
Bi-Directional Net Energy Used	\$/kWh	\$0.06840	\$0.06840	\$0.06840	\$0.06840
Bi-Directional Net Energy Sold	\$/kWh	N/A	\$0.06840	\$0.03790	\$0.07020
ECA/TCRF	\$/kWh	\$0.05820	\$0.05820	\$0.05820	\$0.05820
RCA	\$/kWh	N/A	\$0.03810	N/A	N/A
Facility Charge	\$/month	\$8.67	\$8.67	\$8.67	\$8.67
Monthly Bill					
Bi-Directional Net Energy Used	\$	\$93.37	\$93.37	\$93.37	\$93.37
Bi-Directional Net Energy Sold	\$	N/A	(\$26.68)	(\$14.78)	(\$27.38)
ECA/TCRF	\$	\$79.44	\$79.44	\$79.44	\$79.44
RCA	\$	NA	(\$14.86)	N/A	N/A
Facility Charge	\$	<u>\$8.67</u>	<u>\$8.67</u>	<u>\$8.67</u>	<u>\$8.67</u>
Total Monthly Bill		\$181.48	\$139.94	\$166.70	\$154.10
Annual Savings from Current				\$463,069	\$236,040

STAFF RECOMMENDATIONS

- Recommendations:

1. Implementing the Avoided Cost Method based on DME Solar PPAs rate of \$0.0379/kWh effective 10/1/2024.
2. Transfer estimated annual savings of \$463,069 to GreenSense Incentives program. GreenSense budget will increase from \$1 million to \$1.46 million.



QUESTIONS?

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FINAL REPORT

VALUE OF SOLAR STUDY

MAY 13, 2024



Prepared for:
Denton Municipal Electric

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Section 1

INTRODUCTION, BACKGROUND, AND METHODOLOGY

Introduction

Denton Municipal Electric (DME) retained NewGen Strategies and Solutions, LLC (NewGen) to develop a Value of Solar (VOS) Study (Study) in November 2023. The goal of this Study is to provide a rate (\$/kilowatt-hour [kWh]) to compensate DME customers who have installed solar distributed generation (solar DG) for surplus energy pushed into the DME distribution system. There are a variety of ways to calculate a compensation rate for customers who sell energy back to DME. Customers can be compensated at the current retail rate, an Avoided Cost rate, or a VOS rate. This report (Report) develops the VOS method, which includes the Avoided Cost rate. The Avoided Cost rate was calculated using the costs that DME avoids by not having to generate or purchase an additional kWh to serve load. The VOS rate (\$/kWh) was determined based on three primary components: Avoided Cost, Societal Benefits, and Policy Driven Incentives.

In the industry, the VOS rate compensation method is generally paired with the Buy-All Sell-All billing and metering setup. The Buy-All Sell-All metering setup requires two meters: one meter registers all the energy generated by the customer's solar DG facility and the second meter measures all the energy that the customer consumes. The customer is billed at the standard residential tariff rate for all the power they use. The customer is compensated for the energy generated from their solar DG facility at the VOS rate. Customers served by a Buy-All Sell-All program do not consume the energy produced by their solar DG facility. The Buy-All Sell-All program has been used by Austin Energy since 2012 and is currently being considered for use by the City of Georgetown.

Current DME solar DG customers have one bidirectional meter and cannot be billed under a Buy-All Sell-All program. DME has over 1,100 solar DG customers and a Buy-All Sell-All program would require a second meter at each customer's site. This Report summarizes our analyses with respect to the development of an Avoided Cost rate to be used with a bidirectional program and a VOS rate to be used with a Buy-All Sell-All program (which would require installation of second meters for all solar DG customers) for the City of Denton, Texas (City) and DME.

DME Description

DME is an enterprise of the City providing electricity to customers within and outside the boundaries of the City. DME operates the utility with oversight by the Denton City Council (the City Council), which is advised by the Public Utility Board (PUB). The City Council retains authority for approval of the annual budget, rates for electric service, eminent domain, and approval of debt issuances.

DME serves approximately 64,000 retail electric customers in northwest Texas and delivers around 1.6 billion kWh annually. DME operates their own transmission and distribution system which encompasses 33 miles of transmission lines and 950 miles of overhead and underground distribution lines. The City passed Resolution No. 18-085 in 2018 requiring DME to serve customers using 100% renewable energy. Since 2021, DME has served their customer energy needs with 100% renewable power through solar and wind Purchase Power Agreements (PPAs) and Renewable Energy Credits (RECs).

DME also owns and operates the Denton Energy Center (DEC). The DEC is a natural gas plant with quick start reciprocating engines that can be called upon when needed. The DEC helps provide DME with a revenue stream to offset power costs when energy demand and prices suddenly change. The DEC has the flexibility to produce energy at different levels while supporting DME's renewable power purchase portfolio.

DME currently has approximately 1,100 residential customers and 25 commercial customers with solar DG that contribute approximately 10.7 million kWh annually (less than 1% of DME's load).

Background

Solar DG refers to the generation of electricity from solar photovoltaic (PV) systems installed on or near the site where the electricity is consumed, such as rooftops of residential or commercial buildings. This approach to electricity generation gives customers the opportunity to reduce their electricity bills while also contributing to environmental sustainability by reducing their carbon footprint and reliance on fossil fuels. The next few paragraphs provide a summary of solar DG metering options and energy outflow compensation options.

Solar DG Metering and Billing Options in the Industry

The three most common ways to meter solar DG customers' inflow and outflow are Traditional Net Energy Metering (NEM), Net Billing, and Buy-All Sell-All metering. Descriptions of each method are provided below along with a summary in Table 1-1, and billing examples can be found in Appendix A in Tables A-1 and A-3.

Traditional Net Energy Metering

Net Energy Metering (NEM) is the most common compensation mechanism used by utilities. Under NEM, the utility meters the net of the electricity generated by the customer's solar DG system and the electricity consumed from the grid. The metering may be as simple as one meter with one dial that runs forward and backward.

Most often, the term NEM refers to the monthly netting of energy inflow and outflow. When the solar system produces more electricity than the customer consumes, the excess electricity is exported to the utility grid and the customer receives kWh credits for the excess energy generated. These credits can be used to offset future energy use. Often, the customer receives full retail credit for the outflow. In net metering, the utility is operating as a virtual bank for the solar DG customer by allowing the customer to generate during daylight hours and send power to the grid, but then use power any time they need it, often after the sun sets. The customer receives the benefit of using their generation to offset their usage at any time.

Net Billing

This metering method measures the inflow and outflow instantaneously or at specific time intervals (5 minutes, 15 minutes, hourly, etc.).¹ Net Billing allows the utility to track the actual energy provided to the

¹ <https://www.nrel.gov/state-local-tribal/energy-compensation-mechanisms.html#:~:text=In%20net%20billing%2C%20DG%20system,consumption%20to%20the%20utility%20grid.>

customer and the actual energy provided to the utility. Often, the customer is credited for the outflow based on the utility's Avoided Cost.

Buy-All Sell-All

Buy-All Sell-All is a metering and billing method or program in which the customer is served power under their applicable class tariff as recorded by a consumption meter. The production from the customer's solar DG facility is metered separately and 100% of the power is sold to the utility. The customer pays the full applicable retail rate for any energy usage and is credited an Avoided Cost rate, VOS rate, or other approved rate for all sales to the utility. In any hour, the customer can have both sales of energy and purchases of energy. The "netting" occurs on a dollar basis on the customer's monthly bill (customer's total bill for power less credit for energy sent to the utility).

Buy-All Sell-All requires either the addition of an export validation meter to a bidirectional meter or the use of two unidirectional meters. This is required for the utility to accurately track both the customer's usage and generation separately, unlike the net usage tracked in NEM.

Table 1-1
Industry Solar DG Metering Options

	Traditional Net Metering (Monthly Netting)	Net Billing	Buy-All Sell-All (No Energy Netting)
No. of Meters	1 net meter	1 two-channel bidirectional meter	2 meters
Netting Frequency	Billing cycle	Instantaneously	Not applicable
Self-Consumption Allowed	Yes	Yes	No
Solar DG Customer Purchases Inflow	Retail rate	Retail rate	Retail rate
Outflow Compensation to Customer	Retail rate	Avoided Cost	Value of Solar, Avoided Cost
Credits Carry Forward	Varies	Varies	Not applicable
Credits Recorded In	Energy (kWh)	Dollars	Not applicable
Credits Expire	Varies	Varies	Not applicable

Outflow Compensation Options

Utilities compensate customers for energy sent back to the utility (outflow) using primarily three types of rates which include the retail rate, Avoided Cost rate, or a VOS rate.

Retail Rate

For the retail rate, NEM customers receive a credit in kWh rather than a dollar-based credit for their outflow. While some utilities allow these kWh credits to offset future energy consumption, effectively compensating customers at the full retail rate, other utilities may not permit such credit applications towards future bills.

Avoided Cost

The “Avoided Cost” is the cost to the utility of the electric energy avoided due to the purchase of energy from the customer’s solar DG facility. The Avoided Cost rate may include energy or energy and capacity. The calculation of the Avoided Cost rate varies from state to state and there are multiple ways to calculate the Avoided Cost. The Avoided Cost calculation should also account for lower system losses. Because the customer is generating power where the power is consumed, there are no transmission or distribution line losses. Background information regarding the development of an Avoided Cost methodology for DME is further described in Section 2.

Value of Solar (VOS)

Energy purchased from a solar DG customer may be valued at a rate that is greater than the traditional Avoided Cost rate depending on the utility’s policies. The utility may support or encourage renewable energy and therefore place a higher value on renewable energy related to various benefits that can be defined as Societal Benefits (including cleaner air and general public welfare concerns) as well as Policy Driven Incentives (costs intended to further the city’s or utility’s renewable energy goals). The rate resulting from these considerations is referred to as a Value of Solar rate.

Subsidization of Solar Customers

A major concern with the metering and billing of solar DG customers is the level of subsidization that may exist. Depending on rate structure and rate levels, customers with solar DG facilities are subsidized by customers without solar DG. This has been acknowledged by the National Association of Regulatory Utility Commissioners (NARUC), by the American Public Power Association (APPA), and by multiple public utility commissions.

NARUC states in its Distributed Energy Resources Rate Design and Compensation publication that:

However, DER customers who supply most, if not all, of their own needs annually, but not necessarily daily, may be undercompensating the utility under certain NEM rate designs for the generation, transmission, and distribution investments that were made on behalf of the DER customer. Under such a situation, it is difficult to design a single rate that is appropriate for all customers in an existing rate class, as non-DER customers end up subsidizing DER customers. The solution would be to design rates that recover from DER customers an appropriate amount to compensate the utility for the investments it has made.²

APPA states in its Rate Design for Distributed Generation publication that:

Most utilities in the U.S. use net metering to measure and compensate customers for the generation they produce. However net metering has several shortcomings and results in non-DG customers subsidizing DG customers.

As more customers install DG systems, the cost-revenue disparity grows wider, leading to even more cross subsidization.

Net metering causes revenue shortfalls for utilities, and creates a situation where one class of customers is subsidizing another. In the long run, this is untenable, especially as more customers

² <https://pubs.naruc.org/pub/19FDF48B-AA57-5160-DBA1-BE2E9C2F7EA0>

*install DG systems. Utilities should consider modified approaches to net metering, or completely new billing arrangements . . .*³

APPA⁴ states in its Value of the Grid publication⁵ that:

Net energy metering (NEM), the most common rate design for DG customers, creates subsidies between customers in the same class. This is because though a high proportion of a utility's costs are fixed, however, 90 percent or more of utility revenue is normally recovered through variable charges. Therefore, the recovery of fixed costs through variable charges creates an imbalance where net metered customers are compensated (or credited) for their excess generation at retail rates, and non-DG customers pay a greater share of the cost through the variable charges.

California Public Utilities Commission

The California Public Utilities Commission's (CPUC) net metering policy, NEM 3.0, was updated to reduce the amount that customers without solar DG pay to support customer with solar DG. The CPUC altered the rates because paying solar DG owners near-retail prices allows these mostly wealthy property owners to avoid paying their fair share to maintain the grid, potentially burdening other consumers with higher electric bills, including low-income customers.⁶ The CPUC stated the following in the proposed decision on this topic:

*Affordability is front and center in this proceeding, given the finding that a significant and growing cost shift exists in the previous tariff and, to a lesser extent, remains in the adopted successor tariff. This cost shift is created by the ability of distributed generation customers to avoid fixed costs, including grid costs and public purpose program costs, which then become the responsibility of non-participating ratepayers, including low-income customers. The successor tariff adopted in this decision is designed to compensate customers for the value of their exports to the grid based on the Avoided Cost Calculator. This improved valuation will significantly reduce the cost shift and improve affordability for nonparticipating ratepayers, particularly low-income ratepayers. The subsidization of solar DG customers by non-solar DG customers can occur in many ways, including rate design, rate levels, rebates, and incentives.*⁷

Subsidization from Rate Structure and Rate Design

Subsidization primarily and most commonly results from the standard tariff's rate structure and rate levels. The source of these subsidies can be traced back to the utilities' need to maintain rates that generate the necessary revenues to cover their costs, especially fixed costs. Residential electric rate offerings typically include a fixed monthly charge and a variable usage charge. Fixed monthly charges are intended to recover the costs that do not change based on a utility's customers' usage, such as building and maintaining the transmission and distribution system, servicing debt, labor for accounting, customer service/billing, regulatory compliance, and administrative expenses. Variable charges are typically recovered on a \$/kWh basis and include the cost of energy (fuel, purchased power, ancillary services) that changes depending on how much their customers are using.

³ https://www.publicpower.org/system/files/documents/ppf_rate_design_for_dg.pdf

⁴ https://www.publicpower.org/system/files/documents/ppf_rate_design_for_dg.pdf

⁵ https://www.publicpower.org/system/files/documents/Value%20of%20the%20Grid_1.pdf

⁶ <https://calmatters.org/environment/2023/11/california-solar-payment/>
<https://www.utilitydive.com/news/california-puc-net-metering-policy-nem-appeals-court/702569/>

⁷ <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M499/K921/499921246.PDF>

This discrepancy arises from traditional utility billing structures that primarily utilize \$/kWh rates and have been slow to implement fixed monthly charges that recover all fixed costs. This is most often seen in residential and small commercial rates as these rates usually do not include a demand charge. In our experience, the Customer Charge is consistently set too low to collect the utility's fixed costs of service. To make up for the difference, the energy charge includes recovery of the fixed and variable costs. Therefore, if a solar DG customer is given full retail credit for each kWh they generate, they are not paying their share of the fixed cost of service.

As a result of this rate design discrepancy, a utility may not fully recover its fixed costs from solar DG customers. Since solar DG customers rely less on grid-provided electricity during times of solar generation, they contribute less toward covering the fixed costs of the grid infrastructure. NARUC has been aware of this issue and suggests that utilities take a closer look at their fixed costs and fixed cost recovery methods.⁸ Addressing this imbalance may require adjustments to rate structures to ensure that all customers, including solar DG customers, contribute proportionately to the fixed costs of maintaining the grid infrastructure.

Subsidization from Solar Grants and Rebates

If the utility provides grants, rebates, or incentives to support solar DG installations, these costs are often recovered from all utility customers, not just those installing the solar facilities. This results in non-solar DG customers effectively subsidizing solar DG customers, which leads to concerns about equity and fairness in cost-sharing across a utility's customer base.

DME Proposed Value of Solar Methodology

The VOS rate credit is an element of compensation provided to solar DG customers to assist the utility in achieving its renewable energy goals. However, to the extent that the VOS credit is greater than the direct economic savings to DME, the VOS credit may result in a subsidy to solar DG customers from non-solar DG customers. The appropriate basis for a VOS credit is a policy decision regarding the appropriate balance between equity (minimizing subsidy) and attainment of DME's policy objectives.

There are at least two approaches that the City and DME could employ to establish a VOS credit. One is an incentive policy (which may include consideration of subjective societal benefits and policy driven goals) and the other is a calculation of estimated cost savings (i.e., cost avoidance) to DME as a result of the generation from solar DG.

For the purposes of this Study, the proposed DME VOS rate (\$/kWh) was determined based on three primary components: Avoided Cost, Societal Benefits, and Policy Driven Incentives.

⁸ <https://pubs.naruc.org/pub/19FDF48B-AA57-5160-DBA1-BE2E9C2F7EA0>

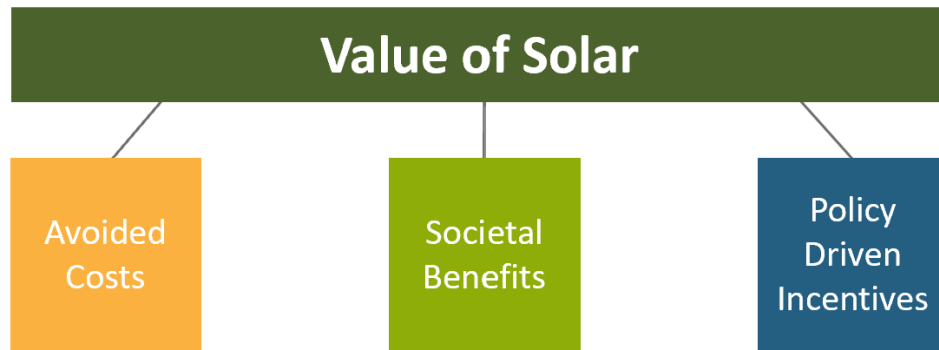


Figure 1-1. Value of Solar Components

Avoided Costs

Avoided Costs refer to the expenses that a utility or energy provider saves by not having to generate or procure electricity from traditional sources. This includes savings in energy production costs, such as fuel and operating expenses, as well as the costs avoided related to building new capacity or procuring additional PPAs to meet future power needs. Additionally, avoided losses, such as transmission and distribution losses, contribute to cost savings by reducing inefficiencies in the energy delivery process. By analyzing factors such as historic peak demand periods and fluctuating energy prices within the Electric Reliability Council of Texas (ERCOT) market, utilities can estimate the economic benefits provided by solar DG customers and optimize their financial viability. While solar DG aligns with daytime electricity demand, grid operators must balance its output with other energy sources to ensure reliable electricity supply, particularly during peak demand times.

Societal Benefits

The Societal Benefits portion of the VOS can represent the theoretical benefits to society of solar DG, including avoidance of greenhouse gases and other emissions associated with fossil fuel generation resources. It should be noted that in certain states like California, avoided emissions for pollutants with established markets (such as those for nitrous oxide [NO_x] and sulfuric oxide [SO_x]) are generally associated with the Avoided Cost methodology. There are a variety of methods that can be used to estimate the savings associated with the avoidance of greenhouse gases and other fossil fuel emissions. For the purposes of this Study, we have focused on greenhouse gas emissions and utilized the United States (U.S.) Federal Government methodology referred to as the Social Cost of Carbon (SCC). The SCC is an estimate of the cost to society from a ton of carbon emissions, and it is used to evaluate program benefits that reduce carbon emissions. The SCC puts the effects of climate change into economic terms to help policymakers understand how emissions-related policies affect the economy.

Whereas Avoided Costs (Section 2) are based on actual costs avoided by the utility from solar DG, the Societal Benefits of reducing carbon emissions are theoretical cost savings. In the short term, the utility does not avoid any costs or reduce expenses beyond the Avoided Cost. In the long term, there are assumed cost savings due to increased societal and environmental health, which may or may not be recognized by a utility.

Policy Driven Incentives

Cities and their utilities may have policies aimed at incentivizing solar DG. Depending on the policies, the utility may consider a credit given to solar DG customers as an incentive to encourage the adoption of solar DG. By providing incentives, such as credits or financial benefits, utilities can help offset the initial investment costs for solar DG customers, making solar energy more financially attractive and accelerating the transition to renewable energy.

Section 4 reviews the City's and DME's policies and strategies regarding the promotion of solar DG and renewable energy adoption. For the City, programs such as the GreenSense Incentive Program and the City's Renewable Resource Plan play a role in fostering a transition to renewable energy sources.

Despite DME's achievement of 100% renewable energy, ongoing initiatives like the City's Climate Action Adaptation Plan (CAAP) underscore the importance of furthering sustainable energy goals, including specific targets for installed solar DG.

Report Organization

This Report provides a comprehensive analysis of the economic impacts of solar DG and is organized into six sections. Section 2 details the calculations for Avoided Costs. Section 3 describes broader Societal Benefits associated with solar DG deployment, encompassing theoretical environmental advantages. Section 4 examines the City's and DME's various policy driven incentives surrounding renewable energy goals. Section 5 compares other utilities' approaches to valuing solar DG. Finally, Section 6 concludes by offering recommendations on how best to compensate customers with solar DG.

Our Report contains six sections as follows:

- Section 1 – Executive summary
- Section 2 – Avoided Cost methodology and calculations
- Section 3 – Societal Benefits methodology and calculations
- Section 4 – DME's policy driven incentives
- Section 5 – Benchmarking other utilities' approaches
- Section 6 – Summary of conclusions and recommendations

Section 2

VALUE OF SOLAR: AVOIDED COST RATE

This section summarizes the methodology and assumptions used to develop the DME Avoided Cost rate for solar DG. Avoided Costs refer to the expenses that a utility or energy provider saves by not having to generate or procure electricity from traditional sources. This includes savings in energy production costs, such as fuel and operating expenses, and may include Avoided Costs related to building new capacity or procuring additional PPAs to meet power needs. Avoided expenses for ERCOT ancillary and transmission services are also considered in the calculation of DME's Avoided Cost rate. Additionally, avoided losses, such as transmission and distribution losses, further contribute to DME's cost savings for solar DG by reducing inefficiencies in the energy delivery process.

Background

The Avoided Cost reflects the minimum compensation that an electric utility must provide to an independent power producer as mandated by the Public Utility Regulatory Policies Act (PURPA) regulations of 1978.⁹ PURPA was enacted to promote energy conservation and encourage the use of renewable energy sources. It sought to diversify the country's energy supply and reduce dependence on fossil fuels by encouraging the development of alternative energy technologies. The generating units installed under this legislation are called Qualifying Facilities or QFs. For QFs, the compensation is equivalent to the expenses that the utility saves by not generating or procuring that power itself.

According to PURPA, electric utilities must purchase energy from QFs at their Avoided Cost rate. The Avoided Cost may include energy or energy and capacity. The calculation of the Avoided Cost rate varies from state to state and there are multiple ways to calculate the Avoided Cost. Common methods used to determine the Avoided Cost are listed below:

- **Proxy unit:** This method assumes that the utility is building a generating unit. The hypothetical cost of that unit is used to set the Avoided Cost. The energy Avoided Cost is based on the variable costs (fuel and operations and maintenance [O&M]) and the capacity Avoided Cost is based on the capital costs to build the generation facility.
- **Peaker unit methodology:** Similar to the Proxy unit method, the energy Avoided Cost is based on the forecast payments for a peaking generation unit; often a natural gas turbine is used as the type of peaking generation unit for this method.
- **Differential revenue requirement:** This method calculates the revenue requirement for the utility with and without the QF unit. The difference, or savings from the QF, is the Avoided Cost to be paid to the QF.
- **Integrated resource plan (IRP) based Avoided Cost:** This method uses the utility's or a state's IRP to determine what the next avoided generation unit will be. Similar to the above methods, the energy Avoided Cost is based on the variable costs (fuel and O&M) and the capacity Avoided Cost is based on the capital costs to build the facility.

⁹ <https://www.ferc.gov/media/public-utility-regulatory-policies-act-1978>

- **Market-based pricing:** If the utility is in a wholesale competitive power market, the utility can use the market energy and/or market and capacity rates as the Avoided Cost. For DME, this would be the ERCOT Market.
- **Competitive bidding:** If the utility issues a request for proposals (RFP) for power, the winning bid can be considered the next avoided generating unit and used as the Avoided Cost. For DME, this would be their solar PPAs.

The Avoided Cost calculation should also account for the difference in system losses between centralized generation facilities (or ERCOT for DME) and solar DG facilities. Because the customer is generating and consuming power at the same location, the cost impacts associated with no transmission or distribution line losses are avoided.

Methodology

The Avoided Cost rate development considers the following cost categories: avoided energy-related costs (ERCOT purchased power, ERCOT ancillary services, and current solar PPA costs) and avoided capacity related costs (generation capacity, distribution capacity, and transmission capacity). As indicated above, for the purposes of this Study, avoided costs for market-based emission costs (such as for NOx and SOx) are assumed to be incorporated into the ERCOT purchased power and have not been separately calculated.

Three Avoided Cost rates were developed for this Study: two flat rates (rates that do not vary with season or time) and a representative time-of-use (TOU) rate (a rate that varies with the season and time). The TOU rate was developed to consider customers who have solar DG and on-site battery storage systems. Customers with solar DG paired with battery storage are becoming more prevalent in Texas due to a reduction in battery costs and increased customer acceptance. A customer with solar DG and battery storage can add more value to the utility by selling power back to the utility during peak periods or using their stored energy during the utility's peak operating hours, typically in the afternoon or early evening. However, solar DG with battery storage can also lead to decreases in fixed cost recovery under typical NEM rate structures. For the purposes of this Study, we have not addressed issues related to fixed cost recovery for solar DG paired with battery storage.

For DME, three Avoided Cost rates were developed based on the following criteria:

- **Based on ERCOT data:** A Flat Rate and a separate Time-of-Use Rate
 - Transmission Avoided: ERCOT data
 - Energy Avoided: ERCOT purchased power
 - Ancillary Services Avoided: ERCOT ancillary services
- **Based on DME Solar PPA data:** A Flat Rate
 - Transmission Avoided: ERCOT data
 - Energy Avoided: DME Solar PPAs
 - Ancillary Services Avoided: ERCOT ancillary services

Data Sources

For the purpose of this Study, the National Renewable Energy Laboratory (NREL) PVWatts calculator was utilized to depict average hourly and monthly generation output. PVWatts is a widely recognized tool within the electric utility industry and is used to estimate the hourly electricity production of localized solar systems in the form of solar production curves. Solar production curves serve to estimate the hourly value of solar energy utilizing ERCOT Settlement Point Prices, the reduction in a utility's contribution to the ERCOT 4-coincident peak (4CP) for estimating avoided transmission service, and the reduction in purchases of ancillary services from the ERCOT market, all of which are important factors for determining the Avoided Cost benefits of DME's system.

The PVWatts calculator incorporates Typical Meteorological Year (TMY) daily weather data for a specified location to develop a comprehensive solar production curve. Additionally, PVWatts accounts for losses in the system that include the impacts of soiling, shading, snow cover, mismatch, wiring, connections, light induced degradation, nameplate rating, system age, system orientation, and operational availability.¹⁰

To calculate Avoided Costs for DME, we used historical ERCOT data for the period beginning October 2022 and ending September 2023 (DME's Fiscal Year 2023). This Avoided Costs methodology bases the value components on the past fiscal year as opposed to a forward-looking (marginal cost) methodology. As a result, the methodology reflects the actual, realized value of solar DG during the preceding year, which is a reasonable proxy for the Avoided Costs anticipated for the current year in which the rate is in effect.

In calculating the Avoided Cost rate, it is our opinion that utilities have the discretion to omit ERCOT market pricing data during "Energy Emergency Alert 3" events. These events are triggered when ERCOT operating reserves fall below 1,500 megawatts (MW) or when the grid's frequency level drops below 59.8 hertz (Hz) for any duration.¹¹ Winter Storm Uri in February 2021 is an example of such an event, in which power became scarce on the system, market prices hit the maximum price established by ERCOT, and several utilities were forced to curtail service. Notably, no similar events occurred during DME's Fiscal Year 2023; thus, for the purposes of this Study, no ERCOT market pricing data was excluded.

DME Avoided Cost Rate Data Sources

The ERCOT North Zone Nodal Price was based on the ERCOT Historical Real Time Market (RTM) Load Zone and Hub Prices obtained from ERCOT.¹² ERCOT also supplies the ancillary service prices and volumes as well as the times for the ERCOT coincident peaks. The ERCOT postage stamp rate was obtained from the relevant Public Utility Commission of Texas (PUCT) docket.¹³

All Avoided Cost components were adjusted for estimated line losses (currently assumed to be 5.1% for the DME secondary voltage system).

Generation Capacity Investment Avoided

The generation capacity investment avoided can be estimated three ways: a) avoided capital expenditures to build capacity, b) avoided capacity purchases in a capacity market, or c) avoided contract purchases that have capacity (resource adequacy). Any of these three generation capacity options may be delayed or avoided due to the energy generated by solar DG during periods of peak load.

¹⁰ PVWatts Version 5 Manual: <https://www.nrel.gov/docs/fy14osti/62641.pdf>

¹¹ https://www.ercot.com/files/docs/2023/06/20/2023_2024%20Energy-Emergency-Alert-Overview.docx

¹² <https://www.ercot.com/mp/data-products/data-product-details?id=NP4-180-ER>

¹³ Public Utility Commission of Texas Docket 54507.

A review of DME's power supply documents, as well as discussions with DME's power procurement staff, suggests that DME has no plans to build or operate additional generators to meet capacity needs in the near future. Therefore, there are no capital costs avoided.

ERCOT operates an energy-only wholesale electricity market. This market design pays generators only for the energy they provide to the grid with very few exceptions. The energy-only wholesale electric market is unique in the U.S. as other competitive markets typically pay generators for having capacity available in their systems.¹⁴ Instead, this market focuses solely on incentivizing the production of electricity to meet demand in real-time. This means that while capacity remains a critical aspect of ensuring grid reliability within ERCOT, it is not directly compensated for in the same manner as capacity markets elsewhere. In ERCOT, the emphasis is placed on efficient energy production rather than capacity availability payments, making it a unique model in the U.S. energy landscape. Therefore, there are no capacity market purchases avoided.

DME's multi-year outlook focuses on procuring additional renewable PPAs across a broad geographic range. DME recently issued and is in the process of procuring new solar contracts that are within 150 miles of the Dallas-Fort Worth (DFW) area. These contracts are energy-only contracts and, therefore, there are no capacity costs avoided.

Due to the structure of ERCOT's energy-only market, the fact that DME does not plan to build/operate an additional fossil fuel resource, and as DME's ongoing procurement of new solar contracts do not contain capacity, it is our opinion that the generation capacity value component of the VOS credit should be set to zero (\$0.0000/kWh).

ERCOT Performance Credit Mechanism Proposal

As indicated above, ERCOT does not have a capacity market that pays generators to ensure there will be enough power to meet peak demand. After the devastation of Winter Storm Uri, Texas lawmakers directed regulators to ensure grid reliability and increase dispatchable generation (i.e., capacity). After investigation, stakeholder comment, studies, and analyses, the Performance Credit Mechanism (PCM) proposal was developed. The PCM's intent is to ensure that during time of highest demand and low supply, load serving entities, like DME, have sufficient dispatchable generating capacity to generate performance credits equal to their system demand. Performance credits will only be awarded to dispatchable generation assets that provide energy to the ERCOT grid during the ERCOT established compliance periods. Dispatchable generation resources will have the ability to forward commit to producing more energy during the compliance periods and will be able to sell performance credits to electricity retailers for additional income.

In 2023, the PUCT voted unanimously to adopt the PCM. However, the PUCT deferred implementation until Texas lawmakers had the opportunity to review the proposal and provide guidance. In the summer of 2023, SB 2627 and HB 1500 were enacted which adjusted the proposed PCM structure. HB1500 placed a variety of restrictions on the PUCT's proposed PCM, including limiting the cost of the PCM, and included a Dispatchable Reliability Reserve Service (DRRS) requirement. The DRRS defines which generators can participate based on how fast they can be dispatched and how long they can provide power. Under these terms, renewable energy is not qualified to be a generator.

As of the date of this report, the PUCT has not yet determined how it will implement the revised PCM proposal. However, if the PUCT implements the PCM as revised, renewable generation does not qualify

¹⁴ https://www.ercot.com/files/docs/2019/09/17/Market_Structure_OnePager_FINAL_Revised.pdf

for any type of generation capacity credit. Therefore, it is our opinion that the avoided generation capacity value for the Avoided Cost rate should be zero.

Distribution Capacity Investment Avoided

While it is common practice in the industry to value the cost savings from solar DG installations to generation and transmission expense, it is less common to value avoided capital investment costs on the distribution system.

Impacts to the distribution system from solar DG are specific to the local circuit where they exist. The presence of solar DG could potentially avoid/defer upgrade costs if the system is installed on a distribution circuit that exceeds or is near its maximum capacity rating. However, the installation of solar on a circuit with low usage could lead to reverse energy flow and ultimately to additional maintenance and/or capital expenses for the distribution system. Thus, the presence of solar installations on the system can result in avoided distribution costs or increased distribution costs.

Because DME does not dictate or encourage installation of solar based on the locational needs of their distribution system, it is difficult to determine if any incremental benefit or cost exists with the addition of customer-sited solar. Based on discussions with DME, the distribution system is relatively new and has plenty of capacity. Therefore, we recommend that no value (either positive or negative) be assigned or included for distribution impacts in DME's VOS credit.

While solar DG does contribute to local generation, it also introduces potential challenges to the distribution grid such as voltage fluctuations, reverse power flows, and increased operational complexity. These challenges may necessitate investments in grid upgrades and management solutions to ensure grid reliability and stability which can offset any benefits provided; therefore, distribution cost savings are not included in this analysis. For the purposes of this Study, we have not included a potential contribution to reductions in future (marginal) investments in transmission and distribution capacity as a result of solar DG.

Transmission Capacity Investment Avoided

DME incurs transmission expense based on their contribution to ERCOT's annual 4CP in the prior year. The actual expense incurred is DME's contribution to the ERCOT 4CP multiplied by the sum of the individual wholesale transmission service charges billed by each transmission service provider (informally referred to as the "ERCOT postage stamp rate"). For the VOS rate, the avoided transmission cost is the reduction in DME's contribution to the ERCOT 4CP due to energy produced at that time by solar DG multiplied by the ERCOT postage stamp rate. This value is based on historical solar production at the time of the ERCOT 4CP. Figure 2-1 compares characteristic summer daily generation profiles¹⁵ against the hours when the ERCOT 4CP has historically occurred.¹⁶

¹⁵ Generation profiles are provided by National Renewable Energy Laboratory PV Watts and assume a 1 kW fixed rooftop installation oriented at 180°.

¹⁶ Historic ERCOT 4CP hours from 2012 to 2023.

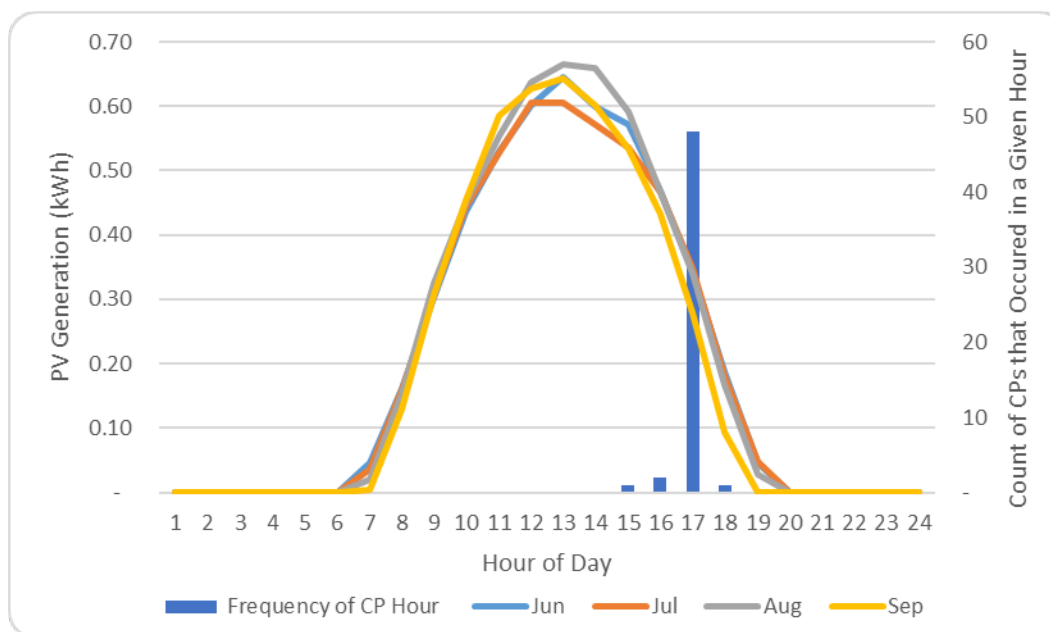


Figure 2-1. Comparison of Generation Profiles Against the Frequency of Occurrence of ERCOT 4CP Hours

As shown in Figure 2-1, the vast majority of ERCOT 4CPs occur during the summer at 5:00 p.m. when solar production is on the decline, which reduces the transmission capacity value in the Avoided Cost rate.

- **Transmission Savings** – This component is based on average solar DG during the ERCOT 4CP periods multiplied by the ERCOT postage stamp rate (the sum of the individual wholesale transmission service charges billed by each transmission service provider in ERCOT) divided by the total PV generation, as shown in this formula.

$$\text{Transmission Savings} = \frac{\text{Average Solar DG Generation During ERCOT 4 CP} * \text{ERCOT Postage Stamp TCOS rate}}{\text{Total Annual Solar DG Generation}}$$

Based on the formula above, the estimated Transmission Capacity Avoided Cost rate for DME's Fiscal Year 2023 is \$0.0135/kWh, as shown in Table 2-1.

Table 2-1
Transmission Capacity Avoided Cost

Component	Avoided Cost Rate (\$/kWh) ⁽¹⁾
Transmission Savings	\$0.0135
Transmission Avoided Costs	\$0.0135

(1) Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.

Energy-Related Costs Avoided: Solar DG and Flat Rate

Timing is an important consideration in the determination of the solar DG Avoided Costs. This is because the value of Avoided Costs can vary depending on factors such as peak demand periods (4CP) and fluctuating energy prices. For DME, analyzing these factors within the context of ERCOT market conditions is essential for accurately assessing the economic benefits of solar DG projects and optimizing their financial viability. Solar DG typically generates electricity during daylight hours with peak production occurring around midday when solar irradiance is highest, as shown in Figure 2-2. Factors such as weather conditions, cloud cover, and shading from nearby buildings or foliage can cause fluctuations in solar output, leading to reduced generation during periods of inclement weather or shading events. In comparison, the ERCOT market's usage pattern reflects the overall electricity demand in the Texas region, which tends to peak during hot summer afternoons due to increased air conditioning usage, as shown in Figure 2-2. While solar DG aligns with daytime electricity demand to some extent, it may not fully coincide with ERCOT's peak demand periods, particularly during late evening hours when solar generation is minimal or absent.

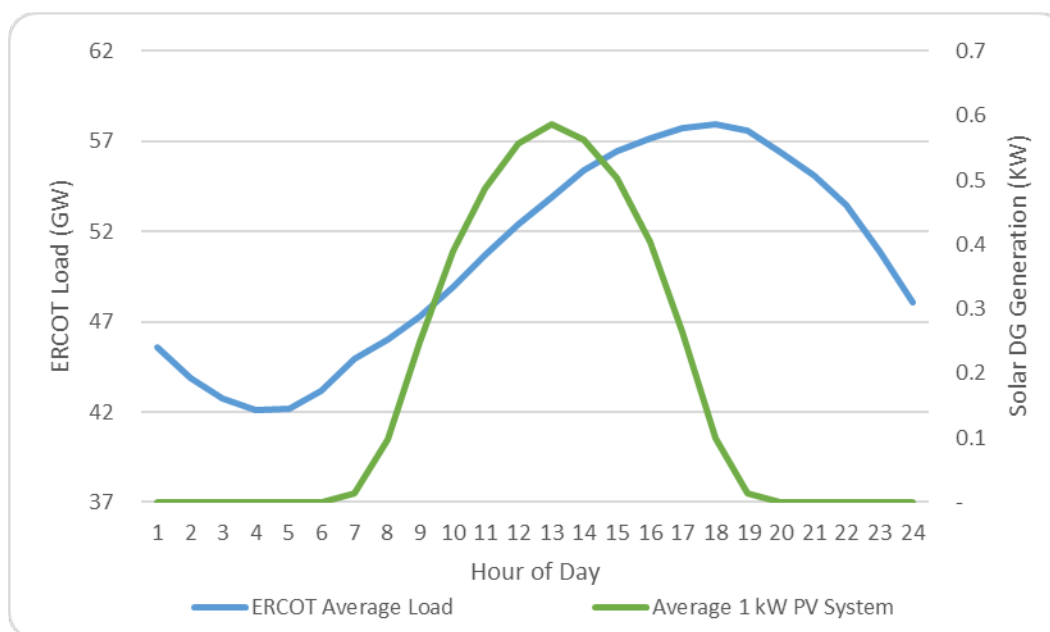


Figure 2-2. ERCOT Average Load Compared to Average Solar DG System¹⁷

Another consequence is that solar DG fails to alleviate the strain during periods of expensive energy. As depicted in Figure 2-3, energy prices in the ERCOT market peak in the evening when solar contribution is minimal or absent, exacerbating the cost burden on consumers. This discrepancy between solar generation and peak demand highlights the critical need for a diverse energy portfolio to uphold reliability and affordability, particularly during peak demand periods. Therefore, grid operators must balance solar DG output with other energy sources to ensure a stable and cost-effective electricity supply throughout the day, particularly during peak demand times.

For DME, the calculated Avoided Cost value comprises two key components:

¹⁷ ERCOT load is the hourly average load in ERCOT from Oct. 2022–Sept. 2023. Generation profiles were provided by National Renewable Energy Laboratory PV Watts and assume a 1 kW fixed rooftop installation oriented at 180°.

ERCOT Energy Savings

- **ERCOT Energy Savings** – This element is based on the weighted average price for energy at the time of PV generation and is calculated as the sum of the ERCOT North Node Day-ahead price for each hour during the previous fiscal year multiplied by the PV generation for that same hour divided by the total PV generation, as shown in this formula.

$$\text{ERCOT Energy Savings} = \frac{\text{ERCOT Hourly Settlement Point Price} * \text{Hourly Solar DG Generation}}{\text{Total Annual Solar DG Generation}}$$

ERCOT Ancillary Services Savings

- **Ancillary Service (AS) Savings** – This component is based on the weighted average price for AS at the time of PV generation. ERCOT currently has five ancillary service products that support the transmission of energy to loads and the reliable operation of the bulk electric system. These five products are Regulation Service – Up (REG UP), Regulation Service – Down (REG DOWN), Responsive Reserve Service (RRS), Non-spinning Reserve Service (NSRS) and ERCOT Contingency Reserve Service (ECRS). ECRS was introduced in June 2023 to support grid reliability¹⁸. Due to its partial availability during the study period, it was not included in the analysis. The Ancillary Service Savings is calculated as the sum of the Scaled AS Price (the sum of the four different ancillary service products available during the study period in each hour scaled to its relevant proportion with overall ERCOT energy load) for each hour multiplied by the PV generation for that same hour during the previous fiscal year divided by the total PV generation, as shown in this formula.

$$\text{Ancillary Service Savings} = \frac{\text{Sum of Hourly AS Prices} * \text{Hourly Solar DG Generation}}{\text{Total Annual Solar DG Generation}}$$

ERCOT Energy and Ancillary Services Avoided Cost Rate

Table 2-2 details the proposed Avoided Costs.

Table 2-2
ERCOT Energy and Ancillary Service (AS)
Avoided Cost

Component	Avoided Energy and AS Cost Rate (\$/kWh) ⁽¹⁾
ERCOT Energy Price Savings	\$0.0524
ERCOT Ancillary Service Savings	\$0.0044
ERCOT Energy Avoided Costs	\$0.0568

(1) Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.

¹⁸ <https://www.ercot.com/news/release/2023-06-12-ercot-adds-new>

DME's Avoided Costs for Customer with Solar DG

The calculated Avoided Cost rate for a DME customer with a solar DG system who is served at secondary voltage is summarized below in Table 2-3.

Table 2-3
Avoided Cost for a DME Customer with Solar DG

Component	Avoided Cost Rate (\$/kWh) ⁽¹⁾
Generation Capacity Savings	\$0.0000
Distribution Capacity Savings	\$0.0000
Transmission Capacity Savings	\$0.0135
ERCOT Energy Savings	\$0.0524
ERCOT Ancillary Service Savings	\$0.0044
DME Avoided Costs for Solar DG ⁽²⁾	\$0.0702

(1) Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.

(2) Rates are for generation facilities less than 1 MW. All resource entities with capacities of 1 MW or higher are required to register with ERCOT.¹⁹

Energy-Related Costs Avoided: Solar DG with Battery Storage – TOU Rate

Batteries store excess energy generated by solar panels during the day for use when customer usage exceeds solar generation. This technology enables solar DG customers users to maximize their self-consumption, reduce reliance on the grid, and potentially save money by avoiding peak electricity rates.

Despite its benefits, battery storage comes with some drawbacks. The upfront cost can be high, adding to the initial cost of a solar system, and battery storage has limited capacity, meaning it may not meet all energy needs during extended periods without sunlight. Additionally, battery systems incur efficiency losses during charging and discharging, have a limited lifespan requiring maintenance or replacement, and can have environmental impacts related to the manufacturing and disposal of the battery.

Battery Storage Benefits for Customers and the Utilities

When solar DG generates excess electricity during the day, customers feed it back into the grid, allowing a utility to either buy less from the market or sell excess energy into the market. However, this excess production often occurs when electricity demand is low, such as during the day when many people are at work and energy usage is minimal. Figure 2-2 shows the time at which solar DG generates power and the time at which the ERCOT market is experiencing the most demand. Figure 2-3 shows the time at which energy prices were the most expensive in the ERCOT market for calendar year 2023.

¹⁹ https://www.ercot.com/files/docs/2021/01/07/Resource_Interconnection_Handbook_v1.94_03012023.docx

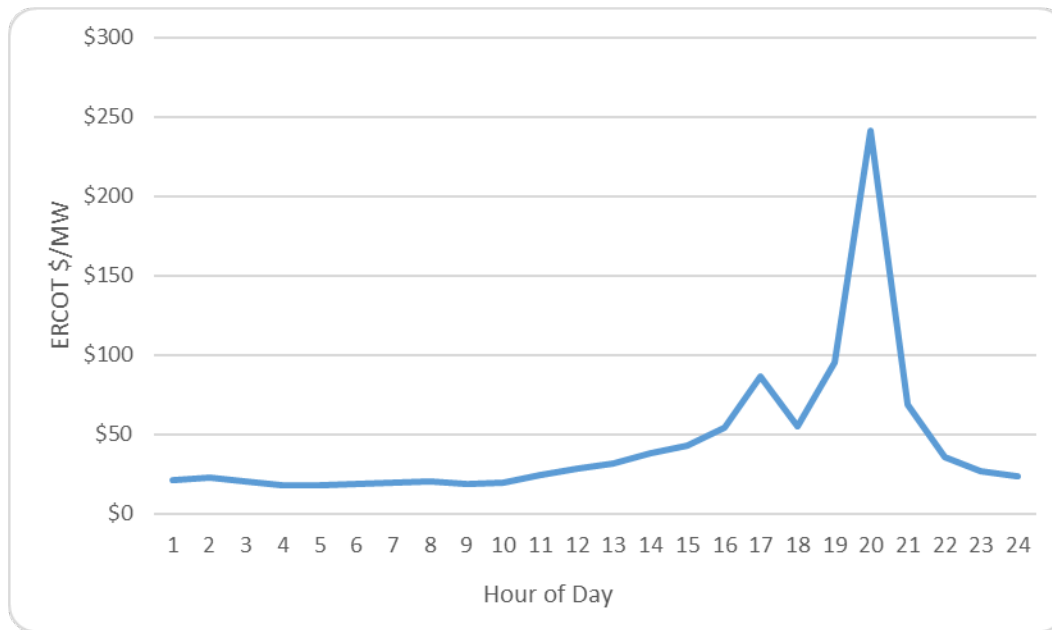


Figure 2-3. Average Hourly ERCOT Market Price

Battery storage offers a solution to this challenge by enabling solar customers to store excess energy during periods of high solar production and relatively low demand, and then discharge it during peak demand hours when electricity is more valuable.

Figures 2-4, 2-5, and 2-6 show the progression of residential usage with solar DG and with battery storage. In Figure 2-6, by integrating battery storage, this customer could capture and store excess energy during periods of surplus generation rather than immediately receiving credit. Subsequently, they could discharge the battery during peak usage times, effectively managing their energy consumption or even feeding surplus energy back into the grid. This adaptive approach not only optimizes the customer's energy usage but also assists utilities in mitigating peak demand pressures.

Please note that Figures 2-4, 2-5, and 2-6 are based on a low energy usage customer with a large solar DG installed. The data does not represent a specific customer.

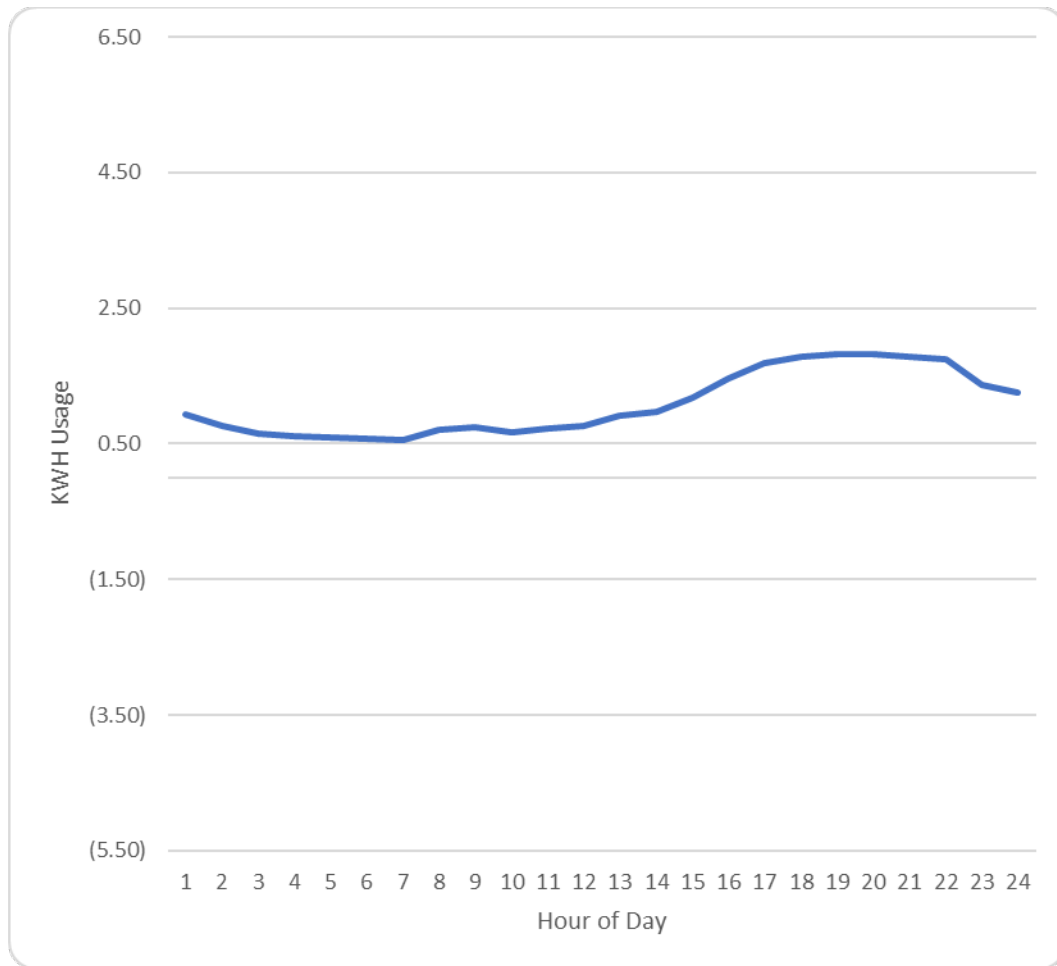


Figure 2-4. Representative Residential Usage

Figure 2-4 represents a residential customer with low energy usage. As seen in the graph, the customer uses the most energy in the late afternoon.

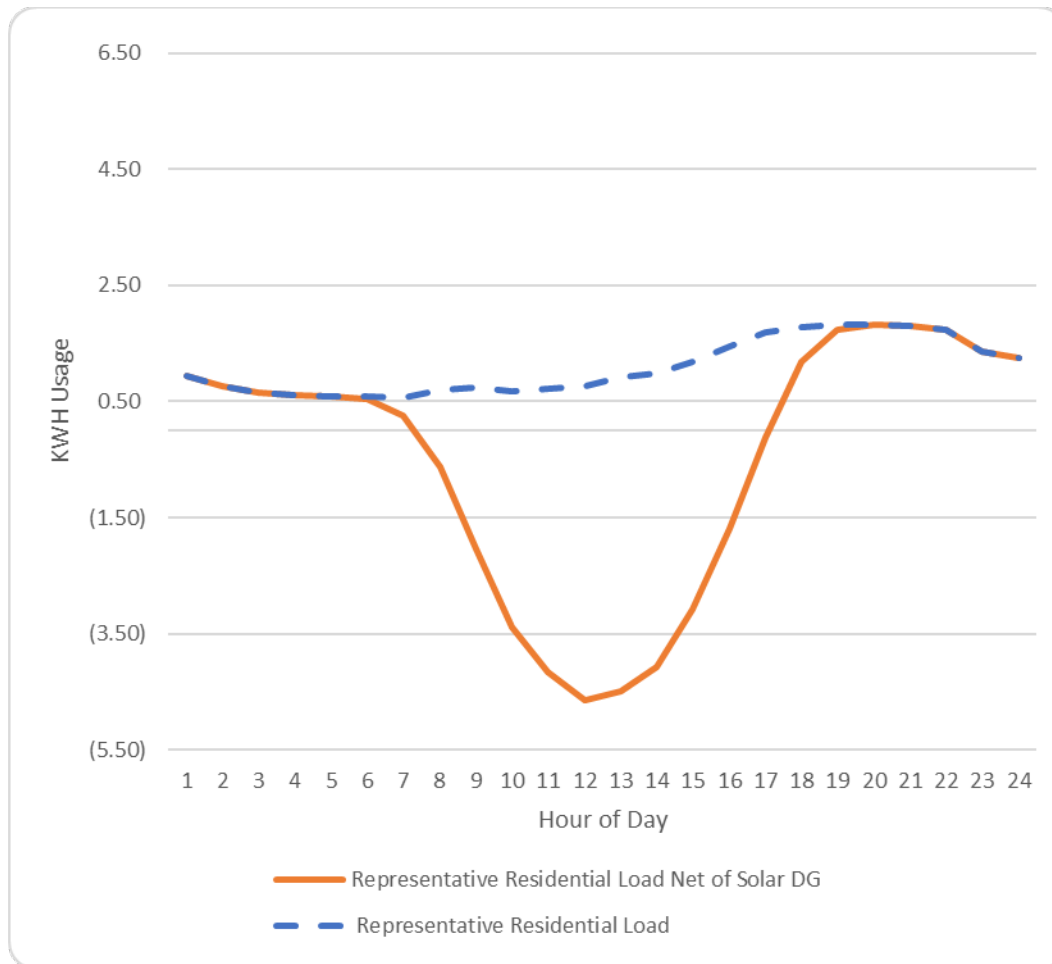


Figure 2-5. Representative Residential Usage with Solar DG

Figure 2-5, the blue dashed line represents the same residential customer in Figure 2-4. The solid orange line represents the residential load net of the solar DG generation. The solar DG is generating more power than the customer is using during midday.

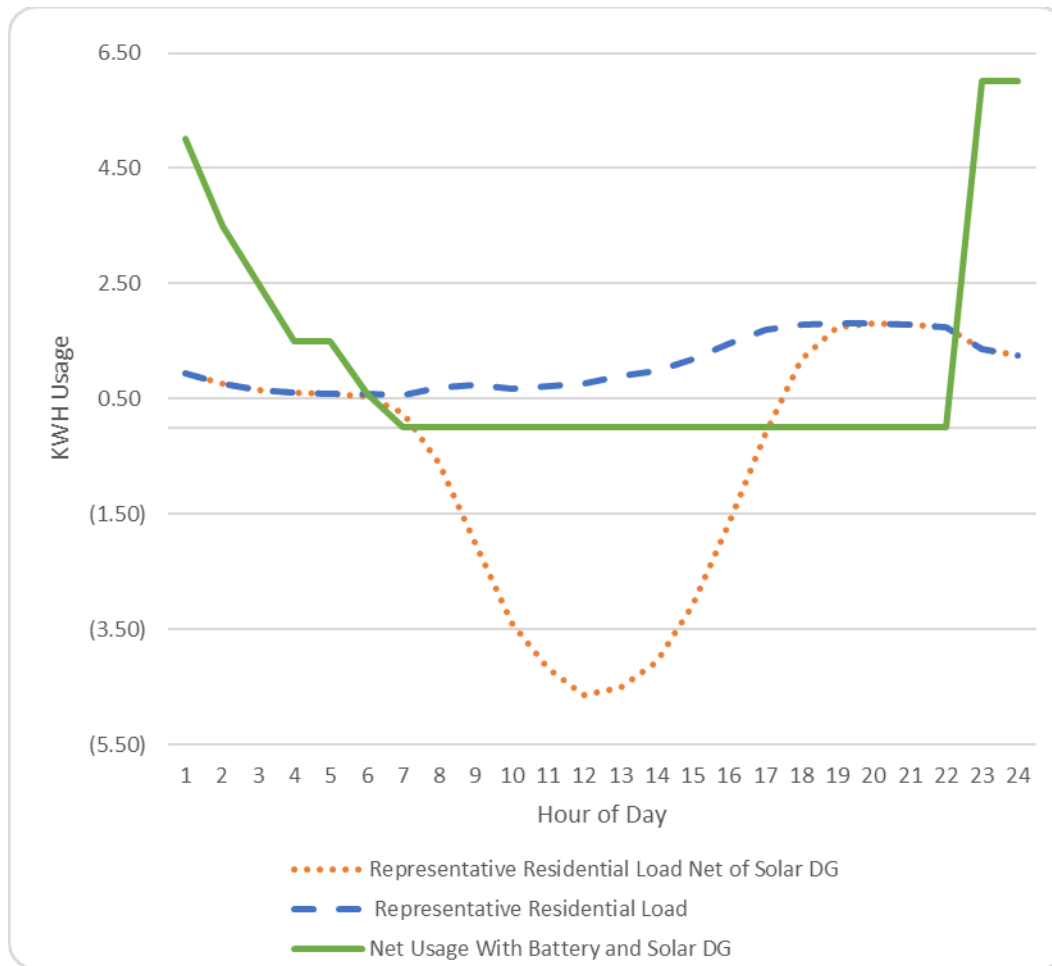


Figure 2-6. Representative Residential Usage with Solar DG and Battery Storage

Figure 2-6, the blue dashed line represents the same residential customer in Figure 2-4. The dotted orange line represents the residential load net of the solar DG generation. The green solid line represents the customers load as views from the utility. The customer is storing their excess energy in the battery, and then using that energy during the late afternoon peak periods.

Figure 2-6 represents a customer that is storing energy, and then using their own energy when the solar DG is not generating. The customer could also store their excess energy, and then sell the energy back to the utility at peak periods. In this way, battery storage can be designed to help utilities manage their peak demand more efficiently and reduce strain on the grid during peak periods. Additionally, by encouraging the adoption of battery storage among solar customers, utilities can enhance grid stability, reliability, and resilience, ultimately benefiting both the utility and their customers. However, as noted before, solar DG paired with battery storage can exacerbate the issue of fixed cost recovery for a utility, depending on the utility's retail rate structures.

Rate Design Considerations

Time-of-Use

Some utilities offer TOU rates where electricity prices vary based on the time of day, the day of the week, and the season. TOU rates send pricing signals that it is more expensive to generate or procure power during peak times. Time-based rates offer customers the chance to manage their electricity consumption and lower their bill by using power in off-peak periods. For customers with solar DG and battery storage, time-based rates can save the customer money (by using power off-peak) and can benefit the customer monetarily (by selling power to the utility at peak periods).

In summary, a TOU rate can be used to incentivize off-peak consumption and on-peak generation, aligning customer behavior with grid needs, maximizing the value of solar generation, and supporting grid stability. By offering lower electricity prices during off-peak hours, TOU rates encourage solar DG customers to utilize their excess energy or charge their battery storage systems when demand on the grid is lower, thus reducing strain during peak periods. Additionally, charging higher rates during peak demand hours ensures fair compensation for excess energy fed back into the grid, maximizing financial benefits for solar customers while supporting grid stability through load shifting and optimization of renewable energy integration. For this Study, we have not included an analysis of DME's potential fixed cost recovery issues related to solar DG paired with battery storage.

Table 2-4 illustrates the same methodology employed in generating DME's Avoided Cost rate of \$0.0702/kWh, as seen in Table 2-3, but on a TOU and seasonal basis. Peak and Off-Peak Avoided Cost rates for both winter and summer periods were developed based on an average of hourly costs for DME. A detailed analysis of DME's seasonal and TOU cost basis was not conducted for this Study.

Incorporating TOU Avoided Cost rates alongside TOU retail rates could enhance the incentive for customers to strategically dispatch energy during peak hours. This approach would ensure that the utility accurately compensates solar DG customers based on the time when costs are avoided, aligning compensation with the actual value of the energy fed back into the grid.

Table 2-4
Representative Time-of-Use Avoided Cost Rate for Solar DG with Battery Storage

Component	Season/Period ⁽¹⁾	Summer Avoided Cost (\$/kWh) ⁽²⁾	Winter Avoided Cost (\$/kWh) ⁽²⁾
Generation Capacity Savings	Peak	\$0.0000	\$0.0000
Generation Capacity Savings	Off-Peak	\$0.0000	\$0.0000
Distribution Capacity Savings	Peak	\$0.0000	\$0.0000
Distribution Capacity Savings	Off-Peak	\$0.0000	\$0.0000
Transmission Capacity Savings	Peak	\$0.1631	\$0.0000
Transmission Capacity Savings	Off-Peak	\$0.0000	\$0.0000
ERCOT Energy Price Savings	Peak	\$0.2337	\$0.0307
ERCOT Energy Price Savings	Off-Peak	\$0.0483	\$0.0294
Ancillary Service Savings	Peak	\$0.0229	\$0.0034
Ancillary Service Savings	Off-Peak	\$0.0039	\$0.0025
Avoided Costs	Peak	\$0.4198	\$0.0340
Avoided Costs	Off-Peak	\$0.0522	\$0.0319

(1) Summer months are June–September, Winter months are all other months. Peak times are from 3 p.m.–7 p.m. every day. Off-Peak are all other times.

(2) Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.

Based on the simplified analysis provided in Table 2-4, a representative customer can be compensated at \$0.42/kWh for energy sold back to the utility during summer peak periods. This is nearly six times the annual average Avoided Cost of approximately \$0.07/kWh shown on Table 2-3. DME does not currently have TOU rates available for most customers (there is a TOU option for General Service Large customers). Due to this limitation, the analysis was simplified, and further investigation would be necessary if this approach were to be pursued.

Energy-Related Costs Avoided Based on Comparative PPAs

Under PURPA, Avoided Costs can be based on a utility's solar PPA prices.²⁰ These Avoided Costs can serve as the basis for setting the rates at which utilities purchase energy from QFs, including solar DG. These PPAs outline the terms under which solar energy developers sell electricity to utilities, often at a predetermined rate over a specified period.

DME's average solar PPA is \$0.0244/kWh which is less than the energy market rate of \$0.0524/kWh as shown in Table 2-3. This underscores the potential for cost savings linked to procuring solar energy compared to purchasing electricity directly from the market, emphasizing the potential discrepancy between awarding the full market rate and the actual cost of solar energy procurement.

If we used the current DME PPA price as the Energy Savings, DME's Avoided Cost rate would be \$0.0379 per kWh, as indicated in Table 2-5.

²⁰ <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-K/part-292>

Table 2-5
Avoided Cost Based on Recent DME Solar PPAs

Component	Avoided Cost Rate (\$/kWh) ⁽¹⁾
Generation Capacity Savings	\$0.0000
Distribution Capacity Savings	\$0.0000
Transmission Capacity Savings	\$0.0135
Solar PPA Price Savings ⁽²⁾	\$0.0244
ERCOT Ancillary Service Savings ⁽³⁾	\$0.0000
Avoided Costs for Solar DG	\$0.0379

(1) Rates are based on customers served at secondary voltage. Values were adjusted for line losses at 5.1%.

(2) DME PPAs are variable only and do not include any firm capacity.

(3) Ancillary Services were assumed to be included in the PPA price.

Regardless of which Avoided Cost the City Council and DME choose to use, the Avoided Cost rate should be recalculated annually.

Section 3

VALUE OF SOLAR: SOCIETAL BENEFITS

This section summarizes the potential Societal Benefits derived from renewable energy and the options for valuing them through solar DG. The Societal Benefits represent the benefits to society resulting from reduced greenhouse gas (GHG) emissions and slowing climate change related impacts. In this section we summarize current GHG valuation markets and metrics including the GHG trading market, carbon capture, and a broad Federal Government valuation of a metric ton of GHG emissions.

Including Societal Benefits in the Value of Solar rate is a policy decision for the City Council. The City Council may choose to include an environmental or societal value component to the VOS credit that is related to or supports their policy objectives. Please note that this societal benefit may not be monetarily realized by the City, unlike the monetized cost avoidance related to energy or capacity benefits. It should be clear, however, that providing this VOS credit component to solar DG customers represents a revenue to solar DG customers paid for by non-solar DG customers. This distinction between a cost-based or monetized credit and a societal or non-monetized subsidy should be agreed upon by the City Council as a policy decision before implementation. If the City Council believes that it has value for the community, then the City Council should consider including Societal Benefits in their Value of Solar rate.

Greenhouse Gas Market

There is not a GHG federal market or a GHG state market in Texas. However, there is an organized GHG market in the Northeast called the Regional Greenhouse Gas Initiative (RGGI).²¹ RGGI is a cooperative among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont to cap and reduce carbon dioxide (CO₂) emissions from the power sector. RGGI is the first cap-and-invest regional initiative implemented in the U.S. As a reference point, the December 2023 auction for CO₂ allowances settled at \$14.88 per allowance. A CO₂ allowance represents a limited authorization to emit one short ton of CO₂.

U.S. Federal Government Tax Credits for Carbon Capture

Section 45Q of the U.S. Internal Revenue Code provides a tax credit for every metric ton of CO₂ that is captured and stored. Section 45Q was first introduced in 2008, and the amount paid for captured CO₂ increased after the passage of the Inflation Reduction Act in August 2022. How much carbon is worth depends on what is done with the carbon. It can vary from \$60 per ton if used for enhanced oil recovery to \$180 per ton if it is pulled from the atmosphere and stored in the ground.²²

California Public Utility Commission Avoided Cost Calculator

The CPUC uses an Avoided Cost Calculator to determine the value of on-site solar and other DG resources. The avoided costs of electricity are modeled based on the following components: generation energy, generation capacity, ancillary services, transmission and distribution capacity, greenhouse gases, and high

²¹ <https://www.rggi.org/>

²² <https://climate.mit.edu/ask-mit/how-much-captured-co2-worth>

global warming potential gases.²³ The annual Total GHG Value in the CPUC model is \$29.31 per ton in 2023 and is growing by 7.5% per year.²⁴

U.S. Federal Government Social Cost of Carbon

The U.S. Federal Government uses the Social Cost of Carbon (SCC) to measure Societal Benefits. The SCC is an estimate of the cost of the damage done by a ton of carbon emissions.²⁵ The SCC is also used as an estimate of the benefit of any action taken to reduce a ton of carbon emissions. The SCC puts the effects of climate change into economic terms to help federal and state policymakers understand how emissions-related policies affect the economy. As previously indicated, the value of the reduction in non-carbon, regulated emissions (NO_x and SO_x) is assumed to be captured in the ERCOT market prices for power discussed in Section 2.

Background

The SCC was first estimated by the U.S. federal government to quantify the impacts from emitting one extra ton of carbon emissions. The federal government uses the SCC in their cost-benefit analyses when evaluating whether a policy to reduce emissions is justified. A cost-benefit analysis compares the total economic benefits of a proposed policy to its total economic costs.

The basis for the SCC is the estimated cost that is imposed on society as a byproduct of fossil-fueled power production. According to certain federal agencies, the harm to society from greenhouse gas emissions (which include but are not limited to CO₂):

*... includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.*²⁶

In 2009, the federal government set up the Interagency Working Group (IWG), a group of several federal departments that includes the U.S. Department of Energy and the U.S. Environmental Protection Agency (EPA), to determine the methodology and standards to be used to calculate the SCC. The SCC has varied significantly over the years depending on the administration in charge. The Obama administration set the SCC at \$43/ton.²⁷ The Trump administration set the SCC between \$3 and \$5/ton. The Biden administration set the SCC at \$51/ton in 2021. In 2022, the EPA issued an estimate of \$190/ton.²⁸

²³ <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/der-cost-effectiveness>

²⁴ <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/der-cost-effectiveness>

²⁵ https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf

²⁶ U.S. Department of Energy's and the U.S. Environmental Protection Agency's Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990 at 2.

²⁷ <https://www.brookings.edu/articles/what-is-the-social-cost-of-carbon/>

²⁸ https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf

Data Sources

IWG published the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Report in February 2021 under Executive Order 13990.²⁹ This report provided the SCC on a per ton (\$/ton) basis as shown in Table 3-1. To convert the cost per ton to a cost per kWh, we used the pounds of CO₂ per megawatt hour (MWh) generated (lbs./MWh). For Texas, we used the U.S. Energy Information Administration's (EIA) Texas Electricity Profile report (EIA Texas Report) for CO₂ emitted in Texas.³⁰

Methodology

The Societal Benefit is calculated by multiplying the emission year dollar per metric ton of CO₂ (from Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990) by the prevailing CO₂ metric tons per kWh (from the U.S. EIA's Texas specific State Electric Profiles report, using the CO₂ lbs./MWh emissions statistic). This equation is shown below.

$$\text{Societal Benefit} = \text{Emission Year } \$/\text{Metric ton CO}_2 * \text{Prevailing Metric ton CO}_2/\text{kWh}$$

Based on the IWG report, the value per metric ton of CO₂ for Emissions Year 2024 is \$55. The metric ton of CO₂/kWh is 0.41 (894 lbs./MWh).³¹ This calculation results in a Societal Benefit value of \$0.0223/kWh for 2024 as shown in Table 3-1. Using the EPA's most recent report, this calculation results in a value of \$0.0849 per kWh.

Table 3-1
Social Cost of Carbon

Emissions Year	\$/Metric Ton of CO ₂ ⁽¹⁾	Metric Ton of CO ₂ /MWh ⁽²⁾	SCC \$/kWh
IWG 2020	\$51.00	0.41	\$0.0207
IWG 2021	\$52.00	0.41	\$0.0211
IWG 2022	\$53.00	0.41	\$0.0215
IWG 2023	\$54.00	0.41	\$0.0219
IWG 2024	\$55.00	0.41	\$0.0223
IWG 2025	\$56.00	0.41	\$0.0227
EPA 2023	\$190.00	0.41	\$0.0849

(1) Table values are derived from Table A-1 in Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990.

(2) Texas specific State Electric Profiles report.

Whereas Avoided Costs (Section 2) are actual costs avoided by the utility from solar generation, the Societal Benefits of reducing carbon emissions are theoretical cost savings, since utilities in Texas do not

²⁹ https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf

³⁰ <https://www.eia.gov/electricity/state/texas/>

³¹ Based on 2022 EIA data released Nov. 2, 2023.

pay for carbon emissions. In the short term, the utility does not avoid any costs or reduce expenses beyond its Avoided Cost. In the long term, there are potential societal cost savings due to increased societal and environmental health.

Societal Benefits Specific to DME

From a Societal Benefit point of view, the benefit of generating power with renewable energy is avoiding the emissions that would have been created from generating with fossil fuels.

Currently, carbon emissions are not regulated in Texas and there is no market value for carbon allowances in Texas. Additionally, because of DME's 100% renewable energy portfolio, DME neutralizes any carbon emissions associated with serving their customers by leveraging their renewable PPAs and RECs. DME has already "avoided" the emissions associated with providing electricity to their customers.

As a result, the Societal Costs outlined in this section are already being mitigated through this power supply strategy, and solar DG does not offer any additional value in this context. Therefore, we recommend that the Societal Benefit for solar DG for DME be set at zero (\$0.00/kWh).

Other Considerations

Benefit of Local Generation

While DME currently meets 100% of their energy needs through renewable PPAs, there are arguments in favor of supporting local renewable generation in the form of solar DG. One program in support of local renewable generation devised by the North Central Texas Council of Governments and local stakeholders is the Dallas-Fort Worth Air Quality Improvement Plan.³² While the specifics of its implementation and potential restrictions remain uncertain, it could entail constraints on local fossil fuel generation capacity and create greater demand for transmitting renewable energy to the region. No valuation associated with the Dallas-Fort Worth Air Quality Improvement Plan was included in the Avoided Cost analysis for this Study.

Cost of Integrating Renewables

While local solar generation can reduce transmission and distribution losses, it also raises concerns about land use, reliability, upfront costs, grid integration, and equity. In certain situations, these factors may offset the potential upside. We did not incorporate any costs associated with these items in the analysis.

Production and Disposal of Solar Panels

Solar panel fabrication requires chemicals, water, and electricity. Minerals and metals used in the production of solar panels are mined, which also requires consumables and electricity. Our analysis does not address any secondary environmental effects related to the production and fabrication of solar panels.

Solar panel disposal includes recycling any recyclable materials (glass, aluminum, copper) while the remaining materials are generally sent to a landfill. Toxic metals like lead and cadmium may also be present in solar panels. Our analysis does not include the recycling and disposal costs of the solar arrays at the end of their life.

³² <https://www.publicinput.com/dfwAQIP>

While it is important to consider the social and ethical implications of solar array production and disposal, attempting to assign a monetary value in the context of solar panel manufacturing or mining is challenging and may vary significantly depending on the methodology used. Therefore, we did not incorporate any offsets associated with these items in the analysis.

Section 4

VALUE OF SOLAR: POLICY DRIVEN INCENTIVES

The third component considered in the value of solar is the City's and DME's policies. The City or DME may consider increasing the credit given to solar DG customers through policy as an incentive to encourage the adoption of rooftop solar systems. By providing additional incentives such as credits or financial benefits, utilities can help offset the initial investment costs for customers, making solar energy more financially attractive and accelerating the transition to renewable energy.

Similar to the Societal Benefits, including policy driven incentives in the VOS rate is a policy decision for the City Council. The City Council may choose to include a value component to the VOS credit that is related to or supports their policy objectives. Please note that this benefit may not be monetarily realized by the City, unlike monetized cost avoidance related to energy or capacity benefits. It should be clear, however, that providing this VOS credit component to solar DG customers represents a revenue to solar DG customers paid for by non-solar DG customers. This distinction between a cost-based or monetized credit and a non-monetized subsidy should be agreed upon by the City Council as a policy decision before implementation. If the City Council believes that it has value for the community, then the City Council should consider including Policy Driven Incentives in their Value of Solar rate.

The City currently has several policies, goals, programs, and plans in place to reach carbon neutral emissions by 2050 as a community, not just for electricity use. This section summarizes these goals and discusses the role that solar DG can play in these policies.

City of Denton and DME Renewable Energy Policies

The policies and plans created by the City and DME define the metrics to guide current and future energy strategies. The City's and DME's existing policies as related to renewable energy and carbon emissions are as follows:

Renewable Resource Plan (12/2017)

The Renewable Resource Plan, initiated in December 2017, aimed to assess the viability of achieving either a 70% or 100% renewable energy target while also establishing a reasonable timeline. Emphasizing diversification, the plan analyzed the impacts and risks associated with different renewable resource production methods across various locations, including the integration of DME's DEC resource. Following thorough deliberation, the PUB and the City Council endorsed the adoption of 100% renewable energy through wind and solar PPAs.

DME action: DME had to begin procuring renewable energy.

Requirement for local solar generation: None required.

Resolution No. 18-085 (2/2018)

With direction from the Renewable Resource Plan, the City Council passed and approved Resolution No. 18-085 on February 6, 2018, directing DME to meet the goal of providing their electric customers with 100% renewable energy. This goal was achieved in 2021 through solar and wind PPAs and RECs.

DME action: DME had to purchase 100% renewable energy.

Requirement for local solar generation: None required.

Simply Sustainable, A Framework for Denton's Future (2/2012 & 6/2020)

Originally adopted in February 2012, this document was updated in June 2020. The primary objective was to enhance efficiency and reduce energy consumption across municipal departments while also promoting energy efficiency among residents and local businesses. Strategy 3 of the plan focuses on enhancing the energy efficiency of existing homes and buildings. This includes exploring potential programs geared toward promoting electric vehicle (EV)/solar readiness. Designed as a dynamic framework, the document aimed to continuously evolve, with periodic reviews and updates of its goals and strategies every five to seven years.

DME action: None required.

Requirement for local solar generation: None required.

GreenSense Incentive Program (2010)

In 2010, DME began offering economic incentives to residential and commercial customers to develop rooftop solar DG facilities in addition to other energy efficient rebates through the GreenSense program.

DME action: Provide rebates for solar DG.

Requirement for local solar generation: None required.

DME Report to Sustainability Framework Advisory Committee Regarding the GreenSense Incentive Program (8/2022)

In August 2022, the DME staff submitted a comprehensive report to the Sustainability Framework Advisory Committee focusing on rooftop solar programs. The report included recommendations for the GreenSense incentives program. Specifically, the DME staff advocated for the removal of the solar rebate component within the GreenSense program. DME staff's rationale stemmed from the achievement of DME's goal of providing 100% renewable energy. Instead, DME proposed reallocating the budgeted funds toward other energy efficiency rebates within the GreenSense program, ensuring a more holistic approach to sustainable energy initiatives.

The report also recommended that a) DME should recover the appropriate fixed costs from each solar DG customer; and b) to the extent that a solar DG customer's credit exceeds the amount due to DME in any month, the credit should not offset other City of Denton billed utilities and should instead provide credits to the solar DG customer no higher than the Energy Cost Adjustment (ECA) rate. The ECA is a pass-through rate mechanism that is designed to fully recover fuel and purchased power costs. These "pass-through" rate mechanisms are a widely adopted industry practice.

City of Denton Climate Action Adaption Plan (Currently Under Consideration)

The City developed a comprehensive plan to better outline the essential steps toward achieving net-zero emissions by 2050. This initiative involved engaging with the public and the City Council through meetings to gather valuable insights into the pivotal opportunities and challenges pertaining to Denton's transition toward a low-carbon future. The plan is holistic in nature, addressing a wide array of factors beyond

electric generation and encompassing transportation, businesses, and community involvement as integral components.

The City has not yet adopted the CAAP. If the City adopts the CAAP, the renewable energy goals include specific capacity goals for installed solar including solar DG. According to the CAAP, the current solar DG capacity is approximately 9 MW and the local solar DG goal is 53 MW by 2030 and 192 MW by 2048. Local solar can be solar DG or DME-owned solar that is near Denton. For Denton to achieve the aggressive goals outlined in the CAAP, the solar DG systems will likely have to be incentivized to meet the targets.

DME action: Not applicable yet.

Requirement for local solar generation: Not applicable yet.

This is relevant to the VOS rate discussion because the ability to achieve the customer-sited policy objectives is dependent on customers installing solar DG as a result of their own economic or social decisions. Currently DME's 100% renewable power supply objective does not rely upon customer sited solar DG installations. However, incremental solar DG installations could be considered energy efficiency improvements as increasing DME's portfolio of renewable resources could be mitigated by these sources of renewable energy. The VOS credit may impact customers' decision to install future solar DG or participate in future community solar projects.

City Policies Specific to DME

Of the policies and plans listed above, none of the policies require DME to provide an incentive to promote the installation of solar DG. Since DME has already achieved its goal of 100% renewable energy, it may be unnecessary to incentivize solar DG for several reasons. First, with renewable energy sources already comprising the entirety of their energy portfolio, DME has sufficient clean energy available for consumption, rendering additional solar generation redundant. Additionally, the cost-effectiveness of incentivizing rooftop solar diminishes when renewable energy sources already fulfill the energy demand without the need for supplementary generation. Redirecting funds from solar rebates toward other energy efficiency initiatives can further optimize resource allocation, addressing broader sustainability goals such as promoting energy conservation practices among consumers and catering to a wider range of consumers, and addressing varied energy needs within the community.

For Denton to achieve the aggressive goals outlined in the CAAP, the solar DG systems will likely have to be incentivized to meet the targets. DME could incentivize solar DG a variety of ways:

- Through the VOS rate.
 - The customers could be compensated at a rate above Avoided Cost for their personal investment. The amount of the credit may not be cost based and could be subjective. Depending on the policy, the customer may be paid this incentive indefinitely.
- Waive application or interconnection fees.
 - Waiving the application and connections fees will save the customer money at the time of installation. However, there is a cost for DME to provide these services. If the solar DG customer is not paying the fees, then the remaining customers will have to cover the costs.
- Streamline application or interconnection permits and inspections.
 - Streamlining the process will save the customer time and allow them to install their system faster.
- Grants or rebates for customers that install solar DG.

- Providing grants or rebates upfront will save the customer money at the time of installation. However, there is a cost for DME to provide these grants or rebates. If the solar DG customer is not paying the full cost of their solar DG, then the remaining customers will have to cover the costs.
- Low-cost loans.
 - Low interest rate loans will save solar DG customers money during the life of the loan. However, if DME offers loans at interest rates lower than what DME pays, then there is a potential subsidy from DME to the customer.

We recommend that the City Council and DME discuss the above options to make decisions that support the community's goals.

Federal Policies Supporting Solar DG

The federal government has offered a variety of programs over the years to support and incentivize solar DG. The Inflation Reduction Act extended the Federal Solar Tax Credit until 2035.³³ The credit is a tax credit that can be claimed on federal income taxes for a percentage of the cost of a solar DG system paid for by the taxpayer. For years 2022–2032, a tax credit can be claimed for 30% of installation costs for the following items:

- Solar electric panels
- Solar water heaters
- Wind turbines
- Geothermal heat pumps
- Fuel cells
- Battery storage technology

State Policies Supporting Solar DG

The state of Texas offers one incentive for customers who install solar DG:

- Texans who install solar can exempt the value the solar panels add to their properties when determining their property tax.³⁴

³³ <https://www.energy.gov/eere/solar/homeowners-guide-federal-tax-credit-solar-photovoltaics>

³⁴ <https://comptroller.texas.gov/> See the Texas Property Tax Exemptions data February 2024.

Section 5

INDUSTRY BENCHMARKING

As part of this Study, we reviewed other Texas utilities' approaches to metering and billing for customers with solar DG.

Austin Energy

Austin Energy (AE) is a municipally owned electric utility serving the city of Austin, Texas. With over 480,000 customers, AE is one of the largest public power utilities in Texas and the U.S. AE currently has an energy portfolio made up of 60% renewable energy and 40% non-renewable energy.³⁵

AE employs a VOS rate system to compensate solar customers for energy generated by their on-site systems, incorporating three key components: Avoided Cost, Societal Benefits, and Policy Driven Incentives. AE utilizes the same approach outlined in this Report to calculate the three components of the VOS. Currently set at \$0.0991/kWh, AE's VOS rate applies to all energy generated by solar DG and facilitated by dual metering, which enables separate tracking of energy generation and consumption. This arrangement allows AE to credit all solar generation at the VOS rate and bill consumption at the retail rate, a model known as Buy-All Sell-All.

DME currently does not have two meters, limiting them to measuring energy flow in a single direction at one time. Consequently, when a customer consumes more energy than they generate, the meter records a positive read, and vice versa. These limitations restrict DME's capacity to implement a Buy-All Sell-All approach.

Pedernales Electric Cooperative

Pedernales Electric Cooperative (PEC) is a member-owned cooperative (co-op) electric utility serving Central Texas. With over 400,000 customers, PEC is the largest co-op electric provider in Texas and one of the biggest in the U.S. PEC uses a similar approach to AE to develop their Sustainable Power Credit (VOS rate equivalent). However, PEC utilizes only the Avoided Cost portion and does not include any Societal Benefits or Policy Driven Incentives as part of their credit. Their reasoning is that since they are not actual and direct costs incurred by PEC, they would result in subsidies paid by non-solar DG members.³⁶

As they operate under a NEM billing structure, PEC ensures members receive full retail credit for their generated electricity, with surplus energy fed back into the grid credited at a rate of \$0.069554/kWh under the Sustainable Power Credit.³⁷

³⁵ <https://austinenenergy.com/about/environment/renewable-power-generation>

³⁶ <https://www.pec.coop/wp-content/uploads/2023/11/Interconnected-Generation-Value-of-Solar-Study-Report.pdf>

³⁷ <https://www.pec.coop/dg-interconnection-rates/#:~:text=The%20Sustainable%20Power%20Credit%20has,PEC%20from%20direct%20avoided%20costs.>

CPS Energy

CPS Energy (CPS) is the largest municipally owned electric utility in Texas and the U.S., serving over 800,000 customers in the city of San Antonio, Texas and surrounding areas. CPS currently has an energy portfolio made up of 10% renewable energy, 25% nuclear energy, and 65% non-renewable energy.³⁸

CPS utilizes a NEM billing approach, giving customers full retail credit up to the amount they consume and providing an Avoided Cost rate for excess generation. Credits can be carried forward to subsequent bills. CPS has rooftop solar incentives to support the adoption of solar for small businesses, schools, and non-profit organizations that is based on a dollar per AC Watt of capacity installed.³⁹

CoServ

CoServ is a member-owned electric cooperative serving North Texas with over 470,000 combined electric and gas meters. CoServ utilizes bidirectional meters and credits all kWh in excess of customer usage at \$0.0821/kWh⁴⁰. Credits can be used toward the non-generation portions of a customer's bill and if additional credits still exist, they can be applied to subsequent months' bills.

Garland Power and Light

Garland Power and Light (GP&L) is a municipally owned utility providing electric service to over 70,000 customers in the city of Garland, Texas. GP&L utilizes bidirectional meters and credits all kWh in excess of customer usage at \$0.0669/kWh.⁴¹

Bryan Texas Utilities

Bryan Texas Utilities (BTU) is a municipally owned utility serving the city of Bryan, Texas and providing electric services to over 60,000 residents and businesses. BTU currently has an energy portfolio of 8% renewable, 15% market purchases, and 77% non-renewables.⁴²

BTU compensates customers for the energy generated by their DG systems, crediting the value against their utility bills based on metered kWh input at BTU's applicable Power Supply Adjustment charge. Any surplus credit remaining after offsetting energy consumption can be requested as a check payment from BTU, with a request limit of twice annually.⁴³

New Braunfels Utilities

New Braunfels Utilities (NBU) is a municipally owned utility serving the city of New Braunfels, Texas and providing electric service to over 50,000 residential and commercial customers. NBU gives full retail credit for any power generated by the customer which can be used to offset the amount of power purchased from NBU. However, NBU does not purchase excess generation.⁴⁴ Additionally, NBU's solar DG customers

³⁸ <https://www.cpsenergy.com/en/about-us/programs-services/energy-generation.html>

³⁹ <https://www.cpsenergy.com/content/dam/corporate/en/Documents/CPSE%20Solar%20Program%20Manual.pdf>

⁴⁰ <https://www.coserv.com/help/how-is-dg-with-buyback-bill-calculated/>

⁴¹ <https://www.gpltexas.org/residential/solar-installation-requirements>

⁴² <https://www.btutilities.com/wp-content/uploads/2023/04/2022-BTU-Annual-Report-WEB.pdf>

⁴³ [https://www.boarddocs.com/tx/cobtx/Board.nsf/files/BZVJBK4C4688/\\$file/Electric%20Rates%202021%20Final.pdf](https://www.boarddocs.com/tx/cobtx/Board.nsf/files/BZVJBK4C4688/$file/Electric%20Rates%202021%20Final.pdf)

⁴⁴ <https://www.nbutexas.com/wp-content/uploads/2023/04/FY-2024-Electric-Rates.pdf>

are assessed a surcharge of \$1.58 per kW of system size.⁴⁵ NBU's solar DG customers are required to have two meters. NBU offers rebates on a \$/watt of capacity installed.⁴⁶

Georgetown Electric Utility

The City of Georgetown provides electric services to its citizens and is in the process of updating its existing NEM rate program. One recent change made was to adopt an avoided cost process for compensating excess energy from solar DG customers. The avoided cost is based on a historic analysis of ERCOT market pricing (including avoided AS costs) as well as avoided transmission costs, similar to the manner proposed for the DME Avoided Cost herein. The City of Georgetown recently reviewed a proposal from staff to move to a "Buy-All Sell-All" model for new solar DG, as well as to incorporate a fixed cost recovery fee for solar DG paired with battery storage.

DME

DME gives full retail credit for any power generated by the customer up to the amount of energy the customers uses. Customers who generate more solar power than they consume—referred to as net generators—receive a Renewable Cost Adjustment (RCA) for the surplus energy they produce on a \$/kWh basis. DME's RCA rate utilizes the following formula to establish the RCA rates.⁴⁷

$$\text{Renewable Cost Adjustment} = \frac{\text{Nodal Market Price} * \text{Renewables Hourly Output}}{\text{Total Annual Renewables Production}}$$

The current RCA rate accounts for the ERCOT Energy Price component in Table 2-3. DME's RCA tariff permits rate adjustments on a quarterly basis. However, DME has not exercised the adjustment in several years. The current RCA rate is \$0.0381/kWh.

Summary of Texas Solar DG Metering and Billing

As shown in Table 5-1 below, nearly all Texas utilities listed use net metering with full retail credit up to their customers' use (monthly netting) and then pay those customers an Avoided Cost rate for any excess generation. Only Austin Energy currently pays a VOS rate and has a Buy-All Sell-All metering and billing setup; however, the City of Georgetown has proposed a Buy-All Sell-All program.

⁴⁵ <https://www.nbutexas.com/wp-content/uploads/2022/09/2022-Solar-Facts-and-FAQs.pdf>

⁴⁶ https://www.nbutexas.com/wp-content/uploads/2024/01/23-20223_ResidentialSolarRebateApplicationGuidelines-02.pdf

⁴⁷ City of Denton Ordinance 20-1553.

Table 5-1
Review of NEM Programs for Selected Texas Electric Utilities

Utility	Billing Method	Metering Method	Credit Type: Up to Customers' Usage	Credit Type: Excess Generation (\$/kWh)
Austin Energy	Buy-All Sell-All	2 meters	Value of Solar	VOS = \$0.0991
Pedernales	Net Metering	1 meter	Retail Credit	AC = \$0.0696
CPS	Net Metering	1 meter	Retail Credit	AC = \$0.0600
CoServ	Net Metering	1 meter	Retail Credit	AC = \$0.0791
Garland Power and Light	Net Metering	1–2 meters	Retail Credit	AC = \$0.0669
Bryan Texas Utilities	Net Metering	1 meter	Retail Credit	Retail
New Braunfels Utilities	Net Metering	2 meters	Retail Credit	\$0.0000
Georgetown ⁽¹⁾	Net Billing	1 meter	Retail Credit	AC = \$0.04531
DME	Net Billing	1 meter	Retail Credit	RCA = \$0.0381

(1) Georgetown recently proposed moving to a Buy-All Sell-All program for new solar DG customers, along with a fixed charge rate for solar DG plus battery storage customers.

Section 6

SUMMARY AND RECOMMENDATIONS

Value of Solar Rate

The Value of Solar rate includes three components: the Avoided Cost rate, the Societal Benefits, and the Policy Driven Incentives. We recommend a VOS rate be used in conjunction with the Buy-All Sell-All billing and metering.

Avoided Costs

The Avoided Cost rate can be calculated in a variety of ways as explained in Section 2. The DME Avoided Cost rate based on the ERCOT market is \$0.0702/kWh. The Avoided Cost Rate based on a representative DME PPA is \$0.0379/kWh. Therefore, for the Avoided Cost we recommend a flat rate between \$0.0379 and \$0.0702/kWh.

If properly managed, the installation of battery storage can increase the value of the generation provided by the customer. Therefore, for a customer with solar DG and battery storage, we recommend a time-based Avoided Cost rate as shown in Table 2-5. However, we recommend DME evaluate fixed cost recovery concerns with solar DG paired with battery storage prior to initiating a TOU Avoided Cost rate.

Regardless of which Avoided Cost the City Council and DME choose to use, the Avoided Cost rate should be recalculated annually.

We recommend that the Avoided Cost rate be set between \$0.0379 and \$0.0702/kWh.

Societal Benefits

Including Societal Benefits in the Value of Solar rate is a policy decision for the City Council. The City Council may choose to include an environmental or societal value component to the VOS credit that is related to or supports their policy objectives. Please note that this societal benefit may not be monetarily realized by the City, unlike the monetized cost avoidance related to energy or capacity benefits. It should be clear, however, that providing this VOS credit component to solar DG customers represents a revenue to solar DG customers paid for by non-solar DG customers. This distinction between a cost-based or monetized credit and a societal or non-monetized subsidy should be agreed upon by the City Council as a policy decision before implementation. If the City Council believes that it has value for the community, then the City Council should consider including Societal Benefits in their Value of Solar rate.

From a Societal Benefit point of view, the benefit of generating power with renewable energy is avoiding the emissions that would have been created from generating with fossil fuels.

Currently, carbon emissions are not regulated in Texas, and there is no federal or state market value for carbon allowances in Texas. Additionally, DME neutralizes any carbon emissions associated with serving their customers by leveraging their renewable PPAs and RECs. DME has already “avoided” the emissions associated with providing electricity to their customers.

As a result, the Societal Costs are already mitigated through this power supply strategy, and solar DG does not offer any additional value in this context.

Including Societal Benefits in a Value of Solar Rate is a policy decision for the City Council. We recommend that the Societal Benefit for solar generation for DME be set to \$0.00/kWh unless the City Council believes that including the incentive has value for the community.

Policy Driven Incentives

Similar to the Societal Benefits, including policy driven incentives in the VOS rate is a policy decision for the City Council. The City Council may choose to include a value component in the VOS credit that is related to or supports their policy objectives. Please note that this benefit may not be monetarily realized by the City, unlike monetized cost avoidance related to energy or capacity benefits. It should be clear, however, that providing this VOS credit component to solar DG customers represents a revenue to solar DG customers paid for by non-solar DG customers. This distinction between a cost-based or monetized credit and a non-monetized subsidy should be agreed upon by the City Council as a policy decision before implementation. If the City Council believes that it has value for the community, then the City Council should consider including Policy Driven Incentives in their Value of Solar rate.

None of the various City policies require DME to provide an incentive to promote the installation of solar DG. For Denton to achieve the aggressive goals outlined in the CAAP, the solar DG systems will likely have to be incentivized to meet the targets.

Including Policy Driven Incentives in a Value of Solar Rate is a policy decision for the City Council. We recommend that the Policy Driven Incentive rate for solar DG for DME be set to \$0.00/kWh unless the City Council believes that including the incentive has value for the community.

Recommended Rate to Compensate Customer Generation

Depending on whether the recent solar PPAs or the ERCOT market is used, the Avoided Cost rate varies from \$0.0379 to \$0.0702.

With DME's current Net Billing tariff, we recommend that DME pay the customers selling excess generation to the utility an Avoided Cost rate between \$0.0379 and \$0.0702/kWh.

Appendix A Tables

Table A-1
Average Monthly Bill Comparisons – Net Consumer ⁽¹⁾

Line No.	Type	Formula	Current DME Rates	Current DME Rates	VOS Rate			PPA Rate		
			Non-Solar	Net Billing	Net Metering (NEM)	Buy All Sell All	Net Billing	Net Metering (NEM)	Buy All Sell All	Net Billing
1	Usage Charge – \$/kWh		\$0.0684 ⁽²⁾		\$0.0684	\$0.0684		\$0.0684	\$0.0684	
2	Gross Cust Usage				\$0.0702 ⁽³⁾	\$0.0702		\$0.0379 ⁽⁴⁾	\$0.0379	
3	Gross Cust Generation			\$0.0684			\$0.0684			\$0.0684
4	Bidirectional Net Energy Used			\$0.0684			\$0.0702			\$0.0379
5	Bidirectional Net Energy Sold									
6	Usage/ (Generation) – kWh									
7	Gross Cust Usage		1,200		1,200	1,200		1,200	1,200	
8	Gross Cust Generation				(800)	(800)		(800)	(800)	
9	Bidirectional Net Energy Used			694			694			694
10	Bidirectional Net Energy Sold			(294)			(294)			(294)
11	Net Usage/ (Generation)		1,200	400	400	400	400	400	400	400
12	Usage Billed									
13	Gross Cust Usage	= Line 1 * Line 5 OR Line 9	\$82.08		\$27.36 ⁽⁵⁾	\$82.08		\$27.36	\$82.08	
14	Gross Cust Generation	= Line 2 * Line 6 OR Line 9			\$0.00 ⁽⁶⁾	(\$56.16)		\$0.00	(\$30.32)	
15	Bidirectional Net Energy Used	= Line 3 * Line 7		\$47.49			\$47.49			\$47.49
16	Bidirectional Net Energy Sold	= Line 4 * Line 8		(\$20.13)			(\$20.66)			(\$11.15)
17	Total Usage Charge		\$82.08	\$27.36	\$27.36	\$25.92	\$26.83	\$27.36	\$51.76	\$36.34
18	ECA Charge – \$/kWh		\$0.0447 ⁽⁷⁾	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447
19	ECA Billed	= Line 5, Line 7 OR Line 9 * Line 15 ⁽⁸⁾	\$53.64	\$31.04	\$17.88	\$53.64	\$31.04	\$17.88	\$53.64	\$31.04
20	RCA Charge – \$/kWh			\$0.0381 ⁽⁹⁾						
21	RCA Billed	= Line 8 * Line 17		(\$11.21)						
22	TCRF Charge - \$/kWh		\$0.0135 ⁽⁷⁾	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135
23	TCRF Billed	= Line 5, Line 7 OR Line 9 * Line 19	\$16.20	\$9.37	\$5.40	\$16.20	\$9.37	\$5.40	\$16.20	\$9.37
24	Facility Charge – \$/month		\$8.67 ⁽¹⁰⁾	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67
25	Average Monthly Bill	= Lines 14 + 16 + 18 + 20 + 21	\$160.59	\$65.23	\$59.31	\$104.43	\$75.91	\$59.31	\$130.27	\$85.42
26	Difference From Current Net Billing				-9%	60%	16%	-9%	100%	31%

(1) Average monthly bill based on summer usage in Table A-2.

(2) DME residential summer usage charge as of 10/01/2020.

(3) ERCOT VOS rate per Table 2-3.

(4) ERCOT VOS rate per Table 2-5.

(5) Line 1 (retail rate) is only applied to customer usage if it exceeds the amount that solar DG generates for NEM.

(6) Line 2 (VOS or PPA rate) is only applied to solar DG that exceeds the customer usage for NEM.

(7) DME energy cost adjustment charge and transmission cost recovery factor as of 04/01/2024.

(8) Line 15 (ECA rate) is only applied to customer usage if it exceeds the amount that solar DG generates for NEM.

(9) DME renewable cost adjustment charge as of 10/01/2020.

(10) DME residential facility charge as of 10/01/2020.

Table A-2
Hourly Summer Load Profiles – Net Consumer ⁽¹⁾

Hour	Buy All Sell All		NEM Billing	Net Billing	
	Monthly Usage	Monthly Generation	Net Billed/ (Credit)	Customer Buys from DME	Customer Sells to DME
1	47	0	47	47	0
2	42	0	42	42	0
3	38	0	38	38	0
4	35	0	35	35	0
5	32	0	32	32	0
6	30	(0)	30	30	0
7	29	(4)	25	25	0
8	29	(25)	5	5	0
9	31	(51)	(20)	0	(20)
10	34	(73)	(39)	0	(39)
11	39	(90)	(51)	0	(51)
12	46	(101)	(55)	0	(55)
13	53	(105)	(52)	0	(52)
14	59	(100)	(41)	0	(41)
15	63	(91)	(28)	0	(28)
16	67	(75)	(8)	0	(8)
17	70	(54)	16	16	0
18	72	(26)	46	46	0
19	72	(5)	67	67	0
20	69	(0)	69	69	0
21	65	0	65	65	0
22	64	0	64	64	0
23	60	0	60	60	0
24	54	0	54	54	0
	1,200	(800)	400	694	(294)

(1) Usage and generation based on representative customer for illustrative purposes. A net consumer customer is a customer that consumes more energy than their solar DG generates.

Table A-3
Average Monthly Bill Comparisons – Net Generator ⁽¹⁾

Line No.	Type	Formula	Current DME Rates	Current DME Rates	VOS Rate			PPA Rate		
			Non-Solar	Net Billing	Net Metering (NEM)	Buy All Sell All	Net Billing	Net Metering (NEM)	Buy All Sell All	Net Billing
	Usage Charge – \$/kWh									
1	Gross Cust Usage		\$0.0684 ⁽²⁾		\$0.0684	\$0.0684		\$0.0684	\$0.0684	
2	Gross Cust Generation				\$0.0702 ⁽³⁾	\$0.0702		\$0.0379 ⁽⁴⁾	\$0.0379	
3	Bidirectional Net Energy Used			\$0.0684			\$0.0684			\$0.0684
4	Bidirectional Net Energy Sold			\$0.0684			\$0.0702			\$0.0379
	Usage/ (Generation) – kWh									
5	Gross Cust Usage		1,200		1,200	1,200		1,200	1,200	
6	Gross Cust Generation				(1,600)	(1,600)		(1,600)	(1,600)	
7	Bidirectional Net Energy Used			638			638			638
8	Bidirectional Net Energy Sold			(1,038)			(1,038)			(1,038)
9	Net Usage/ (Generation) Usage Billed		1,200	(400)	(400)	(400)	(400)	(400)	(400)	(400)
10	Gross Cust Usage	= Line 1 * Line 5 OR Line 9	\$82.08		\$0.00 ⁽⁵⁾	\$82.08		\$0.00	\$82.08	
11	Gross Cust Generation	= Line 2 * Line 6 OR Line 9			(\$28.08) ⁽⁶⁾	(\$112.32)		(\$15.16)	(\$60.64)	
12	Bidirectional Net Energy Used	= Line 3 * Line 7		\$43.65			\$43.65			\$43.65
13	Bidirectional Net Energy Sold	= Line 4 * Line 8		(\$43.65)			(\$72.88)			(\$39.35)
14	Total Usage Charge		\$82.08	\$0.00	(\$28.08)	(\$30.24)	(\$29.23)	(\$15.16)	\$21.44	\$4.30
15	ECA Charge – \$/kWh		\$0.0447 ⁽⁷⁾	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447	\$0.0447
16	ECA Billed	= Line 5, Line 7 OR Line 9 * Line 15 ⁽⁸⁾	\$53.64	\$28.52	\$0.00	\$53.64	\$28.52	\$0.00	\$53.64	\$28.52
17	RCA Charge – \$/kWh			\$0.0381 ⁽⁹⁾						
18	RCA Billed	= Line 8 * Line 17		(\$39.55)						
19	TCRF Charge - \$/kWh		\$0.0135 ⁽⁷⁾	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135	\$0.0135
20	TCRF Billed	= Line 5, Line 7 OR Line 9 * Line 19	\$16.20	\$8.61	\$0.00	\$16.20	\$8.61	\$0.00	\$16.20	\$8.61
21	Facility Charge – \$/month		\$8.67 ⁽¹⁰⁾	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67	\$8.67
22	Average Monthly Bill	= Lines 14 + 16 + 18 + 20 + 21	\$160.59	\$6.26	(\$19.41)	\$48.27	\$16.58	(\$6.49)	\$99.95	\$50.11
23	Difference From Current Net Billing				-410%	672%	165%	-204%	1498%	701%

(1) Average monthly bill based on summer usage in Table A-4.

(2) DME residential summer usage charge as of 10/01/2020.

(3) ERCOT VOS rate per Table 2-3.

(4) ERCOT VOS rate per Table 2-5.

(5) Line 1 (retail rate) is only applied to customer usage if it exceeds the amount that solar DG generates for NEM.

(6) Line 2 (VOS or PPA rate) is only applied to solar DG that exceeds the customer usage for NEM.

(7) DME energy cost adjustment charge and transmission cost recovery factor as of 04/01/2024.

(8) Line 15 (ECA rate) is only applied to customer usage if it exceeds the amount that solar DG generates for NEM.

(9) DME renewable cost adjustment charge as of 10/01/2020.

(10) DME residential facility charge as of 10/01/2020.

Table A-4
Hourly Summer Load Profiles – Net Generator ⁽¹⁾

Hour	Buy All Sell All		NEM Billing	Net Billing	
	Monthly Usage	Monthly Generation	Net Billed/(Credit)	Customer Buys from DME	Customer Sells to DME
1	47	0	47	47	0
2	42	0	42	42	0
3	38	0	38	38	0
4	35	0	35	35	0
5	32	0	32	32	0
6	30	(0)	30	30	0
7	29	(9)	21	21	0
8	29	(49)	(20)	0	(20)
9	31	(102)	(71)	0	(71)
10	34	(146)	(112)	0	(112)
11	39	(180)	(141)	0	(141)
12	46	(203)	(157)	0	(157)
13	53	(210)	(157)	0	(157)
14	59	(199)	(141)	0	(141)
15	63	(183)	(119)	0	(119)
16	67	(150)	(83)	0	(83)
17	70	(108)	(37)	0	(37)
18	72	(52)	20	20	0
19	72	(10)	62	62	0
20	69	(0)	69	69	0
21	65	0	65	65	0
22	64	0	64	64	0
23	60	0	60	60	0
24	54	0	54	54	0
	1,200	(1,600)	(400)	638	(1,038)

(1) Usage and generation based on representative customer for illustrative purposes. A net generator customer is a customer that generates more energy from their solar DG than they consume.



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Legislation Text

File #: PUB24-140, **Version:** 1

AGENDA CAPTION

Receive a report, hold a discussion, and give staff direction on the proposed Solid Waste, Water, Wastewater, and Electric rates for FY 2024-2025.



AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Cassey Ogden

DATE: July 8, 2024

SUBJECT

Receive a report, hold a discussion, and give staff direction on the proposed Solid Waste, Water, Wastewater, and Electric rates for FY 2024-2025.

BACKGROUND

The purpose of this work session is to provide detail to the Public Utilities Board (PUB) regarding the preliminary Solid Waste, Water, Wastewater, and Electric rates for fiscal year 2024-2025. The preliminary fiscal year 2024-2025 operating budgets were presented to PUB on June 24th.

Below is a summary of the proposed rate changes for Solid Waste, Water, Wastewater, and Electric. No changes to the rate schedule for Drainage or Customer Service are proposed for FY 2024-25.

Solid Waste

- Increase the following rates:
 - Residential Cart Service 1.5% Increase
 - Commercial Cart Service 1.5% Increase
 - Commercial Trash 1.5% Increase
 - Roll Off Rates \$25 Increase (Hauls)
\$2.92 Increase (Rental)
 - Compactor Rates \$25 Increase Roll Off (Hauls)
\$1.05 Increase (Rental 30 Cu. Yd.)
\$4.25 Increase (Rental 40 Cu. Yd.)
 - Landfill Flat \$1.50 Increase (except shingles)
- Add the following rates:
 - Add a \$20.00 fee for non-residential electronics disposal.

Water

- Fire Hydrant Meter Deposit
 - Increase hydrant meter deposit from \$1,100 to \$3,000 (approximate replacement cost of an unreturned meter).
 - Increase the backflow testing fee from \$15.95 to \$25.00 to recover the testing expenditures.
 - Add monthly fee for backflow service of \$4.16 per month. This fee would recover the administrative expenses of the backflow testing program.
 - Add a fee for non-COD meter testing of \$25. Currently this service is provided for free to other municipal entities.

- Wholesale Raw Water
 - Per current contract, agreed upon rate is 85% of Dallas's raw volume rate. Increase rate from \$0.90083 to \$0.96000 to align with contract.
- Wholesale Treated Water
 - Increase water volume rate from \$0.61 per 1,000 gallons to \$1.25 per 1,000 gallons.
- Commercial Irrigation
 - Change from a flat rate of \$6.61 per 1,000 gallons to a tier structure based on water usage to encourage conservation and align with other metroplex cities.
 - \$6.80 per 0 – 7,000 gallons
 - \$7.25 per 7,001 – 20,000 gallons
 - \$8.50 per 20,001 – 40,000 gallons
 - \$9.50 per 40,000+ gallons
- Residential & Commercial Rates
 - 3% increase in rates for residential customers

Wastewater

- Sale of Treated Effluent
 - \$1.67/1000 gal increased to \$2.50/1000 gal
- Wastewater Tap Fees
 - Changing from a flat fee to a variable fee assessed on a per project basis and reflective of actual cost of work.
- Waste Manifest Document Fees
 - Waste Manifest is the shipping document that travels with hazardous waste from the point of generation, through transportation, to the final treatment, storage, and disposal facility. Manifest books are billed at \$40, but the actual cost to the City is \$165. We recommend increasing the charge to \$165 to eliminate the \$125 subsidy.
- Residential & Commercial Rates
 - 11% increase in rates for commercial and residential customers
- 1-2" Tap Fees
 - Increase in tap fees to recover actual expense costs associated with tapping. Rate increase varies by tap size, ranging from \$441 to \$2,411.
- 4+" Tap Fees
 - Change to variable fee structure on a per project basis to recover actual expense costs associated with project specifications.

Electric

- Proposed base rate increase of 1.5% subject to cost of service analysis. Results will be brought forward to PUB at a later date.

EXHIBITS

Exhibit 1 – Agenda Information Sheet
 Exhibit 2 – FY 2024-25 Rate Presentation

Respectfully submitted:
 Jessica Williams
 940-349-7899
 Chief Financial Officer

Prepared By:
 Matt Hamilton
 940-349-8127
 Budget Manager

CITY OF DENTON, TEXAS

PUBLIC UTILITIES BOARD

FY 2024-25 Utilities Rates Presentation

July 8, 2024

Inclusion | Collaboration | Quality Service | Strategic Focus | Fiscal Responsibility





Agenda

- Rate Change History
- 2025 Preliminary Utility Rate Changes
 - Solid Waste
 - Water
 - Wastewater
 - Electric
- Next Steps

Rate Change History

History of Rate Increases / (Decreases)
Preliminary 2025 Rate Revenue Requirements

Utility	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Electric	-3.50%	-	-	-	-	3.00%	1.50%
Water	-	-	-2.00%	-	-	-	3.00%
Wastewater	-5.00%	-	-	-	-	11.00%	11.00%
Solid Waste	-12.00%	-12.00%	-5.00%	-	-	-	1.50%



Solid Waste & Recycling

Solid Waste – Preliminary Rate Changes

Summary	Current FY 2023-24	Proposed FY 2024-25	Change	% Change
<u>Residential Service</u>				
Small Container	\$ 20.51	\$ 20.82	\$ 0.31	1.5%
65 Gallon Container	\$ 20.51	\$ 20.82	\$ 0.31	1.5%
95 Gallon Container	\$ 25.04	\$ 25.42	\$ 0.38	1.5%
Additional Cart	\$ 16.57	\$ 16.82	\$ 0.25	1.5%
<u>Commercial Service</u>				
One Pair-Refuse and Recycling Carts	\$ 33.25	\$ 33.75	\$ 0.50	1.5%
Additional Refuse Cart	\$ 19.75	\$ 20.05	\$ 0.30	1.5%
Additional Recycling Cart	\$ 15.00	\$ 15.23	\$ 0.23	1.5%
<u>Roll Off Rates</u>				
Roll-Off Haul (Per Pull)	\$ 275.00	\$ 300.00	\$ 25.00	9.0%
Container Rental	\$ 167.08	\$ 170.00	\$ 2.92	1.75%
<u>Compactor Rates</u>				
Roll-Off Haul (Per Pull)	\$ 275.00	\$ 300.00	\$ 25.00	9.0%
30 Cu. Yard Compactor (Monthly Rental)	\$ 448.95	\$ 450.00	\$ 1.05	0.25%
42 Cu. Yard Compactor (Monthly Rental)	\$ 645.75	\$ 650.00	\$ 4.25	0.67%

Solid Waste – Preliminary Rate Changes

Summary

	Current FY 2023-24	Proposed FY 2024-25	Change	% Change
<u>Landfill</u>				
Gate Rate (Resident)	\$ 44.00	\$ 45.50	\$ 1.50	3.4%
Gate Rate (Non-Resident)	\$ 48.00	\$ 49.50	\$ 1.50	3.1%
City Hauled Disposal Rate	\$ 40.00	\$ 41.50	\$ 1.50	3.8%
City of Denton Department Rate	\$ 24.50	\$ 26.00	\$ 1.50	6.1%
Sludge, Dewatered	\$ 60.00	\$ 61.50	\$ 1.50	2.5%
Clean Concrete, Asphalt, Brick, or Dirt	\$ 22.00	\$ 23.50	\$ 1.50	6.8%
Minimum Charge (per load)	\$ 25.00	\$ 26.50	\$ 1.50	6.0%
Electronics Resident (per item)	\$ 10.00	\$ 11.50	\$ 1.50	15.0%
Electronics Non-Resident (per item)	N/A	\$ 20.00	-	-
Appliances (per item)	\$ 10.00	\$ 11.50	\$ 1.50	15.0%
Construction & Demolition	\$ 65.00	\$ 66.50	\$ 1.50	2.3%
Shingles	\$ 125.00	\$ 125.00	\$ 0.00	0.0%
<u>Commercial Trash</u>				
Commercial Side Load (3 Cu. Yd.)	\$ 74.16	\$ 75.27	\$ 1.11	1.5%
Commercial Side Load (4 Cu. Yd.)	\$ 98.88	\$ 100.36	\$ 1.48	1.5%
Commercial Front Load (Refuse 3 Cu. Yd.)	\$ 74.16	\$ 75.27	\$ 1.11	1.5%
Commercial Front Load (Refuse 4 Cu. Yd.)	\$ 98.88	\$ 100.36	\$ 1.48	1.5%
Commercial Front Load (Refuse 6 Cu. Yd.)	\$ 148.32	\$ 150.54	\$ 2.22	1.5%
Commercial Front Load (Refuse 8 Cu. Yd.)	\$ 197.76	\$ 200.73	\$ 2.97	1.5%
Commercial Front Load (Refuse CO4)	\$ 296.64	\$ 301.09	\$ 4.45	1.5%
Commercial Front Load (Refuse CO6)	\$ 444.96	\$ 451.63	\$ 6.67	1.5%
Commercial Front Load (Recycling 3 Cu. Yd.)	\$ 63.78	\$ 64.74	\$ 0.96	1.5%
Commercial Front Load (Recycling 4 Cu. Yd.)	\$ 85.04	\$ 86.32	\$ 1.28	1.5%
Commercial Front Load (Recycling 6 Cu. Yd.)	\$ 127.56	\$ 129.47	\$ 1.91	1.5%
Commercial Front Load (Recycling 8 Cu. Yd.)	\$ 170.07	\$ 172.62	\$ 2.55	1.5%

Solid Waste – Preliminary Rate Changes

Summary

Preliminary Rate Changes

Residential Cart Service

1.5% Increase

Commercial Cart Service

1.5% Increase

Roll Off Rates

\$25 Increase (Hauls)
\$2.92 Increase (Rental)

Compactor Rates

\$25 Increase Roll Off (Hauls)
\$1.05 Increase (Rental 30 Cu. Yd.)
\$4.25 Increase (Rental 40 Cu. Yd.)

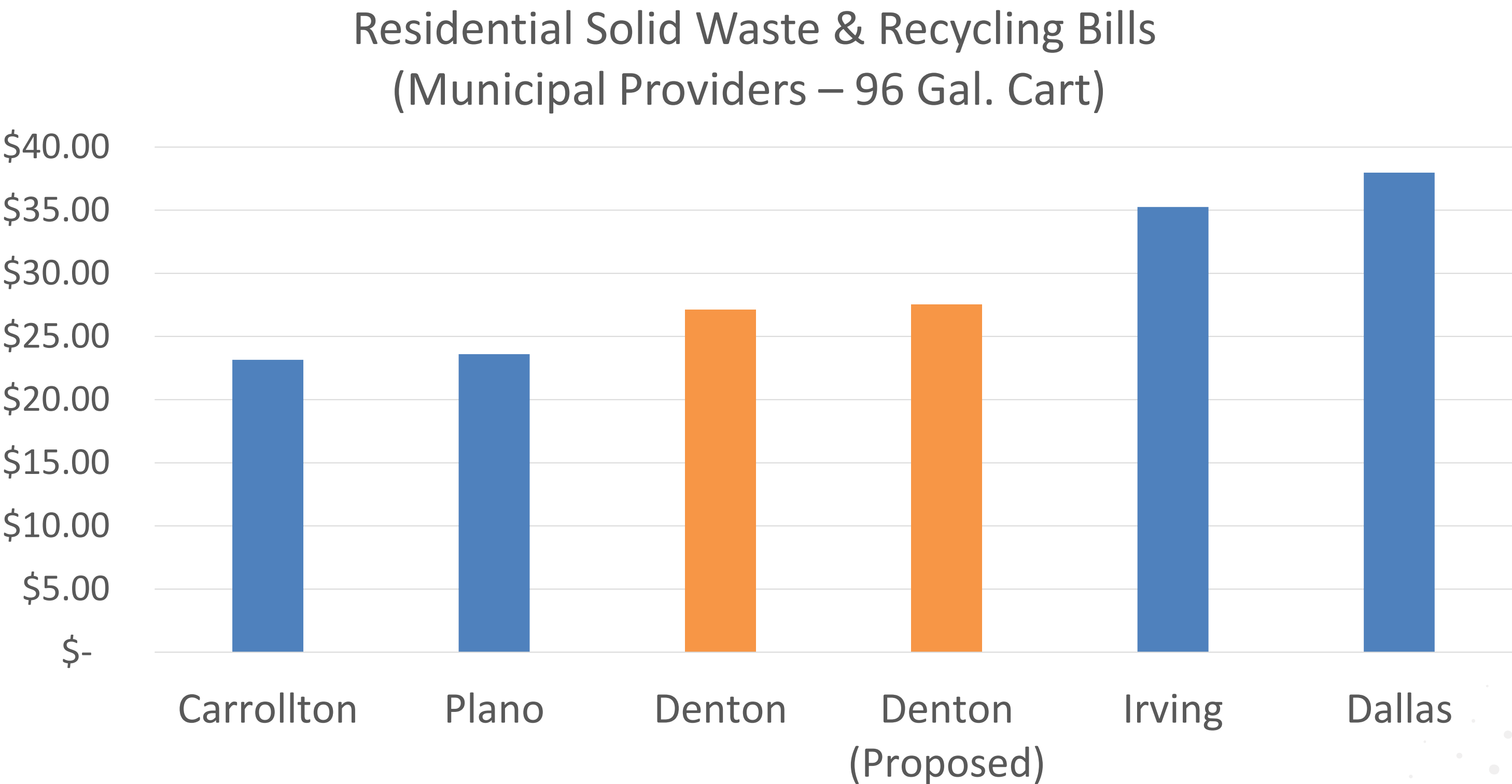
Landfill

Flat \$1.50 Increase
(excluding shingles)

Commercial Trash

1.5% Increase

Solid Waste – Preliminary Rate Changes





Water & Wastewater

Water – Preliminary Rate Changes

Summary	Current FY 2023-24	Proposed FY 2024-25	Change	% Change
<u>Residential Water Service *</u>				
0 – 5,000 Gallons	\$ 3.63	\$ 3.73	\$ 0.10	2.8%
5,001 – 7,000 Gallons	\$ 3.90	\$ 4.01	\$ 0.11	2.8%
7,001 – 15,000 Gallons	\$ 4.05	\$ 4.17	\$ 0.12	3.0%
15,001 – 30,000 Gallons	\$ 7.25	\$ 7.46	\$ 0.21	2.9%
30,001 – 50,000 Gallons	\$ 9.68	\$ 9.97	\$ 0.29	3.0%
Over 50,000 Gallons	\$ 12.04	\$ 12.40	\$ 0.36	3.0%
Facility Charge	Varies	Varies		3.0%
<u>Commercial Water Service *</u>				
Volume Charge	\$ 4.34	\$ 4.47	\$ 0.13	3.0%
Facility Charge	Varies	Varies		3.0%

* Water rates for service outside of corporate limits would also increase 3.0%.

Water – Preliminary Rate Changes

Summary	Current FY 2023-24	Proposed FY 2024-25	Change	% Change
<u>UTRWD Wholesale Raw</u>				
Wholesale Raw Water (85% of Dallas rate)	\$ 0.90	\$ 0.96	\$ 0.06	6.6%
<u>UTRWD Wholesale Treated</u>				
Wholesale Treated Water	\$ 0.61	\$ 1.25	\$ 0.64	104.9%
<u>Meters</u>				
Fire Hydrant Meter Deposit	\$ 1,100	\$ 3,000	\$ 1,900	172.7%
Backflow Testing	\$ 15.95	\$ 25.00	\$ 9.05	56.7%
Backflow Service Fee (Monthly)	N/A	\$4.16	-	-
Non-City of Denton Meter Test	N/A	\$ 25.00	-	-
<u>Commercial Irrigation Rates</u>				
0 – 7,000 Gallons	\$ 6.61	\$ 6.80	\$ 0.19	3.0%
7,001 – 20,000 Gallons	N/A	\$ 7.25	-	-
20,001 – 40,000 Gallons	N/A	\$ 8.50	-	-
Over 40,000 Gallons	N/A	\$ 9.50	-	-

Water – Preliminary Rate Changes

Summary

	Current FY 2023-24	Proposed FY 2024-25	Change	% Change
<u>Water Tap & Meter Fees 1"-2"</u>				
1" T - 5/8" X 3/4" paved (P)	\$ 2,405	\$ 4,617	\$ 2,212	92.0%
1" T - 5/8" X 3/4" unpaved (UP)	\$ 1,605	\$ 2,203	\$ 598	37.3%
1" T - 3/4" X 3/4" (p)	\$ 2,445	\$ 4,471	\$ 2,026	82.9%
1" T - 3/4" X 3/4" (UP)	\$ 1,645	\$ 2,086	\$ 441	26.8%
1" T - 1" (P)	\$ 2,475	\$ 4,886	\$ 2,411	97.4%
1" T - 1" (UP)	\$ 1,675	\$ 2,277	\$ 602	35.9%
2"T - 1 1/2" (P)	\$ 3,070	\$ 4,500	\$ 1,430	46.6%
2"T - 1 1/2" (UP)	\$ 2,070	\$ 2,800	\$ 730	35.3%
2"T - 2" (P)	\$ 3,080	\$ 4,685	\$ 1,605	52.1%
2"T - 2" (UP)	\$ 2,080	\$ 2,800	\$ 720	34.6%
<u>Taps 4" and Larger</u>				
4" Paved	\$ 3,600	Varies*	-	-
4" Unpaved	\$ 2,100	Varies*	-	-
6" Paved	\$ 3,800	Varies*	-	-
6" Unpaved	\$ 2,200	Varies*	-	-
8" Paved	\$ 4,800	Varies*	-	-
8" Unpaved	\$ 3,100	Varies*	-	-
12" Paved	\$ 5,500	Varies*	-	-
12" Unpaved	\$ 4,000	Varies*	-	-

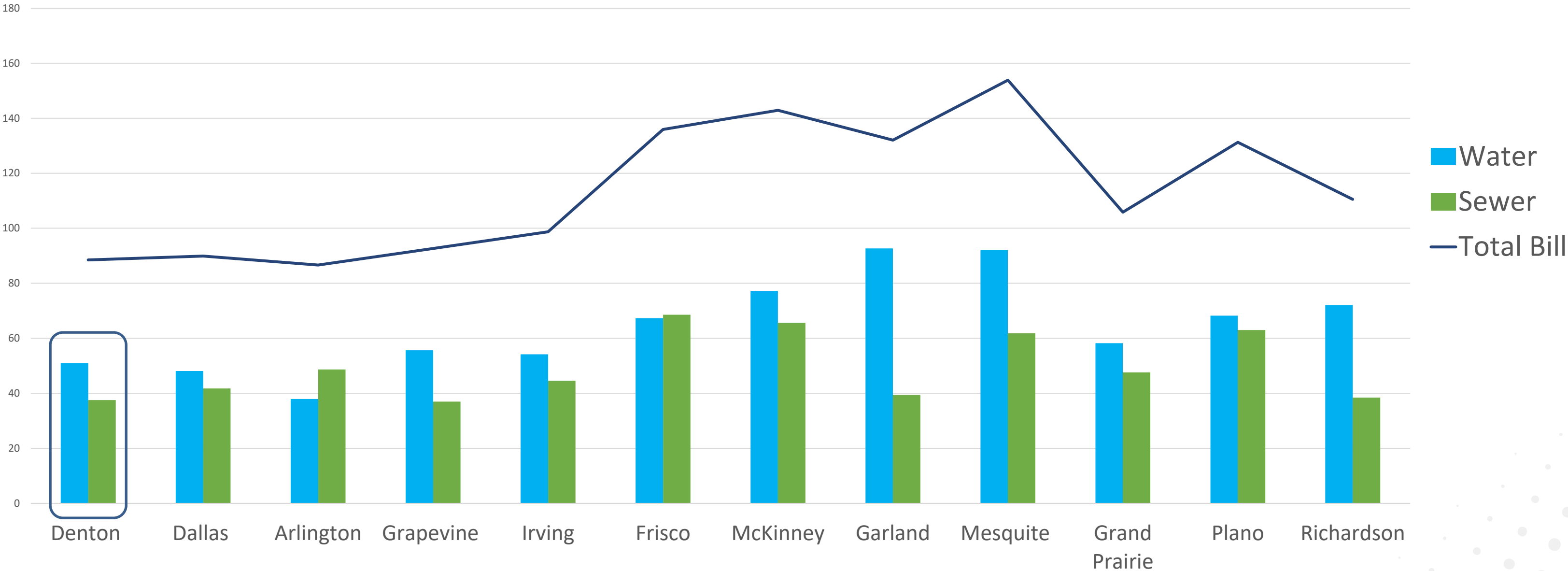
* Fee proposed to be assessed on a per project basis and reflective of the actual cost of work.

Wastewater – Preliminary Rate Changes

Summary	Current FY 2023-24	Proposed FY 2024-25	Change	% Change
<u>Residential Service</u>				
Facility Charge	Varies	Varies	-	11.0%
Volume Charge (1,000 gal. effluent)	Varies	Varies	-	11.0%
<u>Commercial Service</u>				
Facility Charge	Varies	Varies	-	11.0%
Volume Charge (1,000 gal. effluent)	Varies	Varies	-	11.0%
<u>Sale of Treated Effluent</u>				
Per 1,000 gal. effluent	\$ 1.67	\$ 2.50	\$ 0.83	49.7%
<u>Wastewater Tap Fees</u>				
4" Paved	\$ 2,600	Varies*	-	-
4" Unpaved	\$ 1,500	Varies*	-	-
6" Paved	\$ 2,700	Varies*	-	-
6" Unpaved	\$ 1,650	Varies*	-	-
8" Paved	\$ 2,800	Varies*	-	-
8" Unpaved	\$ 1,800	Varies*	-	-
* Fee proposed to be assessed on a per project basis and reflective of the actual cost of work.				
<u>Waste Transportation Manifest</u>				
Waste Manifest Book	\$ 40	\$ 165	\$ 125	312%

Water & Wastewater – Bill Comparison

Water & Sewer Rates



*based on 9,000 monthly gallons water / 6,000 monthly gallons wastewater

Water & Wastewater – Bill Comparison

*based on 9,000 monthly gallons water / 6,000 monthly gallons wastewater	Water			Wastewater			Total Bill
	Avg. Water Vol Rate	Water Fixed Cost	Avg. Water Bill	Avg. WW Volume Rate	WW Fixed Cost	Avg. WW Bill	
Arlington	2.99	\$ 11.04	\$ 37.95	5.71	\$ 14.42	\$ 48.68	\$ 86.63
Denton	3.90	\$ 15.84	\$ 50.94	4.22	\$ 12.21	\$ 37.53	\$ 88.47
Dallas	4.44	\$ 8.16	\$ 48.12	5.81	\$ 6.91	\$ 41.77	\$ 89.89
Grapevine	4.43	\$ 15.78	\$ 55.65	4.41	\$ 10.55	\$ 37.01	\$ 92.66
Irving	4.72	\$ 11.67	\$ 54.15	5.68	\$ 10.50	\$ 44.58	\$ 98.73
Frisco	4.98	\$ 22.52	\$ 67.34	6.38	\$ 30.28	\$ 68.56	\$ 135.90
McKinney	6.50	\$ 18.70	\$ 77.20	6.85	\$ 24.55	\$ 65.65	\$ 142.85
Garland	6.71	\$ 32.25	\$ 92.64	4.74	\$ 10.96	\$ 39.40	\$ 132.04
Mesquite	8.26	\$ 17.68	\$ 92.02	7.23	\$ 18.41	\$ 61.79	\$ 153.81
Grand Prairie	4.50	\$ 17.72	\$ 58.22	5.25	\$ 16.11	\$ 47.61	\$ 105.83
Plano	4.37	\$ 28.89	\$ 68.22	7.39	\$ 18.67	\$ 63.01	\$ 131.23
Richardson	7.12	\$ 8.00	\$ 72.08	5.07	\$ 8.00	\$ 38.42	\$ 110.50



Denton Municipal Electric

Electric – Preliminary Rate Changes

Summary

- Cost of Service Study (Completion July 2024)
 - Cost of Service Study results and recommendations expected in July.
 - Base rate increase of 1.5% expected to be included.

Next Steps

Date	Body	Action
July 8, 2024	PUB	Review FY 2024-25 Utility Rates
July 23, 2024	City Council	Review FY 2024-25 Utility Budgets & Rates
August 10, 2024	City Council	Budget Workshop
August 28, 2024	PUB	FY 2024-25 Utility Budget & Rate Approval
September 10, 2024	City Council	Public Hearings
September 17, 2024	City Council	Budget Adoption

Questions?