



City of Denton

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

Meeting Agenda Public Utilities Board

Monday, July 22, 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 22, 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 Item A). 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. [PUB24-135](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with

Signify North America Corporation, for the Amendment No. 1 to Lifecycle Services Agreement for the maintenance and support of Interact City Software currently used by Denton Municipal Electric; which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8534 - awarded to Signify North America Corporation, in the five (5) year not-to-exceed amount of \$97,500.00).

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

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [PUB24-149](#) Consider approval of the July 8, 2024 minutes.

Attachments: [7.8.24 PUB Minutes](#)

- B. [PUB24-136](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, approving a power purchase agreement between the City and SPRE Denton TX, LLC., a Texas Limited Liability Company; and providing for an Effective Date.

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance and Redacted PPA.pdf](#)

- C. [PUB24-137](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a lease with SPRE Denton TX, LLC for approximately 4 acres of City-owned property located in the City and County of Denton, Texas; and providing an effective date.

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance](#)
 [Exhibit 3 - Presentation.pdf](#)

- D. [PUB24-146](#) Management Reports
 1. Value of Solar Memo
 2. Water Utility Projects Budget Memo
 3. Future Agenda Items
 4. New Business Action Items

Attachments: [1. Value of Solar Memo](#)
 [2. Water Utility Projects Budget Presentation Memo](#)
 [3. Future Agenda Items](#)
 [4. 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 Closed Meeting at which the following items will be considered:

CLOSED MEETING

- A. [PUB24-144](#) Deliberations Regarding Certain Public Power Utilities Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff containing public power information related to a Power Purchase Agreement between the City of Denton, as the seller of power and electric energy services, and SPRE Denton TX, LLC.; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding issues associated with the above matter where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton under Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative or potential litigation.

- B. [PUB24-150](#) Deliberations Regarding Certain Public Power Utilities Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff containing public power information related to a proposed amendment to the Power Purchase Agreement between the City of Denton, as the seller, and Core Scientific Operating Company, Inc.; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding issues associated with the above matter where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton under Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative or potential litigation.

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

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 18, 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 #: PUB24-135, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Signify North America Corporation, for the Amendment No. 1 to Lifecycle Services Agreement for the maintenance and support of Interact City Software currently used by Denton Municipal Electric; which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8534 - awarded to Signify North America Corporation, in the five (5) year not-to-exceed amount of \$97,500.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: July 22, 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 contract with Signify North America Corporation, for the Amendment No. 1 to Lifecycle Services Agreement for the maintenance and support of Interact City Software currently used by Denton Municipal Electric; which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8534 – awarded to Signify North America Corporation, in the five (5) year not-to-exceed amount of \$97,500.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The Interact City software holds immense benefits for the City of Denton. The software enables intelligent street lighting, allowing for adaptive lighting schedules that reduce energy consumption and contribute to a safer and more secure urban environment. Moreover, Interact City facilitates efficient resource allocation through its comprehensive monitoring capabilities, enabling Denton Municipal Electric (DME) to make informed infrastructure development and maintenance decisions. By embracing the Interact City software, Denton stands to create a smarter, more connected city, fostering a higher quality of life for its residents while simultaneously promoting environmental responsibility and economic efficiency. Since 2019, Signify has successfully provided DME with cost-effective software that meets all functional requirements. Additionally, Signify has no distributors of its maintenance and support for its Interact City Software, thus it qualifies as a sole source.

DME proposes the approval and collaboration with Signify North America Corporation for the continued maintenance and support of the Interact City software. Signify has consistently delivered high-quality services, ensuring the reliability and efficiency of the Interact City software. They have demonstrated unparalleled expertise in the field of smart city solutions and have consistently proven their commitment to excellence in providing maintenance and support services. Their extensive experience in developing and maintaining innovative software solutions positions them as the ideal partner to ensure the seamless functioning and optimization of the Interact City platform.

Section 252.022 of the Local Government Code provides that procurement of sole source commodities and services are exempt from competitive bidding if over \$50,000, shall be awarded by the governing body.

RECOMMENDATION

Award with a contract to Signify North America Corporation, as a sole source supplier, for the maintenance and support of Interact City Software currently used by Denton Municipal Electric, in a five (5) year not-to-exceed amount of \$97,500.

PRINCIPAL PLACE OF BUSINESS

Signify North America Corporation
Bridgewater, NJ

ESTIMATED SCHEDULE OF PROJECT

This is a five (5) year contract.

FISCAL INFORMATION

The services will be funded from Electric Technology Operations account 600750.7899.5880. Requisition #165342 has been entered into the Purchasing software system in the amount of \$19,500. The budgeted amount for this item is \$97,500.

EXHIBITS

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

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

For information concerning this acquisition, contact: Jerry Looper, 940-349-7676.

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

LIFECYCLE SERVICES AGREEMENT (INDIRECT)

THIS LIFECYCLE SERVICES AGREEMENT (the “**Agreement**”), effective as of 04/27/2021 (the “**Effective Date**”), is entered into by and between Signify North America Corporation, a Delaware corporation having a place of business at 200 Franklin Square Drive, Somerset, New Jersey 08873 (“**Signify**”) and City of Denton, having a place of business at City of Denton City Hall, 215 E. McKinney Street, Denton, TX 76201-4299 (“**Customer**”). Each of Signify and Customer is a “**Party**” and together they are the “**Parties**.”

WHEREAS, Customer engaged a non-Signify affiliated contractor for the design, supply, and management of the installation of a luminaire control system (such system as further identified on **Schedule A**, the “**System**”); the System is installed at the location identified hereunder (the “**Site**”).

WHEREAS, Customer wishes to engage Signify to provide certain specifically identified maintenance or repair services (as set forth on **Schedule A**, the “**Services**”) for the System.

WHEREAS, Signify agrees to provide such Services on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the terms and conditions in this Agreement and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **SCOPE; SERVICES; RELATIONSHIP.**

1.1 Services. Subject to the terms and conditions of this Agreement, Signify will provide the Services with respect to the System as described in **Schedule A**, attached hereto and made a part hereof (the “**Services**”). Signify will perform the Services in a good and workmanlike fashion in accordance with (a) the terms of this Agreement and (b) with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. Signify shall use qualified personnel in providing such Services. In performing the Services, Signify shall take all reasonable precautions as are consistent with industry practice and standard to prevent physical damage to the System or any tangible property of Customer.

1.2 Compliance with Site Regulations & Applicable Laws. In performing the Services, Signify will comply with: (a) all written, reasonable Site regulations, rules, and processes which have been disclosed to Signify by Customer prior to the Effective Date; (b) excepting any that are specifically designated as the responsibility of the Customer hereunder, for compliance with any laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities specifically applicable to performance of the Services (“**Applicable Laws**”).

1.3 Authorized Representatives. Each Party will appoint a designated representative who possesses full authority to give and receive instructions relating to this agreement and to act on those instructions (each “**Project Manager**”). The Project Managers as of the Effective Date are identified on **Schedule A**. Customer’s Project Manager will be familiar with this Agreement and will have authority to bind Customer in all matters requiring Customer’s approval, authorization or written notice. Either Party will have the right to change the individual designated as such Party’s Project Manager. If either Party changes its Project Manager, it will immediately notify the other in writing.

1.4 Subcontractors. Customer understands and agrees that all or part of the Services may be performed by agents or subcontractors engaged by Signify (“**Subcontractors**”). Customer consents to the use of such Subcontractors as Signify may deem necessary to perform the Services, provided, however, that Signify will at all times remain responsible to Customer for Subcontractors’ performance of the Services hereunder.

1.5 **Third Party Installation; No Extended Warranty.**

(a) **No Responsibility for Installation.** Customer understands that Signify did not control, direct, perform, or supervise the design, engineering, or installation of the System as the System was designed, engineered, and installed by third party contractors unaffiliated with Signify, and over whom Signify had no supervision, authority, or control. Signify makes no representation or warranty regarding the System design, engineering, installation, or other work performed by such third parties and shall have no liability for, nor any obligation to correct or remedy, any defective or non-conforming work or materials performed or supplied by such third party contractors.

(b) **No Extended Warranty.** In connection with the supply of the System, such third party contractors may have assigned to Customer the Signify Standard Product Warranty. Neither this Agreement, nor Signify provision of these Services, are or shall be considered in any way as modifying, varying, expanding, or extending the Signify Product Warranty previously provided or assigned to Customer in connection with the supply or installation of any Signify product included in the System. Except to the extent expressly provided by a validly assigned Signify Standard Warranty, Signify makes no warranty, guarantee, or commitment to Customer with respect to the performance, functioning or lifetime of the System.

1.6 Service Exclusions. The Services include only those Services specifically set forth under **Schedule A**, subject to any restrictions, limitations, conditions, understandings, or exclusions identified thereunder. The Services do not include a generalized, blanket maintenance or repair services program for the System. Additionally, the Services do not include, and Signify shall have no obligation or liability with respect to: (a) repairs arising from, or other corrective or remedial work necessitated by, the act, error, fault, neglect, misuse, improper operation or omission of the Customers, its

servants, agents, contractors or invitees; (b) repairs from, or other corrective or remedial work arising from or required by, changes, alterations, additions, or modifications to the System by a person other than Signify; (c) repairs or other corrective or remedial work necessitated or caused by incorrect power supply, failure of electrical power, air-conditioning, humidity control, or any environmental factor; (d) repairs or other corrective or remedial work necessitated or caused by the operation of the Product other than in accordance with its specifications, or otherwise not in accordance with the direction, instructions, or recommendations of Signify and its personnel; (e) repairs arising from, or other corrective or remedial work necessitated by, the re-installation, moving, or removing of the System by a person other than Signify; (f) repair of damage or other corrective or remedial work necessitated or caused by any circumstances beyond Signify's reasonable control, (g) except as expressly provided by **Schedule A**, furnishing or supplying maintenance of accessories, attachments, supplies, spare parts, consumables associated with the System (including any costs thereof); (h) the upgrading of or retrofitting of improvements or major modification to the System; (i) electrical work external to the System.

1.7 Third Party Reseller. In the event that Customer is purchasing these Services through a Signify authorized third party reseller ("**Authorized Reseller**") or such Authorized Reseller is ordering such Services on the Customer's behalf, Customer acknowledges and agrees as follows: (i) the Services are provided by Signify directly to and for the sole benefit of the Customer, and such Services are provided solely pursuant to the terms and conditions of this Agreement; (ii) such Authorized Reseller is not Signify's agent or representative, and has no authority or capacity to make any representations, warranties, or promises on behalf of or otherwise bind Signify; (iii) Signify's obligations, and Customer's rights and remedies regarding the Services or the subject matter of this Agreement, are expressly limited to those specifically identified under this Agreement, and are not supplemented or modified by any agreement or other understandings between Customer and such Authorized Reseller; (iv) Signify is in no way responsible or liable for any services, content, or products provided by any Authorized Reseller to Customer. Signify reserves the right to immediately upon written notice to Customer suspend the provision of all Services hereunder and/or terminate this Agreement without further liability or obligation to Customer in the event that Signify is such notified by the Authorized Reseller of Customer's failure to pay amounts due to Authorized Reseller concerning the Services or which are otherwise payable hereunder, or in the event that the Authorized Reseller fails to pay any amounts due to Signify concerning the Services.

2. COMMISSIONING & COMMENCEMENT OF SERVICES.

Upon completion of the installation by the third party contractors engaged by Customer, a Signify's authorized commissioning representative (the "**Commissioning Representative**") shall arrange for final commissioning of the System. The Services shall commence upon completion of the final review and commissioning by the Commissioning Representative (the "**Commencement Date**"). Commissioning of the System by the Commissioning Representative does not constitute Signify's approval, endorsement, or acceptance

of the design, engineering, or installation work performed by third parties, nor is such review is provided in connection with the Services.

Service tag data download will be performed once per month per mutually agreed upon schedule between Customer and Signify. This service tag data download will be used by Signify to associate the each luminaire product with the control node at which point the luminaire product will be commissioned.

In the event that the Commissioning Representative discovers defects with respect to the installation of the System, the Commissioning Representative shall notify Customer. Customer may elect to (i) remedy such defects and notify Signify upon completion of such remedies, or (ii) request that Signify remedy such defects, and if Signify agrees to perform such remedial or corrective services, Signify will submit a change order reflecting the additional costs and expenses therefor. Provision of the Services hereunder is conditioned, in all respects, on the System being installed in accordance with manufacturer's specifications and all applicable laws, requirements, and industry standards. In the event that Commencement Date has not occurred within one hundred and twenty (120) days of the Effective Date, Signify may, by notice to Customer, terminate this Agreement.

3. SITE ACCESS; SAFETY; CUSTOMER ASSISTANCE.

3.1 Authority & Access Rights. Customer represents and warrants is has the full right and authority to approve performance of the Services and to enter into this Agreement. Customer is exclusively responsible, at its sole cost and expense, for providing and facilitating free and clear access to the System and Site, as well as any adjacent property that Signify reasonably needs access to for purposes of performing the Services. Without limiting the generality of the foregoing, Customer has obtained or will timely obtain any required consents or approvals from all parties whose consent or approval would be reasonably necessary in order to effect the purposes of the foregoing. In the event that Customer fails to provide and facilitate all such access, Signify may (i) immediately withhold or suspend performance of the Services until proper access is granted or restored, and/or (ii) issue a change order to reflect any additional expenses incurred in performing the Services as a consequence of having limited access.

3.2 Cooperation; Information. Customer will cooperate with Signify in the performance of the Services and will make technically competent staff available for consultation with Signify with respect to the Services, as required. Customer shall provide Signify with such information as may be reasonably required or requested by Signify to execute the Services including any drawings or surveys describing physical characteristics, legal limitations and utility locations for the Site and any information that may be required to satisfy any applicable regulatory requirements. Customer will be responsible for sufficiency & completeness of such plans and specifications, specifically including, but not limited to the accuracy of the dimensions described therein and Signify will be entitled to rely on the accuracy and completeness of all information furnished by Customer.

3.3 Permits; Safety. Customer has obtained and will maintain during the Term, at its cost and expense, any necessary electrical, building or other permits, licenses, certificates or inspections required under Applicable Laws for the execution and performance of the Services. To the extent the Services require any on-site visits or support, Customer will provide safe work surroundings for Signify and its Subcontractors and shall take all measures prescribed by law or otherwise necessary for the prevention of accidents at Site and to ensure the health and safety of the personnel of Signify and its subcontractors at the Site. Customer shall inform Signify in writing of all safety rules and precautions applicable to the Site prior to Signify commencing any on-site Service hereunder. Signify will not be responsible for the supervision or health and safety precautions for any other parties, including Customer, Customer's contractors, subcontractors, or anyone else performing work at the Site.

3.4 Concealed or Unknown Conditions. Notwithstanding the completion of any preliminary site visit as may have been performed by Signify (if any) prior to commencement of the Services, Customer acknowledges and agrees that any review performed during or in connection with such visit was conducted for the limited purpose of acquiring a basic familiarity with the local, general conditions under which the Services would be completed. Signify therefore makes no representation or warranty as to the completeness or scope of such review, including any identification of existing deficiencies, non-compliance with code or other applicable law, or other unknown, concealed, or non-readily observable condition. The Services do not include, nor impose on Signify any duty or obligation to conduct any audit, review, investigation, or evaluation of Site or related conditions. If Signify actually discovers any conditions at the Site that (a) differ materially from those ordinarily found to exist in properties of a type and condition similar to the Site; (b) were unknown or concealed or materially differ from the conditions observed during any preliminary site visit or information provided by Customer; or (c) constitute Hazardous Materials or Legal Deficiencies, each as defined below, then Signify will promptly provide notice to Customer of such discovered conditions before such conditions are disturbed. If such conditions or materials cause an increase in Signify's cost of, or time required for, performance of any part of the Services, Signify shall be entitled to a change order.

3.5 Storage; Utilities. Customer will provide sufficient secure and appropriate space for on-site storage of Signify's Products, materials, tools and equipment, including, but not limited, to the Service Parts identified on **Schedule A** attached hereto. Customer shall ensure access to utilities, including water at point of use, heating and lighting. Customer is responsible for all costs and expenses for utilities (e.g., gas, water, electricity) necessary for the performance of the Lifecycle Services.

3.6 Non-Compliance with Applicable Laws. Prior to the review by the Commissioning Representative, Customer shall notify Signify of any known non-compliance with Applicable Laws at the Site such as grounding deficiencies or other electrical code violations ("**Legal Deficiencies**"). Signify will not be in any way responsible for identifying or remedying any pre-existing Legal Deficiencies at the Site but will advise Customer of any pre-existing non-compliance that Signify actually observes during the performance of the Services.

Customer acknowledges and agrees that such pre-existing Legal Deficiencies may cause delays in the performance of the Services and that it is Customer's responsibility to correct such pre-existing non-compliance at its sole cost and expense.

3.7 Safety Risks and Hazardous Materials. To the extent the Services require any on-site visits or support, prior to the review by the Commissioning Representative, Customer will advise Signify of any health and safety risks at the Site, including, without limitation, the existence of any substances, chemicals, compounds, solids, liquids, gases, materials, pollutants, contaminants, wastes, petroleum products, asbestos or substances containing asbestos, or any other material subject to regulation under any environmental law ("**Hazardous Materials**") that may be at the Site or encountered in the performance of the Services. All actions or services relating to the existence, use, detection, removal, storage, handling, transportation, treatment, disposal, discharge, removal, abatement or containment of Hazardous Materials are specifically excluded from the scope of Services and Signify performance under this Agreement. Customer acknowledge that Signify is under no obligation to assume and assumes no responsibility for the treatment, disposal, or remediation of any Hazardous Materials.

3.8 Customer Maintenance & Log. Nothing in this Agreement shall relieve Customer from any obligation to perform normal operational day-to-day maintenance on the System or its products per Signify written instructions or operating manuals, electronic copies of which shall be provided to Customer by Signify. Customer shall not allow any party other than Signify or a Signify-approved contractor to provide any maintenance to or make any alteration or modification of the System without Signify prior written approval. Customer shall maintain and update such maintenance logs and other records with respect to the System as Signify requests.

4. INTENTIONALLY OMITTED.

5. CONFIDENTIALITY.

5.1 Confidential Information. Each Party shall retain in confidence and shall not disclose or use for any purpose, except in the performance of this Agreement, either the terms of this Agreement or any materials or information disclosed or made available by the other Party or any of their Affiliates (the "**Disclosing Party**") pursuant to this Agreement ("**Confidential Information**"). Notwithstanding the foregoing, "**Confidential Information**" shall not include information which: (a) is in the public domain at the time of its disclosure to the Receiving Party or which thereafter enters the public domain otherwise than by any breach of this Agreement; (b) is already known to or in the possession of the Receiving Party at the time of its disclosure by the Disclosing Party as evidenced by the Receiving Party's records; or (c) is lawfully acquired or developed at any time by the Receiving Party without restrictions from a third party without breach of confidentiality by such third party.

5.2 Permitted Disclosure. Notwithstanding Section 5.1, (a) Signify shall be permitted to disclose Confidential Information relating to the Services to its Subcontractors or its Affiliates to the extent necessary to perform the Services; and (b) in the event that a

Receiving Party is required by law to disclose any Confidential Information such Party may so disclose, provided that it shall, to the extent permitted by law, first inform the Disclosing Party of the request or requirement for disclosure to allow an opportunity for the Disclosing Party to apply for an order to prohibit or restrict such disclosure.

5.3 Liability for Breach. Each Party shall be responsible for any breach of this Section 5 by the Party, its Representatives and any person to whom it discloses any Confidential Information. The Parties agree that a Disclosing Party would be irreparably injured by a breach of this Agreement by a Receiving Party or by any person to whom it discloses any Confidential Information and that monetary damages would not be a sufficient remedy. Therefore, in such event, the Disclosing Party shall be entitled to equitable relief, including injunctive relief without proof of actual damages, as well as specific performance. Such remedies shall not be deemed to be exclusive remedies for a breach of this Section but shall be in addition to all other remedies available at law or equity.

5.4 Survival. The obligations of confidentiality herein shall survive the expiration or termination of this Agreement for a period of three (3) years.

5.5 Public Records. Notwithstanding anything to the contrary regarding each Party's obligations under this Section, Signify acknowledges that Customer must strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information related to this Agreement. This obligation supersedes any conflicting provisions of this Agreement. Any portions of such material claimed by Signify to be proprietary must be clearly marked as such. Determination of the public nature of the information is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

6. INSURANCE. During the Term of this Agreement, Signify will maintain and keep in force, at its own expense, the following minimum insurance coverage: (a) worker's compensation insurance, with statutory limits as required by applicable law, with respect to the employees of Signify and each Subcontractor involved with the Services; (b) employer's liability insurance, for employee bodily injuries and deaths, with a limit of \$1,000,000 per accident; (c) commercial general liability insurance, covering claims for bodily injury, death and property damage, including Site and operations, independent contractors, products, services and completed operations (as applicable to the Services), personal injury, contractual, and broad-form property damage liability coverage, with occurrence limits as follows: \$1,000,000 for bodily injury, death and property damage; \$1,000,000 for products and completed operations; and \$3,000,000 combined aggregate; and (d) commercial automobile liability insurance with a minimum limit of \$1,000,000 combined single limit insuring all owned, non-owned, hired and leased vehicles. Signify and its Subcontractors will not perform any LifeCycle Services without the prerequisite insurance. Upon Customer's request, Signify will provide Customer with certificates evidencing such insurance. During the Term of this Agreement, Customer will name Signify and its Subcontractors as loss payee under Customer's standard property insurance policy for covered perils. Upon execution of the

Agreement, Customer will provide to Signify with certificates evidencing such insurance.

7. TERM AND TERMINATION

7.1 Term. This Agreement commences on the Effective Date and, unless terminated earlier as provided herein, shall terminate at the expiration of the Term, as defined on **Schedule A**.

7.2 Termination for Default. Either Party (the "**Non-Breaching Party**") may suspend performance of its obligations under the Agreement or terminate this Agreement immediately upon written notice to the other party (the "**Breaching Party**") in the event that the Breaching Party: (a) materially breaches any of its obligations under the Agreement and fails to cure such breach within a reasonable period of time not to exceed thirty (30) days from the date of a notice from Non-Breaching Party notifying Breaching Party of the breach; (b) ceases to carry on business in the ordinary course or files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; or (c) becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding and such petition or proceeding is not dismissed within thirty (30) days from filing of such petition or proceeding. Any breach by the Customer of the Interact City Software Service Agreement will be considered a breach of this Lifecycle Services Agreement, entitling Signify to terminate this Agreement in accordance with its terms.

7.3 Effect of Termination. Upon termination of this Agreement for any reason, the relevant provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for any billings, adjustments and payments related to the period prior to termination and the termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such termination or any other rights which the terminating Party may have arising out of either the termination or the event giving rise to the termination and shall not affect any continuing obligations of either of the parties under this Agreement, which are expressed to continue after termination of this Agreement.

8. MISCELLANEOUS TERMS

8.1 Intellectual Property Rights. Customer hereby acknowledges that it shall not by virtue of this Agreement, implication, estoppel, or otherwise, acquire any intellectual property rights with respect to Signify Products, any software or hosted application, or improvements thereto, and that all such rights are, and shall remain, vested in Signify. All improvements to Products, software, or any hosted application, and any new products, software, or hosted application developed or modifications made thereto to satisfy customer requirements or in response to suggestions put forth by Customer shall belong exclusively to Signify. Additionally, Signify is free to use its general knowledge, skills and experience, and any ideas concepts, know-how and techniques that are acquired or used in the course of performing its obligations hereunder or in connection with or arising from its performance hereunder. All diagnostics, test,

or other similar property or materials used by Signify in connection with performing its Services hereunder shall remain the exclusive property and Confidential Information of Signify.

8.2 Software or Hosted Application. To the extent that Signify is making any software or cloud-based lighting management or controls hosted application available to Customer (including Interact City), the provision, use, warranty with respect to, and availability of such hosted application or software shall be exclusively as set forth under such software's end-user licensing agreement or hosted application's terms and conditions of use, which must be acknowledged and agreed to by Customer prior to Signify providing license or such access. Any such software or hosted applications are licensed and not sold, and such license to or access to such hosted application or software shall be only for the Term of this Agreement.

8.3 Product Warranty. Signify's limited warranty for any Signify-manufactured Products supplied in connection with Services is posted on Signify's website at www.Signify.com/warranties (as applicable, the "Product Warranty"). The terms of the Product Warranty are hereby incorporated by reference. The warranties set forth herein are the only warranties made by Signify in connection with any product or service and are expressly in lieu of any other warranties, whether written, oral, statutory, expressed or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose. For any product or component manufactured by a third party, Signify will (if permitted) assign to Customer such third party manufacturer's warranty. Signify will have no liability or responsibility for such third party equipment or related warranty.

NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR CONSTRUED AS MODIFYING, VARYING, EXPANDING, OR EXTENDING ANY SIGNIFY STANDARD PRODUCT WARRANTY PREVIOUSLY PROVIDED OR ASSIGNED TO CUSTOMER IN CONNECTION WITH THE SUPPLY OR INSTALLATION OF ANY SIGNIFY PRODUCT INSTALLED AS PART OF THE SYSTEM.

8.4 Independent Contractor. The Parties agree that Signify is engaged as an independent contractor for all purposes, including all federal, provincial and local laws pertaining to income taxes, withholding taxes, unemployment compensation, workers' compensation and any other rights, benefits, or obligations relating to employment. Neither Party has the authority to bind the other Party or make any commitments of any kind for or on behalf of the other Party except as expressly provided herein.

8.5 Limitation of Certain Damages. In no event shall either Party, its employees, agents or representatives be liable by reason of their breach or termination of this Agreement or for any acts or omissions in connection with this Agreement for any punitive, multiple, special, incidental or consequential damages of any kind, however caused, such as but not limited to loss of profits, savings or revenues, loss of data, work interruption, increased cost of work cost of procurement of substitute goods or services, or any claims or demands against a Party by any other entity, whether remedy is sought in contract, tort (including negligence), strict liability or otherwise, even if such Party has been advised of the possibility of such damages, and notwithstanding the failure of purpose of any

limited remedy. Signify is not responsible for damages caused by Services not performed due to a failure to request or schedule Signify's Services. SIGNIFY'S TOTAL LIABILITY TO CUSTOMER FOR ALL CLAIMS ARISING UNDER OR OUT OF THIS AGREEMENT SHALL NOT EXCEED \$40,000.

8.6 Notices. All notices, requests, demands, consents, and other communications required or permitted hereunder will be in writing and will be deemed to have been duly given if delivered by hand; sent by email with confirmation of receipt by addressee; or sent by commercial courier service or sent by certified or registered mail with delivery or postage prepaid and by means assuring that acknowledgement or receipt is secured, addressed to the Party at the following address:

Customer	Signify
City of Denton City of Denton City Hall 215 E. McKinney Street Denton, TX 76201-4299 DME General Manager Attn: _____ Antonio.Puente@CityofDenton.com Email Address: _____	Signify North America Corporation 200 Franklin Square Drive Somerset, NJ 08873 Attn: Bill Swanson, Customer Services Manager With a required copy to: Signify of Denton North America 200 Franklin Square Drive Somerset, NJ 08873 Attn: Legal Department

8.6 Pandemic. Customer acknowledges that coronavirus has been declared a pandemic by the World Health Organization, and that coronavirus has and may continue to directly or indirectly cause significant disruptions to Signify, industry and global supply chains, including without limitation impacting the availability of labor for sourcing, manufacturing and installation activities, causing product or material sourcing shortages or difficulties, or causing transportation or delivery issues ("Coronavirus Impacts & Events"), any or all of which may materially impact Signify's ability and capacity to deliver the Services, including in accordance with the requirements of this Agreement. By executing this Agreement and performing hereunder, Signify is not to have assumed any risk, as between the Parties, of any of the occurrence of any Coronavirus Impacts & Events. Without limiting the generality of the foregoing, and notwithstanding anything to the contrary under this Section or the Agreement, Signify will have no liability or responsibility for any failure or inability to perform the Services to the extent arising from any Coronavirus Impacts & Events.

8.7 Force Majeure. Neither Signify or Customer will be liable to the other Party for any delay or omission in the performance of any obligation under this Agreement, other than the obligation to pay monies, where the delay or omission is due to any cause or condition beyond the reasonable control of Signify or Customer obliged to perform, including but not limited to, pandemics, strikes or other labor difficulties, acts of God, acts of government, war, riots, embargoes, or inability to obtain supplies ("Force Majeure"). If Force Majeure prevents or delays the performance by Signify or Customer of any obligation under this Agreement, then Signify or Customer claiming Force Majeure will promptly notify the other Party thereof in writing. In any event, if Force Majeure continues for more than ninety (90)

calendar days, either Signify or Customer may terminate this Agreement upon written notice to the other Party. In the event of an occurrence under this Section, Signify will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and Signify continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Signify shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within ten (10) 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.

8.8 Entire Agreement & Amendments. This Agreement (including any Schedule attached hereto) constitutes the entire agreement between the Parties concerning the subject of this Agreement, and may not be amended except by written instrument specifically referring to this Agreement signed by an authorized representative of both Parties. No provision of this Agreement shall be deemed as modifying, amending, varying, cancelling or otherwise affecting the Interact City Software Service Agreement previously executed between the Parties, which shall remain in full force and effect in accordance with its terms. This Agreement concerns only the specific maintenance Services (as identified herein) regarding certain tangible hardware and luminaires separately supplied to Customer by Signify or a third party reseller, and none of the Services concern, supplement, create, or vary any obligation on the part of Signify with respect to the software and hosting services identified under the Interact Software Service Agreement. The parties rights and obligations respecting the software services shall be determined solely with reference to the Interact City Software Service Agreement. In the event of an inconsistency or conflict between the provisions of the main body of this Agreement and any Schedules to this Agreement, the provisions of the main body of this Agreement will prevail, to the extent of the inconsistency or conflict.

8.9 Severability; Waiver; Execution; Assignment; Counterparts. If any provision of this Agreement is held to be invalid, the remainder of this Agreement will not be affected thereby. No failure or delay by either Party in exercising any right, power, or privilege under this Agreement will operate as a waiver thereof, and no single or partial exercise of any such right, power, or privilege will preclude any other or future exercise thereof or the exercise of any other right, power, or privilege under this Agreement. The waiver by either Party of any provision of this Agreement is not effective unless made in a writing specifically referring to this Agreement signed by the Party to be held bound. Neither Party may assign this Agreement or any of its rights under the Agreement, without the other Party's prior written consent, which consent shall not be unreasonably withheld, provided, however, Signify may assign any or all of its rights and/or obligations under this Agreement to its ultimate parent corporation, wholly owned subsidiary of its ultimate parent corporation or to any present or future affiliate of Signify to which Signify transfers all or substantially all of its lighting business without such consent. This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all of which constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or by email in a portable document format (.pdf) and delivery of the signature page by such method will be deemed to have the same effect as if the original signature had been delivered to the other Party.

8.10 Governing Law; Waiver of Jury Trial. This Agreement and all claims related to it shall be governed and construed in accordance with the laws of the State of Texas without giving effect to its choice or conflict of law provisions. ANY ACTION, DEMAND, CLAIM OR COUNTERCLAIM ARISING UNDER OR RELATING TO THIS AGREEMENT WILL BE RESOLVED BY A JUDGE ALONE AND THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL THEREOF. This Agreement and the Services provided are for Signify's and Customer's sole benefit and exclusive use with no third party beneficiaries intended.

IN WITNESS WHEREOF, the Parties have executed this Lifecycle Services Agreement as of the Effective Date.

<p>City of Denton</p> <p>DocuSigned by:</p> <p>By: <u>Christa Christian</u></p> <p>6A8263DE08F4429...</p> <p>Printed Name: <u>Christa Christian</u></p> <p>Title: <u>Senior Buyer</u></p>	<p>Signify North America Corporation</p> <p>DocuSigned by:</p> <p>By: <u>Michael L Manning</u></p> <p>1ECA5526AD77443...</p> <p>Printed Name: <u>Michael L Manning</u></p> <p>Title: <u>VP General Counsel</u></p>
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SCHEDULE A

LIFECYCLE SERVICES

System:	"System" means the Citytouch Connector Nodes as identified under <u>Table 1</u> below. "System" does not include any other lighting products, components, tooling, or Customer's IT infrastructure, including without limitation any routers, network switches, associated wiring or cabling, or any other components, firmware, hardware, or software not specifically described above. System does not include any software as a service or hosting services provided by Signify. System does not include any System upgrades, modifications, or enhancements, that have been installed and managed by others.
Site Location:	City of Denton, Texas
Project Manager	Signify: Customer:
Service Term:	The Term of this Agreement shall commence upon the Commencement Date (as defined under Section 2 and, unless terminated in accordance with the terms of the Agreement, will expire on September 16, 2024 (the "Term"). At the sole option of the City of Denton this contract may be continued for up to six (6) months.
Scope of Services:	The Services shall be those as described and to extent identified under Table 2 below. Services beyond any specified allotment or not specifically identified below are excluded from the scope of this Agreement. Signify may in its sole discretion agree to provide such Services to Customer at an additional charge.
Service Assumptions:	Customer acknowledges and agrees that Signify's obligation to perform the Services is subject to the requirements and conditions set forth under <u>Table 3</u> below. To the extent that such requirements and conditions are not satisfied, Signify may issue a change order to reflect the additional work to be performed by Signify. In the event that a change order is not authorized by Customer, Signify may either (i) suspend performance of the Services (without penalty) until such conditions are satisfied, or (ii) terminate this Agreement without further penalty or obligation.
Other Terms & Conditions:	See <u>Table 4</u> .

Table 1 – System Milestones				
Milestone Date	Total Node Quantity	Signify SKU Quantity	Signify SKU	Description
January 1, 2021	10,000	10,000	LLC729x	CityTouch Connector Node

Table 2 – Description of Selected Services				
Service		Essential with Operations	Description	
Operations	1	Remote Monitoring	12 x / year	<p>Signify's Remote Operations Center will remotely connect to the customer's System to monitor the performance of the System. In case of a deviation from the expected performance, the observed issue will be logged. On a monthly basis, a report will be created with a summary of the Systems performance and the report will be posted on the Customer Portal (see item 8 below).</p> <p>In case of a critical incident, Signify will initiate a remote action to investigate the issue and notify the customer's representative. An incident is considered critical if more than 10% of the total number of lightpoints (LP) are not fully functional.</p>
	2	Remote Operations	Included	<p>When a performance deviation is observed via remote monitoring, Signify shall create an internal service ticket to initiate remote response. In case of deviation, Signify connects to the customer's System to identify the fault condition mode, analyze the potential root cause, and will initiate a corrective action to remotely resolve if possible. Where needed, the customer representative shall be notified of actionable incidents requiring their response for resolution.</p>
	3	System Optimization (remote)	1 x / year - during System Health Check (2 hrs / session)	<p>Initiated by a registered service ticket, Signify remotely adjusts the System configuration (lighting behaviors) in line with the customer's request and system capabilities. The optimization session shall be conducted during the scheduled remote based System Health Check (one time per year, max 2 hours/session). At completion, the System Health Check will be performed, and the customer will receive confirmation of the system elements changed. System optimization includes adjustments to schedules, dimming patterns, setpoints, user account additions / changes, grouping lightpoints or streets, commissioning additional lightpoints, updates of asset information, reconfiguring replacement luminaires and answering general system related questions.</p>
	4	Performance reporting	12 x / year	<p>Every month Signify will create a report with the performance of the system on uptime, faults observed and resolved, critical failures incidents and energy usage. The report will be posted on the Customer Portal.</p>
Preventive Maintenance	5	System health check (remote)	1 x /year	<p>Signify inspects remotely, one time per year, the status of the System, conditions of use, and incident history. At completion of this System Health-Check, the customer receives a status report of the System, together with a list of actions performed and recommended service activities for optimal system performance. All reporting shall be posted on the Customer Portal (see below).</p>

Corrective Maintenance	6	Helpdesk and Service Ticketing (within business hours)	Included – during business hours	Signify provides a helpdesk number and e-mail address to commence service requests. A service ticket is issued for scheduling remote activities, request for remote technical support, maintenance requests or calls for general information. Signify's helpdesk is available during standard business hours.
	7	Remote diagnostics and fault finding (within business hours)	12 x / year	When the Customer (City's representative) requires assistance and as initiated by a registered service ticket, Signify experts connect (online via the CityTouch cloud infrastructure and/or via phone with customer expert) to the customer's System. This service element includes assistance in the identification of the failure fault conditions mode, potential root cause analysis and an advice on resolution (to the extent this is possible remotely).
Training & Documentation	8	Customer Portal On-line Documentation	✓	Signify will provide the Customer with a password-protected web-based portal. In this portal, detailed system documentation, performance and health check reports and training materials on the system are available. Signify will store, update and preserve all the customer's system information in a secure way during the entire contract period.
	9	On Going User Training	1 x / year Remote web-training (2 hrs / session)	Signify trains the users of the system on fault finding, basic diagnostics, service installation and commissioning of the system. These sessions shall be provided, via remote web-training, one time annually (max 2 hours/ session) during the contract term. Training sessions are arranged in advance by the customer's registration of a Service Ticket request.

Table 3 – Service Assumptions

- (a) There are no material defects in any materials, equipment, tooling or accessories included in the System, not supplied by Signify or approved by Signify in writing.
- (b) The System has not been modified, altered or repaired by Customer or any third party without prior written consent of Signify.
- (c) There has not been any material failure or fluctuation of electric power or other adverse operational or environmental conditions affecting the System.
- (d) The lighting design and surrounding conditions affecting the System have not been materially changed since the Effective Date.
- (e) The System has at all times been operated with other software and/or hardware or accessories that were provided or approved by Signify.
- (f) In order for this scope to be possible, a commissioned CityTouch Connector Node with Software as a Service (not included in this estimate) must be installed, activated and associated within the CityTouch instance. Customer is responsible for providing said Citytouch Connected Node and SaaS under separate offer.
- (g) Nothing herein shall be deemed as amending, varying, or supplementing the terms of the Signify Standard Limited Warranty, which remains unchanged and in full force and effect in accordance with its terms.
- (h) All references to year means contract service year (i.e., each anniversary of the Commencement Date during the terms of this Agreement).

Table 4 – Other Terms & Conditions

- Equipment (including Node) cleaning is not included in any Service
- The scope of this service entitlement is limited to the remote based service activities outlined herein. Any additional services, future solution elements, features and the associated services, will be proposed under a separate offer.
- The Parties will mutually develop an operating procedure outlining the ways of working for coordinating performance of the Services.
- Modification to any existing condition may require an update to code adherence that is out of scope of the Services.

- Any Service allotment, which remains unused during each contract year shall be deemed forfeited.
- Existing programming, and parameters of the System shall be used. Requested adjustments to programming(s) of the Citytouch system shall be communicated to Signify in writing. When the program request exceeds the stated System Optimization service allotment, such adjustments will result in an additional service charge, which shall be quoted per the request for Customer authorization.
- Signify does not accept responsibility for the operation of third-party lighting fixtures or other equipment not provided by Signify.
- Signify is not responsible for any damage to the System caused by lightning strikes, inclement weather, or other conditions, developments, actions, or circumstances which are outside of Signify's control.
- Business hours are Monday through Friday, between the hours of 8AM to 5 PM CST, excepting any federal or bank holidays, and period between Christmas Day and New Year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Dates.

Signify North Americans Corporation

By: Michael L Manning

Printed Name

Title: VP General Counsel

DocuSigned by:
Michael L Manning
TECA3526AD77443...

Signature

City of Denton, Texas

Procurement and Compliance

By: Christa Christian

Printed Name

Title: Senior Buyer

DocuSigned by:
Christa Christian
6A8263DE08F4429...

Signature

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

DocuSigned by:
Antonio Puente
E3760944C2BF4B6...

ANTONIO PUENTE, JR

SIGNATURE PRINTED NAME

EXECUTIVE MANAGER OF UTILITIES

TITLE

ELECTRIC ADMINISTRATION

DEPARTMENT


Certificate Of Completion

Envelope Id: 108879275F134B49B4E940C8D58DFFAF	Status: Completed
Subject: Please DocuSign: Denton_Lifecycle Service Agreement_FINALforExecution_2021_0317.pdf, IN WITNESS...	
Source Envelope:	
Document Pages: 11	Signatures: 5
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Christa Christian
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Christa.Christian@cityofdenton.com
	IP Address: 198.49.140.104

Record Tracking

Status: Original	Holder: Christa Christian	Location: DocuSign
4/9/2021 9:49:19 AM	Christa.Christian@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Christa Christian	DocuSigned by:  6A8263DE08F4429...	Sent: 4/9/2021 11:00:34 AM
christa.christian@cityofdenton.com		Viewed: 4/9/2021 11:00:41 AM
Senior Buyer		Signed: 4/9/2021 11:01:01 AM
City of Denton		
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Antonio Puente	DocuSigned by:  E3760944C2BF4B5...	Sent: 4/9/2021 11:01:03 AM
Antonio.Puente@cityofdenton.com		Viewed: 4/9/2021 11:02:40 AM
Exec Mgr of Utilities		Signed: 4/9/2021 11:03:49 AM
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style Using IP Address: 174.197.67.61 Signed using mobile	

Electronic Record and Signature Disclosure:

Accepted: 4/9/2021 11:02:40 AM
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Michael L Manning	DocuSigned by:  1ECA5526AD77443...	Sent: 4/19/2021 11:06:05 AM
michael.l.manning@signify.com		Resent: 4/23/2021 10:47:37 AM
VP General Counsel		Viewed: 4/26/2021 12:27:45 PM
Signify North America Corporation		Signed: 4/26/2021 12:28:08 PM
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style Using IP Address: 165.225.38.190	

Electronic Record and Signature Disclosure:

Accepted: 4/26/2021 12:27:45 PM
ID: d2a190ea-b88d-4b6a-ae7f-c2f06da93a09

Cheyenne Defee	Completed	Sent: 4/26/2021 12:28:09 PM
cheyenne.defee@cityofdenton.com		Viewed: 4/27/2021 1:50:08 PM
Contract Administrator		Signed: 4/27/2021 1:50:22 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		

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>Rubens Costa rubens.V.costa@signify.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 4/15/2021 10:13:13 AM ID: 97d1bda0-bd07-473a-bcf6-8456cb4bd420</p> <p>Sam Mall sam.mall@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div>COPIED</div> <div>COPIED</div>	<p>Sent: 4/19/2021 11:06:07 AM Viewed: 4/20/2021 9:37:58 AM</p> <p>Sent: 4/27/2021 1:50:24 PM</p>
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/9/2021 11:00:34 AM
Certified Delivered	Security Checked	4/27/2021 1:50:08 PM
Signing Complete	Security Checked	4/27/2021 1:50:22 PM
Completed	Security Checked	4/27/2021 1:50:24 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 CITY MANAGER TO EXECUTE A CONTRACT WITH SIGNIFY NORTH AMERICA CORPORATION, FOR THE AMENDMENT NO. 1 TO LIFECYCLE SERVICES AGREEMENT FOR THE MAINTENANCE AND SUPPORT OF INTERACT CITY SOFTWARE CURRENTLY USED BY DENTON MUNICIPAL ELECTRIC; WHICH IS THE SOLE PROVIDER OF THIS SOFTWARE, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8534 – AWARDED TO SIGNIFY NORTH AMERICA CORPORATION, IN THE FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$97,500.00).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids; and

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

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the "File" listed hereon, and on file in the office of the Purchasing Agent, and the license terms attached are hereby approved:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8534	Signify North America Corporation	\$97,500.00

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library

that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids.

SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager, or their designee, is hereby authorized to execute the contract relating to the items specified in Section 1, attached hereto, and the expenditure of funds pursuant to said contract is hereby authorized.

SECTION 5. 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 6. This ordinance shall become effective immediately upon its passage and approval.

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

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
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.

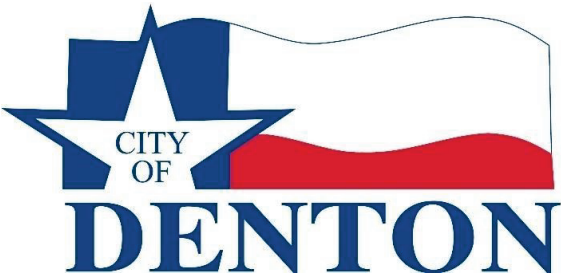
GERARD HUDSPETH, MAYOR

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	8534
File Name	DME Interact City Software
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

AMENDMENT NO. 1 TO LIFECYCLE SERVICES AGREEMENT

THIS **AMENDMENT NO. 1 TO LIFECYCLE SERVICES AGREEMENT** (the “**Amendment**”), made as of May 17, 2024, amends that certain Lifecycle Services Agreement dated April 27, 2021 (“**Original Agreement**”), by and between **SIGNIFY NORTH AMERICA CORPORATION** (“**Signify**”) and **CITY OF DENTON** (“**Customer**”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Original Agreement.

WHEREAS, Signify and Customer are parties to the Original Agreement;

WHEREAS, Signify and Customer wish to make certain revisions with respect to the Original Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to amend the Original Agreement as follows:

1. Term. The parties wish to extend the Term of the Agreement by five (5) years, commencing as of September 16, 2024, and expiring as of September 16, 2029 (the “**Renewal Term**”). After the end of the Renewal Term the Parties shall have the option to renew for consecutive one (1) year periods (each an “**Additional Renewal Term**” and altogether the “**Additional Renewal Terms**”), until and unless terminated by either Party in accordance with the Agreement’s provisions.
2. Revisions. Schedule A of the Original Agreement is hereby modified as follows:

Table 1 – System			
Total Node Quantity	Signify SKU Quantity	Signify SKU	Description
15,000	15,000	LLC729x/LLC78xx	Interact City Connector Node

3. Pricing. As compensation to Signify for performance of the Services hereunder, Customer shall pay Signify \$19,500 upfront for the first year of the Renewal Term (“**Annual Service Fee**”), with four (4) subsequent Annual Service Fee payments of \$19,500 per each subsequent year of the Renewal Term, for a full five (5) year Renewal Term at the total cost of \$97,500. All pricing excludes any taxes. For the avoidance of doubt, the Annual Service Fee shall also apply and shall be due and payable by Customer to Signify for the Services to be performed by Signify in each Additional Renewal Term.
4. Change Orders. Either Party may request modifications to the Services by submitting a written request to the other Party, together with any proposals for equitable adjustments in the price, schedule and/or scope. Without limiting the generality of the foregoing, Customer agrees that Signify will be entitled to a Change Order in the event there is any documented, increased cost or expense in performing any Services resulting from: (a) the conditions or infrastructure at the Site materially differing from information provided by Customer, or of a kind or variety not typical for similar worksites or environments; (b) additions to or changes in Service requirements or Site requirements arising following execution of this Agreement, (c) the physical, structural, or working conditions materially changing at the Site during the term of this Agreement and (d) additions to or changes in Applicable Law or applicable engineering standards (in either such instance, affecting the System, Site, or the Services) which are enacted or adopted following the execution of this Agreement; provided, however, that (a) through (d) shall in no way be deemed or construed as varying or limiting Customer’s obligations with respect to any other provisions referencing Change Orders hereunder. The parties shall negotiate in good faith any proposed change order submitted by the other Party. To the extent agreed to by the other Party in writing, such written request shall be deemed to change the scope of Services and Service Fee, as applicable (each, a “Change Order”). For any Change Order that results in ongoing change of the

annual Service Fee or results in additional compensation to Signify, the Parties shall execute an amendment to this Agreement to reflect the necessary revisions to the scope of Services and/or Service Fee or additional compensation. In the event after negotiating in good faith for thirty (30) days following a Party's submission of a Change Order request the Parties are unable to agree on the proposed Change Order, then as to the affected Service, Signify may terminate such affected Service by written notice to Customer. During the negotiation and pendency of any such proposed Change Order, Signify reserves the right to suspend its provision of the affected Service by written notice. No such withholding, suspension, or termination of an affected Service shall be considered a default hereunder.

5. Product Name Change. All references in the Agreement to CityTouch shall be deleted and replaced with Interact City.

6. Insurance. The parties agree that Attachment A attached hereto and incorporated by reference supersedes and replaces all insurance requirements in the Original Agreement, including those set forth in Article 6.

7. Term & Termination. Section 7 of the Original Agreement is hereby amended to include the following Section 7.4:

7.4 Customer may terminate the Agreement by giving thirty (30) days prior written notice to Signify in the event that the Customer fails to appropriate or allot the necessary funds to pay the Annual Service Fees for any given year of the Renewal Term or for any Additional Renewal Term.

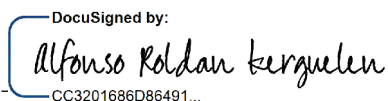
8. Entire Agreement. This Amendment, the Original Agreement and the terms and provisions hereof and thereof constitute the entire agreement among the parties pertaining to the subject matter hereof and thereof and supersede any and all prior or contemporaneous agreements relating to the subject matter hereof or thereof. Except as expressly amended hereby, the Original Agreement will remain unchanged and in full force and effect. To the extent any terms or provisions of this Amendment conflict with those of the Original Agreement, the terms and provisions of this Amendment shall control. This Amendment shall be deemed part of and is hereby incorporated into the Original Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

CITY OF DENTON

SIGNIFY NORTH AMERICA CORPORATION

By (Signature): _____

By (Signature):  CC3201686D86491...


Title as: _____

Title as: Alfonso Roldan Kerguelen

ATTEST:
LAUREN THODEN, CITY SECRETARY

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

BY:  4B070831B4AA438...

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

DocuSigned by:
Antonio Puente
E3760944C2BF4B5...

Antonio Puente

SIGNATUREPRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

Attachment A

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.
 - 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. COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

2. CYBER/TECHNOLOGY NETWORK LIABILITY AND RISK INSURANCE **Cyber/Technology Network Liability and Risk Insurance, inclusive of Information Security and Privacy (first and third party coverage) to**

provide coverage for any damage caused by a network risk, cyber act or breaches of data and privacy right, the rendering of, or the failure to properly perform professional services for, but not limited to, computer programming, management information systems, negligent system design, disclosure of confidential information, and copyright infringement with minimum limits with minimum limits of \$2,000,000.00 per claim.

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.

Signify North America
Corporation

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.

Mary McFall

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.

None

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

DocuSigned by:

Alfonso Roldan Benguelen

6/20/2024

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: 6CA27EED3C53471F905CE71A84E2FE70

Status: Sent

Subject: Please DocuSign: City Council Contract 8534 DME Interact City Software

Source Envelope:

Document Pages: 9

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

Holder: Christa Christian

Location: DocuSign

5/20/2024 9:53:07 AM

Christa.Christian@cityofdenton.com

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

Christa Christian

Completed

Sent: 5/22/2024 11:01:04 AM

christa.christian@cityofdenton.com

Viewed: 5/23/2024 2:07:54 PM

Purchasing Supervisor

Signed: 5/23/2024 2:08:02 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: 5/23/2024 2:08:05 PM

lori.hewell@cityofdenton.com

Viewed: 5/23/2024 8:44:59 PM

Purchasing Manager

Signed: 5/23/2024 8:45:17 PM

City of Denton

Signature Adoption: Pre-selected Style

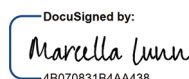
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Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 5/23/2024 8:45:19 PM

marcella.lunn@cityofdenton.com

Viewed: 5/29/2024 5:34:28 PM

Senior Deputy City Attorney

Signed: 5/29/2024 5:35:30 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

Alfonso Roldan Kerguelen



Sent: 5/29/2024 5:35:34 PM

alfonso.rolدان@signify.com

Resent: 6/3/2024 1:51:31 PM

Security Level: Email, Account Authentication
(None)

Resent: 6/17/2024 11:56:57 AM

Viewed: 6/17/2024 1:21:08 PM

Signed: 6/20/2024 11:35:32 PM


Signature Adoption: Pre-selected Style

Using IP Address: 170.85.54.170

Electronic Record and Signature Disclosure:

Accepted: 6/3/2024 1:57:41 PM

ID: 10724c82-18e0-4fdf-b479-1cdb62ce886d

Signer Events	Signature	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> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		Sent: 6/20/2024 11:35:35 PM
<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: 6/21/2024 7:14:06 AM ID: 42d4cc5d-5dec-4e32-b62a-498fd820504a</p>	<p>DocuSigned by:</p>  <p>E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 174.246.129.115 Signed using mobile</p>	<p>Sent: 6/20/2024 11:35:35 PM</p> <p>Viewed: 6/21/2024 7:14:06 AM</p> <p>Signed: 6/21/2024 7:14:38 AM</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: 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: 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>Gretna Jones</p> <p>gretna.jones@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		
<p>City Secretary Office</p> <p>citysecretary@cityofdenton.com</p> <p>Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		

Carbon Copy Events	Status	Timestamp
Jerry Looper jerry.looper@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/23/2024 5:02:47 PM ID: 8a4b487f-4e63-4947-b63b-116198194936		

Nicholas Dusak
nicholas.dusak@cityofdenton.com
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/22/2024 11:01:04 AM
Envelope Updated	Security Checked	6/3/2024 1:51:30 PM
Envelope Updated	Security Checked	6/3/2024 1:51:30 PM
Envelope Updated	Security Checked	6/17/2024 11:03:08 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.

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

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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.

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

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

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

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

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

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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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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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- 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

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215 E. McKinney St.
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Legislation Text

File #: PUB24-149, **Version:** 1

AGENDA CAPTION

Consider approval of the July 8, 2024 minutes.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
July 8, 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, July 8, 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, Thomas Plock, and Aaron Newquist

Also present: DME General Manager Antonio Puente, Jr. and Deputy City Attorney Marcella Lunn

Absent: Lee Riback

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

Ed Soph was present at the meeting and commented in opposition of the Value of Solar Work Session Item PUB24-126. Comments were sent via email prior to the meeting, attached here as Exhibit A.

2. CONSENT AGENDA

The Consent Agenda consisted of Items 2 A - E

Board Member Taylor moved to recommend adoption of agenda items 2 A - D. Motion seconded by Board Member Rayner; motion carried.

YES (6): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Thomas Plock, and Aaron Newquist

NO (0):

- 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).
- 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).

- 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).
- 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).
- 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).

Tracy Beck gave a presentation. Vice Chair Billy Cheek and Robert Rayner had questions that Seth Garcia and Tracy Beck assisted in answering.

Board Member Newquist moved to recommend adoption of agenda items 2 E. Motion seconded by Board Member Rayner; motion carried.

YES (5): Chair Susan Parker, Devin Taylor, Robert Rayner, Thomas Plock, and Aaron Newquist

NO (1): Vice Chair Billy Cheek

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. PUB24-141** Consider approval of the June 24, 2024 minutes.

Board Member Plock moved to recommend adoption of IC item 3 A. Motion seconded by Board Member Cheek; motion carried.

YES (6): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Thomas Plock, and Aaron Newquist

NO (0):

- 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.

Vis Bouaphanthavong gave a presentation. Robert Rayner and Devin Taylor asked questions that Bill Shepherd and Terry Naulty answered.

Board Member Cheek moved to recommend adoption of IC item 3 B. Motion seconded by Board Member Plock; motion carried.

YES (6): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Thomas Plock, and Aaron Newquist

NO (0):

- C. PUB24-142** Management Reports
1. Future Agenda Items
 2. New Business Action Items

4. CONCLUDING ITEMS

None

WORK SESSION

- A. PUB24-126** Receive a report, hold a discussion, and give staff direction regarding the Value of Solar Study.

Bill Shepherd introduced Jill Schuepbach with NewGen. She then proceeded to give a presentation on this item. Bill Shepherd went over staff recommendations. Staff answered questions from PUB members.

- 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.

Matt Hamilton gave a presentation. Stephen Gay assisted in answering questions.

With no further business, the meeting was adjourned at 10:52 AM.

SUSAN PARKER
CHAIR
CITY OF DENTON, TEXAS

CASSIE BLACKBURN
ADMIN MANAGER
CITY OF DENTON, TEXAS

Minutes approved on: July 22, 2024.



City of Denton

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215 E. McKinney St.
Denton, Texas 76201
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Legislation Text

File #: PUB24-136, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, approving a power purchase agreement between the City and SPRE Denton TX, LLC., a Texas Limited Liability Company; and providing for an Effective Date.



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Denton Municipal Electric

CM/DCM/ACM: Antonio Puente, Jr., DME General Manager

DATE: July 22, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, approving a power purchase agreement between the City and SPRE Denton TX, LLC., a Texas Limited Liability Company; and providing for an Effective Date.

INFORMATION/BACKGROUND

In 2022, DME was being approached by many different Crypto Mining operations interested in coming to Denton. They all had the same preference to lease City owned land adjacent to a substation. In order to more fairly select a recipient, DME issued an RFP for available capacity and land located next to the RD Wells Substation. DME received several bids and started negotiations with the most favorable one for the City.

If given the approval to move forward, WAHA Inc, would be the Data Center provider selected. They will be installing a 20 Megawatt modular data center on approximately 4 acres of RD Wells Substation property located in the Airport Industrial park.

Staff and WAHA have successfully negotiated Lease and PPA language and are now bringing them to PUB and City Council for approval. WAHA created a new LLC, SPRE Denton TX, LLC for the purpose of this project. Next steps will be to award the RFP, execute the Lease, execute the PPA, complete development review process and begin construction with anticipated commercial operation date in early Fall.

RECOMMENDATION

Staff recommends adoption and approval of the Ordinance giving the City Manager the authority to execute the Lease Agreement.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance and Redacted PPA

Respectfully submitted:
Bill Shepherd
Executive Manager of Business Services

ORDINANCE NO. 24- 1382

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, APPROVING A POWER PURCHASE AGREEMENT BETWEEN THE CITY AND SPRE DENTON TX, LLC., A TEXAS LIMITED LIABILITY COMPANY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City owns and operates an electric utility which provides electric energy and related services to all customers within Denton Municipal Electric's (DME) Public Utilities Commission of Texas (PUCT) certificated jurisdiction; and

WHEREAS, the City and SPRE Denton TX, LLC. have agreed to terms and conditions for the City's provision of electric energy and related services to a to-be-constructed data center on property to be leased from the City, and those are set forth in a power purchase agreement ("PPA") which is attached as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, the City Council finds the PPA should be sealed and exempted from public disclosure, as permitted by the provisions of §552.133 of the Texas Government Code, as a document that is reasonably related to a competitive electric matter, the disclosure of which would provide an advantage to the competitors or prospective competitors of the City's municipal electric operation ("Competitive Information"); and

WHEREAS, the City Council finds that it is in the public interest that it exercises its right under the Texas Government Code to lawfully safeguard and keep the PPA sealed, as it contains competitive electric commercial and financial information; and

WHEREAS, the City Council finds that it is in the public interest that a copy of the PPA, redacted of Competitive Information, be made available to the public; and

WHEREAS, the City Council further finds that the PPA is in the best interest of the customers; NOW, THEREFOR,

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 Council approves and authorizes the City Manager, or designee, and City Secretary, or designee, to execute, attest and deliver, respectively, the power purchase agreement, attached as Exhibit "A", with SPRE Denton, TX LLC.

SECTION 3. A copy of the PPA, redacted of Competitive Information, attached Exhibit "A", shall be available to the public for inspection and copying. Absent lawful order, the original PPA shall not be available for public inspection or copying and will be sealed as provided for in the preceding section.

SECTION 4. The City Council approves and authorizes the City Manager, or designee,

to take such additional actions as the City Manager, or designee, determines to be necessary and advisable to continue to effectuate the purpose, terms and conditions of the PPA.

SECTION 5. Immediately following the execution, attestation, and delivery of the PPA, the City Secretary is directed to seal and maintain the PPA in her custody and control, as documents excepted from public disclosure under the provisions of Texas Government Code, Section 552.133 unless otherwise lawfully ordered to disclose said documents.

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

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

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
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, A.A.

EXHIBIT A
(Redacted PPA)

POWER PURCHASE AGREEMENT

By and Between

CITY OF DENTON, TEXAS, DBA DENTON

MUNICIPAL ELECTRIC,

(as SELLER)

AND

SPRE DENTON TX, LLC

(as BUYER)

Dated as of

XXXXXX

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

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Exhibit B	Project Description
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Exhibit D	Form of Letter of Credit
Exhibit E	Buyer Insurance Requirements
Exhibit F	QSE Services
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Exhibit H	Renewable Energy Credits

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this “**Agreement**”) is made this ____ day of _____ 2024 (the “**Effective Date**”), by and between the City of Denton, Texas, d/b/a Denton Municipal Electric, a Texas Municipal Corporation and Home-Rule City, acting by and through its City Council with its principal place of business at 215 E. McKinney Street, Denton, Texas 76201 (“**Seller**”) and SPRE Denton TX, LLC, 2146 Roswell Road, #108-851, Marietta, Georgia 30062 (“**Buyer**”). Buyer and Seller are each individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

W I T N E S S E T H:

WHEREAS, Buyer desires to develop, design, construct, own and operate a high efficiency computing center (the “**Project**”) on property leased from Seller;

WHEREAS, the Parties have entered into that certain Lease Agreement contemporaneously with this Agreement pursuant to which Seller is leasing property to Buyer (the “**Lease Agreement**”);¹

WHEREAS, Seller is the single certified electric utility provider for the leased property, as defined in the Lease Agreement, with electric service jurisdictional monopoly rights;

WHEREAS, the Parties desire to enter into this Agreement, pursuant to which, among other things, (i) Seller shall provide all required Energy (as defined in Section 1.1 below) to the Project, (ii) Buyer shall pay to Seller amounts for the Retail Products (as defined in Section 3.1 below), all in accordance with and subject to the terms and conditions set forth in this Agreement;

WHEREAS, Seller has adopted the Denton Renewable Resource Plan (“**DRRP**”) which requires all Energy purchased by Seller for resale at retail, to be renewable Energy;

WHEREAS, Seller desires to sell, and Buyer desires to purchase and receive, the Retail Products, on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 *Definitions.*

A-1

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

“Adjustment Period” has the meaning set forth in Section 4.2.

“Affiliate” means, with respect to any Person, any entity controlled, directly or indirectly, by such Person, any entity that controls, directly or indirectly, such Person or any entity directly or indirectly under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Agreement” has the meaning set forth in the first paragraph hereof.

“Ancillary Services” means a service necessary to support the transmission of Energy to loads while maintaining reliable operation of the Transmission Operator’s System using Prudent Operating Practices pursuant to the applicable ERCOT Protocols.

“Ancillary Service Amounts” means the Buyer’s Load Ratio Share of the ERCOT applicable Ancillary Services attributable to the DME QSE by ERCOT during the prior month.

“Applicable Law” means, with respect to any Person, the Project, or Seller’s obligations under the Agreement, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, Governmental Approvals, directives, ERCOT Protocols and requirements of all regulatory and other Governmental Authorities, in each case applicable to or binding upon such Person, the Seller’s Interconnection Facilities or the Project (as the case may be).

“Bankrupt” means, with respect to a Party, such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) is generally unable to pay its debts as they fall due, (v) has been adjudicated bankruptcy or has filed a petition or an answer seeking an arrangement with creditors, (vi) has taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (vii) becomes subject to an order, judgment or decree for relief, entered in an involuntary case, without the application, approval or consent of such Party by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) Days, (viii) has failed to remove an involuntary petition in bankruptcy filed against it within sixty (60) Days of the filing thereof, or (ix) becomes subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301.

“Business Day” means any day except a Saturday, Sunday or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. Central Prevailing Time and close at 5:00 p.m. Central Prevailing Time. Notwithstanding the foregoing, for scheduling purposes only, the term “Business Day” shall have the meaning given to that term from time to time by NERC on its website (<http://www.nerc.com/~oc/offpeaks.html>).

“Buyer” has the meaning set forth in the first paragraph of this Agreement.

“Buyer Ancillary Service” has the meaning set forth in Exhibit A.

“Buyer Ancillary Service Amounts” has the meaning set forth in Exhibit A.

“Capacity” means the same as “capability” for electric power supply and refers to the maximum electric demand, expressed in MW, that the Project can be expected to consume following the completion of each Phase from the electric transmission system under specified conditions for a given time interval.

“Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or Ancillary Service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of the Project to respond to Load Resource scheduling orders for Energy or Ancillary Services from ERCOT or the DME QSE.

“Change of Law” means (i) any change in, addition to, or change in the interpretation or application of any Applicable Law adopted on or after the Effective Date or (ii) any new Applicable Law adopted on or after the Effective Date.

“COD Conditions” means all of the requirements that must be satisfied by Seller and Buyer as a prerequisite to achieving the Commercial Operation Date of each Phase as set forth in Section 3.17.

“Commercial Operation” means, as applicable, that Seller’s Interconnection Facilities and the Project have met the COD Conditions.

“Commercial Operation Date” means the date on which Commercial Operation is achieved for the Project in accordance with Section 3.16.

“Commercially Reasonable” or **“Commercially Reasonable Efforts”** means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Prudent Operating Practices, including, without limitation, electric system reliability and stability, state or other regulatory mandates relating to renewable Energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase,

sale, decision or other action occurs. “**Commercially Reasonable**” or “**Commercially Reasonable Efforts**” shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

“**Confidential Information**” has the meaning set forth in Section 12.1.

“**Contract Price**” has the meaning set forth in Section 3.4.

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“**Credit Rating**” means, with respect to any entity, the issuer rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third-party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Rating Agencies.

“**Day**” or “**day**” means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Central Prevailing Time on any calendar day and ending at 24:00 hours Central Prevailing Time on the same calendar day.

“**Delivered Energy**” means the Energy purchased from ERCOT by Seller for Buyer, including all transmission and distribution losses.

“**Delivery Point(s)**” means the 13.2 kV point of interconnection with Seller’s distribution systems at the high side of Buyer’s transformers located at the Site.

“**Delivery Term**” means the period of time commencing upon the Commercial Operation Date of Phase I of the Project and terminating at the end of the tenth (10th) Contract Year.

“**Delivery Term Security**” means collateral provided by Buyer to Seller pursuant to Section 8.1, to secure its obligations hereunder, which shall be in the form of a Letter of Credit or cash.

“**Disclosing Party**” has the meaning set forth in Section 12.1.

“**Dispute**” has the meaning set forth in Section 16.1.

“**DME QSE**” means the qualified scheduling entity, as defined in the ERCOT Protocols, that manages the total electric demand of the City of Denton excluding any qualified scheduling entity operated by DME for a specific DME customer.

“**DRRP**” has the meaning set forth in the Recitals to this Agreement.

“Early Termination Date” has the meaning set forth in Section 6.2.

“Effective Date” has the meaning set forth in the Preamble to this Agreement.

“Electric Tariff” means the then current Denton Municipal Electric rate schedule as approved by the Denton City Council.

“Emergency” means that an “Emergency Condition” has been declared as provided in the ERCOT Protocols.

“Energy” means electric energy generated, which shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

“ERCOT” means the Electric Reliability Council of Texas, Inc., or its successor.

“ERCOT North Hub” means ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME" published by the ERCOT at http://www.ercot.com/content/cdr/html/real_time_spp

“ERCOT Protocols” means the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedures described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

“Event of Default” has the meaning set forth in Section 0.

“Executives” has the meaning set forth in Section 16.2(a).

“Force Majeure Event” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, other than the obligation to pay amounts due, but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations

excused thereby.

(a) Subject to the foregoing, events that could qualify as a Force Majeure Event include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) strikes, work stoppage or other labor disputes of a party other than Seller not caused by Seller (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);

(iv) explosion, accident or epidemic;

(v) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials; or

(vi) vandalism.

(b) A Force Majeure Event shall not be based on:

(i) Buyer's inability economically to use the Retail Products purchased hereunder;

(ii) Seller's ability to sell the Retail Products at a price greater than the price set forth in this Agreement;

(iii) an inability to obtain sufficient labor, equipment, materials or other resources to build or operate the Project or the Seller's Interconnection Facilities, except to the extent that a Party's inability to obtain sufficient labor, equipment, materials, or other resources is caused by a Force Majeure Event described in any of subsections (a)(i) through (a)(vi) above; or

(iv) Buyer's failure to obtain financing or other funds.

"Franchise Fee Rate" means the prevailing franchise fee rate on Denton Municipal Electric's revenues as approved by the Denton City Council.

"Governmental Approvals" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any Applicable Law, that are required for the use and operation of the Project.

“Governmental Authority” means any federal, state, local or municipal government body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; any court or governmental tribunal; or any independent operator, regional transmission organization, ERCOT or other regulatory body; in each case having jurisdiction over either Party, the Project, the Site, Seller’s Interconnection Facilities, or the Transmission Operator’s System.

“Governmental Charges” has the meaning set forth in Section 11.2.

“Incremental TCOS Demand” means the incremental demand contribution of the Project served under the Index Supply of Retail Product to Seller’s 4CP demand expressed in MW as specified in PUCT rule 25.192, which will be determined by Seller using the following methodology: (Project’s June_y coincident peak contribution *plus* July_y coincident peak contribution *plus* August_y coincident peak contribution *plus* September_y coincident peak contribution) *divided by* 4, where y is the calendar year during the Term. For the avoidance of doubt, Incremental TCOS Demand charges apply to the full calendar year after the Project has contributed to Seller’s 4CP demand and will continue to be due from Buyer to Seller after the Term of this Agreement if a Contract Year ends prior to the end of the calendar year.

“Index Supply” means any Retail Products sold to Buyer by Seller that is priced pursuant to Attachment A.

“Initial Negotiation End Date” has the meaning set forth in Section 16.2(a).

“Interest Rate” means the lower of (i) annual rate equal to the Prime Rate then in effect plus two percent (2%) and (ii) the maximum interest permitted by Applicable Law.

“Lease Agreement” means the Lease Agreement between Buyer and Seller for use of the Site upon which the Project will be constructed which is being executed contemporaneously herewith.

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit, substantially in the form of Exhibit F, issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, and having assets of at least Ten Billion Dollars (\$10,000,000,000), with any modifications reasonably acceptable to the Party in whose favor the letter of credit is issued.

“Load Ratio Share” means the fraction of the monthly Retail Products sales (in kilowatt hours) divided by the monthly total energy sales (in kilowatt hours) of Seller to the load served by the DME QSE.

“Load Serving Entity” shall have meaning as defined in the ERCOT Protocols.

“Manager” has the meaning set forth in Section 16.2(a).

“Metering System” means all meters, metering devices and related instruments used to measure and record Delivered Energy.

“Moody’s” means Moody’s Investor Service, Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“MW” means a megawatt (or 1,000 kilowatts) of alternating current electric generating capacity.

“MWh” means a megawatt hour of Energy.

“NERC” means the North American Electric Reliability Corporation, or its successor.

“Non-Defaulting Party” has the meaning set forth in Section 0.

“Notice” has the meaning set forth in Section 17.1.

“Operating Procedures” has the meaning set forth in Exhibit G.

“Parties” has the meaning set forth in the first paragraph of this Agreement.

“Party” has the meaning set forth in the first paragraph of this Agreement.

“Person” means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.

“Phases” (collectively Phase I and Phase II, and each a **“Phase”**) means the stages of development that may be requested to be energized sequentially by Buyer upon completion of Seller’s Interconnection Facilities.

“Phase I”, specifically, refers to Buyer’s request for the Project to be energized up to a minimum of [REDACTED].

“Phase II”, specifically, refers to Buyer’s request for the Project to be energized up to a total maximum of [REDACTED].

“Planned Outages” means the scheduled outage of the Transmission Operator’s System as scheduled with ERCOT that impacts the Project.

“Power Ready Date” has the meaning set forth in Section 3.16(a).

“Pre-Pay Amounts” has the meaning set forth in Section 7.1(a).

“Prime Rate” means the interest rate (sometimes referred to as the “base rate”) for large commercial loans to creditworthy entities announced from time to time by Citibank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic average of such rates), in either case determined as of the date the obligation to pay interest arises.

“Project” has the meaning set forth in the Recitals and includes Buyer’s proposed facilities and equipment at the Site. The Project is more particularly described in Exhibit B.

“Prudent Operating Practices” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for facilities of similar size, type and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition. Prudent Operating Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to a spectrum of possible practices, methods or acts generally accepted in the industry and having due regard for, among other things, manufacturers’ warranties and the requirements of any Governmental Authority of competent jurisdiction.

“PUCT” means the Public Utilities Commission of Texas, or its successor.

“Ratings Agency” means either S&P or Moody’s.

“Receiving Party” has the meaning set forth in Section 12.1.

“Referral Date” has the meaning set forth in Section 16.2(a).

“Renewable Energy Credit”/“REC” means a credit representing one MWh of renewable energy that is physically metered and verified in Texas and meets the requirements as set forth in Protocol Section 14, State of Texas Renewable Energy Credit Trading Program.

“Renewal Term” has the meaning set forth in Section 2.1.

“Retail Products” has the meaning set forth in Section 3.1.

“S&P” means Standard & Poor’s or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“SCADA” means Supervisory Control and Data Acquisition.

“Seller” has the meaning set forth in the first paragraph of this Agreement.

“Seller Curtailment” means any curtailment of delivery of Retail Products resulting from any of the following: (a) a failure of Seller’s Interconnection Facilities that causes the Project to be disconnected, suspended or interrupted, in whole or in part, (b) Buyer’s default under this Agreement or other inability or failure to accept delivery of any Retail Products, or (c) a System Curtailment.

“Seller Distribution System Limitation” means a malfunction in Seller’s distribution equipment and/or distribution system that reduces or eliminates the ability of Seller to deliver the Retail Products to Buyer.

“Seller’s Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Seller’s distribution system, up to, and on Seller’s side of, the Delivery Point.

“Site” means the leased parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site is more fully described in the Lease Agreement.

“System Curtailment” means any curtailment of delivery of Retail Products as the result of any of the following: (i) an Emergency, or (ii) transmission system maintenance, repairs or replacements by the Seller acting in its role as a Transmission Operator made necessary by events of Force Majeure or operational action taken by ERCOT to maintain transmission system reliability or to comply with reliability standards of NERC and (iii) Seller Distribution System Limitations.

“System Curtailment Order” means the instruction from ERCOT, Seller in its role as a transmission and distribution operator for ERCOT to reduce load at the Project by an amount, and for the period of time, set forth in such order, due to a System Curtailment.

“Term” has the meaning set forth in Section 2.1.

“Transmission Operator” means ERCOT or any successor independent system operator, regional transmission operator or other transmission operator from time to time having authority to control the transmission balancing authority into which the Project is interconnected.

“Transmission Operator’s System” means the contiguously interconnected electric transmission facilities over which the Transmission Operator has rights to manage the bulk transmission of Energy and Ancillary Service to the Delivery Point.

“TRE” means the Texas Reliability Entity, Inc., or its successor.

1.2 Interpretation.

The following rules of construction shall be followed when interpreting this Agreement:

- (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter;
- (b) words used or defined in the singular include the plural and vice versa;
- (c) references to Articles and Sections refer to Articles and Sections of this Agreement;
- (d) references to Annexes, Exhibits and Schedules refer to the Annexes, Exhibits and Schedules attached to this Agreement, each of which is made a part hereof for all purposes;
- (e) references to Applicable Laws refer to such Applicable Laws as they may be amended from time to time, and references to particular provisions of an Applicable Law include any corresponding provisions of any succeeding Applicable Law and any rules and regulations promulgated thereunder;
- (f) terms defined in this Agreement are used throughout this Agreement and in any Annexes, Exhibits and Schedules hereto as so defined;
- (g) references to money refer to legal currency of the United States of America;
- (h) the words “include” or “including” shall mean “including without limitation;”
- (i) the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular Article or Section in which such words appear, unless otherwise specified;
- (j) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
- (k) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
- (l) the word “or” will have the inclusive meaning represented by the phrase “and/or”, unless the context clearly indicates that an exclusive meaning is intended.
- (m) the words “shall” and “will” mean “must”, and shall and will have equal force and effect and express an obligation; and
- (n) the words “writing,” “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

ARTICLE 2 TERM

2.1 *Term; Renewals*

The “**Term**” of this Agreement, shall commence on the Effective Date and continue until the end of the [REDACTED] Contract Year unless sooner terminated in accordance with the terms hereof. Subsequently, the Term shall automatically renew for an additional period of [REDACTED] (the “**Renewal Term**”) unless either Party provides written notice to the other Party of its intent to terminate the PPA at least six (6) months prior to the expiration of the initial Term. Upon the expiration of the Renewal Term, the PPA may be renewed or extended by mutual consent of the Parties, upon terms and conditions upon which the Parties mutually agree in writing in connection with such extension or renewal. For the Renewal Term and or any further renewal or extension to be effective, the Lease Agreement must also be extended or renewed for the same amount of time.

2.2 *Termination.*

Either Party shall have the right to terminate this Agreement in the event (i) that the Lease Agreement is terminated or (ii) the Lease Agreement fails to become effective due to the failure to secure the necessary zoning and city council approval contemplated therein.

ARTICLE 3 OBLIGATIONS AND DELIVERIES

3.1 *Retail Products.*

The “**Retail Products**” to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is “all requirements”, including Energy, Ancillary Services, Renewable Energy Credits and all other necessary services to effectuate the delivery of all services herein, in accordance with the terms hereof, in an amount equal to the full electric service demand of the Project, not to exceed the maximum capacity for each of Phase I or Phase II following the completion of each Phase.

3.2 *Purchase and Sale.*

Unless specifically excused by the terms of this Agreement, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Retail Products at the Delivery Point, and Buyer shall pay Seller for the Retail Products in accordance with the terms hereof. Buyer shall buy Retail Products exclusively from Seller. Seller shall be responsible for all actions and related costs required to deliver the Retail Products to the Delivery Point. Seller shall be deemed to be in control of the Retail Products up to and until delivery and receipt at the Delivery Point, and Buyer shall be deemed to be in control of such Retail Products from and after delivery and receipt at the Delivery Point.

3.3 *Services.*

Seller shall provide those certain services to Buyer associated with the Project, as set forth in Exhibits C and F hereto.

3.4 *Contract Price.*

Buyer shall pay Seller the amounts as set forth in Exhibit A.

3.5 *Capacity Attributes.*

In the event the PUCT or ERCOT establishes a capacity market, as that term is commonly understood, or any other reliability measures requiring Seller to show resources or Ancillary Services in reserve to satisfy Buyer's load requirements, Buyer shall reimburse Seller for the market cost of the Capacity Attributes plus charges required by ERCOT protocols associated with the procurement of such Capacity Attributes.

3.6 *Performance Excuses*

The performance of Seller's obligation to deliver the Retail Products shall be excused only (i) during periods of Force Majeure, but only to the extent which delivery is impacted by Force Majeure, (ii) during a Seller Curtailment, (iii) during System Curtailments, and (iv) during Planned Outages.

3.7 *Delivery Interruption.*

Retail Products shall not be subject to any recall by Seller, other than as provided in Sections 3.8, a System Curtailment Order, a Transmission Operator's System outage, and/or a Seller Curtailment.

3.8 *Scheduling; Planned Outages*

The Parties shall comply with all ERCOT Protocols, associated operation standards and guidelines, and Operating Procedures.

3.9 *Planned Outage Notifications*

No later than (A) thirty (30) days prior to the anticipated Commercial Operation Date, and (B) at least at least sixty (60) days before May 1 of each calendar year throughout the Term, Seller shall provide Buyer with an annual forecast of Planned Outages ("Outage Schedule"). Seller shall provide the following information for each proposed Planned Outage: (1) Start date and time; (2) end date and time; (3) capacity available to the Project during the Planned Outage. Seller may update such Outage Schedule as necessary to comply with ERCOT Protocols. Any such update to the Outage Schedule must be promptly submitted to Buyer. Notwithstanding this notification provision, Seller makes no representation on ERCOT's determination of when transmission curtailments or outages will occur, and Seller will take commercially reasonable measures to notify Buyer of such ERCOT curtailments and/or outages that will impact the Project.

3.10 *Sales for Resale.*

All Retail Products delivered to Buyer hereunder shall be for the exclusive use by the Project.

3.11 *Standards of Care.*

- (a) Buyer shall comply with all applicable requirements of Applicable Law, ERCOT, TRE and NERC relating to the Project and the Seller's Interconnection Facilities (including those related to construction, ownership and/or operation of the Project and the Seller's Interconnection Facilities).
- (b) Seller shall comply with all applicable requirements of Applicable Law, ERCOT, TRE and NERC relating to the Seller's Interconnection Facilities.
- (c) Each Party shall perform all scheduling and transmission services in compliance with all applicable operating policies, criteria, rules, guidelines, tariffs and protocols of ERCOT and Prudent Operating Practices.
- (d) Buyer agrees to abide by all NERC, TRE and ERCOT reliability requirements.
- (e) Seller agrees to abide by all NERC, TRE and ERCOT reliability requirements regarding interconnection of the Project, including the requirements of the Seller as transmission operator.

3.12 *Curtailment.*

- (a) Seller shall not curtail or interrupt deliveries of the Index Supply Retail Products to the Project as required by this Agreement except as set forth in Section 3.6 and Section 3.7.
- (b) Buyer shall at all times during the Term comply with the directives of the Seller given pursuant to the Switching Agreement (Exhibit E).
- (c) If Buyer fails to comply with the curtailment directives and instructions set forth in any Seller Curtailment or System Curtailment Order, Buyer shall be liable to Seller for any penalties or fines imposed on Seller by any Governmental Authority and any actual direct damages suffered by Seller as a result of Buyer's failure to comply. In the event that Buyer fails to comply, Seller shall have the right, but not the obligation, to open the breakers to the Project to force compliance with the Seller Curtailment or System Curtailment Order subject to whatever the Project requirements are for a shutdown to protect the Buyer's equipment. Seller shall not have any liability for exercising such right nor shall Buyer be excused from any damages that may arise in the case that Seller fails to do so. Notwithstanding the foregoing, Buyer's failure to comply with a Seller Curtailment or System Curtailment Order shall not be a Buyer Event of Default; but, Buyer's failure to reimburse Seller for any fines, penalties or damages actually incurred by Seller as a result of Buyer's failure to comply shall be considered a default under this

Agreement.

- (d) If Seller fails to communicate ERCOT curtailment directives and instructions set forth in any Seller Curtailment or System Curtailment Order, Seller shall be liable for any penalties or fines imposed on Seller by any Governmental Authority and any actual direct damages suffered by Buyer as a result of Seller's negligent or willful failure to communicate.

3.13 *Change of Law.*

If during the Term of this Agreement there occurs any material Change of Law (including promulgation, enactment, repeal and amendment) including PUCT Substantive Rule §25.173, then promptly after any such government action and written notice by the affected Party to the other Party, the Parties shall enter into good faith negotiations to make the minimum changes to this Agreement necessary to render this Agreement in compliance with any such government action and shall take such other actions in compliance with the terms and conditions of such government action while preserving to the maximum extent possible the benefits, burdens and obligations of each Party under this Agreement. If any Change of Law results in materially increased costs or expenses to Buyer, then Buyer shall have the right to terminate this Agreement. Notwithstanding Buyer's right to terminate the Agreement due to a Change in Law, Buyer shall be liable to Seller for any ERCOT resettlement amounts due for all Retail Products. For the avoidance of doubt, changes to the wholesale market by ERCOT or the Public Utility Commission of Texas ("PUCT") including potential capacity or capacity like charges, increased Ancillary Service charges, ERCOT administrative charges, other charges associated with Load Serving Entities, Load Resources and/or Controllable Load Resources, as so defined in the ERCOT protocols, shall be the sole responsibility of Buyer

3.14 *Project Development.*

- (a) Buyer, at no cost to Seller, shall:
 - (i) Design and construct the Project. Seller will provide [REDACTED] feeds to the Project. Project design must include the ability to carry minimum loads of both [REDACTED] phases on a single [REDACTED] feeder that will be served by an Index Supply.
 - (ii) Pay for the construction of Seller's Interconnection Facilities and Seller will be responsible for the development, design and construction of Seller's Interconnection Facilities.
 - (iii) Secure all Governmental Approvals and other approvals necessary for the construction and initial operation and maintenance of the Project.
 - (iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project.

- (v) Provide to Seller Buyer's electrical specifications and design drawings pertaining to the Project.
 - (vi) Maintain those policies of insurance in full force and effect as required by Exhibit E.
 - (vii) On a monthly basis during the construction phases of the Project, provide to Buyer a progress report on the Project construction and upon reasonable request of Seller, schedule a meeting between representatives of Buyer and Seller to review such report and discuss Buyer's construction progress.
 - (viii) Provide access to Seller, its authorized agents, employees and inspectors for purpose of inspecting the Project construction site or on-site Buyer data and information pertaining to Seller's Interconnection Facilities during normal business hours upon reasonable advance Notice.
 - (ix) Once finally and properly completed and in service (following an inspection by Seller to confirm the same): (i) all equipment, and systems in and from the RD Wells Substation to the Delivery Point will become property of the Seller; (ii) Buyer shall convey good and indefeasible title to such equipment to Seller and execute any documents reasonably requested to effectuate the same; and (iii) Buyer shall transfer to Seller any warranties that it is entitled to in connection with the Seller's Interconnection Facilities.
- (b) Seller, at no cost to Buyer, shall design and construct protective relaying systems to the extent required to accommodate the delivery of the Retail Products, including, but not limited to, [REDACTED] feeder lines to the Project.
 - (c) Seller shall, at Buyer's expense, develop, design and construct Seller's Interconnection Facilities.

3.15 Intentionally Omitted.

3.16 Power Ready Date; Commercial Operation Date.

- (a) Seller shall be responsible for designing and constructing (i) Seller's Interconnection Facilities; and (ii) protective relaying systems to the extent required to accommodate the delivery of the Retail Products, including, but not limited to, two [REDACTED] feeder lines to the Project that are capable of energizing the Project to the full [REDACTED] capacity. Seller shall use Commercially Reasonable Efforts to complete its respective portion(s) of Seller's Interconnection Facilities and the relaying systems no later than the following date (such date, the "**Power Ready Date**");

Within ninety (90) days of Buyer obtaining the required permits to construct the Project from the City of Denton.

(b) Buyer shall use Commercially Reasonable Efforts to energize the Project within five (5) days of the Project receiving the occupancy permit from the City of Denton (such date, the “**Commercial Operation Date**”). Buyer shall use Commercially Reasonable Efforts to energize Phase II of the Project within twelve (12) months of the Commercial Operation Date.

(c) The Power Ready Date and Commercial Operation Date may be extended due to delays from supply chain disruptions, logistics disruptions, labor shortages, or the unavailability of any necessary equipment for Seller’s Interconnection Facilities or the Project, wherein such delays are despite the Parties’ Commercially Reasonable Efforts, or for the duration of Force Majeure events impacting construction of the Seller’s Interconnection Facilities or the Project.

3.17 COD Conditions.

The Parties shall cooperate to facilitate Seller’s testing of the Seller’s Interconnection Facilities necessary to satisfy the COD Conditions for each Phase. Each Party shall provide the other Party Notice of the date such Party believes that the Seller’s Interconnection Facilities have been completed. Seller shall provide notice of completion of the Seller’s Interconnection Facilities on an individual and incremental basis pending resolution of any objections, provided, however, that Buyer shall in all cases have up to five (5) Business Days to review and object to each notice, and such notice shall be deemed accepted by Buyer if Buyer fails to object within such time period. The COD Conditions are:

- (a) all necessary and material permits, consents, licenses, approvals, registrations and authorizations required to be obtained by Buyer from any Governmental Authority to construct the Project in compliance with Applicable Law and this Agreement have been obtained and are in full force and effect;
- (b) the Seller’s Interconnection Facilities are available to commence normal operations and able to deliver Retail Products from Seller at the Delivery Point and in accordance with Operating Procedures;
- (c) the Seller’s Interconnection Facilities are fully interconnected to the Transmission Operator’s System, have been fully tested, and are acceptable to the Transmission Operator, without experiencing any abnormal or unsafe operating conditions on any interconnected system;
- (d) all other requirements relating to the completion of the Project and the Seller’s Interconnection Facilities set forth in this Agreement have been fully satisfied.

ARTICLE 4 METERING AND MEASUREMENT

4.1 *Metering System.*

- (a) Seller shall ensure the Metering Systems, including all equipment required to provide Seller, or their agents and successors, with a MW signal of the Project, are designed, located, constructed, installed, owned, operated and maintained in accordance with Prudent Operating Practices in order to measure and record the amount of Energy delivered to the Project at the Delivery Point. The meters shall be of a mutually acceptable accuracy range and type to the Parties, as agreed upon in the Operating Procedures. The Metering Systems will be owned, operated and maintained by Seller. Seller will be responsible for the operation and periodic testing and calibration of the Metering System.
- (b) Seller will design, procure, install and test all metering equipment required for the Project. All equipment not supplied by Seller shall be in accordance with Seller specifications. Buyer shall reimburse Seller for any and all costs and expenses incurred in procuring and installing the metering equipment pursuant to this Article 4.
- (c) Seller shall ensure that the Metering Systems are designed to provide required meter data to Seller, or their agents and successors, consistent with Prudent Operating Practices in order to measure and record the amount of Energy delivered to the Project at the Delivery Point.

4.2 *Inspection and Adjustment.*

- (a) After the Commercial Operation Date of the Project, any meters owned, operated, and maintained by the Seller will be inspected and tested to conform to Prudent Operating Practices. Seller shall contact Buyer for the purpose of witnessing and verifying proper inspection and adjustment, if any, to meters. If Buyer is given notice of a test of these meters for the purpose of witnessing and verifying proper inspection and adjustment, Seller will notify Buyer.
- (b) If any seal securing the metering is found broken, if the Metering System fails to register, or if the measurement made by a metering device is found upon testing to vary by more than one percent (1.0%) from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements of Energy made by the Metering System during: (i) the actual period when inaccurate measurements were made by the Metering System, if that period can be determined to the mutual satisfaction of the Parties; or (ii) if such actual period cannot be determined to the mutual satisfaction of the Parties, the second half of the period from the date of the last test of the Metering System to the date such failure is discovered or such test is made (“**Adjustment Period**”). If the Parties are unable to agree on the amount of the adjustment to be applied to the Adjustment Period,

the amount of the adjustment shall be determined: (A) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or (B) if not so ascertainable, by estimating on the basis of deliveries made under similar conditions during the period since the last test. Within thirty (30) Days after the determination of the amount of any adjustment, Buyer shall pay Seller any additional amounts then due for deliveries of Energy during the Adjustment Period or, conversely, Buyer shall be entitled to a credit against any subsequent payments for Energy.

- (c) Buyer and its representatives shall be entitled to be present at any test, inspection, maintenance, adjustments and replacement of any part of the Metering System relating to obligations under this Agreement.

ARTICLE 5 RETAIL PRODUCTS

Seller shall supply Index Supply to Buyer, in accordance with attached Exhibit A to this Agreement.

ARTICLE 6 EVENTS OF DEFAULT

6.1 Events of Default.

An “**Event of Default**” shall mean,

- (a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following:
 - (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;
 - (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
 - (iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof; provided, however, that if such failure is not reasonably capable of being remedied within the thirty (30) day cure period, such Party shall have such additional time (not exceeding an additional ninety (90) days) as is reasonably necessary to remedy such failure, so long as such Party promptly commences and diligently pursues such remedy;
 - (iv) such Party becomes Bankrupt;

- (v) any event of default by such Party under the Lease Agreement;
- (vi) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 13; or
- (vii) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) With respect to Buyer, if Buyer fails to build the Project and is unable to consume at least 1 MW of electricity for 12 consecutive hours within ninety (90) days of the Power Ready Date, after giving effect to any extension under 3.16(b), and such failure is solely attributable to Buyer; and (ii) if Buyer fails to satisfy its Delivery Term Security requirements set forth in Section 8.1 within five (5) Business Days after receipt of Notice of such failure.

6.2 Remedies; Declaration of Early Termination Date.

If an Event of Default with respect to a defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the right to the following:

- (a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than ten (10) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”);
- (b) accelerate all amounts owing between the Parties and end the Delivery Term effective as of the Early Termination Date;
- (c) withhold any payments due to the defaulting Party under this Agreement;
- (d) send Notice, designating to the defaulting Party a date and time certain no later than five (5) days after a payment Event of Default, a date and time certain that the Non-Defaulting Party may suspend performance; and
- (e) to the extent the Non-Defaulting Party is the Seller, exercise its rights pursuant to Section 8.1, as applicable, to draw upon and retain any portion of Delivery Term Security required to satisfy Buyer’s obligations under this Agreement.

6.3 Rights and Remedies Are Cumulative.

Except where this Agreement expressly provides that a Party’s remedies are sole and exclusive, the rights and remedies of a Party pursuant to this 0 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

6.4 Mitigation.

Any Non-Defaulting Party shall attempt to mitigate its costs and losses resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 7 PAYMENT

7.1 *Billing and Payment.*

Payment Amounts. Consistent with Exhibit A, payment for Retail Products, shall be paid by Buyer to Seller as set forth below.

(a) Pre-Pay Amounts – For all Index Supply, Buyer shall pre-pay Seller on a weekly basis an amount sufficient to maintain a target balance equivalent to ten (10) days of the ERCOT Amounts (as defined in Exhibit A) as determined by Seller

(i) Seller shall provide to Buyer a weekly Pre-pay Invoice for pre-pay replenishment including, as backup, the ERCOT invoices and settlement statements for the Project QSE processed and paid in the prior weekly period and any other applicable Load Ratio Share charges.

(ii) Buyer shall remit to Seller amounts owed for such Pre-pay replenishment amounts within two (2) Business Days of the issuance date of the invoice.

(b) Monthly Invoices. Seller shall transmit via email to Buyer Retail Products invoices as detailed herein:

Indexed Supply – Seller shall transmit to Buyer monthly invoices for Non-ERCOT Amounts (as defined on Exhibit A) including any adjustments due to prior period invoices.

(c) Any disputes of invoices claimed by Buyer shall be communicated with Seller. Resolution of such disputes will be communicated via corrected or adjusted invoices.

(d) With respect to all invoices, if either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

7.2 *Disputes and Adjustments of Invoices.*

A Party may, in good faith, (a) dispute the correctness of any invoice, any adjustment to an invoice, rendered under this Agreement, or that an allocation or assignment of costs is not fair and equitable or otherwise inconsistent with Prudent Operating Practices, or (b) adjust any invoice for any arithmetic or computational error, in each case within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the full amount of the invoice shall be required to be made when due under protest by the disputing Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Upon resolution of the dispute, any required payment or credit shall be made within five (5) Business Days of such resolution. Inadvertent overpayments shall be returned upon request within ten (10) calendar days. Any overpayment not returned within ten (10) calendar days, will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the date the return of the overpayment was requested to but excluding the date the overpayment is returned in full. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 0 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after the twelve (12) month period.

ARTICLE 8

INSURANCE, CREDIT AND COLLATERAL REQUIREMENTS

8.1 *Buyer's Performance Assurance.*

- (a) Buyer agrees to deliver to Seller collateral to secure its obligations under this Agreement and shall maintain such collateral in full force and effect during the Term of this Agreement. Prior to the Commercial Operation Date, Buyer shall provide to Seller the following Delivery Term Security: for Index Supply quantities expressed in MW of Capacity, Delivery Term Security in the amount of [REDACTED] of Capacity (Buyer shall at all times have sufficient Delivery Term Security of at least [REDACTED] of Capacity subject to the Index Supply). Seller will refund or credit the surplus amounts of Delivery Term Security to Buyer on monthly basis.
- (b) Upon termination, Seller shall have the right to draw upon Buyer's Delivery Term Security for any amounts owed to Seller under this Agreement if not paid when due pursuant to Section 0. Buyer's Delivery Term Security shall be subject to replenishment.
- (c) Buyer's obligation to maintain the applicable Delivery Term Security shall terminate upon the occurrence of the following: (i) the Term of the Agreement has ended, or the Agreement has been terminated pursuant to Section 0, as applicable; and (ii) all payment obligations of Buyer arising under this Agreement, including indemnification payments and Incremental TCOS Demand charges, or other damages are paid in full. Upon the occurrence of the foregoing, Seller shall promptly return to Buyer the unused portion of the applicable Delivery Term Security.

- (d) Any Letter of Credit provided by Buyer pursuant to this Agreement must provide, among other things, that the Seller is entitled to draw the full amount of such Letter of Credit if: (i) the Letter of Credit has not been renewed, extended or replaced within thirty (30) days prior to the expiration date of the Letter of Credit; or (ii) the issuer of the Letter of Credit fails to satisfy the requirements of an issuer of a Letter of Credit under this Agreement, within ten (10) Business Days after receipt of Notice thereof by Seller to replace such Letter of Credit with another Letter of Credit, in a form reasonably acceptable to the issuer of the Letter of Credit and Seller. Costs of any Letters of Credit provided by Buyer shall be borne by Buyer.
- (e) Seller shall apply the proceeds of collateral realized upon the exercise of any such rights or remedies under this Article 8 to reduce Buyer's obligations under the PPA, subject to Seller's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 9 REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 *Representations and Warranties.*

On the Effective Date, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) (i) it has all Governmental Approvals necessary for it to perform its obligations under this Agreement, and (ii) all Governmental Approvals necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Buyer;
- (c) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) no Event of Default with respect to it has occurred and is continuing and no such

event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

- (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Retail Products as provided in this Agreement.

9.2 *General Covenants.*

Each Party covenants that throughout the Term:

- (a) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;
- (c) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law; and
- (d) it shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

9.3 *Seller’s Covenants.*

Seller covenants as follows:

- (a) from the date hereof through the expiration or termination of this Agreement, Seller shall comply with this Agreement and Applicable Laws;
- (b) Seller will, at Seller’s expense, reasonably cooperate with Buyer in opposing, and will not support any action of any regulatory body having jurisdiction thereover that could result in the modification or vitiation of any of the terms or conditions hereof or have any other material adverse effect on Buyer, the Project or this Agreement; and

Seller’s obligations under this Agreement shall qualify as operating expenses which enjoy first priority payment at all times under any and all bond or other ordinances or indentures to which Seller is a party and shall be included as part of the rate calculations required by any rate-related

debt covenants to which Seller is bound.

ARTICLE 10 TITLE, RISK OF LOSS, INDEMNITIES

10.1 *Title and Risk of Loss.*

Title to and risk of loss related to the Retail Products shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Retail Products free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

10.2 *Indemnities by Seller.*

To the extent allowed by Applicable Law, Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("**Claims**") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Retail Products delivered under this Agreement up to and at the Delivery Point, (ii) the failure by Seller to comply with Applicable Law, or (iii) any Governmental Charges for which Seller is responsible hereunder, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

10.3 *Indemnities by Buyer.*

To the extent allowed by Applicable Law, Buyer shall release, indemnify, defend, and hold harmless, Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Retail Products received by Buyer under this Agreement after the Delivery Point, (ii) the failure by Buyer to comply with Applicable Law, (iii) any Governmental Charges for which Buyer is responsible hereunder, or (iv) Buyer's development, permitting, construction, ownership, operation and/or maintenance of the Project, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

ARTICLE 11

GOVERNMENTAL CHARGES

11.1 *Cooperation.*

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

11.2 *Governmental Charges.*

Buyer shall pay or cause to be paid all taxes imposed by any Governmental Authority (“**Governmental Charges**”) on or with respect to the Retail Products or the transaction under this Agreement including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. Nothing in this Section 11.2 shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.

ARTICLE 12

CONFIDENTIAL INFORMATION

12.1 *Confidential Information.*

- (a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Project that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the “**Confidential Information**”). Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the “**Disclosing Party**”) may make such Confidential Information available to the other (each, a “**Receiving Party**”) subject to the provisions of this Section 12.1.
- (b) Upon receiving or learning of Confidential Information, the Receiving Party shall:
 - (i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by law, subject to the restrictions set forth below;
 - (ii) Restrict access to such Confidential Information to only those employees, Affiliates, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Project and for the purposes of this

Agreement who shall be bound by the terms of this Section 12.1;

- (iii) Use such Confidential Information solely in connection with the Project and for purposes of this Agreement; and
- (iv) Upon the termination of this Agreement, destroy or, if requested by the Disclosing Party, return any such Confidential Information in written or other tangible form and any copies thereof.

(c) The restrictions of this Section 12.1 do not apply to:

- (i) Release of this Agreement to any Governmental Authority required for obtaining any approval or making any filing pursuant to Section 11.2, *provided* that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;
- (ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;
- (iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party, *provided* that the Person or Persons developing such information have not had access to any Confidential Information;
- (iv) Information which is received from a third party which is not known (after due inquiry) by Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and
- (v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including any Freedom of Information Act or Texas Public Information Act request); *provided, however*, that the Receiving Party, prior to such disclosure, shall provide reasonable advance Notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective

order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

- (d) Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, *provided* that the Disclosing Party has given Notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 12.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project or as are necessary in order to fulfill such Party's obligations under this Agreement.
- (e) The obligations of the Parties under this Section 12.1 shall remain in full force and effect for one (1) year following the expiration or termination of this Agreement.

12.2 Texas Public Information Act.

Notwithstanding any other provision of this Article 12, the Parties understand that Seller is a governmental entity and is required to comply, and Seller does hereby agree to comply, with the Texas Public Information Act (Chapter 552 of the Texas Government Code) when responding to requests for records in its possession except where the information is considered public power utility competitive information protected by the provisions of the Texas Government Code, Sections 552.101, 552.104, 552.110 and/or 552.133. Disclosure of information required by the Texas Public Information Act shall not constitute a breach of any provision contained herein if so ordered by the State of Texas Attorney General. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement is confidential, commercially sensitive information protected from disclosure pursuant to the Texas Public Information Act. In the event that Seller is required by legal or regulatory authority to disclose any Confidential Information, Seller shall promptly notify Buyer of such request or requirement prior to disclosure, if permitted by law, so that Buyer may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Seller agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand under Applicable Law, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. Buyer understands that Seller is bound by any rulings or decisions made by the Texas Attorney General, or other governing body or court that holds binding authority over Seller relative to Confidential Information.

ARTICLE 13 ASSIGNMENT

13.1 Successors and Assigns.

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

13.2 Assignment by Buyer.

- (a) This Agreement shall not be assigned or transferred by Buyer without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, this Agreement may be assigned, without the prior written consent of Seller, (i) by operation of law or (ii) to a purchaser of all or substantially all of Buyer's business, including the Project, so long as such assignee has expressly agreed in writing to assume all obligations of Buyer under this Agreement.
- (b) If the rights and interests of Buyer in this Agreement shall be assumed, sold or transferred as herein provided, the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof.

13.3 Assignment by Seller.

- (a) This Agreement shall not be assigned or transferred by Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.
- (b) If the rights and interests of Seller in this Agreement shall be assumed, sold or transferred as herein provided, the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof.

ARTICLE 14 FORCE MAJEURE

14.1 Force Majeure Events.

To the extent either Party is prevented by a Force Majeure Event from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure Event to the other Party as detailed below, then, the Party impacted by the Force Majeure Event shall be excused from the performance of its obligations to the extent impacted. As soon as practicable after commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Buyer shall not be required to make any payments for any Retail Products that Seller fails to schedule, deliver or provide as a result of a Force Majeure Event during the term of such Force Majeure Event.

14.2 *Limitations on Effect of Force Majeure Events.*

In no event will any delay or failure of performance caused by Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by Force Majeure affecting a Party continues for an uninterrupted period of three hundred sixty-five (365) Days from its inception the Party not claiming Force Majeure may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

ARTICLE 15 LIMITATIONS ON LIABILITY

15.1 *Disclaimer of Warranties.*

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

15.2 *Limitations on Liability.*

TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE INDEMNITOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE; PROVIDED, HOWEVER, SELLER DOES NOT WAIVE ITS GOVERNMENTAL IMMUNITY, AS APPLICABLE. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 16 DISPUTE RESOLUTION

16.1 *Intent of the Parties.*

Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement (a “**Dispute**”) is the dispute resolution procedure set forth in this Article 16. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the Dispute by means of the dispute resolution procedure set forth in this Article 16.

16.2 *Management Negotiations.*

- (a) The Parties will attempt in good faith to resolve any Dispute by prompt negotiations between each Party’s authorized representative designated in writing as a representative of the Party (each a “**Manager**”). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party’s receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting (“**Initial Negotiation End Date**”), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute (“**Executives**”). Within five (5) Business Days of the Initial Negotiation End Date (“**Referral Date**”), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
- (c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.
- (d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 16.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 16.2(a) above, and subject to Sections 15.2, 17.9 and 17.10 of this Agreement, either Party may pursue all remedies available to it at law or in equity.

16.3 *Specific Performance and Injunctive Relief.*

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including, but not limited to, reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

ARTICLE 17 MISCELLANEOUS

17.1 *Notices.*

Whenever this Agreement requires or permits delivery of a “**Notice**” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified herein and to the addresses set forth below; provided, however, that Notices of scheduling shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule for the delivery or acceptance of the Retail Products or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

If to Seller: Denton Municipal Electric
 Attention: General Manager
 1659 Spencer Rd.
 Denton, TX 76205
 Telephone: (940) 349-7565
 Fax (940) 349-7334
 E-mail Address: Antonio.Puente@CityofDenton.com

With a copy to: City Attorney
 215 E. McKinney Street
 Denton City Hall
 Denton, Texas 76201
 Telephone: (940) 349-8333
 Fax: (940) 382-7923
 Email: Caleb.Garcia@cityofdenton.com

If to Buyer: SPRE Denton TX, LLC
Attention: Houston Aderhold
2146 Roswell Road, #108-851
Marietta, GA 30062
Telephone: (770) 315-1016
Email: houston@wahatech.io

With a copy to: WAHA TECHNOLOGIES, INC.
Attention: Chris Bissell
2146 Roswell Road, #108-851
Marietta, GA 30062

17.2 *Effectiveness of Agreement; Survival.*

This Agreement shall be in full force and effect, enforceable and binding in all respects as of the Effective Date until the conclusion of the Term or earlier termination pursuant to the terms of this Agreement; provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations under this Agreement, including payment in full of all invoices (including all corrections thereof) due prior to the end of the Term, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation. Notwithstanding any provisions herein to the contrary, the obligations set forth in Article 7, Section 12.1 and Article 15, the indemnity obligations set forth in Article 10, and the limitations on liabilities set forth herein shall survive (in full force) the expiration or termination of this Agreement.

17.3 *Exhibits.*

Buyer and Seller hereby agree to abide by the terms and conditions set forth in Exhibits C and F attached hereto as if such Exhibit was executed by each of the Parties as a standalone agreement separate from this Agreement.

17.4 *Right to Audit.*

Each Party has the right, at its sole expense, during normal working hours and upon no less than three (3) Business Days' advance notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from

the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not affiliated with any Party (specifically including ERCOT) and such third party corrects its information after such twelve (12)-month period.

17.5 *Amendments.*

This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

17.6 *Waivers.*

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

17.7 *Severability.*

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; *provided* that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the intent of the Parties.

17.8 *Standard of Review.*

Absent the agreement of the Parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a Person or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine).

17.9 *Governing Law.*

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

THIS AGREEMENT WAS EXECUTED IN THE STATE OF TEXAS AND MUST IN ALL RESPECTS BE GOVERNED BY, INTERPRETED, CONSTRUED, AND SHALL BE

EXCLUSIVELY ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE SHALL LIE FOR ANY LAWSUIT DEALING WITH THIS AGREEMENT IN THE APPROPRIATE FEDERAL COURT IN TEXAS, OR, IF THE FEDERAL COURTS DO NOT HAVE JURISDICTION, IN THE STATE DISTRICT COURTS IN AND FOR DENTON COUNTY, TEXAS.

17.10 *Waiver of Trial by Jury.*

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

17.11 *Attorneys' Fees.*

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

17.12 *No Third-Party Beneficiaries.*

Except as set forth in Sections 13.1 and Article 15, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

17.13 *No Agency.*

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

17.14 *Cooperation.*

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make Commercially Reasonable Efforts to cooperate and assist each other in making such change.

17.15 *Further Assurances.*

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 17.15.

17.16 *Captions; Construction.*

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

17.17 *Entire Agreement.*

This Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

17.18 *Forward Contract.*

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

17.19 *Counterparts.*

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

“SELLER”

**The City of Denton d/b/a Denton
Municipal Electric**

By: _____

Name: Sara Hensley
Title: City Manager

By _____
DME Approval

ATTEST: Lauren Thoden
CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
Mack Reinwand
CITY ATTORNEY

By: _____

“BUYER”

SPRE DENTON TX, LLC

By: _____

Name: Houston Aderhold
Title: C.T.O.

APPROVED AS TO LEGAL FORM:

By: _____
ATTORNEY

EXHIBIT A

RETAIL PRODUCTS CONTRACT PRICE

The following are all of the Index Supply amounts required to be paid or received under the Agreement, including how such costs are calculated.

1. The “**ERCOT Settlement Amounts**” means and includes the Energy Fees, the Ancillary Services Fees and the Load Ratio Share, each of which are set forth below in greater detail:

Energy Fees. Seller shall procure all Energy for the Project from the ERCOT market at the ERCOT Load Zone North. [REDACTED]

[REDACTED] pursuant to schedules for such Retail Products provided by Buyer to Seller as Project QSE. [REDACTED]

[REDACTED] In the event that ERCOT changes the designated Load Zone (as defined in the ERCOT Protocols), the Parties agree to use the most representative Load Zone of the Denton load zone as possible. Purchases of Energy quantities in the real-time market by the Project QSE will match the Energy demands of the Project for each 15-minute interval. The Energy Fees [REDACTED]

- b. Ancillary Services Fees. All fees, costs or charges (of any nature whatsoever) by ERCOT associated with or arising from or in connection with the provision of Retail Products by Seller to Buyer under this Agreement, including fees for Ancillary Services, ERCOT system administrative fees, RUC, etc. (collectively, “**Ancillary Services Fees**”)
 - c. Load Ratio Share. Any other ERCOT charges incurred by Seller as a load serving entity and QSE for the Denton load (including Project demand) that are allocable to the Project (“**Load Ratio Share**”) net of any CRR Auction Revenue Distribution amounts that are allocable to Buyer’s load. Seller will provide ERCOT statements and any calculations necessary to determine the Project’s proportional cost as compared to the total Denton demand.
2. “**Buyer Ancillary Service**” is any Ancillary Service that Buyer sells to ERCOT as a Load Resource. [REDACTED]

[REDACTED] The “**Non-ERCOT Amounts**” (These charges billed monthly) means and includes the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

g. **“Sales Tax”** includes all sales, use, excise and other similar taxes that are imposed by any taxing authority as applicable to the sale of electric power in Denton County which shall be equal to eight and 25 one hundredths percent (8.25% [6.75% state sales tax and 1.5% city sales tax]) of the sum of the ERCOT Settlement Amounts less Buyer Ancillary Service Amounts, plus the Transmission Access Fee, the QSE Fee, the Incremental TCOS Demand Charge, the ROI Fee, and the Franchise Fee for the applicable month.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PROJECT DESCRIPTION

Current plan for [REDACTED]

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EXHIBIT C

ELECTRICAL TRANSMISSION AND DISTRIBUTION SWITCHING AGREEMENT BETWEEN THE CITY OF DENTON AND SPRE DENTON TX, LLC

WHEREAS, The City of Denton (the “City”) provides primary distribution voltage electric service to SPRE Denton TX, LLC (“SPRE”) at two distinct points of interconnection for SPRE facilities at the RD Wells Substation in Denton, Texas under the terms and conditions of a Power Purchase Agreement (“PPA”) to which this exhibit is attached; and

WHEREAS, SPRE operates and maintains its own internal electrical distribution facilities and system that receives electric power from the City and distributes such electric power to the SPRE facilities; and

WHEREAS the Parties recognize that coordination and communication in switching of high voltage electrical equipment and understanding the equipment, switch positions, and impact of equipment operations at all times protect City and SPRE personnel and ensures the reliability of the City’s and the ERCOT transmission system,

NOW, THEREFORE, in consideration of the foregoing recitals, premises, and representations and other terms and conditions set forth below, the Parties intending to be legally bound, hereby agree as follows:

1. Definitions; Interpretation.

Capitalized terms used in this Agreement are defined herein or in the Power Purchase Agreement (“PPA”) to which this Agreement is appended, and the rules of interpretation relating to such terms and this Agreement set forth herein. Other terms used but not defined in this Agreement shall have meanings as commonly used in the English language.

2. Term

This Electrical Transmission and Distribution Switching Agreement (“Agreement”) is effective as of the Effective Date of the PPA and shall remain in effect until the termination of the PPA.

3. Obligations of the Parties

The obligations of the Parties to this Agreement are intended to ensure electric system reliability and safety for the Parties by establishing electric transmission and distribution system switching procedures in accordance with electric industry standards and best practices.

- a. General Obligations of the City (“DME”). The City’s responsibilities and obligations are as follows; i). complete and absolute authority over the operation of the City’s

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

- electrical system up and to the Delivery Points; ii) to keep SPRE informed of maintenance activities that will impact the SPRE facilities; iii) provide switching orders to SPRE required by DME and/or ERCOT
- b. General Obligations of SPRE. SPRE responsibilities and obligations are as follows: i) complete switching orders from the City; ii) to keep DME informed of electrical equipment and switches conditions and positions at all time; iii) to follow the procedures specified in this Agreement at all times; iv) to keep DME informed of maintenance activities at the SPRE facilities that have the potential to impact the distribution and transmission system of the City and ERCOT; v) to follow the switching orders of DME

4. Operating Procedures

- a. Operation of electrical Equipment. No electrical apparatus should be disturbed, or operational state changed in any way, except to save life or property, except when provided for through scheduled, urgent, or emergency switching instructions without authority from DME as set forth herein. All switching shall be performed with a DME representative onsite during switching to communicate with the DME's electrical system operational staff. The Parties understand that all DME radio communication is recorded for clarification, review and retention purposes.
- b. System Configuration. Within thirty (30) days of the Effective Date, and annually thereafter, SPRE will provide DME with electronic copies of the facilities 138KV and 15kV electric system including one-line diagrams and any future proposed system revisions. The digital files shall include at least the following information: i) Location of primary lines; ii) size of primary lines; iii) capacity rating of the primary lines; iv) location of switches; v) capacity rating of switches; vi) configuration and normal status of switches; vii) location of transformers; viii) capacity of transformers connected to the system; ix) location of capacitor banks on the system; and, x) capacity of capacitors banks on the system.
- c. Scheduled Switching. SPRE shall contact **DME's Electric System Operations ((940) 349-7644)** regarding all proposed changes to the SPRE electric system **at least 48 hours** prior to any SPRE switching that would modify the SPRE electrical system configuration which potentially could or would impact DME's electrical system. SPRE shall respond to DME switching request within 48 hours of notification. DME will follow the same request criteria as SPRE. SPRE is to request all scheduled switching a minimum of 48 hours in advance of any scheduled switching operation(s). The request shall include the following: Proposed or requested switching orders; drawings showing the switching operation (if needed by either DME or SPRE); diagrams of the switches being operated (if needed by either party); copy of the appropriate safety clearance and hold tags; purpose for the requested system configuration change; and, reason for the requested switching.

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- d. **Urgent Switching.** DME will attempt to accommodate same day switching requests for SPRE for unexpected load or equipment maintenance issues if DME's system configuration and ampacities will permit. SPRE shall contact **DME's System Operations at (940) 349-7644** regarding all urgent switching operations prior to SPRE electric system configuration changes. SPRE shall send a marked up drawing of the switching arrangement to DME System Operations by email. After the switching has been successfully completed, DME's Electric GIS system will be updated to properly reflect the new system configuration.
- e. **Emergency Switching.** No electrical apparatus will be disturbed in any way, except to save life or property, or as provided for in an emergency switching instruction issued from time to time, without at least verbal authority from the DME System Operator. Emergency switching shall only occur to clear a hazard or to protect life or property. Additional or new electrical loads shall not be picked up or transferred by any emergency switching operation. SPRE shall promptly notify **DME's System Operations at (940) 349-7644** when emergency switching occurs or becomes necessary.
- f. **Operation of a Tie Switch (Future Operations).** Operation of a switch capable of connecting two different DME circuits and/or substations and/or transmission lines together shall only be performed when a DME representative is available at the switch. The DME representative will remove the DME padlock from the operator. A SPRE representative will be responsible for coordinating the switching operation with the DME system operator and operating the switch. The DME representative will padlock the operator at the tie switch once the switch is in its new position. DME will authorize make-before-break operations at the SPRE tie points and before any make-before-break switching operation is performed, the DME substation automatic reclosers shall be turned off at the affected substation(s). The DME System Operator will review the most current SCADA circuit loadings and determine if the two circuits are close enough in ABC phase balance so that the electrical load transfer can occur successfully without tripping or affecting any DME substation relays and that enough circuit and breaker ampacities exist to allow successful tying and transfer of the SPRE loads.

5. Notices

Any legal notice required by this Agreement shall be deemed given when personally delivered or mailed by certified or registered United States mail, postage prepaid, addressed as follows:

If to the City: Denton Municipal Electric
 Attention: General Manager
 1659 Spencer Rd
 Denton, TX 76205

with a copy to: City Attorney's Office
 215 E. McKinney St.

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Denton, Texas 76201

If to SPRE: SPRE DENTON TX, LLC
Attention: Houston Aderhold
2146 Roswell Road, #108-851
Marietta, GA 30062
Telephone: (770) 315-1016
Email: houston@wahatech.io

with a copy to: WAHA TECHNOLOGIES, INC.
Attention: Chris Bissell
2146 Roswell Road, #108-851
Marietta, GA 30062

Any operational notice required under this Agreement shall be deemed given when personally delivered, emailed or communicated via recorded telephonic line to:

Denton Municipal Electric
Attention: Division Manager, Energy Operations
1659 Spencer Rd.
Denton, TX 46205
Jerry.Looper@cityofdenton.com

With a copy to:

Denton Municipal Electric
Attention: Supervisor, Energy Operations
1659 Spencer Rd.
Denton, TX 46205
Jonathan.Love@cityofdenton.com
Cameron.Zahn@cityofdenton.com

6. Limitation of Liability; Indemnification.

a. DAMAGES. BOTH PARTIES SHALL BE LIABLE TO THE OTHER ONLY FOR ACTUAL AND DIRECT DAMAGES ARISING OUT OF, OR IN ANY WAY RELATED TO, THE PARTIES' PERFORMANCE, OR FAILURE TO PERFORM, UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE.

b. LIMITATION OF LIABILITY. SUBJECT TO SECTION 6(a) AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS, LOSS OF REVENUES, LOSS OF USE OF THE

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

RETAILPRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE RETAIL PRODUCTS, FACILITIES OR SERVICE, DOWNTIME, PERSONAL PROFITS, OPERATIONAL INTERRUPTION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR IN ANY WAY RELATED TO THE PARTIES' PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (EXCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED OTHERWISE IN THIS AGREEMENT, ALL REMEDIES PROVIDED FOR HEREUNDER, INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO TERMINATE THIS AGREEMENT, AND ALL OF THE REMEDIES PROVIDED BY LAW (AND NOT EXCLUDED PURSUANT TO THE FOREGOING SENTENCE), SHALL BE DEEMED CUMULATIVE AND NON-EXCLUSIVE.

7. Force Majeure.

Neither the City nor SPRE shall be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; epidemics; pandemics; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labor disputes; acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation; provided, however, that in the event of a failure or delay, each party shall use its best efforts to mitigate the effects of any such failure or delay.

8. Miscellaneous.

This Agreement represents the entire understanding of the parties and supersedes all prior representations with the exception of the PPA to which it is appended. This Agreement may not be varied orally but must be amended by written document of subsequent date duly executed by the parties. This Agreement shall be governed by the laws of the State of Texas and venue for any action under this Agreement shall be in Denton County, Texas.

If any term or provision of this Agreement or its application, shall be declared invalid, illegal or unenforceable in any respect as written, that shall not affect any other provision of this AGREEMENT, which shall continue to be effective as though the invalid and unenforceable part, clause or invalidation had not been made, and the remainder of this AGREEMENT shall be valid and enforceable to the fullest extent allowed by law.

This AGREEMENT may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute an instrument.

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

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SPRE DENTON TX, LLC

Houston Aderhold, C.T.O.

Signed on the _____ day of _____, 2024.

CITY:
CITY OF DENTON,
a Texas home-rule municipal corporation

Sara Hensley, City Manager

Signed on the _____ day of _____, 2024.

ATTEST:
LAUREN THODEN, CITY SECRETARY

APPROVED AS TO FORM:
Mack Reinwand, CITY ATTORNEY

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

Attachment A to Switching Agreement
SPRE DENTON TX, LLC and DME MOU

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

EXHIBIT D
FORM OF LETTER OF CREDIT

[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:

[Date of issuance]

[BENEFICIARY] (“Beneficiary”)

[Address]

Attention: **[Contact Person]**

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. _____

Messrs./Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “**you**”) this Irrevocable Standby Letter of Credit No. _____ (the “**Letter of Credit**”) for the account of [--- *Party A* ---] [--- *Address* ---] and [---*Party B*---, (--- *Address* ---)] (“**Account Parties**”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [*describe the underlying agreement which requires this LC*].

1. **Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be [*written dollar amount*] United States Dollars (US\$[*dollar amount*]) (such maximum amount referred to as the “**Stated Amount**”).

2. **Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [*bank address*] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “**Draw Certificate**”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “**Draft**”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: _____ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.

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

3. **Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.
4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.
5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of Attachment C hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).
6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered paragraph 9) that we elect not to consider this Letter of Credit extended for any such additional one year period.
7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of [Texas], and inter-bank payments can be effected on the Fedwire system.
8. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.
9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.
10. **Irrevocability.** This Letter of Credit is irrevocable.
11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein.

D-2

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

*

*

*

SINCERELY,
[ISSUING BANK]

By: _____

Title: _____

Address:

D-3

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

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of _____ U.S. dollars (US\$ _____), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) The conditions for a drawing by Beneficiary pursuant to [*describe the draw conditions from the underlying agreement*].
- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: _____

Title: _____

Date: _____

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[BENEFICIARY]

By: _____

Title: _____

Date: _____

D-4

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

ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO.

Date:

PAY TO: [BENEFICIARY]

U.S.\$ _____

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.
_____.

[BENEFICIARY]

By: _____

Title: _____

Date: _____

D-5

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

ATTACHMENT C

CANCELLATION CERTIFICATE

Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of the Account Parties, under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____

Title: _____

Date: _____

D-6

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

EXHIBIT E

INSURANCE REQUIREMENTS

Before the Commercial Operation Date of Phase I, Buyer shall procure and maintain the following insurance, with insurers rated “A-” VII or higher by A.M. Best’s Key Rating Guide, that are licensed to do business in Texas:

- (a) Workers’ Compensation Insurance for statutory obligations imposed by Applicable Laws, including, where applicable, the Alternate Employer Endorsement, the United States Longshoremen’s and Harbor Workers’ Act, the Maritime Coverage and the Jones Act;
- (b) Employers’ Liability Insurance, including Occupational Disease, shall be provided with a limit of (i) One Million Dollars (\$1,000,000) for bodily injury per accident, (ii) One Million Dollars (\$1,000,000) for bodily injury by disease per policy, and (iii) One Million Dollars (\$1,000,000) for bodily injury by disease per employee;
- (c) Business Automobile Liability Insurance which shall apply to all owned, non-owned, leased, and hired automobiles with a limit of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage;
- (d) General Liability Insurance which shall apply to liability arising out of premises, operations, bodily injury, property damage, Retail Products and completed operations and liability insured under and insured contract (contractual liability), with a limit of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate. The Retail Products and completed operations coverage insurance shall be provided for the duration of any applicable warranty period;
- (e) Excess Liability Insurance which shall apply to Employers Liability, Commercial General Liability and Business Automobile Liability Insurance, required in (b), (c), and (d) above, with a limit of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate;
- (f) Broad Form Property Insurance covering Buyer’s Project.

Except for Workers’ Compensation Insurance and Property Insurance, to the extent of the limits required above, Buyer shall be endorsed as an additional insured on Buyer’s insurance policies required to be maintained under the Agreement and such policies shall provide for a waiver of subrogation in favor of Buyer. All policies of insurance required to be maintained by Buyer hereunder shall provide for a severability of interests clause and include a provision that Buyer’s insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of Buyer.

E-1

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

In the event that any policy furnished by Buyer provides for coverage on a “claims made” basis, the retroactive date of the policy shall be the same as the Effective Date of the Agreement, or such other date, as to protect the interest of Buyer. Furthermore, for all policies furnished on a “claims made” basis, Buyer’s providing of such coverage shall survive the termination of the Agreement and the expiration of any applicable warranty period, until the expiration of the maximum statutory period of limitations in the State of Texas for actions based in contract or in tort. If coverage is on “occurrence” basis, Buyer shall maintain such insurance during the entire term of the Agreement.

Buyer shall promptly provide evidence of the insurance coverage required under the Agreement in the form of an ACORD certificate or other certificate of insurance. If any of the required insurance is cancelled or non-renewed, Buyer shall within thirty (30) days provide written notice to Seller and file a new certificate of insurance with Seller, demonstrating that the required insurance coverage to be maintained hereunder has been extended or replaced. Neither Buyer’s failure to provide evidence of minimum coverage of insurance following Seller’s request, nor Seller’s decision to not make such request, shall release Buyer from its obligation to maintain the minimum coverage provided for in this Exhibit E.

Buyer shall be responsible for covering all deductibles associated with the foregoing insurance coverage.

E-2

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

Exhibit F

Qualified Scheduling Entity Services

The agreed QSE services Seller will provide to Buyer in Seller's capacity as Project QSE under the Agreement include (collectively, the "**QSE Services**") the below services.

- (a) Schedule with ERCOT, at the direction of Buyer, Retail Products and Buyer Ancillary Services consistent with the ERCOT Protocols for a Load Resource.
- (b) Assist Buyer in registering the Seller's Interconnection Facilities as a Load Resource with ERCOT.
- (c) Register a sub-QSE with ERCOT for the Seller's Interconnection Facilities and the Project.
- (d) Perform all ERCOT settlements on behalf of Buyer.
- (e) Process ERCOT invoices as specified in Section 0 of the Agreement.

The associated terms and conditions with such QSE Services are set forth below:

- 1.1 **Day-Ahead Requirements.** Buyer shall provide Seller all bids, offers, schedules, and/or other such information relevant to or required by the governing rules, pertaining to any Retail Products and Buyer Ancillary Services relating to Buyer's Project, to be included for submission to ERCOT to satisfy all relevant data and information required for participation in the day-ahead market (to the extent such is required by or applicable to the ERCOT Protocols) and/or to satisfy the obligation to submit data and information to ERCOT for day-ahead operations (collectively, "**Day-Ahead Schedules**"). Such Day-Ahead Schedules shall be provided to Seller in those time increments, quantities, duration, and terms required by the governing rules, for Buyer's Project in accordance with this Agreement and in compliance with the governing rules; each component of Buyer's Day-Ahead Schedules (collectively and individually) shall satisfy the requirements of the governing rules when provided to Seller. If Buyer's Day-Ahead Schedules conflict with the requirements of the governing rules, Seller shall promptly notify Buyer and shall coordinate with Buyer to modify Buyer's Day-Ahead Schedules. If such Day-Ahead Schedules cannot be modified then Seller shall have the right to reject Buyer's Day-Ahead Schedules. Buyer shall provide or make available to Seller all such Day-Ahead Schedules using the format, software, and communication format and specifications, and other technical criteria mutually agreed between the Parties. Buyer shall provide Seller the Day-Ahead Schedules at least one (1) hour prior to any applicable deadline specified under the governing rules; however, nothing herein shall be construed as restricting Buyer from providing updated Day-Ahead Schedules to Seller at any time.

F-1

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

- 1.2 Adjustment Period Requirements. Buyer shall provide Seller all bids, offers, schedules, and/or other such information relevant to or required by the governing rules, pertaining to any Retail Products and Buyer Ancillary Services relating to Buyer's Project, to be included for submission to ERCOT (or to update existing information with ERCOT) to satisfy all relevant data and information required for participation in any applicable adjustment period market or service and/or to satisfy the obligation to submit, update, and/or maintain data and information to ERCOT for the adjustment period (collectively, "**Adjustment Period Schedules**"). Such Adjustment Period Schedules shall be provided to Seller in those time increments, quantities, duration, and terms required by the governing rules, for Buyer's Project, in accordance with this Agreement and in compliance with the governing rules; each component of Buyer's Adjustment Period Schedules (collectively and individually) shall satisfy the requirements of the governing rules when provided to Seller. If Buyer's Adjustment Period Schedules conflict with the requirements of the governing rules, Seller shall promptly notify Buyer and shall coordinate with Buyer to modify Buyer's Adjustment Period Schedules. If such Adjustment Period Schedules cannot be modified then Seller shall have the right to reject Buyer's Adjustment Period Schedules to remedy any conflict therewith. Buyer shall provide or make available to Seller all such Adjustment Period Schedules using the format, software and communication format and specifications, and other technical criteria mutually agreed between the Parties. Buyer shall provide Seller the Adjustment Period Schedules at least one (1) hour prior to the earlier of (i) any applicable deadline specified by the governing rules. Nothing herein shall be construed as restricting Buyer from providing updated Adjustment Period Schedules to Seller at any time, and Seller shall implement such schedules as soon as reasonably practicable.
- 1.3 Schedule Changes. Subject to Sections 1.1 and 1.2 herein, Buyer may change information provided to Seller as part of its schedules as allowable under the governing rules. Seller will use Commercially Reasonable Efforts to implement any such change as soon as reasonably practicable. Notices shall be made to Seller by telephone and followed up by written communication via email or through other mutually agreed electronic communication. In the event that any schedule or schedule change provided to Seller differs from a prior schedule for the same time period, such subsequent schedule shall supersede the prior schedule, and Seller will rely upon and implement the most recent schedule when submitting such to ERCOT for Buyer and any additional costs or fees arising from or attributable to such a schedule change shall be Buyer's responsibility.
- 1.4 Scheduling Validation. Seller will use Commercially Reasonable Efforts to schedule Buyer's obligations on Buyer's behalf pursuant to Buyer's schedules; *provided, however*, if Buyer's schedules fail to meet with the validation requirements of ERCOT, Seller shall promptly notify Buyer and shall coordinate with Buyer to modify Buyer's schedules. If such schedules cannot be modified then Seller may rescind any component of Buyer's schedule(s) to the extent such schedules fail to meet any validation requirement of ERCOT. In addition, Seller shall not be required to employ extraordinary means or to incur hardship

or loss to schedule a modified transaction for Buyer. For the avoidance of doubt, in no event shall Seller be required to schedule any of Buyer's schedules to the extent such Buyer's schedule instructs Seller to sell volumes of Buyer Ancillary Services in excess of the Project's Capacity.

- 1.5 Limitations of Liability. Notwithstanding anything in this Agreement to the contrary: (i) Buyer shall indemnify and hold Seller harmless from and against any and all damages, costs, liabilities and expenses arising from or in connection with Seller's provision of QSE Services hereunder except to the extent that such amounts are the result of Seller's gross negligence or willful misconduct and (ii) the total aggregate liability of Seller under this Exhibit I or otherwise resulting from the provision of QSE Services shall not in any event exceed actual direct damages.

EXHIBIT G

OPERATING PROCEDURES CRITERIA

The Operating Procedures for the Project to be agreed upon by Buyer and Seller pursuant to Sections 3.11, 3.12 and accounting procedures to facilitate optimization of daily payments and settlement pursuant to Article 7 shall address, among others, the following:

- I. Buyer Curtailment Orders**
- II. Outage Notification**
- III. Day-Ahead Availability Notice**
- IV. Settlement and Billing procedures and escrow accounts**
- V. Contact Information**

EXHIBIT H – RENEWABLE ENERGY CREDITS

(a) Because Seller has adopted the DRRP, which requires all Energy purchased by Seller for resale at retail to be renewable Energy, Seller is required to retire one REC for every MWh of Energy sold to Buyer.

(b) Seller shall procure the RECs corresponding to Buyer's load, deposit the RECs into Seller's ERCOT REC account, and retire the RECs in accordance with ERCOT protocols. At Buyer's request, Seller shall procure RECs from a Buyer-designated third-party participant in the REC market; provided, however, that Seller must already be fully enabled to transact with any such third-party. Buyer shall be responsible for REC Costs, in accordance with Exhibit A to this PPA.



City of Denton

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

Legislation Text

File #: PUB24-137, **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 lease with SPRE Denton TX, LLC for approximately 4 acres of City-owned property located in the City and County of Denton, Texas; and providing an effective date.



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Denton Municipal Electric

CM/DCM/ACM: Antonio Puente, Jr., DME General Manager

DATE: July 22, 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 lease with SPRE Denton TX, LLC for approximately 4 acres of City-owned property located in the City and County of Denton, Texas; and providing an effective date.

INFORMATION/BACKGROUND

In 2022, DME was being approached by many different Crypto Mining operations interested in coming to Denton. They all had the same preference to lease City owned land adjacent to a substation. In order to more fairly select a recipient, DME issued an RFP for available capacity and land located next to the RD Wells Substation. DME received several bids and started negotiations with the most favorable one for the City.

If given the approval to move forward, WAHA Inc, would be the Data Center provider selected. They will be installing a 20 Megawatt modular data center on approximately 4 acres of RD Wells Substation property located in the Airport Industrial park.

Staff and WAHA have successfully negotiated Lease and PPA language and are now bringing them to PUB and City Council for approval. WAHA created a new LLC, SPRE Denton TX, LLC for the purpose of this project. Next steps will be to award the RFP, execute the Lease, execute the PPA, complete development review process and begin construction with anticipated commercial operation date in early Fall.

RECOMMENDATION

Staff recommends adoption and approval of the Ordinance giving the City Manager the authority to execute the Lease Agreement.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

Exhibit 3: Presentation

Respectfully submitted:
Bill Shepherd
Executive Manager of Business Services

ORDINANCE NO. 24-1383

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE WITH SPRE DENTON TX, LLC FOR APPROXIMATELY 4 ACRES OF CITY-OWNED PROPERTY LOCATED IN THE CITY AND COUNTY OF DENTON, TEXAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton ("City") owns the RD Wells Sub Station (SUB) and property around it located in Denton, TX and owns certain real property at and around the SUB (the "SUB Property");

WHEREAS, SPRE Denton TX, LLC ("Lessee"), a provider of high efficiency computing centers, wishes to enter into a lease with the City, pursuant to that certain Lease Agreement attached hereto as Exhibit A and made a part hereof for all purposes (the "Lease"), for certain real property located at the SUB Property consisting of one tract, being approximately 4 acres in the City of Denton, Denton County, Texas (the "Leased Premises");

WHEREAS, Lessee further wishes to develop a high efficiency computing center on the Leased Premises and to enter into a Power Purchase Agreement for the purchase by Lessee from City of electric power in support thereof (the "PPA");

WHEREAS, the City Council finds it is in the public interest to enter into the Lease; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

SECTION 2. The City Manager, or designee, is hereby authorized to execute the Lease attached hereto as Exhibit A and made a part hereof for all purposes.

SECTION 3. The City Manager, or designee, is hereby further authorized to take any other actions that may be necessary, appropriate or convenient to exercise the City's rights and to perform the City's obligations under the Lease including, but not limited to, amending the Lease to extend the term of the Lease for up to ten (10) additional years beyond the initial term in accordance with the provisions of the Lease and contemporaneously and consistent with any extension(s) of the PPA.

SECTION 4. This Ordinance shall become effective immediately upon its passage and approval.

[Signatures to appear on the following page.]

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: Benjamin N. Samples, II

EXHIBIT A
(Lease)

LEASE AGREEMENT

between

CITY OF DENTON

and

SPRE DENTON TX, LLC

dated as of

August 1, 2024

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Agreement”) effective as of this 1st day of August, 2024, by and between the CITY OF DENTON, a Texas home-rule municipal corporation (“City”), and SPRE DENTON TX, LLC, a Texas limited liability company (“Lessee” and, together with City, the “Parties” and each a “Party”).

RECITALS

WHEREAS, City is the owner of the property described in **Exhibit A** located in Denton, Texas (the “Property”);

WHEREAS, Lessee is a company specializing in high efficiency computing centers;

WHEREAS, City has the right, title and interest in and to the real property located in and around RD Wells Sub Station depicted on **Exhibit A**, together with the facilities, rights, and privileges hereinafter granted, (collectively referred to herein as the “Leased Property”) and has full power and authority to enter into this Agreement in respect thereof;

WHEREAS, in and around Lease Property, City owns that certain real property described and depicted on **Exhibit A**, attached hereto and made part hereof, consisting of a single site referred to on Exhibit A as Site One, that together total approximately 4 acres more or less (such real property, together with all rights, privileges, easements (temporary and permanent), and appurtenances benefiting or encumbering such real property and all preexisting improvements, as hereafter defined, are collectively referred to herein as the “Leased Property”);

WHEREAS, Lessee plans to develop a high efficiency computing center project on the Leased Property, subject to the terms set forth herein (the “Project”);

WHEREAS, City desires to develop and permit uses of the Leased Property that are beneficial to the City and the general public;

WHEREAS, City has determined that the Project on the Leased Property will be beneficial to the City and serve a public purpose providing for additional electric sales and associated ROI and Franchise Fees to the City; and

WHEREAS, Lessee is qualified, willing and able to undertake such commercial development and use, and the City is willing to lease the Leased Property to Lessee for such activities;

WHEREAS, on or about the effective date of this Agreement, City and Lessee have entered into or will enter into a Power Purchase Agreement for the purchase by Lessee from City of electric power to support the Project to be located on the Leased Property (the “PPA”); and

WHEREAS, the Parties hereto wish to memorialize their agreement with respect to the Leased Property herein.

NOW, THEREFORE, in consideration of the foregoing Recitals, which by this reference are hereby incorporated into this Agreement, and the mutual covenants contained in this Agreement, and for other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, the Parties hereto agree as follows:

ARTICLE I LEASE OF LEASED PROPERTY; TERM

Section 1.1 Lease of Leased Property.

A. City hereby leases to Lessee, and Lessee hereby rents from City for its exclusive use the Leased Property and any preexisting improvements (as defined herein), and all herein described rights incident thereto, for and during the Lease Term (hereafter defined) and upon and subject to the terms, provisions and conditions herein set forth. All improvements preexisting in, on or under the Leased Property as of the Commencement Date, as hereafter defined, shall be referred to herein as “Preexisting Improvements”. The “Leased Property” shall be deemed to include the Preexisting Improvements and the Interconnection Improvements-, as hereafter defined.

Section 1.2 Lease Term. The term of this Agreement shall be for an initial term commencing on August 1, 2024 (the “Commencement Date”) and continuing until the end of the tenth (10th) “Contract Year” as defined below (the “Initial Term”), unless sooner terminated pursuant to the provisions of this Agreement or the PPA. “Contract Year” means a calendar year period, with the first (1st) Contract Year commencing on January 1 of the calendar year following the Commercial Operation Date of Phase I of the Seller’s Interconnection Facilities (as such terms are defined in the PPA) and the second (2nd) and each subsequent Contract Year commencing sequentially on each January 1 thereafter. Upon mutual consent of the Parties and approval by the Denton City Council, the Initial Term may be extended contemporaneously with any extensions of the PPA and consistent with the terms of the PPA for up to ten (10) additional years, the “Extension Term” (collectively, the Initial Term and the Extension Term are referred to herein as the “Lease Term”). However, the foregoing shall not preclude the Parties from entering into a new lease to be effective after the expiration of the Lease Term. If the PPA is terminated for any reason, this Agreement shall also automatically terminate, and City and Lessee shall have no further obligations or liabilities hereunder except as otherwise stated herein. Except as provided in Section 9.8, if during the Lease Term electric retail products are unable to be provided to the Leased Property, Lessee may terminate this Agreement by providing City with at least thirty (30) days’ prior written notice of such termination.

Section 1.3 Holding Over; Rights at Expiration.

A. If Lessee retains all or any portion of the Leased Property after the expiration or termination of the Lease Term by lapse of time or otherwise, such holding over shall constitute the creation of a month-to-month tenancy with respect to such retained portion, terminable by City at any time upon thirty (30) days prior written notice to Lessee. Under such month-to-month tenancy, all provisions of this Agreement shall remain in full force and effect during such holdover period except that monthly Rent (as hereafter defined) shall be equal to one hundred fifty percent (150%) of the monthly Rent that was in effect immediately prior to the expiration or termination.

B. Lessee further agrees that, upon the expiration or termination of the Lease Term, the Leased Property will be delivered to City in good working order and condition, reasonable wear and tear and matters covered by insurance excepted, and the Improvements, as hereafter defined, will be delivered to City in as good a condition as when such Improvements were constructed, located, installed, placed or erected in, upon or under the Leased Property, reasonable wear and tear and matters covered by insurance excepted.

C. Except as otherwise expressly set forth elsewhere herein, Lessee shall have no rights with respect to any improvements made to the Leased Property during the Lease Term that are not otherwise required to be removed by City.

Section 1.4 Inspection of Leased Property; Access to Books and Records. City, through its duly authorized agents, shall have at any reasonable time the right to enter the Leased Property and the Improvements, as hereafter defined in Section 3.2.A., for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement; provided, however, that except in the case of emergency, Lessee shall have no less than forty-eight (48) hours' notice and an opportunity to have an employee or agent present. City agrees that any entry pursuant to this Section 1.4 will not unreasonably interfere with Lessee's construction or operations. Lessee agrees to provide any documents that may be reasonably requested by City to determine compliance with this Agreement within thirty (30) days of such request.

Section 1.5 Ownership of Leased Property. City and Lessee intend and hereby agree that the Leased Property shall be and remain the property of City during the entire term of this Agreement and thereafter.

ARTICLE II

RENTAL

Section 2.1 Rent.

A. In consideration for the use of the Leased Property herein granted, Lessee shall pay to City the following rental amounts (the "Rent"). The monthly rent shall be in the sum of ONE THOUSAND SIX HUNDRED EIGHTY AND NO/100 DOLLARS (\$1680.00) per month (sales tax included). On or prior to the Commencement Date, Lessee shall pay City a sum equal to the first month's Rent, which shall be applied to the first month's Rent due under this Agreement. All other Rent payments will be due in advance on or before the first day of the month to which the Rent payment relates. Failure to receive an invoice reflecting Rent in a timely manner does not absolve Lessee from its obligation to pay the monthly Rent on or before the first day of the month to which the Rent payment relates. If the Commencement Date or a termination date occurs on a day other than the first day of a calendar month, Rent for the first and last partial months will be prorated on the basis of the number of actual days in such month.

B. The Rent for the Leased Property shall be increased, but not decreased, at the end of the fifth year of the initial Lease Term, the first adjustment occurring on the first day of the sixth (6th) year of the initial Lease Term. If the Lease is extended pursuant to Section 1.2, the Rent for

the Lease Property shall be increased, but not decreased, with the first adjustment occurring on the first day of the month of any such Lease Term extensions. Adjustments to the rent shall be on the basis of the proportion that the then current and available month United States Consumer Price Index for all urban consumers (“CPI-U”) for the Dallas-Fort Worth Bureau of Labor Statistics bears to the January 2024 index.

Section 2.2 Time and Place of Payments. The Rent, shall be payable by wire transfer monthly.

Section 2.3 Delinquent Rent. In the event Rent due pursuant to Section 2.1 or any other amounts payable by Lessee hereunder shall not be paid by Lessee on or before thirty (30) days after the due date thereof (the “Grace Period”), Lessee shall pay to City as additional Rent, an interest charge equal to the lower of (i) the annual rate equal to the Prime Rate (as defined herein) then in effect plus two percent (2%) and (ii) the maximum percentage allowed by law, multiplied by the amount due for each full calendar month of delinquency, computed as simple interest. Interest shall be computed and assessed from the due date. The “Prime Rate” means the interest rate (sometimes referred to as the “base rate”) for large commercial loans to creditworthy entities announced from time to time by Citibank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic average of such rates), in either case determined as of the date the obligation to pay interest arises.

ARTICLE III

OCCUPANCY, USE AND CONDITIONS OF LEASED PROPERTY

Section 3.1 Condition of Leased Property. Lessee accepts the Leased Property in its present “as is” condition. **LESSEE RELEASES CITY AND HOLDS CITY AND CITY’S OFFICERS, DIRECTORS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AND AGENTS HARMLESS FOR ANY CLAIMS ARISING OUT OF OR RELATED TO ANY CONDITION OF THE LEASED PROPERTY.**

Section 3.2 Project Construction and Ownership of Improvements.

A. The Parties agree that this Agreement is entered into specifically with the understanding that Lessee will build, construct, and complete the Project at its own expense in accordance with the requirements of the Denton Development Code and Denton Municipal Electric’s (DME)’s specifications unless this Agreement is sooner terminated pursuant to the terms herein. Any and all buildings, structures, fixtures, appurtenances, site work, site utilities, or other improvements to be located or constructed on the Leased Property by Lessee during the Lease Term shall be known as “Improvements”. Improvements shall not include any Preexisting Improvements, Lessee Personal Property or Interconnection Improvements, as hereafter defined. Those improvements made by City or Lessee to enable the delivery of electric energy from City to the equipment of Lessee will be referred to herein as the “Interconnection Improvements”. “Lessee Personal Property” shall mean any structures including electrical equipment beyond the Seller’s side of the Delivery Point (as defined in PPA) (e.g., transformers and circuit breakers), from which the Project business will be conducted that are placed on the Leased Property by Lessee

during the Lease Term that can be disassembled and removed from the Leased Property without causing material damage unable to be reasonably repaired, such repairs to be at the sole cost to Lessee, to the Leased Premises. Lessee Personal Property will not be considered part of the Leased Premises. Lessee agrees to commence construction of the Project upon obtaining necessary governmental approvals and permits after the Commencement Date and to complete the Project in accordance with all governmental requirements and specifications and to obtain a Certificate of Occupancy, and/or such other evidence of completion as may be applicable, as soon as practicable after the Commencement Date. Lessee shall not construct, locate, install, place or erect any improvements, other than the Improvements and Interconnection Improvements, at, upon or under the Leased Property without the express prior written consent of City, which consent shall not be unreasonably withheld or delayed.

B. Lessee will own, operate, and maintain the Interconnection Improvements from the Primary Meter(s) during the Lease Term. The Primary Meter(s) shall be the point of interconnection of the DME's R.D. Wells substation to the Project. Effective upon the expiration or termination of this Agreement, the Interconnection Improvements from the Primary Meter(s) shall be removed by Lessee without material damage to the Leased Property by the date of expiration or termination of this Agreement. The Lessee Personal Property and any other personal property of Lessee that can be removed by Lessee without material damage to the Leased Property or to the Improvements, Preexisting Improvements or Interconnection Improvements may remain the personal property of Lessee and may be removed by Lessee at any time on or before the end of the Lease Term. In connection with the expiration or termination of this Agreement, City reserves the right to require Lessee to remove the Lessee Personal Property from the Leased Property by the date of expiration or termination of this Agreement. If so required, Lessee shall remove the Lessee Personal Property from the Leased Property by the date of expiration or termination of this Agreement. Lessee shall, in removing any such Lessee Personal Property or other personal property, repair all damage to the Leased Property, Improvements, Preexisting Improvements, and Interconnection Improvements caused by such removal. Any Lessee Personal Property or any other property, of any kind or type, left or remaining on the Leased Property at the expiration or termination of this Agreement shall be deemed abandoned property and, without liability of any kind to City and without payment of consideration of any kind to Lessee, at City's option may be removed, retained, stored, destroyed, or disposed of by City or its contractors, all at Lessee's expense. Lessee shall remove from property any and all hazardous or environmentally sensitive materials that are located upon or may accumulate or otherwise be placed on the Property ("Hazardous Material") and dispose of same in accordance with all applicable statutes, regulations, rules, orders, and ordinances. It is expressly stipulated that Hazardous Material shall be deemed at all times the property of Lessee; and City may remove, retain, store (at Lessee's expense), destroy, or dispose of any personal property and any other property, of any kind or type, left or remaining on the Property at the termination of the Lease, without liability of any kind to the City. Preexisting Improvements are and shall continue to be owned by City. The rights and obligations provided in this Section 3.2.B shall survive any expiration or termination of this Agreement.

Section 3.3 Access; Staging Areas. City agrees that if Lessee is not in breach of this Agreement beyond any applicable notice and cure period, Lessee and Lessee's employees, officers, directors, sublessees (that are approved by City pursuant to this Agreement), Project employees, contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Lessee's Associates") are authorized to enter, exit and transit across the existing roads in the

non-controlled access areas of the Property on a non-exclusive basis for purposes of ingress and egress to the extent reasonably necessary in connection with Lessee's construction of the Project authorized by City, Lessee's construction of the Interconnection Improvements, and for Lessee's use, occupancy, and operations at the Leased Property. If one or more of the unimproved existing roads in the non-controlled access areas of the Property require improvement or modification, if approved in writing in advance by City, Lessee may undertake such road improvement or modification at Lessee's expense. If in connection with any construction authorized hereunder, Lessee wishes (i) to use or access the City's utility poles for purposes of attaching any telecommunications lines or cables, Lessee may do so only with City's prior approval pursuant to a written Pole Attachment Agreement signed by the Parties, or (ii) to temporarily stage any construction materials or equipment, Lessee may do so only at those locations in the non-controlled access areas of the Property authorized by City in writing and only in the manner, and for the duration, permitted by City. Lessee shall, at its expense, in connection with any of the activities described in this Section 3.3 or elsewhere in this Agreement, repair or restore any and all damage to the Property, Leased Property, Improvements, Preexisting Improvements, and Interconnection Improvements caused by or resulting from the acts or omissions of Lessee or any of Lessee's Associates. Lessee and Lessee's Associates agree to comply with the reasonable security and safety policies, procedures and practices of the City at all times.

Section 3.4 Use of Leased Property and Compliance with all Laws and Regulations. Lessee agrees that it shall use the Leased Property and the Improvements only for its reasonable business purposes authorized by City from time to time in its sole discretion, which City-authorized business purposes include the construction and operation of Project facilities. Lessee and Lessee's Associates shall comply at all times, at Lessee's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Lessee's business or to Lessee's construction of the Improvements or Interconnection Improvements, including any applicable laws or regulations pertaining to the construction of buildings or other improvements on public property, and that are applicable to Lessee's use, occupancy, or operations at the Leased Property, the Improvements or, to the limited extent provided herein, the Property (the "Laws and Regulations"), which include, but are not limited to, all laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law that may be applicable at any time during the term of this Agreement including, but not limited to, master plans and zoning codes, and all Laws and Regulations pertaining to the environment (the "Environmental Laws"); any and all plans and programs developed in compliance with such requirements; and all lawful, reasonable, and nondiscriminatory City policies and other requirements, including but not limited to restrictions on noise, dust and light spillover and any current or future agreements to which the City is a party restricting noise, dust, light spillover or operations on the RD Wells Sub Station Property. Lessee shall provide all required notices under the Laws and Regulations with respect to the Leased Property or the Improvements. If requested by City in writing, Lessee will verify, within a reasonable time frame, compliance with any Laws and Regulations. Further, in its use of the Leased Property and the Improvements, Lessee shall comply with the following:

A. Address. Lessee shall file with Denton Municipal Electric ("DME") and keep current its mailing and email addresses, landline telephone and cell phone numbers, and contacts where it can be reached in an emergency.

B. List of Sublessees. At least quarterly, Lessee shall file with DME and keep current a list of any sublessees and a list of all Improvements and Interconnection Improvements on the Leased Property.

Section 3.5 No Unauthorized Use. Lessee and Lessee's Associates shall use the Leased Property, the Improvements and, to the limited extent provided herein only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, restricting access on any road or other area that Lessee does not lease; placing waste materials on or around the Leased Property or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or adversely impact adjacent landowners; parking outside of the Leased Property or using automobile parking areas outside of the Leased Property, unless authorized by DME in writing; use of automobile parking areas within the Leased Property in a manner not authorized by this Agreement or City; any use that would interfere with any operation at the RD Wells Sub Station or that would decrease the Sub Station's effectiveness (as determined by City in its sole discretion); and any use that would be prohibited by or would impair coverage under either Party's insurance policies or would cause an increase in the existing rate of insurance upon the Leased Premise.

Section 3.6 Permits and Licenses. Lessee shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Lessee's construction of Improvements or Interconnection Improvements and the use, occupancy, or operations at the Leased Property or of the Improvements. Those permits and licenses include, but are not limited to, (i) all contractors doing work on the Leased Property, including work on or for the Improvements or Interconnection Improvements, must be licensed by the State of Texas, (ii) if applicable, prior to commencing construction of any Improvements or Interconnection Improvements, a permit must be obtained from the City and a copy of the permit must be furnished to DME, and (iii) if applicable, clearance must be obtained from the responsible health department or other agency. In the event that Lessee receives notice from any governmental entity that Lessee lacks, or is in violation of, any such permit, license or other requirement, Lessee shall provide City with timely written notice of the same and Lessee shall diligently pursue the resolution of any such issues.

Section 3.7 Payment of Taxes. Lessee shall pay (before their respective due dates) all taxes, including ad valorem taxes, and all fees, charges, assessments, and levies that relate to Lessee's use, occupancy, or operations at the Leased Property or the Improvements and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for any Improvements or Interconnection Improvements). During the Lease Term, Lessee shall be responsible for any and all taxes generated by the Denton County Tax Assessor / Collector. With respect to the Leased Property and the Improvements, such taxes shall be prorated between Lessee and City on a daily basis for the tax years in which the Lease Term commences and expires or terminates. City shall either forward tax bills for the Leased Property to Lessee, or cause the taxing authority to mail the bills directly to Lessee.

Section 3.8 No Liens. No liens related to Lessee or Lessee's use, occupancy or operations may be placed upon the Leased Property. Within thirty (30) days, Lessee shall pay all lawful claims made against City and discharge all liens filed or which exist against the Leased

Property to the extent such claims arise out of or in connection with, whether directly or indirectly, the failure to make payment for work done or materials provided by Lessee its contractors, subcontractors, or materialmen. However, Lessee shall have the right to contest the amount or validity of any such claim or lien without being in default under this Agreement upon furnishing security in form acceptable to City, in an amount equal to one hundred percent (100%) of such claim or lien, which insures that such claim or lien will be properly and fully discharged forthwith in the event that such contest is finally determined against Lessee or City. City shall give timely notice to Lessee of all such claims and liens of which it becomes aware. When contracting for any work in connection with the Leased Property, Improvements or Interconnection Improvements, Lessee shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein. Lessee is solely responsible for ensuring that all requirements are met such that such lien waivers are effective and enforceable (such as filing such contracts, if necessary). Furthermore, when completed, the Improvements and Interconnection Improvements on the Leased Property shall be free from all construction liens.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations by City. City represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of City.

Section 4.2 Representations by Lessee. Lessee represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of Lessee.

ARTICLE V

OBLIGATIONS OF LESSEE

Section 5.1 Plans and Specifications; Re-Zoning. With respect to any Improvements and Interconnection Improvements, Lessee shall select qualified architects and engineers to prepare and, if applicable, submit for approval, prior to construction or on a phased basis during construction, any architectural, site, structural, civil, mechanical, and/or electrical drawings and specifications for the Improvements and Interconnection Improvements in the form and with the content required by the appropriate local planning and zoning authorities and pursuant to all applicable Laws and Regulations and this Agreement (collectively, the "Plans and Specifications").

Section 5.2 Operations and Maintenance. Lessee shall maintain the Leased Property and all Improvements in a condition that is clean, free of debris, safe, sanitary, and in good repair and shall not accumulate or permit the accumulation of any trash, refuse, debris, or anything that is unsightly, creates a fire hazard or nuisance, or causes inconvenience to adjoining properties.

Lessee shall at its own expense create, execute, and maintain a comprehensive landscaping, tree canopy, and irrigation plan for the Leased Property in accordance with relevant local development and landscaping codes. Lessee shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. Lessee shall promptly remedy any condition that fails to meet this standard. Without limiting the foregoing obligations, Lessee shall not store on the Leased Property any inoperable equipment, excess, discarded or unsightly materials, or materials likely to create a hazard; shall not use areas outside of enclosed buildings for storage; and shall store trash in covered metal receptacles. Any substance or material that is regulated by any Environmental Law (“Hazardous Materials”) shall be governed by Section 5.6. In addition, Lessee agrees to comply with all applicable provisions of City’s Texas Pollutant Discharge Elimination Multi-Sector General Permit.

Section 5.3 Utilities. City represents that there are water, sewer, and electrical lines accessible within the general vicinity of the Leased Property. Lessee shall be responsible, at Lessee’s sole cost and expense, for obtaining all utility connections at or for the Leased Property, Improvements and Lessee Personal Property. Further, Lessee shall pay for telecommunications, television, internet, gas, light bulbs, electricity, water, sewer, and garbage and trash removal services provided to or used by Lessee and shall make such deposits as are required to secure service. Lessee shall be responsible for any water or sewer impact fees incurred by Lessee’s and Lessee’s Associates’ use of the Leased Property. Any repairs of the Interconnection Improvements or other utility lines, other than those which are the responsibility of the utility service, are the responsibility of Lessee.

Section 5.4 Signs. Lessee shall not place, or cause to be placed, any sign or signs on the Leased Property or the Improvements unless otherwise agreed to in writing by City.

Section 5.5 Security. Lessee is responsible to comply (at Lessee’s sole cost) with all security measures that City, the United States Department of Homeland Security (“Homeland Security”), the National Electric Regulatory Commission (“NERC”), the Texas Reliability Entity (“TRE”), or any other governmental entity having jurisdiction may require now or in the future in connection with the Lessee’s activities and operations on the Leased Property, including, but not limited to, any access credential and escort requirements, and any civil penalty obligations and other costs arising from a breach of security requirements caused or permitted by Lessee or Lessee’s Associates. Lessee shall protect and preserve security at the Leased Property.

Section 5.6 Hazardous Materials.

A. No Violation of Environmental Laws. Lessee shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the Leased Property by Lessee or Lessee’s Associates in violation of applicable Environmental Laws. Lessee is responsible for any such violation as provided by Section 7.1.

B. Response to Violations. Lessee agrees that in the event of a release or threat of release of any Hazardous Material by Lessee or Lessee’s Associates at the Leased Property, Lessee shall provide City with prompt notice of the same. Lessee shall respond to any such release or threat of release in accordance with applicable Laws and Regulations. If City has reasonable cause to believe that any such release or threat of release has occurred, City may request, in writing, that

Lessee conduct reasonable testing and analysis (using qualified independent experts reasonably acceptable to City) to show that Lessee is complying with applicable Environmental Laws. City may conduct the same at Lessee's expense if Lessee fails to respond in a reasonable manner. Lessee shall cease any or all of Lessee's activities as City determines necessary, in its sole and absolute discretion, in connection with any investigation, cure, or remediation. If Lessee or Lessee's Associates violate any Environmental Laws at the Leased Property (whether due to the release of a Hazardous Material or otherwise) or directly or indirectly cause the release of any Hazardous Material to the environment, Lessee, at Lessee's sole expense, shall have the following obligations, which shall survive any expiration or termination of this Agreement: (i) promptly remediate such violation in compliance with applicable Environmental Laws; (ii) submit to City a written remediation plan, and City reserves the right to approve such plan (which approval shall not be unreasonably withheld) and to review and inspect all work; (iii) work with City and other governmental authorities having jurisdiction in connection with any violation; and (iv) promptly provide City copies of all documents pertaining to any environmental concern that are not subject to Lessee's attorney-client privilege.

C. Obligations upon Termination and Authorized Transfers. Upon any expiration or termination of this Agreement or any change in possession of the Leased Property authorized by City, Lessee shall demonstrate to City's reasonable satisfaction that Lessee has removed any Hazardous Materials, addressed any releases to the environment, and is in compliance with applicable Environmental Laws. Such demonstration may include, but is not limited to, independent analysis and testing to the extent that facts and circumstances warrant analysis and testing, such as evidence of past violations or specific uses of the Leased Property. If the site is contaminated during Lessee's possession, Lessee shall bear all costs and responsibility for the required clean up, and shall hold City, its officers, elected and appointed officials, employees, and agents harmless therefrom unless such contamination was caused directly by the City. Notwithstanding anything to the contrary, the obligations of this Section 5.6.C. shall survive any termination of this Agreement.

D. City's Environmental Representation. City covenants, and represents, that as of the Commencement Date, to City's knowledge, the Leased Property and Preexisting Improvements do not contain Hazardous Materials that would constitute a violation of any Environmental Law. If Lessee discovers any Hazardous Materials during construction, Lessee shall (i) notify City immediately, (ii) stop all construction activities, (iii) perform any required investigation to determine the extent of such Hazardous Materials, and (iv) perform any required remediation of the Leased Property. Alternatively, Lessee may unilaterally terminate the Agreement and Power Purchase Agreement. Nothing contained in this Section 5.6 D is intended to, nor shall it, waive or limit the City's governmental immunity, or any defenses related thereto or under any local, state or federal law, rule, or ordinance.

Section 5.7 Trash, Garbage, and Other Refuse. Lessee shall pick up and provide for a complete and proper arrangement for the adequate sanitary handling and disposal of trash, garbage and other refuse, away from the Property through the City. Lessee is responsible for contacting the refuse hauler and arranging for such waste management, handling and disposal services and for payment of such services. Lessee shall provide and use suitable covered metal receptacles for all such garbage, trash, and other refuse on the Leased Property. Lessee shall not pile boxes,

cartons, barrels, pallets, debris, or similar items in an unattractive or unsafe manner, on or about the Leased Property.

ARTICLE VI

INDEMNIFICATION AND INSURANCE

Section 6.1 Insurance. Lessee agrees to purchase at their own cost and maintain the minimum insurance coverage as provided in Exhibit E of the PPA, with additional insurance requirements indicated below. Lessee shall provide satisfactory certificate(s) of insurance, including any applicable endorsements to the City no less than thirty (30) days prior to the scheduled program date.

All Risk Property Insurance covering Lessee's buildings, including improvements and betterments with insured value equal to 80% replacement cost. Covered perils shall include, but not be limited to, Fire, Extended Coverage, and Vandalism & Malicious Mischief.

Section 6.2 Indemnification and Duty to Pay Damages.

A. LESSEE SHALL INDEMNIFY AND HOLD CITY AND CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AND AGENTS EXEMPT AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, JUDGMENTS, COSTS, AND EXPENSES ASSERTED BY ANY PERSON OR PERSONS (INCLUDING AGENTS OR EMPLOYEES OF CITY, LESSEE, OR SUBLESSEE) BY REASON OF DEATH OR INJURY TO PERSONS OR LOSS OF OR DAMAGE TO PROPERTY RESULTING FROM (I) LESSEES BREACH OR OTHER VIOLATION OF THIS AGREEMENT, OR AND (II) LESSEES ACTIVITIES, INCLUDING BUT NOT LIMITED TO CONSTRUCTION ACTIVITIES BY LESSEE OR BY ANY OF LESSEE'S ASSOCIATES, OR OPERATIONS, OR ANYTHING DONE OR OMITTED BY LESSEE OR BY ANY OF LESSEES ASSOCIATES, UNDER THIS AGREEMENT EXCEPT TO THE EXTENT THAT SUCH CLAIMS, DEMANDS, SUITS, JUDGMENTS, COSTS, AND EXPENSES MAY BE ATTRIBUTED TO THE SOLE NEGLIGENCE OF CITY, ITS AGENTS, ITS EMPLOYEES.

B. Intentionally Omitted.

C. City shall not be liable to Lessee for any damage by or from any act or negligence of any tenant or other occupant by any owner or occupant of adjoining or contiguous property.

D. Lessee agrees to pay for all damages to the Leased Property, the Improvements, the Preexisting Improvements, the Interconnection Improvements, and any related apparatus or appurtenances caused by Lessee's misuse or neglect thereof.

E. Lessee shall be responsible and liable for its conduct and the conduct of Lessee's Associates in, on and around the Leased Property, including but not limited to under or around any transmission lines.

F. The provisions of this Section 6.2 and the remedies and rights provided in this Section 6.2 shall survive any expiration or termination of this Agreement.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1 Lessee's Default. The occurrence of any of the following events shall constitute a default by Lessee under this Agreement unless cured within thirty (30) days following written notice of such violation from City: (i) Lessee fails to timely pay any Rent; (ii) Lessee or Lessee's Associates violate any requirement under this Agreement (including, but not limited to, abandonment of the Leased Property); (iii) Lessee assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Leased Property except as expressly permitted in this Agreement; (iv) Lessee files a petition in bankruptcy or has a petition filed against Lessee in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Lessee petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; (vi) Lessee defaults in constructing any Improvements that are required to be constructed under this Agreement; (vii) Lessee dissolves or dies; (viii) Lessee is in default under the terms of the PPA; or (ix) the PPA terminates or expires. Notwithstanding the foregoing, with respect to clause (ii) of the previous sentence, if the nature of Lessee's requirement is such that more than thirty (30) days are reasonably required for performance or cure of such requirement, Lessee shall not be in default if Lessee commences performance within such 30-day period and thereafter diligently pursues the same to completion.

Section 7.2 Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within thirty (30) days after written notice by Lessee to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

Section 7.3 Remedies for Failure to Pay Rent. If any Rent required by this Agreement shall not be paid when due, and City has provided Lessee with the required notice and opportunity to cure as set forth in Section 7.1, City shall have the option to:

A. Terminate this Agreement, take possession of the Improvements, resume possession of the Leased Property for its own account, and recover immediately from Lessee the differences between the Rent and the fair rental value of the Property for the Lease Term, reduced to present worth; or

B. Terminate this Agreement and the PPA, take possession of the Leased Property, resume possession of the Leased Property, re-lease the Leased Property for the remainder of the Lease Term for the account of Lessee, and recover from Lessee, at the end of the Lease Term or at the time each payment of Rent comes due under this Agreement as City may choose, the difference between the Rent and the rent received on the re-leasing or renting of the Leased Property.

In an event of default by Lessee, City shall also recover all reasonable and documented expenses incurred by reason of an event of default, including reasonable attorneys' fees.

Section 7.4 Remedies for Breach of Agreement. If Lessee breaches or fails to perform any provision of this Agreement other than the agreement of Lessee to pay Rent, City shall provide written notice to Lessee identifying the breach or specifying the performance required. If Lessee fails to remedy the breach within the required notice and cure period set forth in Section 7.1 City may terminate this Agreement or take any such action it is legally entitled to take, including instituting litigation to compel performance of this Agreement. Should litigation be filed by City and it is the prevailing party in that litigation, Lessee shall be liable for all reasonable and documented expenses related to such litigation, including City's reasonable attorneys' fees.

Section 7.5 Cross Default. Any event of default under the PPA (or under any of the other agreements referenced therein or executed in connection therewith) by either City or Lessee shall be an event of default hereunder.

Section 7.6 Survival. The provisions of this Article VII and the remedies and rights provided in this Article VII shall survive any expiration or termination of this Agreement.

ARTICLE VIII

ASSIGNMENT AND SUBLEASING

Section 8.1 Assignment by Lessee.

A. Except as otherwise set forth in Section 8.1(B) of this Agreement, Lessee shall not assign any of its rights under this Agreement, including, but not limited to, rights in any Improvements, (whether such assignment is voluntarily or involuntarily, by consolidation, dissolution, change in control, or any other manner), and shall not delegate any performance under this Agreement, except with the prior written consent of City to any of the same, in City's sole discretion. As a condition of obtaining such consent, the City reserves the right to require the transferee receiving any such rights from Lessee to (i) provide its financial statements or other financial or credit information to City for review, (ii) provide replacement insurance certificates for the insurance required under this Agreement prior to the effective date of the transfer or assignment, (iii) provide a security deposit or letter of credit in the manner and form acceptable to City securing payment and other obligations under this Agreement, and/or (iv) execute a new lease agreement provided by City. Regardless of City's consent, Lessee shall not be released from any obligations for matters arising during the time when this Agreement was in effect. Any purported assignment or delegation of rights or delegation of performance in violation of this section is void.

B. Notwithstanding anything to the contrary contained in this Article VIII, an assignment or transfer of this Agreement (each a "Transfer"): (i) to a successor to Lessee by merger, consolidation or reorganization or in connection with the sale of all or substantially all of the assets of Lessee (a Successor); or (ii) to an entity which is controlled by, controls, or is under common control with Lessee, shall not require City's consent. Lessee shall notify City of any such Transfer and promptly supply City with any documents or information reasonably requested by City regarding such Transfer or such entity, and further provided that no uncured event of default exists.

“Control, as used in this Section, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether by the ownership of voting securities, by contract or otherwise.

C. Upon the expiration or termination of this Agreement with respect to the Improvements and upon construction or installation with respect to the Interconnection Improvements, Lessee hereby grants, assigns, transfers, and conveys to City, without warranty, the following: as built plans that detail any work performed by Lessee at the Leased Property (City has the non-exclusive right to use the as-builts and is hereby assigned a non-exclusive license to any copyright interests therein); and the right to enforce, in Lessee's own name as a proper party, any subcontracts related to the Improvements or other maintenance or services contracts in force with respect to the Leased Property or Improvements and any warranties arising under any of them or in connection with the performance thereof, as the case may be.

Section 8.2 Assignment by City. City shall have the right, in City's sole discretion, to assign any of its rights under this Agreement (and in connection therewith, shall be deemed to have delegated its duties), and upon any such assignment, Lessee agrees that Lessee shall perform its obligations under this Agreement in favor of such assignee.

Section 8.3 Encumbrances. Lessee shall not encumber or permit the encumbrance of the Leased Property or any of Lessee's rights under this Agreement. Any purported encumbrance of rights in violation of this Section 8.3 is void.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1 Waiver of Exemption. Any constitutional or statutory exemption of Lessee of any property usually kept on the Leased Property, from distress or forced sale, is waived.

Section 9.2 Addresses. All notices given under this Agreement to City shall be sent to the City in care of General Manager, Denton Municipal Electric, at 1659 Spencer Road, Denton Texas, 76205, with a copy to the City Attorney, City of Denton, at 215 E. McKinney, Denton, Texas 76201, or such other place as City shall specify in writing. All notices given under this Agreement to Lessee shall be sent to:

Name:	SPRE DENTON TX, LLC
Address	2146 Roswell Rd., #108-851
City, State, ZIP:	Marietta, GA, 30062
Telephone Number:	(770) 315-1016
E-mail address:	houston@wahatech.io

Notices given under this Agreement to the Lender, if any, shall be sent to the address provided by the Lender to City in writing. Any notice properly mailed by registered mail, postage and fee

prepaid, shall be deemed delivered when mailed, whether received or not, and all notices sent via overnight delivery service or email shall be deemed delivered when received.

Section 9.3 No Waiver. The waiver by City in writing of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of Rent hereunder by City shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Agreement, other than the failure of Lessee to pay the particular Rent so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such Rent.

Section 9.4 Lessee's Subordination. Lessee hereby subordinates and makes this Agreement inferior to all existing and future mortgages, trust indentures or other security interest of City or City's successor in interest. Lessee shall execute and deliver to City any documents required to evidence and perfect such subordination.

Section 9.5 Additional Charges as Rent. Any charges assessed against Lessee by City for services or for work done on the Leased Property or the Improvements by order of Lessee or otherwise accruing under this Agreement shall be considered as Rent due.

Section 9.6 Non-Interference With Operation of the RD Wells Sub Station. Lessee expressly agrees for itself, its successors, and assigns that Lessee and its successors and assigns will not conduct operations in or on the Leased Property or the Improvements in a manner that in the reasonable judgment of City, (i) interferes or might interfere with the reasonable use or operation of the RD Wells Sub Station or RD Wells Sub Station Property by the City, including Denton Municipal Electric; (ii) hinders or might hinder police, fire fighting, or other emergency personnel in the discharge of their duties; (iii) would or would be likely to constitute a hazardous condition at the RD Wells Sub Station or RD Wells Sub Station Property; (iv) would or would be likely to increase the premiums for insurance policies maintained by City; (v) is in contradiction to any rule, regulation, directive, or similar restriction issued by agencies having jurisdiction over the RD Wells Sub Station or RD Wells Sub Station Property; or (vi) would involve any illegal purposes. In the event this covenant is breached, City reserves the right, after prior written notice to Lessee, to enter upon the Leased Property and the Improvements and cause the abatement of such interference at the expense of Lessee. In the event of a breach in RD Wells Sub Station security caused by Lessee, resulting in fine or penalty, such fine or penalty will be considered and charged to Lessee as Rent.

Section 9.7 Interpretation.

A. References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified.

B. The terms "hereby," "herein," "hereof," "hereto," "hereunder," and any similar terms used in this Agreement refer to this Agreement. The term "including" shall not be construed in a limiting nature, but shall be construed to mean "including, without limitation."

C. Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.

D. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

E. Words importing the singular shall include the plural and vice versa. Words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders.

F. Capitalized terms in this Agreement that are used throughout this Agreement and in any Annexes, Exhibits and Schedules hereto shall have the meaning or definition ascribed to it herein. Absent such meaning or definition in this Agreement, such term shall have the meaning or definition ascribed to it in the PPA between the Parties.

Section 9.8 Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Lessee from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Lessee in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the Party so delayed or hindered. A “force majeure event” is an act or event, whether foreseen or unforeseen, that prevents a Party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such Party, and that such Party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, epidemics, pandemics, viruses, diseases, quarantines, acts of government, public health emergencies and changes in law. Lessee hereby releases City and City’s officers, elected and appointed officials, employees, and agents from any and all liability, whether in contract or tort (including strict liability and negligence) for any loss, damage, or injury of any nature whatsoever sustained by Lessee, its employees, agents, or invitees during the Lease Term, including, but not limited to, loss, damage, or injury to the Leased Property or the personal property of Lessee that may be located or stored in, on or under the Leased Property or the Improvements due to a force majeure event.

Section 9.9 Governing Law and Venue. This Agreement has been made in and will be construed in accordance with the laws of the State of Texas. In any action initiated by one Party against the other, exclusive venue and jurisdiction will be in the appropriate state courts in and for Denton County, Texas.

Section 9.10 Amendments and Waivers. No amendment to this Agreement shall be binding on City or Lessee unless reduced to writing and signed by both Parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the Party against whom the waiver is sought to be enforced.

Section 9.11 Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any Party. If any provision of

this Agreement is held invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

Section 9.12 Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the Parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

Section 9.13 Further Assurances. Each Party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

Section 9.14 The Lessee hereby represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, “foreign terrorist organization” shall have the meaning given such term in Section 2252.151, Texas Government Code.

Section 9.15 Texas Local Government Code 2274.0102 Certification

The Lessee hereby represents that SPRE Denton TX, LLC is not: (A) owned by, or the majority of stock or other ownership interest in SPRE Denton TX, LLC is not held or controlled by:

(i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country under Section 2274.0102, Texas Government Code; or

(ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

(B) headquartered in China, Iran, North Korea, Russia, or a designated country.

Section 9.16 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 9.17 When Lessee conducts any construction, alteration, or repair of an improvement to the Leased Premises, Lessee must require their contractor to execute a payment bond and performance bond in accordance with Government Code 2252.909. The bonds shall be executed by a corporate surety authorized to do business in Texas in accordance with Chapter 2253 of the Texas Government Code, shall be on the City’s standard form, and shall contain a local resident agent for service of process. Lessee must provide a notice of commencement in

accordance with Government Code 2252.909. Lessee must require their contractor to provide copies of the required bonds to all subcontractors not later than the fifth (5th) day after such subcontract is executed.

Section 9.18 Lessee acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Lessee certifies that Lessee’s signature provides written verification to the City that Lessee: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of 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.

Section 9.19 Lessee acknowledges that in accordance with Chapter 2276 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Lessee certifies that Lessee’s signature provides written verification to the City that Lessee: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Section 9.20 Lessee acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Lessee certifies that Lessee’s signature provides written verification to the City that Lessee: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the ____ day
of _____, 2024.

CITY OF DENTON

By: _____
Sara Hensley, City Manager

ATTEST:
Lauren Thoden, City Secretary

By: _____

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

Signature

APPROVED AS TO LEGAL FORM:
Mack Reinwand, City Attorney

Title

Department

Date Signed: _____

By: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2024,
by Sara Hensley, City Manager of the City of Denton, on behalf of said municipality.

NOTARY PUBLIC, STATE OF TEXAS

SPRE DENTON TEXAS, LLC, LESSEE

By: _____

Name: Houston Aderhold

Title: C.T.O.

LESSEE NOTARY

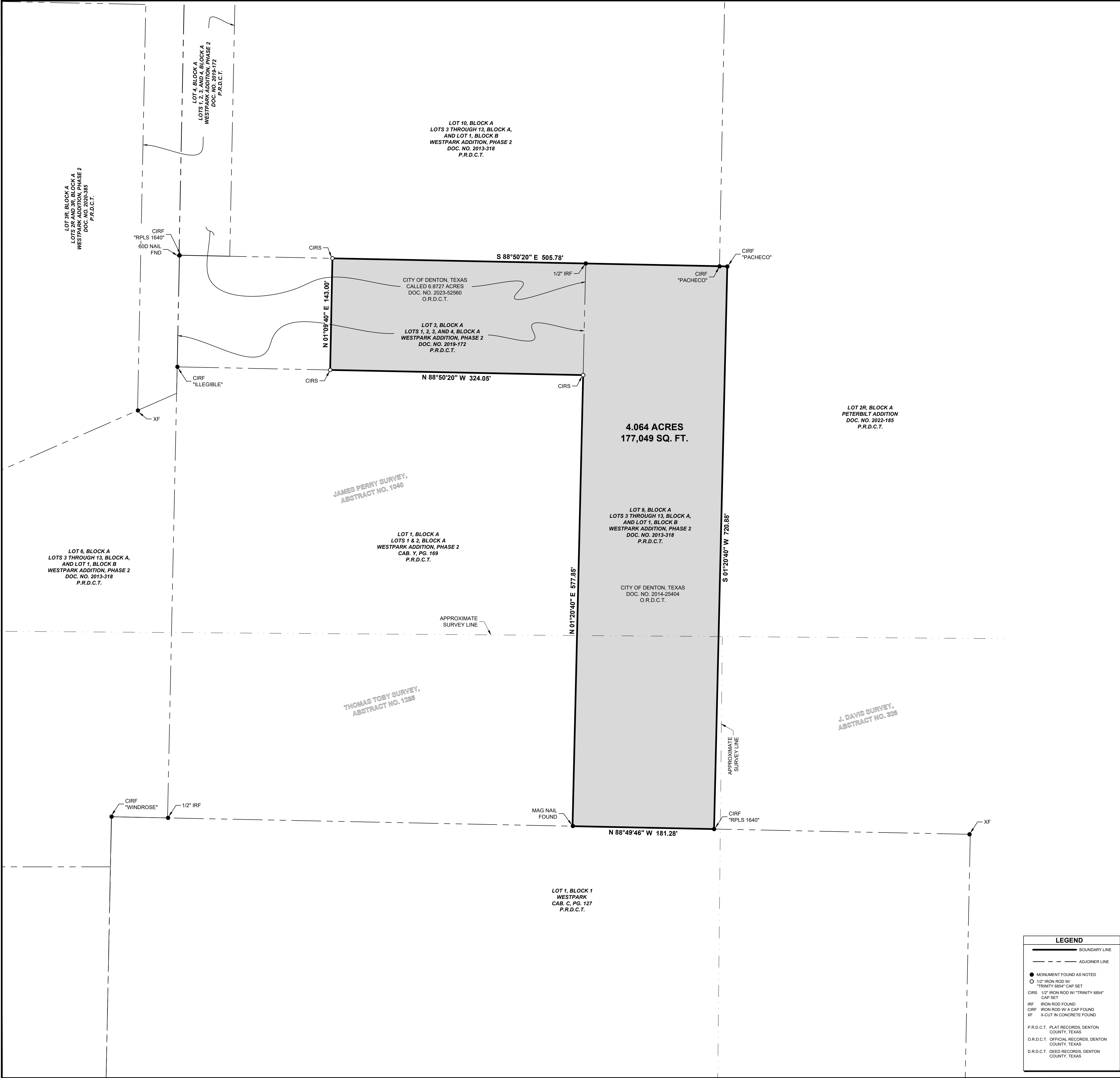
THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2024, by _____, on behalf of said company.

NOTARY PUBLIC, STATE OF TEXAS

Exhibit A -- Leased Property



DESCRIPTION
BEING a tract of land situated in the Thomas Toby Survey, Abstract No. 1285 and the James Perry Survey, Abstract No. 1040, in the City of Denton, Denton County, Texas and being all of Lot 9, Block A of Westpark Addition, Phase 2, Lots 3 through 13, Block A, an addition to the City of Denton, Texas according to the plat thereof recorded in Document No. 2013-318 of the Plat Records of said county and a portion of Lot 3, Block A, Westpark Addition, Phase 2, Lots 1, 2, 3, and 4, Block A, an addition to the City of Denton, Texas according to the plat thereof recorded in Document No. 2019-172 of said Plat Records, same being all of a tract of land described in a Special Warranty Deed to the City of Denton, Texas, as recorded in Document No. 2014-25404 of the Official Records of said county and a portion of a called 6.8717 acre tract described in a Deed to the City of Denton, Texas, as recorded in Document No. 2023-52560 of the Official Records of said county, and being more particularly described by metes and bounds as follows:

BEGINNING at an iron rod with a cap, stamped "RPLS 1640", found on the north line of Lot 1, Block 1 of Westpark, an addition to the City of Denton, Texas according to the plat thereof recorded in Cabinet C, Page 127 of said Plat Records, for a southwest corner of Lot 2R, Block A of Peterbilt Addition, an addition to the City of Denton, Texas according to the Plat thereof recorded in Document No. 2022-185 of said Plat Records and the southeast corner of said Lot 9 and the southeast corner of the herein described tract;

THENCE North 88°49'46" West, with the south line of said Lot 9, a distance of 181.28 feet to a mag nail found for the southeast corner of Lot 1, Block A of Westpark Addition, Phase 2, Lots 1 & 2, Block A, an addition to the City of Denton, Texas according to the plat thereof recorded in Cabinet Y, Page 169 of said Plat Records and the southwest corner of said Lot 9 and the most southerly southwest corner of the herein described tract;

THENCE North 01°20'40" East, with the west line of said Lot 9, a distance of 577.85 feet to a 1/2 inch iron rod with a yellow cap, stamped "Trinity 6854", set for the northeast corner of said Lot 1 and the southeast corner of the aforementioned Lot 3 and an inner "L" corner of the herein described tract;

THENCE North 88°50'20" West, with the south line of said Lot 3, a distance of 324.05 feet to a 1/2 inch iron rod with a yellow cap, stamped "Trinity 6854", set for the most westerly southwest corner of the herein described tract;

THENCE North 01°09'40" East, crossing said Lot 3, a distance of 143.00 feet to a 1/2 inch iron rod with a yellow cap, stamped "Trinity 6854", set on the north line of said Lot 3, same being the south line of Lot 10, Block A, Westpark Addition, Phase 2, Lots 3 through 13, Block A, an addition to the City of Denton, Texas according to the plat thereof recorded in Document No. 2013-318 of said Plat Records, for the northwest corner of the herein described tract;

THENCE South 88°50'20" East, with the north line of said Lot 3 part of the way and continuing with the north line of said Lot 9, a distance of 505.78 feet to a iron rod with a cap, stamped "PACHECO", found for the northeast corner of the aforementioned Lot 9, an inner "L" corner of the aforementioned Lot 2R, Peterbilt Addition, and the northeast corner of the herein described tract;

THENCE South 01°20'40" West, with the east line of said Lot 9, a distance of 720.88 feet to the **POINT OF BEGINNING** and containing 177,049 square Feet or 4.064 acres of land, more or less.

Surveyor's Notes:
Bearing system based on the Texas Coordinate System of 1983, North Central Zone (4202), North American Datum of 1983.

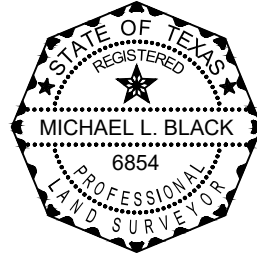
No investigation has been made by this firm into current zoning requirements

This survey has been prepared without the benefit of a current title report. The property shown hereon may be subject to various easements and/or "Rights of Others". This survey is subject to revisions as such a report may reveal.

This is a boundary survey. Only improvements related to the boundary were located. No additional improvements were located as a part of this survey.

SURVEYORS CERTIFICATION:
This is to certify that this map or plat and the survey on which it is based represents an on the ground survey conducted on July 8, 2024, and is true and correct to the best of my knowledge.


MICHAEL L. BLACK, RPLS 6854



BOUNDARY SURVEY
4.064 ACRES
THOMAS TOBY SURVEY,
ABSTRACT NO. 1285 AND THE
JAMES PERRY SURVEY,
ABSTRACT NO. 1040
CITY OF DENTON,
DENTON COUNTY, TEXAS



4401 N. Interstate 35, #202 Denton, Texas 76201 FIRM # 10194687 Tel. No. (940) 293-3180

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 60'	MLB	TLS	07/09/2024	2024-074	1 OF 1



WAHA Data Center Lease and PPA

Bill Shepherd

Executive Manager Business Svcs – DME

July 22, 2024

PUB 24-136 & PUB 24-137

Summary

- DME was being approached by several crypto mining prospects
- DME issued an RFP for the lease of city property and available distribution capacity located at RD Wells Substation in the Airport Industrial Park
- Negotiating Lease and PPA language with top runner for the last 12 months
- Next steps would be to finalize and get authorization for Lease and PPA along with development review process

Project Location



Modular Data Center

- 20 MW High Speed Computing (Bitcoin)
- Very small footprint behind RD Wells in Airport Industrial Park
- Will adhere to Denton Development Code for Noise and Vibration for Modular Data Centers.
 - $\leq 60\text{db}$ or no more than 3db above ambient

Layout



Direct Benefits to City of Denton

- Aligned with Denton's Economic Development Strategic Plan.
 - 2A.2: Attract New Investment.
 - 2C.2.1: Identify business that are high electricity users.
- Estimated Net Income to DME \$2.8 Mil over first 5 years
 - Assumes October 1st 2024 start date
- Estimated Revenue to the City in ROI and Franchise Fees \$5.4 Mil over first 5 years

Major Terms and Conditions

- 10-Year Lease
- 10-Year Renewal Term (Option)
- Lease rate
 - \$20,160 / Year
 - Market base rate
 - CPI escalator upon renewal
- Expected revenue stream will be fully collateralized and a prepay account will be established to eliminate risk to DME



Recommendation

Staff recommends awarding the bid to WAHA Inc. and adoption and approval of Ordinances authorizing execution of the PPA and Lease with SPRE Denton TX, LLC.



Questions

**Bill Shepherd – Executive Manager of
Business Services**

Denton Municipal Electric





City of Denton

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

Legislation Text

File #: PUB24-146, **Version:** 1

AGENDA CAPTION

Management Reports

1. Value of Solar Memo
2. Water Utility Projects Budget Memo
3. Future Agenda Items
4. New Business Action Items

MEMORANDUM

DATE: July 18, 2024
TO: Public Utilities Board
FROM: Bill Shepherd, DME Executive Manager of Business Services
THROUGH: Tony Puente, DME General Manager
SUBJECT: Q&A from July Presentation on Value of Solar

On July 8th, staff gave a presentation on the Value of Solar study to this body. During that presentation, Member Robert Rayner asked a question about the financial impact DME would see over the next 5-10 years if we were to continue the program as it is currently. Currently, rooftop solar power pushed back to DME is compensated at 10.5 cents per kWh. The table below shows the forecasted growth in rooftop solar customers, along with the projected capacity brought online, and the subsequent credit DME would be paying for the excess generation at 10.5 cents per kWh. Since we've ceased our rebate program, we've seen a slight decrease in the annual growth of systems being installed, but it still remains high.

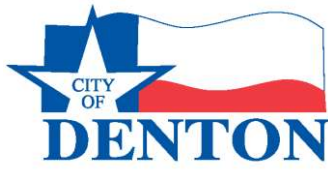
Calendar Year	Customers	Cumulative Installed Capacity ACwatts	Net Billing Credit
2023*	1153	10,539	\$729,463
2024	1341	12,253	\$850,023
2025	1531	13,994	\$970,370
2026	1720	15,729	\$1,090,717
2027	1910	17,465	\$1,211,065
2028	2100	19,200	\$1,331,412
2029	2290	20,936	\$1,451,759
2030	2480	22,671	\$1,572,106
2031	2670	24,407	\$1,692,453
2032	2860	26,142	\$1,812,800
2033	3049	27,878	\$1,933,147

*2023 data are actuals.

Staff will be available at the PUB meeting if any member has further questions.

OUR CORE VALUES

Inclusion • Collaboration • Quality Service • Strategic Focus • Fiscal Responsibility

**MEMORANDUM**

DATE: July 22, 2024
TO: Public Utilities Board
FROM: Matt Hamilton, Budget Manager
SUBJECT: Q&A from June 24, 2024 Budget Presentation

During the Public Utilities Board meeting on June 24, 2024, Member Cheek requested a breakdown of the water utility projects categorized as ‘miscellaneous’ in the presentation. Below are descriptions and the 5-year capital improvement costs associated with each project. Staff has reassigned the category for each project to ensure the project falls within a more descriptive category.

	<u>FY 24-25</u>	<u>FY 25-26</u>	<u>FY 26-27</u>	<u>FY 27-28</u>	<u>FY 28-29</u>	<u>TOTAL</u>
Water Distribution Replacement Program	\$ 1,241,139	\$ 4,581,313	\$ 11,249,273	\$ 12,075,734	\$ 12,902,195	\$ 42,049,654
LLWTP DME Pond Infill	2,000,000	-	-	-	-	2,000,000
Service Center Renovation	3,000,000	2,000,000	-	-	-	5,000,000
Roselawn Elevated Storage Tank Improvements	-	3,780,000	-	-	-	3,780,000
Administrative Building	-	-	-	6,000,000	-	6,000,000
TOTAL FUNDING	\$ 6,241,139	\$ 10,361,313	\$ 11,249,273	\$ 18,075,734	\$ 12,902,195	\$ 58,829,654

Project Descriptions:**1) Water Distribution Replacement Program**

Annual replacement of aging water distributors. This annual project is utilized to replace segments of the water distribution system due to age/condition that aren't included in part of a larger capital project.

2) Lake Lewisville Water Treatment Plant Pond Infill

This is a project to take advantage of the DME pond area located west of the existing Lake Lewisville Water Treatment Plant. The pond will be evacuated of water and silt, then filled in. The remediation of the pond will give the treatment plant additional property to expand its footprint. This prepares the site for additional expansion when additional capacity is required.

OUR CORE VALUES

Inclusion • Collaboration • Quality Service • Strategic Focus • Fiscal Responsibility

3) Service Center Renovation

This project will renovate the administrative offices and water meter shop located at 901 Texas St. The current building was reviewed during the City's 2022 facility condition assessment study and was identified as requiring a renovation based on the physical condition of the building, equipment, and high maintenance costs.

4) Roselawn Elevated Storage Tank Improvements

This project will complete scheduled coating, mixer installation and fill pipe modification.

5) Administrative Building

This project will replace the office building located at the Lake Lewisville Water Treatment Plant. The current facility is too small to allow for efficient operations by staff.

Revised 5-Year Water Utility CIP Overview:

Projects	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Total
Booster Stations	\$750,000	\$1,200,000	\$3,000,000	\$3,000,000	\$ -	\$7,950,000
Field Service Replacement	1,050,000	1,102,500	1,157,625	1,215,506	1,269,319	5,794,950
Facility Improvements	3,000,000	5,780,000	-	6,000,000	-	14,780,000
Oversize Lines	5,360,000	5,075,000	1,250,000	10,720,000	5,700,000	28,105,000
Replace Lines	21,735,000	7,700,000	1,500,000	1,500,000	1,500,000	33,935,000
Taps, Fire Hydrants, & Meters	10,269,615	10,280,703	392,124	411,731	429,947	21,784,120
Transmission Lines	7,191,139	18,031,313	29,649,273	14,275,734	15,102,195	84,249,654
Plant Improvements	80,640,000	45,910,000	54,200,000	44,200,000	43,300,000	268,250,000
Vehicles	430,562	426,931	524,035	475,483	-	1,857,011
Total	\$130,426,316	\$95,506,447	\$91,673,057	\$81,798,454	\$67,301,461	\$466,705,735

Additionally, Member Rayner asked a question regarding the anticipated new municipal utility districts. The City has given consent to all, or portions of, seven municipal utility districts (MUDs) since 2020 with nine others currently known to the City for a total of sixteen MUDs. Two MUDs have active development agreements and four others are in discussions with developers regarding potential agreements. These sixteen MUDs comprise 9,139 acres and have the potential of 34,232

new housing units for an anticipated population growth of 109,543 residents. The City's utility departments are currently assessing service needs for energy, water, wastewater, and waste disposal, and how this aligns with the City's master plan. This includes a coordinated effort with the utility districts to anticipate future needs for easements and infrastructure to limit service disruptions and ensure the utilities capacity to handle the increase in services.

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 22, 2024	5yr Forecast of Misc. items	Finance
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
2.	7/8/24	Cheek	Provide multi-year details on Water's Miscellaneous Capital Improvement Projects.	Finance	7/22/24
3.	7/8/24	Rayner	Provide 10-year forecast on rooftop solar subsidy if no changes are made to solar compensation rates.	Electric Business Services	7/22/24



City of Denton

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Legislation Text

File #: PUB24-144, Version: 1

AGENDA CAPTION

Deliberations Regarding Certain Public Power Utilities Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff containing public power information related to a Power Purchase Agreement between the City of Denton, as the seller of power and electric energy services, and SPRE Denton TX, LLC.; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding issues associated with the above matter where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton under Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative or potential litigation.



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Legislation Text

File #: PUB24-150, **Version:** 1

AGENDA CAPTION

Deliberations Regarding Certain Public Power Utilities Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff containing public power information related to a proposed amendment to the Power Purchase Agreement between the City of Denton, as the seller, and Core Scientific Operating Company, Inc.; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding issues associated with the above matter where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton under Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative or potential litigation.