



City of Denton

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

Meeting Agenda Public Utilities Board

Monday, November 18, 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, November 18, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

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

2. CONSENT AGENDA

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

Listed below are bids, purchase orders, contracts, and other items to be approved for payment or other action under the Consent Agenda (Agenda Items A – I). 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. [PUB24-230](#) Consider recommending adoption of an ordinance of the City of Denton, Texas

considering all matters incident and related to the issuance, sale and delivery of up to \$300,000,000 in principal amount of "City of Denton Utility System Revenue Refunding Bonds, Series 2025"; authorizing the issuance of the bonds; delegating the authority to certain city officials to execute certain documents relating to the sale of the bonds; approving and authorizing instruments and procedures relating to said bonds; enacting other provisions relating to the subject; and providing an effective date.

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

- B. [PUB24-231](#) 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 Burns & McDonnell Engineering Company, Inc., to provide project support services and Maximo support specialists for Denton Municipal Electric as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-015 - Professional Services Agreement for support services awarded to Burns & McDonnell Engineering Company, Inc., in the not-to-exceed amount of \$434,596.00).

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

- C. [PUB24-232](#) 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 Kirksey Architects, Inc., for design services for the Denton Municipal Electric Campus Masterplan project for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8376-001 - Professional Services Agreement for master plan design services awarded to Kirksey Architects, Inc., in the not-to-exceed amount of \$169,500.00).

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

- D. [PUB24-233](#) 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 Biggs & Mathews Environmental, Inc., for engineering services for the Solid Waste Chemicals and Recycling Center Facility Improvements for the Solid Waste Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8525-004 - Professional Services Agreement for engineering services awarded to Biggs & Mathews Environmental, Inc., in the not-to-exceed amount of \$131,000.00).

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

- E. [PUB24-234](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of Change Order No. 7 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. 7, in the not-to-exceed amount of \$1,087,043.85, for a total contract award aggregated to \$43,389,120.11).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
[Exhibit 2 - Original Ordinance, Contract, Ordinances and Change Orders 1-6](#)
[Exhibit 3 - Ordinance and Change Order 7](#)

- F. [PUB24-235](#) 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 contract between the City of Denton and Invoice Cloud, Inc., amending the contract approved by City Council on September 28, 2021, in the not-to-exceed amount of \$1,500,000.00; said first amendment to provide additional funding for charges through the contract term for online billing portal and payment services for the Customer Service Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 7697 - providing for an additional first amendment expenditure amount not-to-exceed \$375,000.00, with the total contract amount not-to-exceed \$1,875,000.00).

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

- G. [PUB24-236](#) 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 Flow-Line Construction, Inc., for the construction of the Granada Sanitary Sewer Improvements and Lift Station Decommissioning Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8573 - awarded to Flow-Line Construction, Inc., in the not-to-exceed amount of \$1,487,590.50).

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

- H. [PUB24-237](#) 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 Weaver Consultants Group, LLC, for the operation and maintenance of the Landfill Gas Collection and Control System as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8525-005 - Professional Services Agreement for operation and maintenance services awarded to Weaver Consultants Group, LLC, in the not-to-exceed amount of \$52,200.00).

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

- I. [PUB24-242](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive bids under IFB 8546 for Power Transformer Disposal (Scrap); and providing an effective date (IFB 8546).

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

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [PUB24-239](#) Consider approval of the October 28, 2024 minutes.

Attachments: [10.28.2024 PUB Minutes](#)

- B. [PUB24-244](#) Consider recommending adoption of an Ordinance of the City Of Denton, a Texas Home-Rule Municipal Corporation, Authorizing the City Manager to execute a Temporary Construction Easement between the City and Core Scientific Inc., a Delaware Corporation; providing for an effective date.

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

- C. [PUB24-245](#) Consider recommending adoption of an Ordinance of The City of Denton, a Texas Home-Rule Municipal Corporation (THE "CITY"), authorizing the City Manager to execute a third amendment to the lease agreement between the City and Core Scientific Inc., a Delaware Corporation; providing for an effective date.

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

- D. [PUB24-246](#) Consider recommending adoption of an Ordinance of The City of Denton, A Texas Home-Rule Municipal Corporation, authorizing the City Manager to execute Amendment number four (4) to the Power Purchase Agreement between the City and Core Scientific Inc., a Delaware Corporation; providing for an effective date.

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

- E. [PUB24-247](#) Consider recommending adoption of an ordinance of the City of Denton, Texas, a home-rule municipal corporation, authorizing the City Manager to execute an Agreement for Value Loss Consideration with Core Scientific, Inc., a Delaware Corporation; and providing an effective date.

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

- F. [PUB24-241](#) Management Reports
1. PUB Roster
 2. Ray Roberts Water Treatment Plant Expansion Filtration Methods
 3. Future Agenda Items

4. New Business Action Items

Attachments:

- [1. PUB Roster](#)
- [2. Ray Roberts Water Treatment Plant Expansion Filtration Methods](#)
- [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 to consider specific items when these items are listed below under the Closed Meeting section of this agenda. The Public Utilities Board (PUB) reserves the right to adjourn into a Closed Meeting on any item on its Open Meeting agenda consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law.

CLOSED MEETING

- A. [PUB24-243](#) 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 seller of power and electric energy services, and Core Scientific 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 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 November 14, 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.



City of Denton

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Legislation Text

File #: PUB24-230, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, Texas considering all matters incident and related to the issuance, sale and delivery of up to \$300,000,000 in principal amount of "City of Denton Utility System Revenue Refunding Bonds, Series 2025"; authorizing the issuance of the bonds; delegating the authority to certain city officials to execute certain documents relating to the sale of the bonds; approving and authorizing instruments and procedures relating to said bonds; enacting other provisions relating to the subject; and providing an effective date.



AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Cassey Ogden

DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, Texas considering all matters incident and related to the issuance, sale and delivery of up to \$300,000,000 in principal amount of "City of Denton Utility System Revenue Refunding Bonds, Series 2025"; authorizing the issuance of the bonds; delegating the authority to certain city officials to execute certain documents relating to the sale of the bonds; approving and authorizing instruments and procedures relating to said bonds; enacting other provisions relating to the subject; and providing an effective date.

BACKGROUND

The Utility System Extendable Commercial Paper ("UECP") program established in 2021 requires an annual adoption of a Utility System Revenue Refunding Bond Ordinance. If needed, the refunding bonds sold would be used to pay off any maturing short-term extendable commercial paper and convert the debt to long term financing.

Commercial paper notes cannot have a maturity that is later than the 270th day after the date on which the paper is initially issued. This Ordinance is an integral part of the UECP program because it provides delegated authority that allows refunding bonds to be issued, within certain parameters, in the event that commercial paper is issued and cannot otherwise be retired or defeased by the 270th day.

By doing so, City staff will be authorized to execute the sale without additional Council action. Once the exact terms of the transaction are determined, staff will provide the City Council with additional information in an informal staff report. This ordinance will give staff the flexibility to sell revenue refunding bonds to pay off the commercial paper outside of the City's normal financing routine should it be necessary.

One benefit of adopting this refunding ordinance is establishing the authority to execute the sale of long-term debt quickly, avoiding additional costs of step-up rates by not having to extend the commercial paper term. Another benefit is rating agencies view the refunding ordinance as a positive measure that ensures the City has a quick and viable means of paying off maturing commercial paper. This measure will assist in maintaining a desirable credit rating on the commercial paper. A third benefit is potential investors view the refunding ordinance as a positive measure that increases confidence in the investment.

The parameters ordinance sets the following requirements in order to complete the sale of the revenue bonds.

- (i) the aggregate original principal amount of the Bonds shall not exceed \$300,000,000;
- (ii) the maximum stated maturity of the Bonds shall not exceed 30 years from the date of issuance;

- (iii) the Bonds shall bear interest at a fixed rate, and the net effective interest rate on the Bonds shall not exceed the maximum net effective interest rate permitted by law to be paid on obligations issued or incurred by the Issuer in the exercise of its borrowing powers (prescribed by Chapter 1204, Texas Government Code, as amended);
- (iv) the delegation made hereby shall expire if not exercised by the Pricing Officer through execution of a Pricing Certificate on or prior to December 3, 2025; and
- (vi) on or prior to delivery, the Bonds shall be rated by a Rating Agency for municipal securities in one of the four highest categories for long-term obligations.

RECOMMENDATION

Staff recommends moving forward with the annual refunding ordinance approval by City Council.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

The required annual adoption of the UECP was last approved by City Council on December 12, 2023 (Ord 23-2241).

EXHIBITS

- 1. Agenda Information Sheet
- 2. Ordinance

Respectfully submitted:
Ranee Klingele
Treasury Manager

ORDINANCE NO. 24-_____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS CONSIDERING ALL MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE AND DELIVERY OF UP TO \$300,000,000 IN PRINCIPAL AMOUNT OF “CITY OF DENTON UTILITY SYSTEM REVENUE REFUNDING BONDS, SERIES 2025”; AUTHORIZING THE ISSUANCE OF THE BONDS; DELEGATING THE AUTHORITY TO CERTAIN CITY OFFICIALS TO EXECUTE CERTAIN DOCUMENTS RELATING TO THE SALE OF THE BONDS; APPROVING AND AUTHORIZING INSTRUMENTS AND PROCEDURES RELATING TO SAID BONDS; ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, defined terms used in this Ordinance shall have the meaning given said terms in Section 1 of this Ordinance, unless otherwise indicated herein; and

WHEREAS, the City of Denton (the “City” or the “Issuer”) has heretofore issued its City of Denton Utility System Revenue Bonds, Series 2017 (the “Series 2017 Bonds”), its City of Denton Utility System Revenue Refunding Bonds, Taxable Series 2021 (the “Series 2021 Bonds”), and its City of Denton Utility System Revenue Note, Taxable Series 2024 (the “Series 2024 Note”), and has authorized the issuance of its City of Denton Utility System Revenue Bonds, Series 2024 (the “Series 2024 Bonds” and, together with the Series 2017 Bonds, the Series 2021 Bonds and the Series 2024 Note, the “Existing Bonds”); and

WHEREAS, in the ordinances adopted by the City Council of the City authorizing the issuance of the Existing Bonds, the City reserved the right to issue revenue bonds on a parity with the Existing Bonds; and

WHEREAS, pursuant to an Ordinance Establishing the City of Denton Utility System Extendable Commercial Paper Financing Program and Authorizing Utility System Revenue Extendable Commercial Paper Notes, Series A, adopted on January 12, 2021, as amended by Ordinance No. 21-355 adopted on February 23, 2021 (the “ECP Ordinance”), the Issuer has authorized to be outstanding the following described obligations:

City of Denton Utility System Revenue Extendable Commercial Paper Notes, Series A (Tax-Exempt) and City of Denton Utility System Revenue Extendable Commercial Paper Notes, Series A (Taxable), in the aggregate original principal amount not to exceed \$300,000,000 at any time (collectively, the “ECP Series A Notes”); and

WHEREAS, the Issuer now desires to refund all or part of the ECP Series A Notes (the “Eligible Refunded Notes,” and those Eligible Refunded Notes designated by the Pricing Officer in a Pricing Certificate, each as defined below, to be refunded are herein referred to as the “Refunded Notes”); and

WHEREAS, Chapter 1207, Texas Government Code, as amended (“Chapter 1207”) authorizes the Issuer to issue refunding bonds and to deposit the proceeds from the sale thereof, together with any other available funds or resources, directly with a paying agent for the Refunded Notes or a trust company or commercial bank that does not act as a depository for the Issuer and is named in these proceedings, and such deposit, if made before the payment dates of the Refunded Notes, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Notes; and

WHEREAS, Chapter 1207 further authorizes the Issuer to enter into an escrow or similar agreement with such paying agent for the Refunded Notes or trust company or commercial bank with respect to the safekeeping, investment, reinvestment, administration and disposition of any such deposit, upon such terms and conditions as the Issuer and such paying agent or trust company or commercial bank may agree; and

WHEREAS, the issuance of the Bonds and the application of the proceeds of the Bonds to refund the Refunded Notes, which consist of extendable commercial paper notes, makes it impracticable to determine the maximum amount by which the aggregate amount of payments to be made under the Bonds exceeds the aggregate amount of payments that would have been made under the terms of the Refunded Notes for purposes of Section 1207.008(a)(2) of Chapter 1207; and

WHEREAS, the City Council hereby finds and declares a public purpose and it is in the best interests of the Issuer to refund the Refunded Notes in accordance with this Ordinance, with the terms of any series of Bonds issued to be included in a Pricing Certificate to be executed by the Pricing Officer, all in accordance with the provisions of Section 1207.007 of Chapter 1207 and Chapter 1371, Texas Government Code, as amended ("*Chapter 1371*"); and

WHEREAS, all the Refunded Notes mature or are subject to redemption prior to maturity within 20 years of the date of the bonds hereinafter authorized; and

WHEREAS, the bonds hereinafter authorized to be issued are to be issued, sold and delivered pursuant to the general laws of the State of Texas, including Texas Government Code Chapters 1207, 1502 and 1371, as amended, and the Issuer's Home Rule Charter; and

WHEREAS, it is officially found, determined, and declared that the meeting at which this Ordinance has been adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including this Ordinance, was given, all as required by the applicable provisions of Texas Government Code, Chapter 551; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. DEFINITIONS.

The defined terms in recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

"*Accountant*" means an independent certified public accountant or accountants or a firm of independent certified public accountants, in either case, with demonstrated expertise and competence in public accountancy.

"*Additional Senior Lien Obligations*" means bonds, notes, contractual obligations or other Debt which the Issuer reserves the right to issue or enter into, as the case may be, in the future under the terms and conditions provided in Section 17 and which obligations are equally and ratably secured solely by a first lien on and pledge of the Pledged Revenues on a parity with the Bonds and other Senior Lien Obligations.

"*Amortization Installment*" means, with respect to Senior Lien Obligations issued as Term Bonds, each mandatory sinking fund redemption of such Term Bonds (whether prior to maturity or at maturity), provided that the total Amortization Installments for such Term Bonds shall be sufficient to provide for retirement of the aggregate principal amount of such Term Bonds.

"*Annual Debt Service Requirements*" means, as of the date of calculation, the principal of and interest on all Senior Lien Obligations coming due at Maturity or Stated Maturity (or that could come due on demand of the owner thereof or other demand conditioned upon default by the Issuer on such Debt, or be payable in respect of any required purchase of such Debt by the Issuer) in such Year, and, for such purposes, any one or more of the following rules shall apply at the election of the Issuer:

(1) Balloon Debt. If the principal (including the accretion of interest resulting from original issue discount or compounding of interest) of any series or issue of Funded Debt, except Term Bonds, due (or payable in respect of any required purchase of such Funded Debt by the Issuer) in any Year either is equal to at least 25% of the total principal (including the accretion of interest resulting from original issue discount or compounding of interest) of such Funded Debt or exceeds by more than 50% the greatest amount of principal of such series or issue of Funded Debt due in any preceding or succeeding Year (such principal due in such Year for such series or issue of Funded Debt being referred to herein and throughout this Ordinance as “*Balloon Debt*”), the amount of principal of such Balloon Debt taken into account during any Year shall be equal to the debt service calculated using the original principal amount of such Balloon Debt amortized over the Term of Issue on a level debt service basis at an assumed interest rate equal to the rate borne by such Balloon Debt on the date of calculation;

(2) Consent Sinking Fund. In the case of Balloon Debt, if a Designated Financial Officer shall deliver to the Issuer a certificate providing for the retirement of (and the instrument creating such Balloon Debt shall permit the retirement of), or for the accumulation of a sinking fund for (and the instrument creating such Balloon Debt shall permit the accumulation of a sinking fund for), such Balloon Debt according to a fixed schedule stated in such certificate ending on or before the Year in which such principal (and premium, if any) is due, then the principal of (and, in the case of retirement, or to the extent provided for by the sinking fund accumulation, the premium, if any, and interest and other debt service charges on) such Balloon Debt shall be computed as if the same were due in accordance with such schedule, provided that this clause (2) shall apply only to Balloon Debt for which the installments previously scheduled have been paid or deposited to the sinking fund established with respect to such Debt on or before the times required by such schedule; and provided further that this clause (2) shall not apply where the Issuer has elected to apply the rule set forth in clause (1) above;

(3) Term Bonds. The principal of Term Bonds shall be considered as maturing in accordance with the Amortization Installments set forth in the ordinance authorizing same;

(4) Prepaid Debt. Principal of and interest on Senior Lien Obligations, or portions thereof, shall not be included in the computation of the Annual Debt Service Requirements for any Year for which such principal or interest are payable from funds on deposit or set aside in trust for the payment thereof at the time of such calculations (including without limitation capitalized interest and accrued interest so deposited or set aside in trust) with a financial institution acting as fiduciary with respect to the payment of such Debt;

(5) Variable Rate. As to any Senior Lien Obligations that bear interest at a variable interest rate which cannot be ascertained at the time of calculation of the Annual Debt Service Requirement then, at the option of the Issuer, either (A) an interest rate equal to the average rate borne by such Senior Lien Obligations (or by comparable debt in the event that such Senior Lien Obligations has not been Outstanding during the preceding 24 months) for any 24 month period ending within 30 days prior to the date of calculation, or (B) an interest rate equal to the 30-year Revenue Bond Index (as most recently published in The Bond Buyer), shall be presumed to apply for all future dates, unless such index is no longer published in The Bond Buyer, in which case an index of revenue bonds with maturities of at least 20 years which is published in a financial newspaper or journal with national circulation may be used for this purpose (if two series of Senior Lien Obligations which bear interest at variable interest rate, or one or more maturities within a series, of equal par amounts, are issued simultaneously with inverse floating interest rates providing a composite fixed interest rate for such Senior Lien Obligations taken as a whole, such composite fixed rate shall be used in determining the Annual Debt Service Requirement with respect to such Senior Lien Obligations);

(6) Committed Take Out. If the Issuer has entered into a Credit Agreement constituting a binding commitment within normal commercial practice to discharge any of its Funded Debt at its Maturity or Stated Maturity (or, if due on demand, at any date on which demand may be made) or to purchase any of its Funded Debt at any date on which such Debt is subject to required purchase, all under arrangements whereby the Issuer's obligation to repay the amounts advanced for such discharge or purchase constitutes Funded Debt, then the portion of the Funded Debt committed to be discharged or purchased shall be excluded from such calculation and the principal of and interest on the Funded Debt incurred for such discharging or purchase that would be due in the Year for which the calculation is being made, if incurred at the Stated Maturity or purchase date of the Funded Debt to be discharged or purchased, shall be added;

(7) Credit Agreement Payments. If the Issuer has entered into a Credit Agreement in connection with an issue of Debt, payments due under the Credit Agreement (other than payments for fees and expenses), for either the Issuer or the Credit Provider, shall be included in such calculation, except to the extent that the payments are already taken into account under (1) through (6) above and any payments otherwise included above under (1) through (6) which are to be replaced by payments under a Credit Agreement, from either the Issuer or the Credit Provider, shall be excluded from such calculation; and

(8) Guarantee. In the case of any guarantee, as described in clause (2) of the definition of Debt, no obligation will be counted if the Issuer does not anticipate in its annual budget that it will make any payments on the guarantee. If, however, the Issuer is making payments on a guarantee or anticipates doing so in its annual budget, such obligation shall be treated as Senior Lien Obligations and calculations of annual debt service requirements with respect to such guarantee shall be made assuming that the Issuer will make all additional payments due under the guaranteed obligation. If the entity whose obligation is guaranteed cures all defaults and the Issuer no longer anticipates making payments under the guarantee, the guaranteed obligations shall not be included in the calculation of Annual Debt Service Requirements.

With respect to any calculation of historic data, only those payments actually made in the subject period shall be taken into account in making such calculation and, with respect to prospective calculations, only those payments reasonably expected to be made in the subject period shall be taken into account in making the calculation.

“Average Annual Debt Service Requirements” means that average amount which, at the time of computation, will be required to pay the Annual Debt Service Requirements when due (either at Stated Maturity or mandatory redemption) and derived by dividing the total of such Annual Debt Service Requirements by the number of Years then remaining before Stated Maturity of such Senior Lien Obligations. For the purposes of this definition, a fractional period of a Year shall be treated as an entire Year.

“Bond,” “Bonds” and *“Series 2025 Bonds”* have the meaning assigned to such terms in Section 2(c).

“Capital Addition” means the construction or acquisition of improvements or rights that will increase the capacity of the System, or an interest therein, and which shall become a part of the System.

“City Council” means the City Council of the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations and rules promulgated in connection therewith.

“*Consulting Engineer*” means an independent engineer or firm employed by the Issuer to perform and carry out the duties imposed on such engineer or firm by this Ordinance and having a favorable reputation nationally for skill and experience in the engineering of waterworks systems, wastewater systems, electric utility systems or drainage systems of comparable size and character as those forming parts of the System.

“*Credit Agreement*” means, collectively, a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase Senior Lien Obligations, purchase or sale agreement, Interest Rate Management Agreement, or commitments or other contracts or agreements authorized, recognized and approved by the Issuer as a Credit Agreement in connection with the authorization, issuance, security, or payment of Senior Lien Obligations and on a parity therewith.

“*Credit Provider*” means any bank, financial institution, insurance company, surety bond provider, or other entity which provides, executes, issues, or otherwise is a party to or provider of a Credit Agreement.

“*Debt*” means:

(1) all indebtedness payable from Pledged Revenues incurred or assumed by the Issuer for borrowed money (including indebtedness arising under Credit Agreements) and all other financing obligations of the System payable from Pledged Revenues that, in accordance with generally accepted accounting principles, are shown on the liability side of a balance sheet; and

(2) all other indebtedness payable from Pledged Revenues for borrowed money or for the acquisition, construction or improvement of property or capitalized lease obligations pertaining to the System that is guaranteed, directly or indirectly, in any manner by the Issuer, or that is in effect guaranteed, directly or indirectly, by the Issuer through an agreement, contingent or otherwise, to purchase any such indebtedness or to advance or supply funds for the payment or purchase of any such indebtedness or to purchase property or services primarily for the purpose of enabling the debtor or seller to make payment of such indebtedness, or to assure the owner of the indebtedness against loss, or to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether or not such property is delivered or such services are rendered), or otherwise.

For the purpose of determining Debt, there shall be excluded any particular Debt if, upon or prior to the Maturity thereof, there shall have been deposited with the proper depository (a) in trust the necessary funds (or investments that will provide sufficient funds, if permitted by the instrument creating such Debt) for the payment, redemption, or satisfaction of such Debt or (b) evidence of such Debt deposited for cancellation; and thereafter it shall not be considered Debt. No item shall be considered Debt unless such item constitutes indebtedness under generally accepted accounting principles applied on a basis consistent with the financial statements of the System in prior Years.

“*Defeasance Securities*” means any securities and obligations now or hereafter authorized by the laws of the State of Texas that are eligible to refund, retire or otherwise discharge obligations such as the Bonds.

“*Depository*” means one or more official depository banks of the Issuer.

“*DTC*” means The Depository Trust Company, New York, New York.

“*DTC Participant*” means securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

“*Designated Financial Officer*” means the City Manager or the Assistant City Manager/Chief Financial Officer (including, in each case, the official succeeding to such position after a title change), or such other official of the Issuer so designated by the Issuer.

“*Electric System Fund*” means the special fund confirmed, established and maintained by and pursuant to the provisions of Sections 7 and 8.

“*Event of Default*” means an event as described in Section 28.

“*Funded Debt*” means all Senior Lien Obligations created or assumed by the Issuer that mature by their terms (in the absence of the exercise of any earlier right of demand), or that are renewable at the option of the Issuer to a date, more than one year after the original creation or assumption of such Debt by the Issuer.

“*Gross Revenues*” mean all revenues, income and receipts of every nature derived or received by the Issuer from the operation and ownership of the System, including the interest income from investment or deposit of money in any fund or account created by this Ordinance or maintained by the Issuer in connection with the System.

“*Initial Bonds*” has the meaning assigned to such term in Section 2(c).

“*Interest and Sinking Fund*” means the special fund created, established and maintained by and pursuant to the provisions of Sections 7 and 10.

“*Interest Rate Management Agreement*” means an agreement that provides for an interest rate transaction, including a swap, basis, forward, option, cap, collar, floor, lock, or hedge transaction, a similar transaction, or any combination of those types of transactions, now or hereafter authorized by the laws of the State of Texas, including, without limitation, Chapter 1371.

“*Issuer*” means the City of Denton, Texas.

“*Maturity*” means, when used with respect to any Debt, the date on which the principal of such Debt or any installment thereof becomes due and payable as therein provided, whether at the Stated Maturity thereof, or call for redemption, or otherwise.

“*Maximum Annual Debt Service Requirements*” means the greatest amount of Annual Debt Service Requirements scheduled to occur in any future Year or in the then current Year for the particular obligations for which such calculation is made.

“*Net Revenues*” mean all Gross Revenues remaining after deducting Operating Expenses.

“*Operating Expenses*” means the reasonable and necessary expenses of operation and maintenance of the System, including all salaries, labor, materials, repairs and extensions necessary to render efficient service (but only such repairs and extensions as, in the judgment of the Issuer, are necessary to keep the System in operation and render adequate service or such as might be necessary to meet some physical accident or conditions which would otherwise impair the Senior Lien Obligations), and all payments under contracts for materials and services (including water supply contracts) provided to the Issuer that are required to enable the Issuer to render efficient service. The following shall never be considered as an Operating Expense: (1) depreciation, (2) franchise fees paid to the Issuer or transferred to the general fund or other fund of the Issuer, and (3) return on investment payments made to the Issuer or transferred to the general fund or other fund of the Issuer.

“*Ordinance*” means this ordinance finally adopted by the City Council on December 3, 2024.

“*Outstanding*” means, when used with respect to Senior Lien Obligations, as of the date of determination, all Senior Lien Obligations theretofore delivered under this Ordinance and any ordinance authorizing other Senior Lien Obligations, except:

(1) Senior Lien Obligations theretofore cancelled and delivered to the Issuer or delivered to the paying agent/registrar for the Senior Lien Obligation for cancellation;

(2) Senior Lien Obligations deemed paid pursuant to the provisions of Section 22 or any comparable section of any ordinance authorizing Additional Senior Lien Obligations;

(3) Senior Lien Obligations upon transfer of or in exchange for and in lieu of which other Senior Lien Obligations have been authenticated and delivered pursuant to this Ordinance and any ordinance authorizing Additional Senior Lien Obligations; and

(4) Senior Lien Obligations under which the obligations of the Issuer have been released, discharged or extinguished in accordance with the terms thereof.

“*Paying Agent/Registrar*” means the paying agent/registrar for the Bonds, described in Section 4(a) and any successor thereto.

“*Permitted Investments*” means any security or obligation or combination thereof permitted under the Public Funds Investments Act, Chapter 2256, Texas Government Code, as amended, or other applicable law.

“*Pledged Revenues*” means

(1) the Net Revenues, plus

(2) any additional revenues, income, receipts, or other resources, including, without limitation, any grants, donations or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which hereafter are pledged by the Issuer to the payment of the Senior Lien Obligations,

and excluding those revenues excluded from Gross Revenues or excluded from Net Revenues.

“*Pricing Certificate*” means the certificate of the Pricing Officer referenced in Section 3 to be executed and delivered in connection with the initial issuance of each Series of Bonds.

“*Pricing Officer*” means any one of the City Manager of the Issuer, the Assistant City Manager/Chief Financial Officer of the Issuer or the Director of Finance of the Issuer (including any person appointed to such position on an “acting” or “interim” basis).

“*Purchaser*” means the initial purchaser or purchasers of the Bonds.

“*Rate Stabilization Reserve*” means a rate stabilization reserve created, established and maintained by and pursuant to the provisions of Section 12 in the Electric System Fund, the Wastewater System Fund or the Water System Fund.

“*Rating Agency*” means any nationally recognized securities rating agency which has assigned, at the request of the Issuer, a rating to the Senior Lien Obligations.

“*Record Date*” means Record Date as defined in the FORM OF BOND.

“*Registered Owner*” or “*Registered Owners*” means the registered owner, whose name appears in the Registration Books, for any Senior Lien Obligation.

“*Registration Books*” means the books or records for the registration of the transfer, conversion and exchange of the Bonds kept by the Paying Agent/Registrar.

“*Reserve Credit Facility*” means (i) a policy of insurance or a surety bond, issued by an issuer of policies of insurance insuring the timely payment of debt service on governmental obligations, and (ii) a letter or line of credit issued by any financial institution, in each case meeting the requirements for such facility under any ordinance authorizing the issuance of Senior Lien Obligations that are to be secured by a debt service reserve fund.

“*Senior Lien Obligations*” means the Series 2017 Bonds, the Series 2021 Bonds, the Series 2024 Bonds, the Bonds and any Additional Senior Lien Obligations hereafter issued by the Issuer or obligations issued to refund any of the foregoing (as determined within the sole discretion of the City Council in accordance with applicable law) if issued in a manner that provides that the refunding bonds are payable from and equally and ratably secured by a first lien on and pledge of the Pledged Revenues.

“*Senior Lien Obligation Reserve Requirement*” means the amount or a manner of calculating the amount established by each ordinance authorizing the issuance of Senior Lien Obligations that are to be secured by a debt service reserve fund to be held and maintained on deposit therein.

“*Series*” or “*Series of Bonds*” means any designated series of Bonds issued pursuant to this Ordinance.

“*Series 2017 Bond Ordinance*” means the ordinance adopted by the City Council of the City on June 21, 2016 authorizing the issuance of the Series 2017 Bonds.

“*Special Project*” means any water, wastewater, electric, drainage or other facilities of any kind or other public improvement declared by the Issuer not to be part of the System, for which the costs of acquisition, construction and installation are paid from proceeds of Special Project Bonds, but only to the extent that and for so long as all or any part of the revenues or proceeds of which are or will be pledged to secure the payment or repayment of such costs of acquisition, construction and installation under such financing transaction.

“*Special Project Bonds*” means special revenue obligations of the Issuer which are not secured by the Pledged Revenues, but which are secured by and payable solely from liens on and pledges of any other revenues, sources, or payments, including, but not limited to, special contract revenues or payments received from the System, any other legal entity, or any combination thereof, in connection with a Special Project; and such revenues, sources or payments shall not be considered as or constitute Gross Revenues of the System, unless and to the extent otherwise provided in the ordinance or ordinances authorizing the issuance of such Special Project Bonds.

“*Special Record Date*” has the meaning assigned to such term in Section 4(d).

“*Stated Maturity*” means the annual principal payments of the Senior Lien Obligations payable on the respective dates set forth in the ordinances which authorized the issuance of such Senior Lien Obligations.

“*Subordinate Lien Obligations*” means any bonds, notes, contractual obligations or other Debt issued by the Issuer that are payable from or reasonably expected to be payable in whole from, and equally and ratably secured by a lien on and pledge of the Pledged Revenues, such pledge being subordinate and inferior to the lien on and pledge of the Pledged Revenues that are or will be pledged to the payment of any Senior Lien Obligations issued by the Issuer.

“*System*” means the Issuer's entire existing waterworks system, the Issuer's entire existing wastewater system, the Issuer's entire existing electric light and power system, and the Issuer's entire existing drainage system, together with all future extensions, improvements, enlargements, and additions thereto, and all replacements thereof; provided that, notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term System shall not include any Special Projects which are hereafter acquired or constructed by the Issuer with the proceeds of Special Project Bonds.

“*System Funds*” means, collectively, the Electric System Fund, the Wastewater System Fund and the Water System Fund.

“*Tax-Exempt Bonds*” means any Bond, the interest on which is excludable from gross income for federal income tax purposes.

“*Taxable Bonds*” means any Bond, the interest on which is includable in gross income for federal income tax purposes.

“*Term Bonds*” means those Senior Lien Obligations (if any) so designated pursuant to the terms of the ordinance authorizing their issuance, which shall be subject to retirement by operation of mandatory sinking fund redemptions.

“*Term of Issue*” means with respect to any Balloon Debt, a period of time equal to the greater of (i) the period of time commencing on the date of issuance of such Balloon Debt and ending on the final maturity date of such Balloon Debt or (ii) thirty years.

“*Wastewater System Fund*” means the special fund confirmed, established and maintained by and pursuant to the provisions of Sections 7 and 8.

“*Water System Fund*” means the special fund confirmed, established and maintained by and pursuant to the provisions of Sections 7 and 8.

“*Year*” means the regular fiscal year used by the Issuer in connection with the operation of the System, currently ending on September 30 of each year, which may be any twelve consecutive month period established by the Issuer.

SECTION 2. RECITALS, AMOUNT, PURPOSE AND DESIGNATION OF THE BONDS.

(a) Recitals. The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

(b) Amount; Purpose. The bonds of the Issuer are hereby authorized to be issued and delivered in one or more Series in the maximum aggregate principal amount (determined without regard to premium or

discount affecting the sale price) of \$300,000,000 for the public purpose of refunding the Refunded Notes , and to pay the costs associated with the issuance of the Bonds.

(c) Designation of the Bonds. Each bond issued pursuant to this Ordinance shall be designated: “CITY OF DENTON UTILITY SYSTEM REVENUE REFUNDING BOND, SERIES 2025” with each Series of Bonds having a letter designation following the year, starting with “A”, and with such changes as designated by the Pricing Officer pursuant to Section 3. Initially there shall be issued, sold, and delivered hereunder fully registered bonds, without interest coupons, payable to the respective Registered Owners thereof (with the Initial Bond being made payable to the Purchaser as described in Section 27 hereof). The terms “*Bonds*” and “*Series 2025 Bonds*” as used herein shall mean and include collectively all bonds initially issued hereunder (the “*Initial Bonds*”) and all substitute bonds exchanged therefor, as well as all other substitute bonds and replacement bonds issued pursuant hereto, and the term “*Bond*” shall mean any of the Bonds. The Bonds shall be in the respective principal amounts, shall be numbered, shall mature and be payable on the date or dates in each of the years and in the principal amounts, and shall bear interest to their respective dates of maturity or redemption prior to maturity at the rates per annum, as set forth in the Pricing Certificate.

SECTION 3. DELEGATION TO PRICING OFFICER.

(a) As authorized by Section 1371.053 of Chapter 1371, a Pricing Officer is hereby authorized to act on behalf of the Issuer in selling and delivering each Series of the Bonds, determining which of the Eligible Refunded Notes shall be refunded, and carrying out the other procedures specified in this Ordinance, including, determining the date of sale of the Bonds, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment and record dates, the use of capitalized interest, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the Issuer, as well as any mandatory sinking fund redemption provisions, whether any Series of Bonds will be secured by a debt service reserve fund and the amount of any Senior Lien Obligation Reserve Requirement, whether a Series will be issued as Tax-Exempt Bonds or Taxable Bonds, the authorized denominations of and the method for the calculation of interest for any Taxable Bonds and all other matters relating to the issuance, sale, and delivery of the Bonds and the refunding of the Refunded Notes, including without limitation establishing the redemption date for and effecting the redemption of Refunded Notes, approving modifications to this Ordinance and executing such instruments, documents and agreements as may be necessary with respect to the issuance of the Bonds, and obtaining municipal bond insurance for all or any portion of the Bonds (including in connection therewith the execution of any commitment agreements, membership agreements in mutual insurance companies, and other similar agreements) and providing for the terms and provisions thereof applicable to the Bonds, all of which shall be specified in the Pricing Certificate; provided that:

- (i) the aggregate original principal amount of the Bonds shall not exceed \$300,000,000;
- (ii) the maximum stated maturity of the Bonds shall not exceed 30 years from the date of issuance;
- (iii) the Bonds shall bear interest at a fixed rate, and the net effective interest rate on the Bonds shall not exceed the maximum net effective interest rate permitted by law to be paid on obligations issued or incurred by the Issuer in the exercise of its borrowing powers (prescribed by Chapter 1204, Texas Government Code, as amended);

- (iv) the delegation made hereby shall expire if not exercised by the Pricing Officer through execution of the Pricing Certificate on or prior to December 3, 2025; and
- (v) on or prior to delivery, the Bonds shall be rated by a Rating Agency for municipal securities in one of the four highest categories for long-term obligations.

(b) In establishing the aggregate principal amount of a Series of Bonds, the Pricing Officer shall establish an amount not exceeding, in aggregate with any other Series of Bonds, the amount authorized in Subsection (a)(i) hereof, which shall be sufficient in amount to provide for the purposes for which the Series of Bonds are authorized and to pay costs of issuing the Bonds. Each Series of Bonds shall be sold with and subject to such terms as set forth in the Pricing Certificate for such Series.

SECTION 4. CHARACTERISTICS OF THE BONDS.

(a) Appointment of Paying Agent/Registrar. The Pricing Officer shall designate in the Pricing Certificate a bank to act as the Paying Agent/Registrar for the Bonds. A Pricing Officer is authorized and directed to execute and deliver in the name and under the corporate seal and on behalf of the Issuer a Paying Agent/Registrar Agreement with the Paying Agent/Registrar in substantially the form presented at this meeting.

(b) Registration, Transfer, Conversion and Exchange. The Issuer shall keep or cause to be kept Registration Books at the corporate trust office of the Paying Agent/Registrar, and the Issuer hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the Issuer and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided within three days of presentation in due and proper form. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the registered owner of each Bond to which payments with respect to the Bonds shall be mailed, as herein provided; but it shall be the duty of each registered owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The Issuer shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The Issuer shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, conversion, exchange and delivery of a substitute Bond or Bonds. Registration of assignments, transfers, conversions and exchanges of Bonds shall be made in the manner provided and with the effect stated in the FORM OF BOND set forth in this Ordinance. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond.

(c) Authentication. Except as provided in subsection (g) of this Section, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Bond, date and manually sign said Bond, and no such Bond shall be deemed to be issued or outstanding unless such Bond is so executed. The Paying Agent/Registrar promptly shall cancel all paid Bonds and Bonds surrendered for conversion and exchange. No additional ordinances, resolutions, orders or other instruments need be passed or adopted by the governing body of the Issuer or any other body or person so as to accomplish the foregoing conversion and exchange of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution and delivery of the substitute Bonds in the manner prescribed herein. Pursuant to Subchapter D, Chapter 1201, Texas Government Code, the duty of conversion and exchange of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Bond, the converted and exchanged Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Bonds which initially

were issued and delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(d) Payment of Principal and Interest. The Issuer hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Bonds, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the Issuer and the Paying Agent/Registrar with respect to the Bonds, and of all conversions and exchanges of Bonds, and all replacements of Bonds, as provided in this Ordinance. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a “*Special Record Date*”) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each registered owner appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

(e) Payment to Registered Owner. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Registration Books as the absolute owner of such Bond for the purpose of payment of principal and interest with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Bonds only to or upon the order of the registered owners, as shown in the Registration Books as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than a registered owner, as shown in the Registration Books, shall receive a Bond certificate evidencing the obligation of the Issuer to make payments of principal and interest pursuant to this Ordinance.

(f) Paying Agent/Registrar. The Issuer covenants with the registered owners of the Bonds that at all times while the Bonds are Outstanding the Issuer will provide a competent and legally qualified bank, trust company, financial institution or other agency to act as and perform the services of Paying Agent/Registrar for the Bonds under this Ordinance, and that the Paying Agent/Registrar will be one entity. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

(g) Substitute Paying Agent/Registrar. The Issuer reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 120 days written notice to the Paying Agent/Registrar, to be effective not later than 60 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the Issuer covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Bonds, to the new Paying Agent/Registrar designated and appointed by the Issuer. Upon any change in the Paying Agent/Registrar, the Issuer promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the Bonds, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar.

(h) Book-Entry Only System. The Bonds issued in exchange for the Bonds initially issued to the purchaser or purchasers specified herein shall be initially issued in the form of a separate single fully registered Bond for each of the maturities thereof and the ownership of each such Bond shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in subsections (j) and (k) of this Section, all of the Outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

(i) Blanket Letter of Representations. The previous execution and delivery of the Blanket Letter of Representations with respect to obligations of the Issuer is hereby ratified and confirmed; and the provisions thereof shall be fully applicable to the Bonds. Notwithstanding anything to the contrary contained herein, while the Bonds are subject to DTC's Book-Entry Only System and to the extent permitted by law, the Letter of Representations is hereby incorporated herein and its provisions shall prevail over any other provisions of this Ordinance in the event of conflict.

(j) Bonds Registered in the Name of Cede & Co. With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of Bonds, as shown on the Registration Books, of any notice with respect to the Bonds, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of Bonds, as shown in the Registration Books of any amount with respect to principal of or interest on the Bonds. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks being mailed to the registered owner at the close of business on the Record date, the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(k) Successor Securities Depository; Transfers Outside Book-Entry Only System. In the event that the Issuer determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the Issuer to DTC or that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Issuer shall (i) appoint a successor securities depository, qualified to act as such under Section 17A of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Registration Books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names registered owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

(l) Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the representation letter of the Issuer to DTC.

(m) General Characteristics of the Bonds. The Bonds (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Bonds to be payable only to the Registered Owners thereof, (ii) may and shall be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other Bonds, (v) shall have the characteristics, (vi)

shall be signed, sealed, executed and authenticated, (vii) the principal of and interest on the Bonds shall be payable, and (viii) shall be administered and the Paying Agent/Registrar and the Issuer shall have certain duties and responsibilities with respect to the Bonds, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF BOND set forth in this Ordinance (as modified in the Pricing Certificate). The Bonds initially issued and delivered pursuant to this Ordinance is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Bond issued in conversion of and exchange for any Bond or Bonds issued under this Ordinance the Paying Agent/Registrar shall execute the Paying Agent/registrar's Authentication Bond, in the FORM OF BOND set forth in this Ordinance.

(n) Cancellation of Initial Bonds. On the closing date, one Initial Bond representing the entire principal amount of a Series of the Bonds, payable in stated installments to the Purchaser or its designee, executed by manual or facsimile signature of the Mayor and Secretary of the Issuer, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to such purchaser or its designee. Upon payment for such Initial Bond, the Paying Agent/Registrar shall cancel such Initial Bond and deliver to DTC on behalf of such purchaser one registered definitive Bond for each year of maturity of such Bonds, in the aggregate principal amount of all of the Bonds for such maturity, registered in the name of Cede & Co., as nominee of DTC. To the extent that the Paying Agent/Registrar is eligible to participate in DTC's FAST System, pursuant to an agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Bonds in safekeeping for DTC.

SECTION 5. FORM OF BONDS. The form of the Bonds ("FORM OF BOND"), including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Bonds initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially as follows, with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance, and with the FORM OF BOND to be modified pursuant to, and completed with information set forth in, the Pricing Certificate.

(a) FORM OF BOND.

NO. R-	UNITED STATES OF AMERICA STATE OF TEXAS CITY OF DENTON UTILITY SYSTEM REVENUE REFUNDING BOND SERIES 2025	PRINCIPAL AMOUNT \$ _____
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Interest Rate	Delivery Date	Maturity Date	CUSIP No.
_____	_____	_____	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS

ON THE MATURITY DATE specified above, the City of Denton, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above. The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from

_____, _____ at the Interest Rate per annum specified above. Interest is payable on _____, _____ and semiannually on each _____ and _____ thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except, if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such principal amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Bond or Bonds, if any, for which this Bond is being exchanged is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full.

THE PRINCIPAL OF AND INTEREST ON this Bond are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Bond shall be paid to the Registered Owner hereof upon presentation and surrender of this Bond at maturity, or upon the date fixed for its redemption prior to maturity, at the principal corporate trust office of _____, _____, _____, which is the "Paying Agent/Registrar" for this Bond. The payment of interest on this Bond shall be made by the Paying Agent/Registrar to the Registered Owner hereof on each interest payment date by check or draft, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the Issuer required by the ordinance authorizing the issuance of this Bond (the "Bond Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the Registered Owner hereof, at its address as it appeared on the _____ day of the month preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In addition, interest may be paid by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner. In the event of a non-payment of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Issuer. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each owner of a Bond appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

ANY ACCRUED INTEREST due at maturity or upon the redemption of this Bond prior to maturity as provided herein shall be paid to the Registered Owner upon presentation and surrender of this Bond for payment or redemption at the principal corporate trust office of the Paying Agent/Registrar. The Issuer covenants with the Registered Owner of this Bond that on or before each principal payment date and interest payment date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Bond Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Bonds, when due.

IF THE DATE for any payment of the principal of or interest on this Bond shall be a Saturday, Sunday, a legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day that is not such a Saturday, Sunday, legal holiday or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS BOND is one of a series of Bonds dated _____, _____, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$ _____

for the public purpose of refunding the Refunded Notes, and to pay the costs associated with the issuance of the Bonds.

ON _____, or on any date thereafter, the Bonds of this series may be redeemed prior to their scheduled maturities, at the option of the Issuer, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the particular Bonds, or portions thereof, to be redeemed shall be selected and designated by the Issuer (provided that a portion of a Bond may be redeemed only in an integral multiple of \$5,000), at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption.

[THE BONDS scheduled to mature on _____ in the years ____ and ____ (the “Term Bonds”) are subject to scheduled mandatory redemption by the Paying Agent/Registrar by lot, or by any other customary method that results in a random selection, at a price equal to the principal amount thereof, plus accrued interest to the redemption date, out of moneys available for such purpose in the interest and sinking fund for the Bonds, on the dates and in the respective principal amounts, set forth in the following schedule:

Term Bond Maturity: _____, 20__		Term Bond Maturity: _____, 20__	
Mandatory Redemption Date	Principal Amount	Mandatory Redemption Date	Principal Amount
February 15, 20__	\$ _____	February 15, 20__	\$ _____
February 15, 20__	_____	February 15, 20__	_____
February 15, 20__	_____	February 15, 20__	_____
February 15, 20__ (maturity)	_____	February 15, 20__ (maturity)	_____

The principal amount of Term Bonds of a stated maturity required to be redeemed on any mandatory redemption date pursuant to the operation of the mandatory sinking fund redemption provisions shall be reduced, at the option of the Issuer, by the principal amount of any Term Bonds of the same maturity which, at least 50 days prior to a mandatory redemption date (1) shall have been acquired by the Issuer at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the Issuer at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase, or (3) shall have been redeemed pursuant to the optional redemption provisions and not theretofore credited against a mandatory redemption requirement.]

AT LEAST 30 days prior to the date fixed for any redemption of Bonds or portions thereof prior to maturity a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, at least 30 days prior to the date fixed for any such redemption, to the Registered Owner of each Bond to be redeemed at its address as it appeared on the 45th day prior to such redemption date; provided, however, that the failure of the Registered Owner to receive such notice, or any defect therein or in the sending or mailing thereof, shall not affect the validity or effectiveness of the proceedings for the redemption of any Bond. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Bonds or portions thereof that are to be so redeemed. If such written notice of redemption is sent and if due provision for such payment is made, all as provided above, the Bonds or portions thereof that are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being Outstanding except for the right of the Registered Owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Bond shall be redeemed, a substitute Bond or Bonds

having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the Registered Owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the Registered Owner upon the surrender thereof for cancellation, at the expense of the Issuer, all as provided in the Bond Ordinance.

IF AT THE TIME OF MAILING of notice of optional redemption there shall not have either been deposited with the Paying Agent/Registrar or legally authorized escrow agent immediately available funds sufficient to redeem all the Bonds called for redemption, such notice may state that it is conditional, and is subject to the deposit of the redemption moneys with the Paying Agent/Registrar or legally authorized escrow agent at or prior to the redemption date, and such notice shall be of no effect unless such moneys are so deposited on or prior to the redemption date. If such redemption is not effectuated, the Paying Agent/Registrar shall, within five days thereafter, give notice in the manner in which the notice of redemption was given that such moneys were not so received and shall rescind the redemption.

ALL BONDS OF THIS SERIES are issuable solely as fully registered bonds, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Bond Ordinance, this Bond may, at the request of the Registered Owner or the assignee or assignees hereof, be assigned, transferred, converted into and exchanged for a like aggregate principal amount of fully registered Bonds, without interest coupons, payable to the appropriate Registered Owner, assignee or assignees, as the case may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate Registered Owner, assignee or assignees, as the case may be, upon surrender of this Bond to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Bond Ordinance. Among other requirements for such assignment and transfer, this Bond must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Bond or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Bond or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Bond may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Bond or any portion or portions hereof from time to time by the Registered Owner. The Paying Agent/Registrar's reasonable standard or customary fees and charges for assigning, transferring, converting and exchanging any Bond or portion thereof will be paid by the Issuer. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, conversion or exchange, as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer, conversion, or exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or (ii) with respect to any Bond or any portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date.

IN THE EVENT any Paying Agent/Registrar for the Bonds is changed by the Issuer, resigns, or otherwise ceases to act as such, the Issuer has covenanted in the Bond Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owners of the Bonds.

THE BONDS are special obligations of the Issuer payable solely from and equally secured by a lien on and pledge of the Pledged Revenues of the Issuer's System (as defined in the Ordinance). Reference is hereby made to the Bond Ordinance for a more complete statement of the covenants and provisions securing the payment of this Bond and the series of which it is one.

THE ISSUER EXPRESSLY RESERVES the right to issue further and additional special revenue obligations equally secured by a lien on and pledge of the Pledged Revenues of the Issuer's Utility System on a parity with the Bonds of this issue; provided, however, that any and all such additional Senior Lien Obligations may be issued only in accordance with and subject to the covenants, conditions, limitations and restrictions relating thereto which are set out and contained in the Bond Ordinance, to which reference is hereby made for more complete and full particulars. The Issuer has further reserved the right in the Bond Ordinance to issue Subordinate Lien Obligations and to finance Special Projects that are not part of the System and not payable from Pledged Revenues and for which all maintenance and operation expenses are payable from sources other than Pledged Revenues.

THE REGISTERED OWNER HEREOF shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation or from any sources whatsoever other than those described in the Bond Ordinance.

IT IS HEREBY certified, recited and covenanted that this Bond has been duly and validly authorized, issued and delivered; that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization, issuance and delivery of this Bond have been performed, existed and been done in accordance with law.

THE ISSUER HAS RESERVED THE RIGHT to amend the Bond Ordinance as provided therein, and under some (but not all) circumstances amendments thereto must be approved by the Registered Owners of a majority in aggregate principal amount of the Outstanding Bonds.

BY BECOMING the Registered Owner of this Bond, the Registered Owner thereby acknowledges all of the terms and provisions of the Bond Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Bond Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the Issuer, and agrees that the terms and provisions of this Bond and the Bond Ordinance constitute a contract between each Registered Owner hereof and the Issuer.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be signed with the manual or facsimile signature of the Mayor of the Issuer (or in the Mayor's absence, the Mayor Pro-Tem of the Issuer) and countersigned with the manual or facsimile signature of the Secretary of said Issuer, and has caused the official seal of the Issuer to be duly impressed, or placed in facsimile, on this Bond.

Secretary

Mayor

(SEAL)

(b) Form of Paying Agent/Registrar's Authentication Certificate.

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE
(To be executed if this Bond is not accompanied by an executed Registration Certificate
of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Bond has been issued under the provisions of the Bond Ordinance described in the text of this Bond; and that this Bond has been issued in conversion or replacement of, or in exchange for, a bond, bonds, or a portion of a bond or bonds of a series that originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: _____.

_____,
Paying Agent/Registrar

By: _____
Authorized Representative

(c) Form of Assignment.

ASSIGNMENT
(Please print or type clearly)

For value received, the undersigned hereby sells, assigns and transfers unto: _____

Transferee's Social Security or Taxpayer Identification Number: _____

Transferee's name and address, including zip code: _____

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____
_____, attorney, to register the transfer of the within
Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an
eligible guarantor institution participating in a
securities transfer association recognized signature
guarantee program.

NOTICE: The signature above must correspond with
the name of the Registered Owner as it appears upon
the front of this Bond in every particular, without
alteration or enlargement or any change whatsoever.

(d) Form of Registration Certificate of the Comptroller of Public Accounts.

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO. _____

I hereby certify that there is on file and of record in my office a true and correct copy of the opinion
of the Attorney General of the State of Texas approving this Bond and that this Bond has been registered this
day by me.

Witness my signature and seal this _____.

Comptroller of Public Accounts of the State of Texas

(COMPTROLLER'S SEAL)

(e) Initial Bond Insertions.

(i) The Initial Bonds shall be in the form set forth in paragraph (a) of this Section, except
that:

A. immediately under the name of the Bond, the headings “Interest Rate” and “Maturity Date” shall both be completed with the words “As shown below” and “CUSIP No. _____” shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:

“THE CITY OF DENTON, TEXAS (the “Issuer”), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the “Registered Owner”), on _____ in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<u>Years</u>	<u>Principal Installments (\$)</u>	<u>Interest Rates (%)</u>
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(Information for the Bonds from the Pricing Certificate to be inserted)

The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from _____, ____ at the respective Interest Rate per annum specified above. Interest is payable on _____, _____, and semiannually on each _____ and _____ thereafter to the date of payment of the principal installment specified above, or the date of redemption prior to maturity; except, that if this Bond is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Bond or Bonds, if any, for which this Bond is being exchanged is due but has not been paid, then this Bond shall bear interest from the date to which such interest has been paid in full.”

C. The Initial Bond shall be numbered “T-1.”

SECTION 6. PLEDGE OF PLEDGED REVENUES.

(a) The Bonds are “Additional Senior Lien Obligations” as permitted by Section 17 of the Series 2017 Bond Ordinance; and it is hereby determined, declared and resolved that Sections 1, 6 through 17, 19, 20, 21, 28 and 30 of this Ordinance are supplemental to and cumulative of such sections in the Series 2017 Bond Ordinance.

(b) The Issuer hereby covenants and agrees that the Pledged Revenues are hereby irrevocably pledged to the payment and security of the Senior Lien Obligations, including the establishment and maintenance of the special funds confirmed, created, established and maintained for the payment and security thereof, all as hereinafter provided; and it is hereby ordered that the Senior Lien Obligations, and the interest thereon, shall constitute a lien on and pledge of the Pledged Revenues and be valid and binding without any physical delivery thereof or further act by the Issuer, and the lien created hereby on the Pledged Revenues for the payment and security of the Senior Lien Obligations, including the establishment and maintenance of the special funds created, confirmed, established and maintained for the payment and security thereof, shall be superior to the lien on and pledge of the Pledged Revenues securing payment of any Subordinate Lien Obligations heretofore or hereafter issued by the Issuer. The Senior Lien Obligations, and any interest payable thereon, are and shall be secured by and payable from a first lien on and pledge of the Pledged

Revenues. The Senior Lien Obligations are not and will not be secured by or payable from a mortgage or deed of trust on any real, personal, or mixed properties constituting the System.

(c) Chapter 1208, Government Code, applies to the issuance of the Bonds and the pledge of the Pledged Revenues granted by the Issuer under this Section, and is therefore valid, effective, and perfected. Should Texas law be amended at any time while the Bonds are Outstanding and unpaid, the result of such amendment being that the pledge of the Pledged Revenues granted by the Issuer under this Section is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, in order to preserve to the Registered Owners of the Bonds a security interest in said pledge, the Issuer agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing of a security interest in said pledge to occur.

SECTION 7. SPECIAL FUNDS.

(a) There heretofore has been created and is hereby confirmed and ordered to be maintained on the books of the Issuer, a special fund entitled the “City of Denton Electric System Fund” (the “*Electric System Fund*”).

(b) There heretofore has been created and is hereby confirmed and ordered to be maintained on the books of the Issuer, a special fund entitled the “City of Denton Wastewater System Fund” (the “*Wastewater System Fund*”).

(c) There heretofore has been created and is hereby confirmed and ordered to be maintained on the books of the Issuer, a special fund entitled the “City of Denton Water System Fund” (the “*Water System Fund*”).

(d) There heretofore has been created and is hereby confirmed and ordered to be maintained on the books of the Issuer so long as Senior Lien Obligations are Outstanding, a separate fund entitled “City of Denton Utility System Revenue Bonds Interest and Sinking Fund” (the “*Interest and Sinking Fund*”).

(e) The Issuer may at any time combine any two or more of the Electric System Fund, Wastewater System Fund or Water System Fund into a single Fund. Any references in this Ordinance to any of the Funds so combined shall be deemed to refer to the newly combined Fund.

(f) Each such Fund shall be accounted for separate and apart from all other funds of the Issuer, and shall be maintained in a Depository of the Issuer.

SECTION 8. SYSTEM FUNDS. The Issuer hereby covenants, agrees and establishes that the Gross Revenues shall be deposited and credited to the System Funds immediately as collected and received except as otherwise provided in this Ordinance. All Operating Expenses are and shall be paid from such Gross Revenues as a first charge against same.

SECTION 9. FLOW OF FUNDS.

(a) All Gross Revenues deposited and credited to the System Funds shall be pledged and appropriated to the extent required for the following uses and in the order of priority shown:

First: to the payment of all necessary and reasonable Operating Expenses as defined herein, and the payment of such Operating Expenses shall be a first charge on and claim against the Gross Revenues.

Second: to the payment of the amounts required to be deposited and credited to the Interest and Sinking Fund, created and established for the payment of the Bonds and any other Senior Lien Obligations as the same become due and payable.

Third: pro rata to the payment of the amounts required to be deposited and credited to each debt service reserve fund (including any payments under any Reserve Credit Facility) as may be created and established to maintain a reserve with respect to the Additional Senior Lien Obligations, if any, and in accordance with the provisions of the ordinances relating to the issuance of any Additional Senior Lien Obligations hereafter issued by the Issuer.

Fourth: to make payment, including payment of amounts required for reserve fund requirements, of Subordinate Lien Obligations.

(b) Any Pledged Revenues remaining in the System Funds after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other Issuer purpose now or hereafter permitted by law.

SECTION 10. INTEREST AND SINKING FUND.

(a) For purposes of providing funds to pay the principal of, premium, if any, and interest on the Senior Lien Obligations as the same become due and payable, including any Amortization Installment payments, the Issuer agrees that it shall maintain the Interest and Sinking Fund. The Issuer covenants to deposit and credit to the Interest and Sinking Fund prior to each principal, interest payment or redemption date from the available Pledged Revenues an amount equal to one hundred percent (100%) of the amount required to fully pay the interest on and the principal of the Senior Lien Obligations then coming due and payable. The Issuer shall deposit to the Interest and Sinking Fund the amounts required to be deposited therein with respect to Senior Lien Obligations in accordance with the ordinance authorizing such Senior Lien Obligations. The Issuer shall cause to be deposited to the credit of the Interest and Sinking Fund accrued interest received from the sale of the Bonds, and on or before the last business day of each month, the Issuer shall cause to be deposited to the credit of the Interest and Sinking Fund, in approximately equal monthly payments, amounts sufficient, together with any other funds on hand therein, to pay all of the interest or principal and interest coming due, including Amortization Installments, on the Bonds on the next succeeding interest or principal payment date.

(b) The required deposits and credits to the Interest and Sinking Fund shall continue to be made as hereinabove provided until such time as (i) the total amount on deposit in and credited to the Interest and Sinking Fund and in any debt service reserve fund created pursuant to Section 11, taking into account any Reserve Credit Facility held in or for the benefit of any such debt service reserve fund, is equal to the amount required to fully pay and discharge all Outstanding Senior Lien Obligations (principal, premium, if any, and interest) or (ii) the Senior Lien Obligations are no longer Outstanding.

(c) Accrued interest, if any, received from the purchaser of any Senior Lien Obligation and capitalized interest shall be taken into consideration and reduce the amount of the deposits and credits hereinabove required into the Interest and Sinking Fund.

(d) In allocating moneys on deposit in the Interest and Sinking Fund to pay the principal of, premium, if any, and interest on the Senior Lien Obligations as the same become due and payable among Senior Lien Obligations that are secured by a debt service reserve fund created pursuant to Section 11 and Senior Lien Obligations that are not secured by a debt service reserve fund, the Issuer shall not take amounts on deposit (including moneys or Reserve Credit Facilities) in the debt service reserve funds into account when making such allocations.

SECTION 11. DEBT SERVICE RESERVE FUNDS.

(a) The Issuer may create and establish a debt service reserve fund pursuant to the provisions of any ordinance or other instrument authorizing the issuance of Senior Lien Obligations for the purpose of securing that particular issue or series of Senior Lien Obligations or any specific group of issues or series of Senior Lien Obligations (including the combining of debt service reserve funds for Senior Lien Obligations so long as the requirements of each ordinance authorizing such Senior Lien Obligations are satisfied). A debt service reserve fund may be funded from Pledged Revenues, proceeds from the sale of Additional Senior Lien Obligations, Reserve Credit Facilities, or any other available source or combination of sources. The amounts once deposited or credited to said debt service reserve funds shall no longer constitute Pledged Revenues and shall be held solely for the benefit of the owners of the particular Senior Lien Obligations for which such debt service reserve fund was established. Each debt service reserve fund shall receive a pro rata amount of the Pledged Revenues after the requirements of the Interest and Sinking Fund, which secures all Senior Lien Obligations, have first been met. Each such debt service reserve fund shall be designated in such manner as is necessary to identify the Senior Lien Obligations it secures and to distinguish such debt service reserve fund from the debt service reserve funds created for the benefit of other Senior Lien Obligations. Each ordinance authorizing the issuance of Senior Lien Obligations that are to be secured by a debt service reserve fund shall specify the amount or a manner of calculating the amount to be held and maintained on deposit therein.

(b) The Issuer may issue Additional Senior Lien Obligations not secured by any debt service reserve fund.

SECTION 12. RATE STABILIZATION RESERVES. The Issuer may from time to time establish and maintain a Rate Stabilization Reserve in any one or more of the Electric System Fund, the Wastewater System Fund and the Water System Fund for so long as any Senior Lien Obligations remain outstanding and unpaid. The Issuer may at any time deposit to the credit of any Rate Stabilization Reserve any excess Net Revenues, after making required deposits hereinabove described to the Interest and Sinking Fund and any debt service reserve fund created in accordance with Section 11(a), and any other money received by the Issuer and available to be used therefor. Funds on deposit in a Rate Stabilization Reserve may be used, at the discretion of the Issuer, for capital additions and improvements to the System or any other lawful purpose, or to enable the Issuer to satisfy its covenant set forth in Section 16(m). All interest or other earnings derived from the investment of money in a Rate Stabilization Reserve shall be credited to that Rate Stabilization Reserve. Money on deposit to the credit of a Rate Stabilization Reserve shall not be included as a revenue for purposes of satisfying the covenant set forth in Section 16(m), unless the Issuer transfers money from the Rate Stabilization Reserve to the System Funds for the sole purpose of enabling the Issuer to be in compliance with its covenant set forth in Section 16(m).

SECTION 13. DEFICIENCIES; EXCESS PLEDGED REVENUES.

(a) Deficiencies. If on any occasion there shall not be sufficient Pledged Revenues (after making all payments pertaining to all Senior Lien Obligations) to make the required deposits and credits to the Interest and Sinking Fund and any debt service reserve fund for Senior Lien Obligations, then such deficiency shall be cured as soon as possible from the next available unallocated Pledged Revenues, and such deposits and credits shall be in addition to the amounts otherwise required to be deposited and credited to such funds.

(b) Excess Pledged Revenues. Subject to making the deposits and credits required by this Ordinance or any ordinances authorizing the issuance of Additional Senior Lien Obligations, or the payments and credits required by the provisions of the ordinances authorizing the issuance of Subordinate Lien Obligations heretofore or hereafter issued by the Issuer, the excess Pledged Revenues may be used for any lawful purpose.

SECTION 14. INVESTMENT OF FUNDS; VALUATION; FUNDS SECURED; TRANSFER OF INVESTMENT INCOME.

(a) Moneys in any fund established or maintained pursuant to this Ordinance may, at the option of the Issuer, be invested in Permitted Investments, provided that all such deposits and investments shall be made in such manner that the money required to be expended from any Fund will be available at the proper time or times. Moneys in a debt service reserve fund for Senior Lien Obligations shall not be invested in securities maturing later than the final maturity of the Senior Lien Obligations secured by such debt service reserve fund. Such investments shall be valued in terms of current market value as of the last day of each Year, except that direct obligations of the United States (State and Local Government Series) in book-entry form shall be continuously valued at their par or face principal amount. Such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds or any Additional Senior Lien Obligations issued. To the extent not invested, moneys in any fund established pursuant to this Ordinance shall be secured in the manner prescribed by law for securing funds of the Issuer.

(b) All interest and income derived from such investments (other than interest and income derived from amounts credited to the Rate Stabilization Reserves or any debt service reserve fund created in accordance with Section 11, if the debt service reserve fund does not contain the Senior Lien Obligation Reserve Requirement) shall be credited to the System Funds semi-annually and shall constitute Gross Revenues.

SECTION 15. PAYMENT OF SENIOR LIEN OBLIGATIONS. While any of the Senior Lien Obligations are Outstanding, the Issuer shall transfer to the respective paying agent/registrars therefor, from funds on deposit in and credited to the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly the interest on and principal of the Senior Lien Obligations as shall become due on each interest or principal payment date, or date of redemption of the Senior Lien Obligations; such transfer of funds must be made in such manner as will cause immediately available funds to be deposited with each respective paying agent/registrars for the Senior Lien Obligations by not later than 11:00 a.m. Central Time on the applicable payment date for the Senior Lien Obligations. The paying agent/registrars shall destroy all paid Senior Lien Obligations and furnish the Issuer with an appropriate certificate of cancellation or destruction.

SECTION 16. ISSUER COVENANTS. The Issuer further covenants and agrees that in accordance with and to the extent required or permitted by law:

(a) Performance. It will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in any ordinance authorizing the issuance of Senior Lien Obligations, including this Ordinance, and in each and every Senior Lien Obligation; it will promptly pay or cause to be paid the principal of and interest on every Senior Lien Obligation on the dates and in the places and manner prescribed in such ordinances and obligations; and it will, at the times and in the manner prescribed, deposit and credit or cause to be deposited and credited the amounts required to be deposited and credited to the Interest and Sinking Fund.

(b) Issuer's Legal Authority. It is a duly created and existing home rule city of the State of Texas, and is duly authorized under the laws of the State of Texas to issue the Bonds; that all action on its part for the issuance of the Bonds has been duly and effectively taken, and that the Bonds in the hands of the Registered Owners thereof are and will be valid and enforceable special obligations of the Issuer in accordance with their terms.

(c) Title. It has or will obtain lawful title to the lands, buildings, structures and facilities constituting the System, that it warrants that it will defend the title to all the aforesaid lands, buildings, structures and facilities, and every part thereof, for the benefit of the Registered Owners of the Senior Lien Obligations,

against the claims and demands of all persons whomsoever, that it is lawfully qualified to pledge the Pledged Revenues to the payment of the Senior Lien Obligations in the manner prescribed herein, and has lawfully exercised such rights.

(d) Liens. It will from time to time and before the same become delinquent pay and discharge all taxes, assessments and governmental charges, if any, which shall be lawfully imposed upon it, or the System; it will pay all lawful claims for rents, royalties, labor, materials and supplies which if unpaid might by law become a lien or charge thereon, the lien of which would be prior to or interfere with the liens hereof, so that the priority of the liens granted hereunder shall be fully preserved in the manner provided herein, and it will not create or suffer to be created any mechanic's, laborer's, materialman's or other lien or charge which might or could be prior to the liens hereof, or do or suffer any matter or thing whereby the liens hereof might or could be impaired; provided, however, that no such tax, assessment or charge, and that no such claims which might be used as the basis of a mechanic's, laborer's, materialman's or other lien or charge, shall be required to be paid so long as the validity of the same shall be contested in good faith by the Issuer.

(e) Operation of System; No Free Service. It will, while any Senior Lien Obligations are Outstanding, continuously and efficiently operate the System, and shall maintain the System in good condition, repair and working order, all at reasonable cost. No free service of the System shall be allowed, and should the Issuer or any of its agencies, instrumentalities, lessors, or concessionaires make use of the services and facilities of the System, payment monthly of the standard retail price of the services provided shall be made by the Issuer or any of its agencies, instrumentalities, lessors, or concessionaires out of funds from sources other than the revenues of the System, unless made from surplus Pledged Revenues as permitted by Section 13(b).

(f) Further Encumbrance. While any Senior Lien Obligations are Outstanding, it will not additionally encumber the Pledged Revenues in any manner, except as permitted in this Ordinance in connection with Additional Senior Lien Obligations, unless said encumbrance is made junior and subordinate in all respects to the liens, pledges, covenants and agreements of this Ordinance; but the right of the Issuer to issue or incur obligations, including Subordinate Lien Obligations, payable from a subordinate lien on the Pledged Revenues is specifically recognized and retained.

(g) Sale or Disposal of Property. While any Senior Lien Obligations are Outstanding, it will not sell, convey, mortgage, encumber, lease or in any manner transfer title to, or otherwise dispose of, the System, or any significant or substantial part thereof, except as follows:

(1) To the extent permitted by law, the Issuer may sell, exchange or otherwise dispose of at any time and from time to time any property or facilities constituting part of the System only if (i) it shall determine such property or facilities are not useful in the operation of the System, (ii) the proceeds of such sale are \$500,000 or less, or it shall have received a certificate of a Designated Financial Officer stating in the opinion of the signer, that the fair market value of the property or facilities exchanged is \$500,000 or less, or (iii) if such proceeds or fair market value exceeds \$500,000 it shall have received a certificate of a Designated Financial Officer stating, in the opinion of the signer, that the sale or exchange of such property or facilities will not impair the ability of the Issuer to comply during the current or any future year with the provisions of clause (m) of this Section. The proceeds of any such sale or exchange not used to acquire other property necessary or desirable for the safe or efficient operation of the System shall forthwith, at the option of the Issuer (i) be used to redeem or purchase Senior Lien Obligations, (ii) otherwise be used to provide for the payment of Senior Lien Obligations, or (iii) be used for any other lawful purpose; and

(2) To the extent permitted by law, the Issuer may lease or make contracts or grant licenses for the operation of or make arrangements for the use of or grant easements or other rights with

respect to, any part of the System, provided that any such lease, contract, license, arrangement, easement or right (i) does not impede the operation by the Issuer of the System and (ii) does not in any manner impair or adversely affect the rights or security of the owners of the Senior Lien Obligations under this Ordinance; and provided, further, that if the depreciated cost of the property to be covered by any such lease, contract, license, arrangement, easement or other right is in excess of \$1,000,000, the Issuer shall have received a certificate of a Designated Financial Officer that the action of the Issuer with respect thereto does not result in a breach of the conditions under this clause (2). Any payments received by the Issuer under or in connection with any such lease, contract, license, arrangement, easement or right in respect of the System or any part thereof shall constitute Gross Revenues.

(h) Insurance. (1) The Issuer shall insure such parts of the System as would usually be insured by corporations operating like properties, with responsible insurance companies, or through self-insurance with adequate stop-loss reinsurance, against loss to the extent insurance is usually carried by corporations operating like properties, including, to the extent reasonably obtainable, insurance against the perils of fire, extended coverage and flooding and use and occupancy insurance. Public liability and property damage insurance shall also be carried unless the Issuer's attorney gives a written opinion to the effect that the Issuer is not liable for claims which would be protected by such insurance. At any time while any contractor engaged in construction work shall be fully responsible therefor, the Issuer shall not be required to carry insurance on the work being constructed if the contractor is required to carry appropriate insurance. All such policies shall be open to the inspection of the Registered Owners and their agents and representatives at all reasonable times. Upon the happening of any loss or damage covered by insurance from one or more of said causes, the Issuer shall make due proof of loss and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly to the Issuer. The proceeds of insurance covering such property, together with any other funds necessary and available for such purpose, shall be used forthwith by the Issuer for repairing the property damaged or replacing the property destroyed; provided, however, that if said insurance proceeds and other funds are insufficient for such purpose, then said insurance proceeds pertaining to the System shall be deposited in a special and separate trust fund, at a Depository, to be designated the Insurance Account. The Insurance Account shall be held until such time as other funds become available which, together with the Insurance Account, will be sufficient to make the repairs or replacements originally required, whichever of said events occurs first; provided that the Issuer may, in its discretion, use funds in the Insurance Account for the redemption or purchase of Senior Lien Obligations.

(2) The foregoing provisions of clause (1) above notwithstanding, the Issuer shall have authority to enter into coinsurance or similar plans where risk of loss is shared in whole or in part by the Issuer.

(3) The annual audit hereinafter required may contain a section commenting on whether or not the Issuer has complied with the requirements of this Section with respect to the maintenance of insurance, and listing all policies carried, and whether or not all insurance premiums upon the insurance policies to which reference is hereinbefore made have been paid.

(i) Governmental Agencies. It will comply with all of the terms and conditions of any and all franchises, permits and authorizations applicable to or necessary with respect to the System, and which have been obtained from any governmental agency; and the Issuer has or will obtain and keep in full force and effect all franchises, permits, authorization and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation and maintenance of the System.

(j) No Competition. That so far as it legally may, it will not grant any franchise or permit for the acquisition, construction or operation of any competing facilities which might be used as a substitute for the System's facilities and, to the extent that it legally may, the Issuer will prohibit any such competing facilities.

(k) Records. It will keep proper books of record and account in which full, true and correct entries will be made of all dealings, activities and transactions relating to the System, the Pledged Revenues, and the funds created pursuant to this Ordinance, and all books, documents and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of a Registered Owner of Senior Lien Obligations; provided, that all books, documents, and vouchers relating to the City's electric system shall be made available for inspection only to the extent required by law, including, without limitation, the provisions of Section 552.133 of the Texas Government Code.

(l) Audits. After the close of each Year while any Senior Lien Obligation is Outstanding, it will cause an audit to be made of the books and accounts relating to the Issuer, including the System and the Pledged Revenues by an Accountant. Such annual audit reports shall be open to the inspection of the Registered Owners of Senior Lien Obligations and their agents and representatives at all reasonable times.

(m) Rate Covenant. It will fix, establish, maintain and collect such rates, charges and fees for the use and availability of the System at all times as are necessary to produce Gross Revenues, together with any other Pledged Revenues, sufficient (1) to pay all current Operating Expenses, and (2) to produce Pledged Revenues for each Year at least equal to 1.00 times the Annual Debt Service Requirements of all then Outstanding Senior Lien Obligations for that Year, and (3) to produce amounts required to pay all other obligations of the System reasonably anticipated to be paid from Pledged Revenues during the current Year.

SECTION 17. ISSUANCE OF ADDITIONAL SENIOR LIEN OBLIGATIONS.

(a) The Issuer shall have the right and power at any time and from time to time and in one or more series or issues, to authorize, issue and deliver Additional Senior Lien Obligations for any purpose authorized by law, including for purposes of extending, improving or repairing the System and for the purpose of refunding of any Senior Lien Obligations, Subordinate Lien Obligations or other obligations of the Issuer incurred in connection with the ownership or operation of the System. Such Additional Senior Lien Obligations, if and when authorized, issued and delivered in accordance with this Ordinance and any ordinance hereafter adopted authorizing the issuance or incurrence of Additional Senior Lien Obligation, shall be secured by and made payable equally and ratably on a parity with all other Senior Lien Obligations at the time Outstanding and unpaid, from a first lien on and pledge of the Pledged Revenues herein granted.

(b) The Interest and Sinking Fund shall secure and be used to pay all Senior Lien Obligations. Each ordinance under which Additional Senior Lien Obligations are issued shall provide and require that, in addition to the amounts required by the provisions of this Ordinance and the provisions of any other ordinance or ordinances authorizing Additional Senior Lien Obligations to be deposited to the credit of the Interest and Sinking Fund, the Issuer shall deposit to the credit of the Interest and Sinking Fund at least such amounts as are required for the payment of all principal of and interest on said Additional Senior Lien Obligations then being issued, as the same come due.

(c) Additional Senior Lien Obligations shall be issued only in accordance with this Ordinance, but notwithstanding any provisions of this Ordinance to the contrary, no installment, series or issue of Additional Senior Lien Obligations shall be issued or delivered unless:

(1) A Designated Financial Officer shall have executed a certificate stating (A) that, to the best of such person's knowledge and belief, the Issuer is not then in default as to any covenant or requirement contained in any ordinance authorizing the issuance of Outstanding Senior Lien Obligations, and (B)(i) payments into all special funds or accounts created and established for the payment and security of all Outstanding Senior Lien Obligations have been made and that the amounts on deposit in such special funds or accounts are the amounts then required to be on deposit

therein or (ii) the application of the proceeds of sale of such obligations then being issued will cure any such deficiency; and

(2) A Designated Financial Officer shall have executed a certificate stating that based on the books and records of the Issuer, during either the preceding Year, or any twelve (12) consecutive months out of the fifteen (15) months immediately preceding the month in which the then proposed Additional Senior Lien Obligations are to be issued, the Net Revenues are equal to the lesser of (A) at least 1.25 times the Average Annual Debt Service Requirements, or (B) at least 1.10 times the Maximum Annual Debt Service Requirements, of, in either case, the Senior Lien Obligations to be Outstanding after the issuance of the then proposed Additional Senior Lien Obligations.

(d) If the proceeds of the Additional Senior Lien Obligations are to be used to construct or acquire a Capital Addition, the certificate required by clause (c)(2) above shall not be required, and the following two certificates shall be required:

(1) A Designated Financial Officer shall have executed a certificate stating that based on the books and records of the Issuer, during either the preceding Year, or any twelve (12) consecutive months out of the fifteen (15) months immediately preceding the month in which the then proposed Additional Senior Lien Obligations are to be issued, the Net Revenues are equal to the lesser of (A) at least 1.25 times the Average Annual Debt Service Requirements, or (B) at least 1.10 times the Maximum Annual Debt Service Requirements, of, in either case, the Senior Lien Obligations to be Outstanding at the time of the issuance of the then proposed Additional Senior Lien Obligations (but excluding the Additional Senior Lien Obligations then being issued); and

(2) An Accountant or a Consulting Engineer shall have executed a certificate to the effect that the projected Net Revenues will be, in the person's or its opinion, for each of the five (5) Years subsequent to the date the Capital Addition becomes commercially operative (as estimated in the engineering report pertaining thereto) equal to the lesser of (A) at least 1.25 times the Average Annual Debt Service Requirements, or (B) at least 1.10 the Maximum Annual Debt Service Requirements, of, in either case, Senior Lien Obligations then Outstanding and all Additional Senior Lien Obligations then estimated to be issued, if any, for all improvements to the System and for all Capital Additions then in progress or then being initiated during the period from the date the first series of obligations for the Capital Addition is to be delivered through the fifth Year subsequent to the date the Capital Addition is estimated to become commercially operative.

(e) Payments to be made under a Credit Agreement may be treated as a payment in respect of a Senior Lien Obligation and secured by Pledged Revenues if the City Council makes a finding in the ordinance authorizing the execution and delivery of a Credit Agreement as a Senior Lien Obligation that, based upon the findings contained in a certificate executed and delivered by a Designated Financial Officer, the Issuer will have sufficient funds to meet the financial obligations of the System, including sufficient Pledged Revenues to satisfy the Annual Debt Service Requirements of the System and the financial obligations of the Issuer relating to the System after giving effect to the treatment of the Credit Agreement as a Senior Lien Obligation. The payment obligations incurred by the Issuer under a Credit Agreement shall not be treated as a Senior Lien Obligation unless the form of such Credit Agreement is approved by ordinance or resolution adopted by the City Council.

(f) In making a determination of Net Revenues for any of the purposes described in this Section, the Designated Financial Officer, Accountant or Consulting Engineer may take into consideration a change in the rates and charges for services and facilities afforded by the System that has been adopted by the Issuer or became effective at least sixty (60) days prior to the issuance date of the Additional Senior Lien Obligations and, for purposes of satisfying the Net Revenues tests described above, make a pro forma determination of the

Net Revenues of the System for the period of time covered by said Designated Financial Officer's, Accountant's or Consulting Engineer's certification or opinion based on such change in rates and charges being in effect for the entire period covered by said Designated Financial Officer's, Accountant's or Consulting Engineer's certificate or opinion.

(g) Senior Lien Obligations may be refunded (pursuant to any law then available) upon such terms and conditions as the Issuer may deem to be in the best interest of the Issuer and its inhabitants, and if less than all such Outstanding Senior Lien Obligations are refunded, the proposed refunding bonds shall be considered as "Additional Senior Lien Obligations" under the provisions of this Section and the certificate required in clause (c)(2) shall give effect to the issuance of the proposed refunding bonds (and shall not give effect to the bonds being refunded following their cancellation or provision being made for their payment).

(h) All calculations of Average Annual Debt Service Requirements and Maximum Annual Debt Service Requirements made pursuant to this Section shall be made as of and from the date of the Additional Senior Lien Obligations then proposed to be issued.

SECTION 18. [RESERVED].

SECTION 19. NO ISSUANCE OF OBLIGATIONS SENIOR TO THE SENIOR LIEN OBLIGATIONS. The Issuer covenants and agrees that it will not issue any obligations payable from and secured, in whole or in part, by a lien on and pledge of the Pledged Revenues, senior in rank and dignity to the lien on and pledge of such Pledged Revenues securing the payment of the Senior Lien Obligations, it being the intent of the Issuer that upon the issuance of the Bonds, the Issuer will finance improvements and extensions of the System and refinance revenue obligations issued for the purpose of improving and extending the System with Senior Lien Obligations, Subordinate Lien Obligations or other obligations not issued on a parity with Senior Lien Obligations.

SECTION 20. ISSUANCE OF SUBORDINATE OBLIGATIONS. The Issuer hereby reserves the right to issue, at any time, obligations including, but not limited to, Subordinate Lien Obligations, payable from and equally and ratably secured, in whole or in part, by a lien on and pledge of the Pledged Revenues, subordinate and inferior in rank and dignity to the lien on and pledge of such Pledged Revenues securing the payment of the Senior Lien Obligations, as may be authorized by the laws of the State of Texas.

SECTION 21. ISSUANCE OF SPECIAL PROJECT BONDS. Nothing in this Ordinance shall be construed to deny the Issuer the right and it shall retain, and hereby reserves unto itself, the right to issue Special Project Bonds secured by liens on and pledges of revenues and proceeds derived from Special Projects.

SECTION 22. DEFEASANCE OF BONDS.

(a) Any Bond and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Bond") within the meaning of this Ordinance, except to the extent provided in subsection (c) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the Issuer with the Paying Agent/Registrar for the payment of its services until all Defeased Bonds shall have

become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the funds created and the revenues herein pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Bonds that is made in conjunction with the payment arrangements specified in subsection (a)(i) or (ii) of this Section shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the Issuer expressly reserves the right to call the Defeased Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Bonds immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Any moneys so deposited with the escrow agent under a Future Escrow Agreement may at the written direction of the Issuer be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Defeased Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Issuer, or deposited as directed in writing by the Issuer. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Bonds may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection (a)(i) or (ii) of this Section. All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Bonds, with respect to which such money has been so deposited, shall be remitted to the Issuer or deposited as directed in writing by the Issuer.

(c) Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the Issuer shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(d) In the event that the Issuer elects to defease less than all of the principal amount of Bonds of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Bonds by such random method as it deems fair and appropriate.

SECTION 23. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED BONDS.

(a) Replacement Bonds. In the event any Outstanding Bond is damaged, mutilated, lost, stolen or destroyed, the Paying Agent/Registrar shall cause to be printed, executed and delivered, a new Bond of the same principal amount, maturity and interest rate, as the damaged, mutilated, lost, stolen or destroyed Bond, in replacement for such Bond in the manner hereinafter provided.

(b) Application for Replacement Bonds. Application for replacement of damaged, mutilated, lost, stolen or destroyed Bonds shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft or destruction of a Bond, the registered owner applying for a replacement Bond shall furnish to the Issuer and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft or destruction of a Bond, the registered owner shall furnish to the Issuer and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft or destruction of such Bond, as the case may be. In every case of damage or mutilation of a Bond, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Bond so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event any such Bond shall have matured, and no default has occurred that is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Bond, the Issuer may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Bond) instead of issuing a replacement Bond, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Bonds. Prior to the issuance of any replacement Bond, the Paying Agent/Registrar shall charge the registered owner of such Bond with all legal, printing, and other expenses in connection therewith. Every replacement Bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is lost, stolen or destroyed shall constitute a contractual obligation of the Issuer whether or not the lost, stolen or destroyed Bond shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Bonds duly issued under this Ordinance.

(e) Authority for Issuing Replacement Bonds. In accordance with Section 1206.022, Texas Government Code, this Section 23 shall constitute authority for the issuance of any such replacement Bond without necessity of further action by the governing body of the Issuer or any other body or person, and the duty of the replacement of such Bonds is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Bonds in the form and manner and with the effect, as provided in Section 4(a) for Bonds issued in conversion and exchange for other Bonds.

SECTION 24. CUSTODY, APPROVAL, AND REGISTRATION OF BONDS; BOND COUNSEL'S OPINION; CUSIP NUMBERS.

(a) The Mayor of the Issuer and each Designated Financial Officer are hereby authorized to have control of the Bonds initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Bonds pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Bonds said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Bonds, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Bond. The approving legal opinion of the Issuer's Bond Counsel and the assigned CUSIP numbers may, at the option of the Issuer, be printed on the Bonds issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the registered owners of the Bonds. In addition, if bond insurance is obtained, the Bonds may bear an appropriate legend as provided by the insurer.

(b) The obligation of the initial purchaser to accept delivery of the Bonds is subject to the initial purchaser being furnished with the final, approving opinion of McCall, Parkhurst & Horton L.L.P., bond counsel to the Issuer, which opinion shall be dated as of and delivered on the date of initial delivery of the Bonds to the initial purchaser.

SECTION 25. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE BONDS.

(a) Covenants. The Issuer covenants to take any action necessary to assure, or refrain from any action that would adversely affect, the treatment of the Tax-Exempt Bonds as obligations described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the Issuer covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Tax-Exempt Bonds (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the

projects financed or refinanced therewith are so used, such amounts, whether or not received by the Issuer, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Tax-Exempt Bonds, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the “private business use” described in subsection (1) hereof exceeds 5 percent of the proceeds of the Tax-Exempt Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a “private business use” that is “related” and not “disproportionate,” within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) to take any action to assure that no amount that is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Tax-Exempt Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action that would otherwise result in the Tax-Exempt Bonds being treated as “private activity bonds” within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Tax-Exempt Bonds being “federally guaranteed” within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Tax-Exempt Bonds, directly or indirectly, to acquire or to replace funds that were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) that produces a materially higher yield over the term of the Tax-Exempt Bonds, other than investment property acquired with:

(A) proceeds of the Tax-Exempt Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 30 days or less until such proceeds are needed for the purpose for which the bonds are issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the rules and regulations of the United States Department of the Treasury (“*Treasury Regulations*”), and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Tax-Exempt Bonds;

(7) to otherwise restrict the use of the proceeds of the Tax-Exempt Bonds or amounts treated as proceeds of the Tax-Exempt Bonds, as may be necessary, so that the Tax-Exempt Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

(8) to refrain from using the proceeds of the Bonds or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Bonds in contravention of the requirements of section 149(d) of the Code (relating to advance refundings); and

(9) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Tax-Exempt Bonds) an amount that is at least equal to 90 percent of the “Excess Earnings,” within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Tax-Exempt Bonds have been paid in full,

100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (a)(9), a “Rebate Fund” is hereby established by the Issuer for the sole benefit of the United States of America, and such Rebate Fund shall not be subject to the claim of any other person, including without limitation the Bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Use of Proceeds. For purposes of the foregoing covenants (a)(1) and (a)(2), the Issuer understands that the term “proceeds” includes “disposition proceeds” as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Tax-Exempt Bonds. It is the understanding of the Issuer that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the United States Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated that modify or expand provisions of the Code, as applicable to the Tax-Exempt Bonds, the Issuer will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Tax-Exempt Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements applicable to the Tax-Exempt Bonds, the Issuer agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Tax-Exempt Bonds under section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the Mayor or Pricing Officer to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, that may be permitted by the Code as are consistent with the purpose for the issuance of the Tax-Exempt Bonds.

(d) Disposition of Project. The Issuer covenants that the property constituting the projects refinanced with the Bonds will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer of cash or other compensation, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Tax-Exempt Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the Issuer shall not be obligated to comply with this covenant if it obtains a legal opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

SECTION 26. COVENANTS REGARDING TAXABLE BONDS.

(a) To the extent required by the Code, and the rules and regulations of the United States Department of the Treasury, it shall be the duty of the Paying Agent/Registrar to report to the owners of the Taxable Bonds and the Internal Revenue Service (i) the amount of “reportable payments,” if any, subject to back up withholding during each year and the amount of tax withheld, if any, with respect to the payments on the Taxable Bonds and (ii) the amount of interest or amount treated as interest, such as original issue discount, on the Taxable Bonds required to be included in the gross income of the owners thereof for federal income tax purposes.

(b) It is the intention of the Issuer that the Taxable Bonds not be obligations described in section 103 of the Code interest on which is excludable from the gross income of the holders and in that regard the Issuer agrees not to file a form 8038 G, or any comparable information return relating to tax-exempt obligations, with the Internal Revenue Service.

SECTION 27. SALE OF BONDS; OFFICIAL STATEMENT; BOND INSURANCE; FURTHER PROCEDURES.

(a) Sale of Bonds. Each Series of Bonds shall be sold and delivered subject to the provisions of Section 2 and Section 3 through a negotiated sale, competitive sale or private placement and pursuant to the terms and provisions of a purchase contract or a notice of sale and official bid form (in each case, a “*Purchase Agreement*”), the terms and provisions of which are to be determined by the Pricing Officer in accordance with Section 3, and in which the purchaser or purchasers of the Bonds (the “*Purchaser*”) shall be designated. The Pricing Officer is hereby authorized to execute and deliver one or more Purchase Agreements for and on behalf of the Issuer. The Bonds shall initially be registered in the name of the Purchaser or its designee.

(b) Official Statement. The Pricing Officer is hereby authorized, in the name and on behalf of the Issuer, to approve, distribute, and deliver one or more preliminary official statements or other preliminary offering document relating to the Bonds and any addenda, supplement or amendment thereto, and approves the distribution of such preliminary official statement or other preliminary offering document in the offering of the Bonds by the Purchaser in final form, with such changes therein or additions thereto as the Pricing Officer may deem advisable. The Pricing Officer is hereby authorized, in the name and on behalf of the Issuer, to approve, distribute, and deliver one or more final official statement or other a final offering document relating to the Bonds to be used by the Purchaser in the marketing of the Bonds.

(c) Bond Insurance. The Pricing Officer is authorized, in connection with effecting the sale of the Bonds, to obtain from a municipal bond insurance company so designated in the Pricing Certificate (the “*Insurer*”) a municipal bond insurance policy (the “*Insurance Policy*”) in support of the Bonds. To that end, should the Pricing Officer exercise such authority and commit the Issuer to obtain a municipal bond insurance policy, for so long as the Insurance Policy is in effect, the requirements of the Insurer relating to the issuance of the Insurance Policy as set forth in the Pricing Certificate are incorporated by reference into this Ordinance and made a part hereof for all purposes, notwithstanding any other provision of this Ordinance to the contrary. The Pricing Officer shall have the authority to execute any documents to effect the issuance of the Insurance Policy by the Insurer, including commitment agreements, membership agreements in mutual insurance companies and other similar agreements.

(d) Further Procedures. The Mayor and Mayor Pro Tem, the City Manager, Pricing Officer and City Secretary and all other officers, employees and agents of the Issuer, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer a Paying Agent/Registrar Agreement with the Paying Agent/Registrar and all other instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Pricing Certificate, the Bonds, the sale of the Bonds, any Purchase Agreement and any official statement or other offering document. In case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 28. DEFAULT AND REMEDIES.

(a) Events of Default. Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

(i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the Issuer, the failure to perform which materially, adversely affects the rights of the registered owners of the Bonds, including, but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Registered Owner to the Issuer.

(b) Remedies for Default.

(i) Upon the happening of any Event of Default, then and in every case, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the Issuer for the purpose of protecting and enforcing the rights of the Registered Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Registered Owners hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Registered Owners of Bonds then Outstanding.

(c) Remedies Not Exclusive.

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(iii) By accepting the delivery of a Bond authorized under this Ordinance, such Registered Owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or council members of the Issuer.

(iv) None of the members of the City Council, nor any other official or officer, agent, or employee of the Issuer, shall be charged personally by the registered owners with any liability, or be held personally liable to the registered owners under any term or provision of this Ordinance, or because of any Event of Default or alleged Event of Default under this Ordinance.

SECTION 29. COMPLIANCE WITH RULE 15c2-12.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“*Financial Obligation*” means a (i) debt obligation, (ii) derivative instrument entered into in connection with or pledged as security or a source of payment for, an existing or planned debt obligation, or (iii) a guarantee of (i) or (ii); provided however, that a “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

(b) Annual Reports.

(i) The Issuer shall provide annually to the MSRB, in the electronic format prescribed by the MSRB, financial information and operating data (the “*Annual Operating Report*”) with respect to the Issuer of the general type included in the final official statement or other offering document authorized by this Ordinance, being the information described in the Pricing Certificate. The Issuer will additionally provide financial statements of the Issuer (the “*Financial Statements*”), that will be (i) prepared in accordance with the accounting principles described in the Pricing Certificate or such other accounting principles as the Issuer may be required to employ from time to time pursuant to State law or regulation and shall be in substantially the form included in the final official statement or other offering document and (ii) audited, if the Issuer commissions an audit of such Financial Statements and the audit is completed within the period during which they must be provided. The Issuer will update and provide the Annual Operating Report within six months after the end of each Year and the Financial Statements within 12 months of the end of each Year, in each case beginning with the Year ending in and after 2020. The Issuer may provide the Financial Statements earlier, including at the time it provides its Annual Operating Report, but if the audit of such Financial Statements is not complete within 12 months after any such Year end, then the Issuer shall file unaudited Financial Statements within such 12-month period and audited Financial Statements for the applicable Year, when and if the audit report on such Financial Statements becomes available.

(ii) If the Issuer changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Issuer otherwise would be required to provide financial information and operating data pursuant to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB's internet website or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(c) Event Notices.

(i) The Issuer shall notify the MSRB in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten business days after the occurrence of the event) of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:

1. Non-payment related defaults;
2. Modifications to rights of Registered Owners;
3. Bond calls;
4. Release, substitution, or sale of property securing repayment of the Bonds;
5. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to

undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;

6. Appointment of a successor or additional trustee or the change of name of a trustee; and

7. Incurrence of a Financial Obligation of the Issuer or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect security holders.

(ii) The Issuer shall notify the MSRB in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten business days after the occurrence of the event) of any of the following events with respect to the Bonds, without regard to whether such event is considered material within the meaning of the federal securities laws:

1. Principal and interest payment delinquencies;

2. Unscheduled draws on debt service reserves reflecting financial difficulties;

3. Unscheduled draws on credit enhancements reflecting financial difficulties;

4. Substitution of credit or liquidity providers, or their failure to perform;

5. Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the Bonds, or other material events affecting the tax-exempt status of the Bonds;

6. Tender offers;

7. Defeasances;

8. Rating changes;

9. Bankruptcy, insolvency, receivership or similar event of an obligated person; and

10. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

(iii) The Issuer shall notify the MSRB, in a timely manner, of any failure by the Issuer to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such subsection.

(d) Limitations, Disclaimers, and Amendments.

(i) The Issuer shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the Issuer remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the Issuer in any event will give notice of any deposit made in accordance with this Ordinance or applicable law that causes Bonds no longer to be Outstanding.

(ii) The provisions of this Section are for the sole benefit of the registered owners and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Issuer undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Issuer's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Issuer does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

(iii) UNDER NO CIRCUMSTANCES SHALL THE ISSUER BE LIABLE TO THE REGISTERED OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(iv) No default by the Issuer in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance. Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the Issuer under federal and state securities laws.

(v) Should the Rule be amended to obligate the Issuer to make filings with or provide notices to entities other than the MSRB, the Issuer hereby agrees to undertake such obligation with respect to the Bonds in accordance with the Rule as amended. The provisions of this Section may be amended by the Issuer from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Issuer, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the registered owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the Issuer (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the registered owners and beneficial owners of the Bonds. The Issuer may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds. If the Issuer so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided.

(e) Amendment of the Rule. The provisions of this Section shall be revised by the Pricing Officer to reflect the requirements of the Rule if the Rule is amended after the adoption of this Ordinance but prior to the delivery of the Bonds so as to permit an underwriter to purchase or sell Bonds in the primary offering of the

Bonds in compliance with the Rule. The provisions of this Section may also be revised by the Pricing Officer prior to the delivery of the Bonds if the Pricing Officer determines such revisions are necessary or desirable. Any such revisions shall be set forth in the Pricing Certificate and are incorporated by reference into this Ordinance and made a part hereof for all purposes, notwithstanding any other provision of this Ordinance to the contrary.

SECTION 30. METHOD OF AMENDMENT.

(a) The Registered Owners of Senior Lien Obligations of a majority of the aggregate principal amount of then Outstanding Senior Lien Obligations thereby affected (for purposes of this sentence only, 100% of the aggregate principal amount of Senior Lien Obligations which are insured by a bond insurance provider at the time that the Issuer seeks approval of an amendment shall be deemed to be owned by such bond insurance provider) shall have the right from time to time to approve any amendment to this Ordinance which may be deemed necessary or desirable by the Issuer; provided, however, that without the consent of the Registered Owners of all of the Senior Lien Obligations at the time Outstanding thereby affected, nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions in this Ordinance or in the Senior Lien Obligations so as to:

- (1) Make any change in the maturity of any of the Outstanding Senior Lien Obligations;
- (2) Reduce the rate of interest borne by any of the Outstanding Senior Lien Obligations;
- (3) Reduce the amount of the principal payable on the Outstanding Senior Lien Obligations;
- (4) Modify the terms of payment of principal of or interest on the Outstanding Senior Lien Obligations or impose any conditions with respect to such payment;
- (5) Affect the rights of the Registered Owners of less than all of the Senior Lien Obligations then Outstanding;
- (6) Change the minimum percentage of the principal amount of Senior Lien Obligations necessary for consent to such amendment; or
- (7) Amend this subsection (a) of this Section.

(b) If at any time the Issuer shall desire to amend the Ordinance under this Section, the Issuer shall cause notice of the proposed amendment to be published in a financial newspaper or journal published in the City of New York, New York, once during each calendar week for at least two (2) successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Paying Agent/Registrar for inspection by all Registered Owners of Senior Lien Obligations. Such publication is not required, however, if notice in writing is given to each Registered Owner of Senior Lien Obligations.

(c) Whenever at any time the Issuer shall receive an instrument or instruments executed by the Registered Owners of at least a majority in the aggregate principal amount of all Senior Lien Obligations then Outstanding thereby affected, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file with the Paying Agent/Registrar, the City Council may pass the amendatory ordinance in substantially the same form.

(d) Upon the passage of any amendatory ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be amended in accordance with such amendatory ordinance, and the respective rights, duties and obligations under this Ordinance of the Issuer and all the Registered Owners of then Outstanding Senior Lien Obligations and all future Senior Lien Obligations shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such amendments.

(e) Any consent given by the Registered Owner of a Senior Lien Obligation pursuant to the provisions of this Section shall be irrevocable for a period of twelve (12) months from the date of the first publication of the notice or other service of written notice provided for in this Section, and shall be conclusive and binding upon all future Registered Owners of the same Senior Lien Obligation during such period. Such consent may be revoked at any time after twelve (12) months from the date of the first publication of such notice or other service of written notice by the Registered Owner who gave such consent, or by a successor in title, by filing notice thereof with the Paying Agent/Registrar and the Issuer, but such revocation shall not be effective if the Registered Owners of a majority in aggregate principal amount of the then Outstanding Senior Lien Obligations as in this Section defined have, prior to the attempted revocation, consented to and approve the amendment.

(f) The fact of the owning of Senior Lien Obligations issued in registered form without coupons and the amounts and numbers of such Senior Lien Obligations and the date of their holding same shall be proved by the Registration Books of the Paying Agent/Registrar. The Issuer may conclusively assume that such ownership continues until such ownership is changed on the Registration Books. For purposes of this Section, the notional amount attributable to a Credit Agreement that is treated as a Senior Lien Obligation shall be deemed to be the principal amount of such Senior Lien Obligation.

(g) The foregoing provisions of this Section notwithstanding, the Issuer by action of the City Council may amend this Ordinance without the consent or approval of any Registered Owners of Senior Lien Obligations for any one or more of the following purposes:

(1) To add to the covenants and agreements of the Issuer in this Ordinance contained, other covenants and agreements thereafter to be observed, grant additional rights or remedies to Registered Owners or to surrender, restrict or limit any right or power herein reserved to or conferred upon the Issuer;

(2) To make such provisions for the purpose of curing any ambiguity, or curing, correcting or supplementing any defective provision contained in this Ordinance, or in regard to clarifying matters or questions arising under this Ordinance, including, without limitation, those matters described in Section 29(d)(v), or those matters necessary to obtain a rating on the Bonds or to obtain the approving opinion of the Attorney General of Texas as required by law, as are necessary or desirable and not contrary to or inconsistent with this Ordinance and which shall not adversely affect the interests of the Registered Owners of the Senior Lien Obligations;

(3) To make such changes, modifications and amendments as may be necessary or desirable, which shall not adversely affect the interests of the Registered Owners of Outstanding Senior Lien Obligations, in order to obtain or maintain a Credit Agreement or a Credit Facility;

(4) To modify any of the provisions of this Ordinance in any other respect whatever, provided that (i) such modification shall be, and be expressed to be, effective only after all Senior Lien Obligations Outstanding at the date of the adoption of such modification shall cease to be Outstanding, and (ii) such modification shall be specifically referred to in the text of all Senior Lien Obligations issued after the date of the adoption of such modification.

SECTION 31. APPROVAL OF ESCROW AGREEMENT AND TRANSFER OF FUNDS. In furtherance of authority granted by Section 1207.007(b), Texas Government Code, the Mayor or a Pricing Officer are further authorized to enter into and execute on behalf of the Issuer with the escrow agent named therein, an escrow agreement, deposit agreement or other similar agreement, in the form and substance as shall be approved by the Pricing Officer, which agreement will provide for the payment in full of the Refunded Notes. In addition, the Mayor, Pricing Officer or other officer of the Issuer is authorized to purchase such securities, to execute such subscriptions for the purchase of the Escrowed Securities, (as defined in the agreement), if any, and to authorize such contributions to the escrow fund as provided in the agreement.

SECTION 32. REDEMPTION OF REFUNDED NOTES.

(a) The Refunded Notes shall be paid upon the earlier of their stated maturity dates or the earliest redemption dates for which notice of redemption can be given pursuant to the ECP Ordinance, in each case at a price of par plus accrued interest to the date of payment. As soon as practicable after sale of a Series of Bonds, appropriate notices of redemption shall be delivered to the paying agent/registrars for the Refunded Notes to notify, in accordance with the requirements of the ECP Ordinance, the owners of the Refunded Notes of the call for redemption thereof.

(b) In addition, the paying agent/registrars for the Refunded Notes is hereby directed to provide the appropriate notices of redemption and defeasance as specified by the ECP Ordinance and is hereby directed to make appropriate arrangements so that the Refunded Notes may be redeemed on their respective redemption dates. The Refunded Notes shall be presented for redemption at the paying agent/registrars therefore, and shall not bear interest after the date fixed for redemption.

(c) Concurrently with the delivery of a Series of Bonds, the Issuer shall cause to be deposited an amount from the proceeds from the sale of the Bonds, together with, to the extent necessary, available funds of the Issuer, with the paying agent/registrars for the Refunded Notes or placed in escrow with the escrow agent, pursuant to an escrow agreement approved in Section 31 of this Ordinance, sufficient to provide for the payment at maturity or the refunding and redemption, on the date or dates fixed for redemption, of all of the Refunded Notes, in accordance with Subchapter C of Chapter 1207.

SECTION 33. SEVERABILITY. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any persons or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Ordinance, despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 34. NO PERSONAL LIABILITY. No recourse shall be had for payment of the principal of or interest on any Bonds or for any claim based thereon, or on this Ordinance, against any official or employee of the Issuer or any person executing any Bond.

SECTION 35. RULES OF CONSTRUCTION. That for all purposes of this Ordinance, unless the context requires otherwise, all references to designated Sections and other subdivisions are to the Sections and other subdivisions of this Ordinance. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Ordinance as a whole and not to any particular Section or other subdivision. Except where the context otherwise requires, terms defined in this Ordinance to impart the singular number shall be considered to include the plural number and vice versa. References to any named person means that party and its successors and assigns. References to any constitutional, statutory or regulatory provision means such provision as it exists on the date this Ordinance is adopted by the Issuer and any future amendments thereto or successor provisions thereof. Any reference to the payment of principal in this Ordinance shall be deemed to include the payment of Amortization Installments (if any). Any reference to “FORM OF BOND” shall refer to the form of the Bonds set forth in Section 5, as modified in a Pricing Certificate. The calculation

of Average Annual Debt Service Requirements as may be required by this Ordinance shall be made at the beginning of each Year and shall be the sum of the Annual Debt Service Requirements due for the current and each subsequent Year in which the Senior Lien Obligations are outstanding divided by the number of such Years, or partial Years, if applicable. The words “owner” and “holder” and “bondholder”, as used in this Ordinance, shall mean the registered or beneficial owner of a Bond.

SECTION 36. OPEN MEETING. It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public, and that public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

SECTION 37. IMMEDIATE EFFECTIVE DATE. This Ordinance shall take effect and be in force immediately upon and after its adoption by the City Council in accordance with the provisions of Section 1201.028, Texas Government Code, and it is accordingly so resolved.

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

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

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PASSED, APPROVED AND EFFECTIVE this December 3, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Susan Keller Digitally signed by Susan Keller
Date: 2024.11.08 11:13:06
-06'00'



City of Denton

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

Legislation Text

File #: PUB24-231, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Burns & McDonnell Engineering Company, Inc., to provide project support services and Maximo support specialists for Denton Municipal Electric as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-015 - Professional Services Agreement for support services awarded to Burns & McDonnell Engineering Company, Inc., in the not-to-exceed amount of \$434,596.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Burns & McDonnell Engineering Company, Inc., to provide project support services and Maximo support specialists for Denton Municipal Electric as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-015 – Professional Services Agreement for support services awarded to Burns & McDonnell Engineering Company, Inc., in the not-to-exceed amount of \$434,596.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

Denton Municipal Electric (DME) began implementing IBM Maximo last year to optimize workflow management strategies and improve operational efficiency. Maximo enables DME to make informed, data-driven decisions through the use of a unified system, effectively streamlining resource allocation, optimizing maintenance scheduling and costs, and reducing downtime. Additionally, the utilization of this workflow management system is scalable and customizable. However, due to this system's complexity and configurational needs, a Senior Solution Architect is necessary to assist in providing technical oversight and project support services to ensure Maximo is tailored to our specific operational needs. As such, it is essential to leverage Burns & McDonnell Engineering Company, Inc., (B&M) for their current knowledge and technical expertise to help manage DME's new IBM Maximo workflow management system and ensure that it is completed efficiently, effectively, and following all applicable requirements.

The Maximo Solution Architect (SA) will work closely with, and at the direction of DME's Technology Operations Group to organize the development effort and deliver technical solutions that satisfy the project's business objectives. The SA will:

- Assist with critical and prioritization of backlog.
- Develop solutions for assigned defects and enhancements.
- Thoroughly test fixes & enhancements in lower environments prior to migrating to production.
- Update technical documents to reflect fixes.
- Review project technical requirements to verify that they can be implemented as they relate to the project.

- Communicate issues related to architecture, design, and technical implementation to the Lead Architect and the Project Manager.
- Review detailed technical and deployment specifications provided by the Client and/or System Implementation partner.
- Provide technical guidance to team members.
- Coordinate with other project and technical leads to verify that cross-project technical and solution dependencies and impacts are identified and managed appropriately.
- Implement QA best practices and standards, ensuring the quality and integrity of the Maximo system through rigorous testing and validation procedures.

DME has selected B&M under the Pre-Qualified Engineering Firms RFQ 7804-015 to work as a Maximo Specialist, providing Senior Solution Architecture (SA) services. After evaluating proposals from several pre-qualified firms, B&M was selected due to their expertise in the specific version of IBM Maximo that DME operates. B&M demonstrated a deep understanding of our current system’s configuration needs and presented a tailored approach to meet DME’s goals. Additionally, their proven track record with similar projects and comprehensive support model positions them as the best fit to help DME successfully continue the Maximo project.

Request for Qualifications for professional engineering services for Denton Municipal Electric was solicited using the City’s formal solicitation process. City Council approved a pre-qualified list of engineering firms on December 14, 2021.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On December 14, 2021, City Council approved RFQ 7804 for a prequalified list of professional engineering services for Denton Municipal Electric (Ordinance 21-2687).

RECOMMENDATION

Award a contract to Burns & McDonnell Engineering Company, Inc., to provide project support services and Maximo support specialists for Denton Municipal Electric, in the not-to-exceed amount of \$434,596.

PRINCIPAL PLACE OF BUSINESS

Burns & McDonnell Engineering Company, Inc.
Fort Worth, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with a completion date by October 31, 2025.

FISCAL INFORMATION

These services will be funded from DME Work Management System account 605267500. Requisition # 167095 has been entered into the Purchasing software system in the amount of \$434,596. The budgeted amount for this item is \$434,596.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance and Contract

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

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

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH BURNS & MCDONNELL ENGINEERING COMPANY, INC., TO PROVIDE PROJECT SUPPORT SERVICES AND MAXIMO SUPPORT SPECIALISTS FOR DENTON MUNICIPAL ELECTRIC AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7804-015 – PROFESSIONAL SERVICES AGREEMENT FOR SUPPORT SERVICES AWARDED TO BURNS & MCDONNELL ENGINEERING COMPANY, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$434,596.00).

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

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Burns & McDonnell Engineering Company, Inc., to provide professional engineering services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

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

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

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

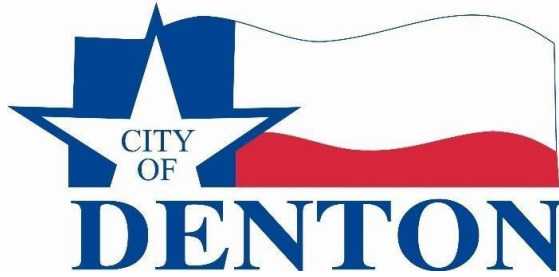
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



DocuSign City Council Transmittal Coversheet

PSA	7804-015
File Name	Maximo Support Specialist
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS
7804-015 OWNERS ENGINEER FOR PROJECT SUPPORT SERVICES - MAXIMO
SUPPORT SPECIALIST
STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL
SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and **BURNS & MCDONNELL ENGINEERING COMPANY, INC.**, with its corporate office at 100 Energy Way, Suite 1700, Fort Worth TX 76102 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: 7804-015 Project Support Services - Maximo Support Specialist (the "PROJECT").

SECTION 1
Scope of Services

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.

- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

SECTION 2
Compensation and Term of Agreement

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed **\$434,596.00** in the manner and in accordance with the fee schedule as set forth in Attachment A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.

- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

SECTION 3
Terms of Payment

Payments to the ENGINEER will be made as follows:

A. Invoice and Payment

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

**SECTION 4
Obligations of the Engineer**

A. General

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

B. Standard of Care

The ENGINEER shall perform its services:

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

care of a competent engineer.

C. Subsurface Investigations

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

D. Preparation of Engineering Drawings

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

E. Engineer's Personnel at Construction Site

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

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

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

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

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

G. Construction Progress Payments

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

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

H. Record Drawings

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

I. Right to Audit

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

J. INSURANCE

(1) ENGINEER'S INSURANCE

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

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

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

(2) GENERAL INSURANCE REQUIREMENTS

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

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

K. Independent Consultant

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

L. Disclosure

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

M. Asbestos or Hazardous Substances

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

N. Permitting Authorities - Design Changes

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

O. Schedule

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

P. Equal Opportunity

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

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

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

SECTION 5 **Obligations of the City**

A. City-Furnished Data

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

B. Access to Facilities and Property

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

C. Advertisements, Permits, and Access

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

D. Timely Review

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

E. Prompt Notice

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

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

F. Asbestos or Hazardous Substances Release.

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

G. Contractor Indemnification and Claims

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

H. Contractor Claims and Third-Party Beneficiaries

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

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

I. CITY's Insurance

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

J. Litigation Assistance

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

K. Changes

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

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

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

B. Reuse of Project Documents

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

C. Force Majeure

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

D. Termination

(1) This AGREEMENT may be terminated:

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

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

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

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

E. Suspension, Delay, or Interruption to Work

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

F. Indemnification

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

G. Assignment

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

H. Jurisdiction

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

I. Severability and Survival

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

J. Observe and Comply

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

K. Immigration Nationality Act

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

L. Prohibition On Contracts With Companies Boycotting Israel

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

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

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

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Engineer acknowledges that in accordance with Chapter 2274 of the Texas

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

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

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

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

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

Q. Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908

of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Engineer submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

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

The contractor shall:

1. Log onto the State Ethics Commission Website at :
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: **Contract 7804-015** – Form 1295)

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

O. Prohibition Against Personal Interest In Contracts

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Engineer shall complete and submit the City's Conflict of Interest Questionnaire.

P. Agreement Documents

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

this AGREEMENT:

Attachment A – Statement of Work

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

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

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

Burns & McDonnell Engineering Company Inc.

DocuSigned by:
BY: Robb Montgomery
1D30F8C99BF94A8
AUTHORIZED SIGNATURE

Printed Name: Robb Montgomery

Title: Director

913-484-3535
PHONE NUMBER

robb.montgomery@1898andco.com
EMAIL ADDRESS

2024- 1149980
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
BY: Marcella Lunn
4B070831B4AA438...

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

Signed by:
Antonio Puente Antonio Puente
E3760944C2BF4B5... PRINTED NAME
SIGNATURE

DME General Manager
TITLE

Electric
DEPARTMENT



ENTERPRISE WORK AND ASSET MANAGEMENT TECHNICAL SUPPORT SERVICES

FOR DENTON MUNICIPAL ELECTRIC

STATEMENT OF WORK

October 10, 2024

CONTENTS

- 1.0 Overview and Scope Activities1-1**
 - 1.1 Background 1-1
 - 1.2 Services Term 1-1
 - 1.3 Service to be Provided 1-1
 - 1.3.1 Role Details 1-1
- 2.0 Assumptions2-2**
- 3.0 Team Structure3-4**
- 4.0 Maintenance and Support4-1**
- 5.0 Escalation Process5-2**
- 6.0 Change Management.....6-3**
- 7.0 Budget and Payment Terms.....7-1**
- 8.0 Contact Information8-2**
- 9.0 Terms Error! Bookmark not defined.**
- 10.0 Authorization9-1**

FIGURES

- Figure 1. Project Team Structure 3-4

1.0 Overview and Scope Activities

1.1 Background

This project involves supporting the Client's ongoing implementation of MAS Manage. The Supplier resources will work on behalf of the Client to provide technical support, including defect remediation, configuration, testing, and migrations to help the Supplier and their system implementation partner achieve the project objectives.

1.2 Services Term

Work is estimated to begin on or before 11/01/2024. Up to 1500 hours will be allocated for assistance, with a project completion date of 12/31/2025. Exact start and end dates shall be determined by Client and Supplier.

1.3 Service to be Provided

Client has requested Supplier to provide a Maximo Solution Architect to work with, and under the direction of, the Client to relieve Client of the day-to-day responsibilities of supporting the Project team. The Supplier will support project implementation and technical activities as directed by Client. Where available, Supplier will utilize the Client Methodologies and conform to Client's architectural and testing standards, and policies.

Supplier personnel will support Maximo and integrated technologies upon reasonable agreement between the parties.

Supplier will perform the Work described below and such tasks directed by Client to support the Project.

1.3.1 Role Details

Maximo Solution Architect(s) (SA)

Work closely with, and at the direction of Client's Technology Operations Group to organize the development effort and deliver technical solutions that satisfy the Project's business objectives. The SA will:

- Follow the Client solution architecture methodology
- Assist with critical and prioritization of backlog
- Develop solutions for assigned defects and enhancements
- Thoroughly test fixes & Enhancements in lower environments prior to migrating to production
- Support the migration of the solution (application and infrastructure) to the production environment
- Update Technical documents to reflect fixes
- Review Project technical requirements to verify that they can be implemented as they relate to the Project
- Communicate issues related to architecture, design and technical implementation to the Lead Architect and the Project Manager
- Review detailed technical and deployment specifications provided by Client and/or System Implementation partner
- Work closely with the Client IT infrastructure, networking, communication and IT security teams to deploy, provision, and configure hardware, software, and application components in accordance with Client IT standards and policies

- Work with the vendor, testing, business, and IT teams to confirm that non-functional requirements are met, and non-functional testing is successful
- Provide technical guidance to team members
- Develop and maintain the technical design and migration documents as per the changes.
- Coordinate with other Project and technical leads to verify that cross-project technical and solution dependencies and impacts are identified and managed appropriately
- Perform and support other Project related tasks as required by the Project
- Manage a robust defect tracking process, ensuring timely identification, logging, prioritization, and resolution of defects
- Implement QA best practices and standards, ensuring the quality and integrity of the Maximo system through rigorous testing and validation procedures
- Provide support for various testing activities to promote consistency across different test phases
- Oversee creation, management, and maintenance of test data sets required for various test scenarios, ensuring the data's relevance and accuracy
- We will provide a weekly status report

2.0 Assumptions

In addition to any other responsibilities, roles, or duties described in the Agreement and this SOW, set forth below is a list of the obligations for which Client is responsible, conditions on Supplier's performance, and assumptions upon which Supplier has relied in agreeing to perform the Work described in this SOW on the terms set out herein. If any of the assumptions set out below are proven to be incorrect or if the Client does not fulfill its obligations and any such incorrect assumptions or Client non-performance materially impacts the Project, then any resultant changes to the Project schedule, fees and expenses, Deliverables, level of effort required, or otherwise adverse impact to Supplier's performance of the Work described in this SOW, either party may initiate a change request.

- The Client shall set the direction for the Project, make choices on direction, options and priorities, and take ownership for the outcomes.
- The Supplier is not responsible for production of deliverables under this SOW.
- The overall project duration of the Maximo Solution Architect role is 14 months, assuming a start of August 2024 and substantially completed by October 2025.
- Roles will be a minimum of 16 hours per week for the duration of the project that the role is engaged.
- If duration of role requires changes due to schedule, requirements, or complexity of project execution, a mutually agreed change may be issued.
- The information provided by the Client regarding the SOW is accurate and complete. If, after the SOW is signed, it is determined that the information provided by the Client is inaccurate or incomplete in any material manner, the Parties will negotiate an adjustment in the project schedule and the fees and expenses, as applicable, in a Change Order.
- Anything not identified in this SOW specifically in scope is excluded from the scope.
- Any additional scope outside of this SOW will require a mutually agreed-upon Change Order.
- Each party will maintain open communication with the other party at all levels and will proactively resolve issues by escalating unresolved issues to appropriate levels of the Client and Supplier management.

- Supplier reserves the right to decline to perform any task/service that (a) is beyond the reasonably anticipated scope of this SOW; (b) presents a conflict or appearance of a conflict; and/or (c) Supplier is not sufficiently qualified and available to perform.
- The Client recognizes that expeditious responses are required to establish project team network access, user IDs, and security permissions and will therefore make its best effort to secure such access for Supplier onboarding prior to the scheduled project start date.
- The Client will be responsible for coordinating and securing the commitment to schedule relevant personnel in all key meetings, as mutually agreed upon in the project schedule.
- The Client recognizes that unplanned working session deferrals or working session duplication due to lack of attendance will constitute a break in the schedule and, therefore, may require a Change Order.
- The Client will commit resources and management involvement as described in this SOW as required by the work effort to promptly support the delivery of the Work and perform the agreed-upon acceptance procedures. Supplier shall not incur any penalties due to delays caused by the Client; and any such delays may require a Change Order to adjust scope, schedule, or fees.
- The Client is responsible for the contractual relationship with its third-party vendor(s). Supplier will not be responsible for the performance of other contractors or vendors engaged by the Client.
- The Client will be responsible for its operation and use of deliverables provided by Supplier and the Client will validate that the deliverables meet the Client's requirements through the signoff and deliverable acceptance procedures outlined in this SOW.
- Unless otherwise stated in the SOW, remote work will be provided via telephone, email, and/or webcast and only during normal business hours, Monday - Friday, 7:00 a.m. to 6:00 p.m. Eastern time, excluding Client or Supplier holidays.
- On-site work will take place at Client's facilities in Denton, TX, unless otherwise stated in this SOW.
- Client will provide Supplier with a minimum of two weeks' advanced notice before on-site travel is scheduled.
- Client shall be responsible for obtaining, at no cost to Supplier, consents for Supplier's use of any third-party products, including, but not limited to software (including purchase of any licenses), necessary for Supplier to perform its obligations under this SOW.
 - For example, if Client requires Supplier to manage all work via VPN to their environment using a virtual machine. Client would be responsible for setup of the virtual machine, the VPN, and any software needed on the VPN that would be relevant to a Client standard image.
- Client will provide Supplier access to detailed design documentation such as architecture designs, schema design, source code, and coding standards, if any exist, as needed to fulfill the Work.
- Client will provide timely access to stakeholders and decision-makers, and decisions will be made promptly and without delay.
- Identified Client executive sponsors shall be responsible for resolving all escalated decisions regarding scope, duration, resources, and finances.
- Client acknowledges and agrees that Supplier is not providing any tax, legal, accounting or regulatory services or advice while providing the Work.
- Client shall provide appropriate access and log-in privileges to all applicable System environments including production and any ticketing tool for the purposes of delivering the Work. All required application support software, support licenses, and tools will be provided by the Client. Any product support will be provided by the relevant product vendor(s), and Client will purchase the necessary product support from these vendors. For the newly onboarded resources, all access will be provided within five (5) working days.

- Client shall be responsible for its operation and for determining whether to use or refrain from using any recommendation that may be made by Supplier. Client will be solely responsible for determining whether any Work provided by Supplier (i) meets Client requirements; (ii) complies with all laws and regulations applicable to Client, and (iii) complies with Client’s applicable internal guidelines and any other agreements it has with third parties.

3.0 Team Structure

The project team structure is illustrated below:

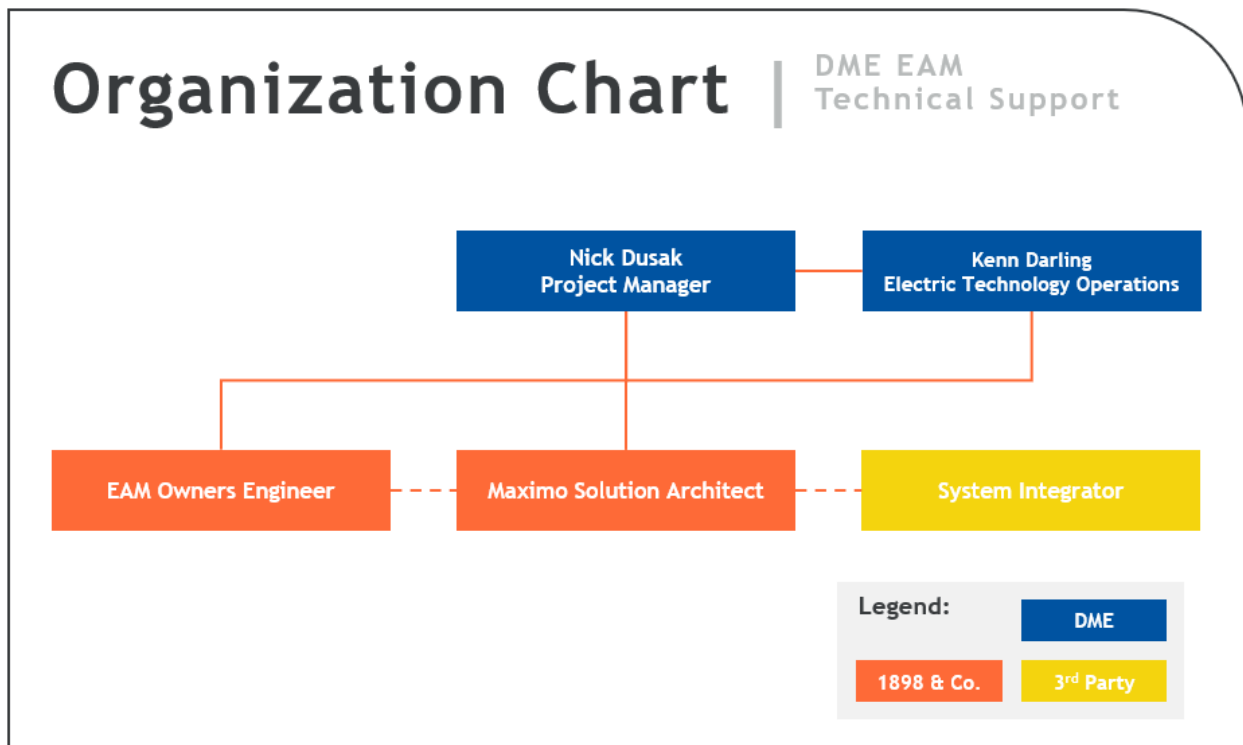


Figure 1. Project Team Structure

4.0 Maintenance and Support

The system components will be managed by the project team, which includes DME. During this period, defects will be logged and prioritized by the team. The team may elect to not address defects to focus on delivering demonstratable project value. The team will provide their best-effort to ensure the uptime and availability of the system during business hours.

As DME is committed to providing safe and reliable energy, 1898 & Co. is committed to maintaining and supporting Maximo with high availability up time and quality control. 1898 & Co. has established a support methodology that will allow seamless support while maintaining business continuity. 1898 & Co. is committed to providing Application Management, Integration, Configuration, and Business Process Support to DME for the Maximo solution.

Incident / Problem Management

All incidents / defects will be entered by the client into the client incident management system (or other incident management system mutually agreed upon by DME and 1898 & Co. 1898 & Co. will leverage DME's incident management system for the duration of the program. 1898 & Co. will review incidents, debrief on root cause and review provided solutions on a weekly basis with DME. The following checklist outlines the information to be recorded in the incident management system when reporting a problem.

- Date and time of the error/problem
- Severity of the problem
- Name and contact information for the originator of the trouble report
- Description of the problem including any error messages received
- Task(s) user could not complete (e.g. log in)
- Number of users affected
- If the problem is related to another reported problem, describe that problem and provide ticket information

Once assigned, 1898 & Co. will confirm and update the incident ticket with an incident severity level based upon the mutually agreed upon assessment criteria, assign the appropriate severity level to the incident, troubleshoot the incident, and work to resolve the incident. Once the incident has been resolved, the ticket will be closed. All dates, times and support staff for the incident will be tracked by the incident management system.

Incident/Defect management severity will be mutually agreed to by 1898 & Co. and client based on the following table.

Incident Severity Level	Incident Management Description
Severity 1: Critical	Critical incident reserved for business-critical functionality. A critical IT function (e.g. supported materials, network, hardware, etc.) is unavailable or interaction with outside customers is greatly impacted or business can continue but with significant impact on internal business processes. Requires immediate resolution.
Severity 2: High	A problem which does not qualify as a Severity 1 problem will be assigned as “Severity Level 2” if the problem is characterized by the following: The Supported Materials’ critical IT functions are unavailable to a significant number of Licensee’s customers, or the problem significantly impacts Licensee’s internal business processes, but a workaround is available and agreed to by Licensee, and Licensee’s business operations can continue.
Severity 3: Medium	A problem which does not qualify as a Severity 1 or 2 problem will be assigned as “Severity Level 3” if the problem is characterized by the following: The problem has a commercial impact on Licensee’s business.
Severity 4: Low	A problem which does not qualify as a Severity 1, 2 or 3 problem will be assigned as “Severity Level 4”. Resolution is expected based on a mutually agreed upon commitment between the 1898 & Co. support person and the client. Severity 4 will be addressed on normal agreement schedule as normal configuration management schedule.

5.0 Escalation Process

Significant issues related to resource skills, availability, and quality, which cannot be resolved by the core team, will follow a specific escalation path. The process will be as follows:

- Representatives at each stage should make good faith efforts to resolve any issue that is within their authority, within 10 business days.
- As soon as it is determined that a representative does not have the authority to resolve an issue, or there is an impasse at that stage, it should be immediately escalated within that representative’s organization.
- The escalation of the issue should include a summary of unresolved issues together with the recommendation of each of the Client and Supplier designated points of contact. When escalating an issue, both the Supplier and Client representatives listed in the respective stages below should be included in the correspondence.
- Client requires that unresolved issues be discussed at the next stage within 5 days of being escalated. To that end, within 24 hours of an issue being escalated, a conference call will be set up between the representatives at the next stage.

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

6.0 Change Management

Supplier shall inform Client of any pending or possible changes in the use or status of all Supplier Project personnel.

Any changes to Supplier staff, including work assignments and participation level, shall be subject to Client approval.

Client shall have the right to have any Supplier staff replaced or removed from the Project for cause.

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

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

7.0 Budget and Payment Terms

Supplier will perform the Work on a time and material basis based on the rates set forth below. Based on the terms set forth in this SOW, Supplier’s fees for its work will be approximately **\$434,596**. Client understands that Supplier’s fees will be based on upon work performed.

Scope Tasks	2024	2025	Totals
1.3 - Maximo Solution Architect	\$133,807	\$299,693	\$433,500
1.3 - Project Support	\$411	\$685	\$1,096
Totals	\$134,218	\$300,378	\$434,596

Work hours will be charged using the following rate classification:

Scope Task	Role	Rate	Estimated Hours	Estimated Fees
1.3	Senior EAM Solution Architect	\$289	1500	\$433,500
1.3	Project Support	\$137	8	\$1,096

Position Classification	Hourly Billing Rate
Project Support ^{*, 2}	\$137.00
Analyst	\$217.00
Lead Analyst	\$234.00
Consultant	\$289.00
Manager/Senior Consultant	\$307.00
Director / Senior Manager ³	\$372.00
Managing Director	\$390.00
Principal Consultant	\$427.00

NOTES:

1. Position classifications listed above refer to the firm's internal title system or project role.
2. Project Support includes Technical Writer, Research Assistant, or similar roles defined for the scope of work.
3. Manager includes Project Manager, Section Manager, Product Manager, Research Manager, and any other manager title.
4. Project time spent by corporate officers will be billed at the Managing Director rate.
5. Expenses (if required) will include, but not limited to, travel and lodging, and all taxes, as applicable, and will only be billed as incurred. Supplier resources will follow travel and expense

policies and procedures as defined in the current Agreement between Supplier and Client as referenced above.

6. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt.
7. A late payment charge of 1.5% per month may be added to all amounts not paid within 30 days of the invoice date.
8. The services of contract/agency and/or any personnel of a Burns & McDonnell parent, subsidiary or affiliate shall be billed to the Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
9. The rates shown above are effective for services through December 31, 2024, and are subject to revision thereafter.

8.0 Contact Information

Notices related to this SOW will be sent to the contacts shown below, with a copy of the Parties' legal notices contact if applicable. Either Party may modify the contacts shown below by providing written notice to the other Party (where an email will suffice).

<p>Client Project/Notices Contact:</p> <p>Name: Jerry Looper</p> <p>Role: Director</p> <p>Email: Jerry.Looper@cityofdenton.com</p>	<p>Supplier Project/Notices Contact:</p> <p>Name: Robert Montgomery</p> <p>Role: Director</p> <p>Email: Robert.Montgomery@1898andco.com</p>
<p>Client Invoice Contact:</p> <p>(if different from above):</p> <p>Name:</p> <p>Role:</p> <p>Email:</p>	

9.0 Authorization

Intending to be legally bound, Client and Supplier have caused their duly authorized representatives to execute this Statement of Work in the space provided below.

Client/Accepted and Agreed:
Denton Municipal Electric

By: _____

Printed Name: _____

Title: _____

Date: _____

Supplier/Accepted and Agreed:
Burns & McDonnell Engineering Company, Inc.

DocuSigned by:
By: Robb Montgomery
1D20F5C9DDF04AD...

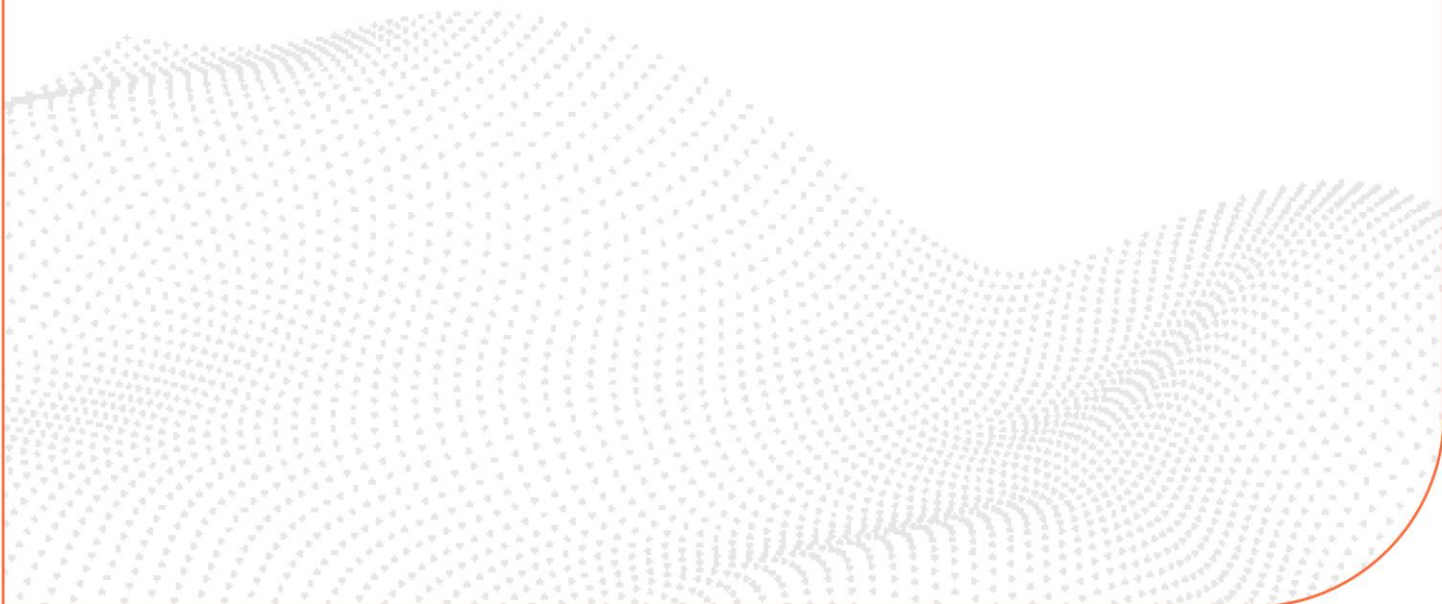
Printed Name: Robert Montgomery

Title: Director

Date: October 10th, 2024



1898andco.com



Certificate Of Completion

Envelope Id: C1E888BD61774E52A38E15AF60252EBA	Status: Sent
Subject: Please DocuSign: City Council Contract 7804-015 Maximo Support Specialist	
Source Envelope:	
Document Pages: 33	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped 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: 198.49.140.10

Record Tracking

Status: Original	Holder: Christa Christian	Location: DocuSign
10/10/2024 3:54:10 PM	Christa.Christian@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Christa Christian christa.christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 10/10/2024 4:35:12 PM Viewed: 10/10/2024 4:35:21 PM Signed: 10/10/2024 4:35:27 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 10/10/2024 4:35:31 PM Viewed: 10/10/2024 6:58:47 PM Signed: 10/11/2024 10:10:37 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/11/2024 10:10:39 AM Viewed: 10/11/2024 10:17:25 AM Signed: 10/14/2024 9:16:35 AM
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Electronic Record and Signature Disclosure:
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Robb Montgomery robb.montgomery@1898andco.com Director Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 45.22.105.57	Sent: 10/14/2024 9:16:38 AM Viewed: 10/14/2024 10:39:21 AM Signed: 10/17/2024 9:49:14 AM
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Signer Events	Signature	Timestamp
Antonio Puente Antonio.Puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None)	Signed by:  E3760944C2BF4B5... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/17/2024 9:49:17 AM Viewed: 10/17/2024 9:51:46 AM Signed: 10/17/2024 10:40:46 AM

Electronic Record and Signature Disclosure:
 Accepted: 10/17/2024 9:51:46 AM
 ID: 0f4b027d-80c7-489e-b626-03f1bd6b7562

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	Sent: 10/17/2024 10:40:49 AM
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Electronic Record and Signature Disclosure:
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Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 10/10/2024 4:35:30 PM Viewed: 10/10/2024 7:26:55 PM
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Electronic Record and Signature Disclosure:
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Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 10/17/2024 10:40:49 AM Viewed: 10/17/2024 3:18:00 PM
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Carbon Copy Events	Status	Timestamp
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City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Nicholas Dusak
nicholas.dusak@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 9/13/2024 4:46:24 PM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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



City of Denton

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

Legislation Text

File #: PUB24-232, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kirksey Architects, Inc., for design services for the Denton Municipal Electric Campus Masterplan project for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8376-001 - Professional Services Agreement for master plan design services awarded to Kirksey Architects, Inc., in the not-to-exceed amount of \$169,500.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kirksey Architects, Inc., for design services for the Denton Municipal Electric Campus Masterplan project for the Capital Projects Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8376-001 – Professional Services Agreement for master plan design services awarded to Kirksey Architects, Inc., in the not-to-exceed amount of \$169,500.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Support Healthy and Safe Communities.

INFORMATION/BACKGROUND

Denton Municipal Electric (DME) seeks the development of a master plan for its campus. The purpose of the master plan is to understand and assess the current facilities on its campus to identify which buildings are no longer functional and require replacement and what new facilities are recommended to support the city's growth.

Upon reviewing and re-evaluating the qualifications of the prequalified vendors, Kirksey Architects, Inc. has the most relevant master planning experience and available staff to complete the project within the schedule. Kirksey Architects, Inc., has provided material testing services for other projects similar in size and cost to the DME Campus. Based on Kirksey Architecture's knowledge, project team experience, and availability, Kirksey Architecture has been selected as the best choice for the DME Campus Master Plan.

Request for Qualifications for architectural firms for professional architectural services for various vertical capital infrastructure-related projects within the City of Denton for the Capital Projects Department was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of professional service firms on February 20, 2024 (Ordinance 24-276).

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On May 21, 2024, City Council approved RFQ 8376 for firms for professional architectural services for various vertical capital infrastructure-related projects within the City of Denton for the Capital Projects Department (Ordinance 24-953).

RECOMMENDATION

Award a contract with Kirksey Architects, Inc., for design services for the Denton Municipal Electric Campus Masterplan project for the Capital Projects Department, in a not-to-exceed amount of \$169,500.

PRINCIPAL PLACE OF BUSINESS

Kirksey Architects, Inc.
Dallas, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with an estimated starting date of Q1 2025. We anticipate the completion date of construction materials testing services by Q3 of 2025.

FISCAL INFORMATION

These services will be funded from Denton Municipal Electric Master plan account 605138500.1341.3900. Requisition #166378 has been entered into the Purchasing software system in the amount of \$169,500. The budgeted amount for this item is \$169,500.

EXHIBITS

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

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

For information concerning this acquisition, contact: Trevor Crain, 940-349-7426.

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KIRKSEY ARCHITECTS, INC., FOR DESIGN SERVICES FOR THE DENTON MUNICIPAL ELECTRIC CAMPUS MASTERPLAN PROJECT FOR THE CAPITAL PROJECTS DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8376-001 – PROFESSIONAL SERVICES AGREEMENT FOR MASTER PLAN DESIGN SERVICES AWARDED TO KIRKSEY ARCHITECTS, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$169,500.00).

WHEREAS, on May 21, 2024, the City Council approved a pre-qualified professional services list for architectural firms for professional architectural services for various vertical capital infrastructure-related projects within the City of Denton for the Capital Projects Department (Ordinance 24-953), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Kirksey Architects, Inc., to provide professional design services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

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

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

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

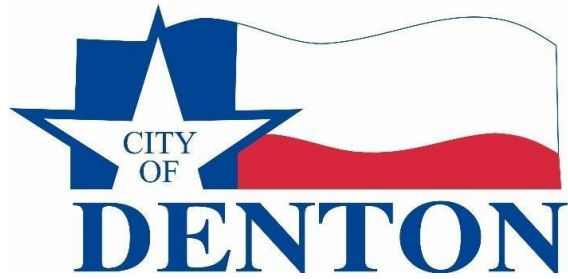
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Marcella Lunn*



DocuSign City Council Transmittal Coversheet

PSA	8376-001
File Name	DME Campus Masterplan
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

STANDARD AGREEMENT FOR ARCHITECTURAL RELATED PROFESSIONAL SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Kirksey Architects, Inc. with its corporate office at 143 Manufacturing St., Dallas, TX 75207 and authorized to do business in Texas, ("ARCHITECT"), for a PROJECT generally described as: DME Masterplan (the "PROJECT").

SECTION 1 **Scope of Services**

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

SECTION 2 **Compensation and Term of Agreement**

- A.** The ARCHITECT shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$169,500 in the manner and in accordance with the fee schedule as set forth in Attachment A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ARCHITECT shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment B.

SECTION 3 **Terms of Payment**

Payments to the ARCHITECT will be made as follows:

A. Invoice and Payment

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

SECTION 4 Obligations of the ARCHITECT

A. General

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

B. Standard of Care

The ARCHITECT shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent architects practicing in the same or similar locality and under the same or similar circumstances and professional license; and

- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect.

C. Subsurface Investigations

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

D. Preparation of Architectural Drawings

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

E. Architect's Personnel at Construction Site

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

Attachment A, the ARCHITECT or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ARCHITECT be construed as requiring ARCHITECT to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ARCHITECT makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ARCHITECT shall inform the CITY.

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

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

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

G. Construction Progress Payments

Recommendations by the ARCHITECT to the CITY for periodic construction progress payments to the construction contractor will be based on the ARCHITECT 's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ARCHITECT to ascertain that the construction contractor has completed the work in exact accordance with the

AGREEMENT Documents; that the final work will be acceptable in all respects; that the ARCHITECT has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

H. Record Drawings

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

I. Right to Audit

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

J. INSURANCE

(1) ARCHITECT'S INSURANCE

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

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

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

(2) GENERAL INSURANCE REQUIREMENTS

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

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

K. Independent Consultant

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

L. Disclosure

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

M. Asbestos or Hazardous Substances

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

N. Permitting Authorities - Design Changes

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

O. Schedule

ARCHITECT shall manage the PROJECT in accordance with the schedule developed per Attachment B to this AGREEMENT.

P. Equal Opportunity

- (1) **Equal Employment Opportunity:** ARCHITECT and ARCHITECT's agents shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic

testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.

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

SECTION 5 **Obligations of the City**

A. City-Furnished Data

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

B. Access to Facilities and Property

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

C. Advertisements, Permits, and Access

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

D. Timely Review

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

E. Prompt Notice

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

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

F. Asbestos or Hazardous Substances Release.

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

G. Contractor Indemnification and Claims

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

H. Contractor Claims and Third-Party Beneficiaries

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

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

I. CITY's Insurance

City of Denton, Texas
Professional Services Agreement
Revised Date: 3/22/22
Page 11 of 19

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

J. Litigation Assistance

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

K. Changes

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

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

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

B. Reuse of Project Documents

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

C. Force Majeure

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

D. Termination

(1) This AGREEMENT may be terminated:

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

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

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

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

E. Suspension, Delay, or Interruption to Work

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

F. Indemnification

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

G. Assignment

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

H. Jurisdiction

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

I. Severability and Survival

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

J. Observe and Comply

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

K. Immigration Nationality Act

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

L. Prohibition On Contracts With Companies Boycotting Israel

Architect 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, Architect certifies that Architect's signature provides written verification to the City that Architect: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Architect acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or

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

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

Architect 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, Architect certifies that Architect’s signature provides written verification to the City that Architect: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

Q. Prohibition Against Personal Interest in Contracts

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance

of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethics Ordinance 23-1165 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

R. Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

1. Log onto the State Ethics Commission Website at:
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

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

S. Agreement Documents

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

City of Denton, Texas
Professional Services Agreement
Revised Date: 3/22/22
Page 17 of 19

Attachment A - Scope of Services and Compensation
Attachment B - Project Schedule

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

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

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

BY:
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:
ARCHITECT
Kirksey Architects, Inc.

Signed by:
Todd C Howard

Todd C. Howard,

Date: _____

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

Signed by:
Trevor Crain

Signature

Director of Capital Projects

Title

Capital Projects

Department

Date Signed: _____

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned By:
By: Marcella Lunn
4B876034B4AA430...

ATTEST:
LAUREN THODEN, CITY SECRETARY

By: _____

ATTACHMENT A

September 10, 2024 Rev.

Mr. Giovanni Piñeiro-Villalba, Ph.D., PMP
Project Manager
Capital Projects/Engineering
City of Denton, Texas

RE: Denton Municipal Electric - Master plan

Dear Giovanni:

Kirksey is pleased to submit our proposal for building assessment, programing, and master plan design for the Denton Municipal Electric (DME) under our IDIQ Contract with the City of Denton. We understand that the DME is looking to develop a new master plan for the next 10 years and need to understand and assess their current facilities on their campus to help them identify which building are no longer functional and need to replace and what new facilities are needed to support the city's growth. We proposed to perform our design and planning work in following steps, assessing the conditions of the existing facilities, performing stake holder interviews and collecting data, having a visioning workshop, developing the new program of requirements, and present planning options to lead us to the final master plan and develop an estimate of probable construction cost.

SCOPE OF WORK**Building Assessment**

- Review existing floor plan / department locations on each building
- Brief description of each structure (year it was built, latest renovation, type of construction, size)
- Identify any physical barriers that would limit site development
- Site Visits to see existing buildings and become familiar with its condition and functions

Site Due diligence

- Review existing flood maps, utility maps, topography maps and traffic studies
- Identify new land suitable for development within the campus
- Review overall site infrastructure capacity (what can the site handle vs what will need to be added)
-
- Identify possible site modifications due to topography, flood or utility availability
- Develop a site analysis narrative with cost implications

Data Collection

- Key Stakeholder interviews with team meeting to discuss future needs.
- Our team will need to review issues of workflow, headcounts and growth projections, space types and utilization, employee interaction, adjacencies, equipment storage and spatial needs.
- Kirksey will meet with departmental representatives to gather detailed information and unique requirements, if any, to be accommodated in the planning.

ATTACHMENT A

Visioning Workshop

- Discussion of high-level issues such as Image and Identity, Big Ideas and Goals, Workplace Trends, Amenities, Technology. Typically consists of one session with leadership and another with a selected group of stakeholders representing various disciplines within the organization.
- Document workshop in a Design Guide

Program Development

- Develop overall program with department requirements.
- To understand issues of workflow, headcounts and growth projections, space types and utilization, employee interaction, adjacencies, equipment storage and spatial needs
- Kirksey will meet with departmental representatives to gather detailed information and unique requirements, if any, to be accommodated in the planning.

Master Plan Design Options

- Develop overall site plans, SF for new buildings, effects to existing structures, etc.
- Develop 2 or 3 design master plan options with pros and cons
- Present for review and approval and finalize master plan design

Master Plan conceptual cost estimates

- Develop cost estimates for 2 master plan options
- Present for review master plan design cost estimate

LEVEL OF EFFORT FOR KIRKSEY DESIGN TEAM

Kirksey anticipates 14 weeks of design and coordination with DME to develop the visioning, programming, and master plan design efforts.

Building Assessment

2-week task

(3 staff @ \$180hr x 24 = \$12,960 x 2 weeks = \$25,920)

Lump sum Fee \$25,000

Site Due diligence

2-week task

Kimley Horn - lump sum fee

Lump sum Fee \$20,000

Data Collection

2-week task

(3 staff @ \$180hr x 24 = \$12,960 x 2 weeks = \$25,920)

Lump sum Fee \$25,000

Visioning Workshop

3-day Task

(4 staff @ \$150hr x 24 = \$14,400)

Lump sum Fee \$15,000

ATTACHMENT A

Program Development

4-week task

(2 staff @ \$180hr x 24 = \$8,640 x 4 weeks = \$34,560)

Lump sum Fee \$35,000

Master Plan Design Options

3-week task

(3 staff @ \$150hr x 24 = \$10,800 x 3 weeks = \$32,400)

Lump sum Fee \$32,000

Preliminary Cost Estimate

2-week task

Gallager - lump sum fee

Lump sum Fee \$15,000

TOTAL FEE \$167,000 + \$2,500 for in-house reimbursables = \$169,500

We propose a **lump sum fee of \$169,500.00** for our services that will be billed monthly on percentage of completion.

Also, we understand that if this proposal is acceptable, the City of Denton will issue a Purchase Order from our IDIQ Contract, and it will serve as our notice to proceed.

We thank you for the opportunity to provide these design services.

Sincerely,



Benito Guerrier, AIA

Partner, Managing Director of Government Practice

ATTACHMENT B

DME Master Plan

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Gantt Chart																		
							January	12/29	1/5	1/12	1/19	1/26	February	2/2	2/9	2/16	2/23	March	3/2	3/9	3/16	3/23	April	3/30	4/6
1	→																								
2	→																								
3	★	Buildings Assessments	10 days	Mon 1/13/25	Fri 1/24/25																				
4	→																								
5	★	Site Due Diligence	10 days	Mon 1/13/25	Fri 1/24/25																				
6	→																								
7	★	Data Collection	10 days	Mon 1/27/25	Fri 2/7/25	5,3																			
8	→																								
9	★	Visioning Workshop	5 days	Mon 2/3/25	Fri 2/7/25																				
10	→																								
11	★	Program Development	20 days	Mon 2/10/25	Fri 3/7/25	7																			
12	→																								
13	★	Master Plan Design	15 days	Mon 3/10/25	Fri 3/28/25	11																			
14	→																								
15	★	Preliminary Cost Estim	10 days	Mon 3/24/25	Fri 4/4/25	13																			
16	→																								
17	★	Draft Master Plan Package for review by DME	10 days	Mon 4/7/25	Fri 4/18/25	15																			
18	→																								
19	★	Final Master Plan Package	5 days	Mon 4/21/25	Fri 4/25/25	17																			

Project: Project1
Date: Tue 9/10/24

Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			

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.

Kirksey Architects, Inc.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

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

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relations hip with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes No

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

4 I have no Conflict of Interest to disclose.

Signed by:
Todd C Howard

10/20/2024

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/hm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 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: 44CD6398045942A699FA46C569E89A9E	Status: Sent
Subject: Please DocuSign: City Council Contract 8376-001 DME Campus Masterplan	
Source Envelope:	
Document Pages: 26	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Erica Garcia
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	erica.garcia@cityofdenton.com
	IP Address: 198.49.140.10


Record Tracking

Status: Original	Holder: Erica Garcia	Location: DocuSign
10/8/2024 9:01:10 AM	erica.garcia@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
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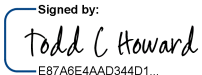
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/8/2024 9:09:26 AM Viewed: 10/8/2024 1:14:20 PM Signed: 10/8/2024 1:15:08 PM
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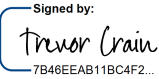
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/8/2024 1:15:10 PM Viewed: 10/8/2024 1:15:19 PM Signed: 10/10/2024 5:18:39 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Todd C Howard toddh@kirksey.com Executive Vice-President Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 76.185.101.175	Sent: 10/10/2024 5:18:42 PM Resent: 10/16/2024 2:29:48 PM Resent: 10/16/2024 10:56:34 PM Resent: 10/18/2024 2:23:47 PM Resent: 10/18/2024 4:36:32 PM Viewed: 10/18/2024 11:49:18 PM Signed: 10/20/2024 4:55:25 PM
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Signer Events	Signature	Timestamp
<p>Trevor Crain Trevor.Crain@cityofdenton.com Director of Capital Projects City of Denton Security Level: Email, Account Authentication (None)</p>	<p>Signed by:  7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 10/20/2024 4:55:28 PM Viewed: 10/20/2024 4:56:58 PM Signed: 10/21/2024 8:33:55 AM</p>

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<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	Sent: 10/21/2024 8:33:59 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p>

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None)</p>

Electronic Record and Signature Disclosure:
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	<p>Sent: 10/8/2024 9:09:26 AM</p>
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	<p>Sent: 10/21/2024 8:34:00 AM Viewed: 10/21/2024 9:21:26 AM</p>
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Carbon Copy Events	Status	Timestamp
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Giovanni Piñeiro-Villalba
giovanni.pineiro-villalba@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 10/4/2024 11:21:27 AM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

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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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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



City of Denton

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

Legislation Text

File #: PUB24-233, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Biggs & Mathews Environmental, Inc., for engineering services for the Solid Waste Chemicals and Recycling Center Facility Improvements for the Solid Waste Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8525-004 - Professional Services Agreement for engineering services awarded to Biggs & Mathews Environmental, Inc., in the not-to-exceed amount of \$131,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Biggs & Mathews Environmental, Inc., for engineering services for the Solid Waste Chemicals and Recycling Center Facility Improvements for the Solid Waste Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8525-004 – Professional Services Agreement for engineering services awarded to Biggs & Mathews Environmental, Inc., in the not-to-exceed amount of \$131,000.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The Solid Waste Home Chemicals & Recycling Center (SWHCRC) was constructed in 2007 and has been operating for 15 years. The Solid Waste Department operates many programs and offers diverse services, many of which take place at the SWHCRC. As the City of Denton and surrounding regions have been growing, so has the traffic as it approaches and departs the SWHCRC.

The Solid Waste Department seeks to improve site access roads and driveways for improved traffic flow and safety concerns with the current unimproved surfaces, to expedite and manage traffic with efficacy and safety. The purpose of this contract is to secure professional services with an engineering firm to design delineated site improvements and prepare bid documents, as appropriate.

Through the engineering services contract RFQ 8525, we found that Biggs & Mathews Environmental, Inc. has pronounced knowledge and experience with the Solid Waste industry including household hazardous waste facilities and recycling centers. Biggs and Mathews have provided a Best and Final Offer and proposed to perform tasks as requested in the Scope of Work, the City of Denton development code, and all applicable federal, state, and local rules and regulations.

Request for Qualifications for state-certified engineers for professional engineering services for the Solid Waste and Recycling Department was solicited using the City’s formal solicitation process. City Council approved a pre-qualified list of professional service firms on August 20, 2024 (Ordinance 24-1562).

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On August 20, 2024, City Council approved RFQ 8525 for state-certified engineers for professional engineering services for the Solid Waste and Recycling Department (Ordinance 24-1562).

RECOMMENDATION

Award a contract with Biggs & Mathews Environmental, Inc., for engineering services for the Solid Waste Chemicals and Recycling Center Facility Improvements for the Solid Waste Department, in a not-to-exceed amount of \$131,000.

PRINCIPAL PLACE OF BUSINESS

Biggs & Mathews Environmental, Inc.
Mansfield, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with a completion date within six (6) months.

FISCAL INFORMATION

These services will be funded from Solid Waste and Recycling account 660906595. Requisition #166797 has been entered into the Purchasing software system in the amount of \$131,000. The budgeted amount for this item is \$131,000.

EXHIBITS

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

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

For information concerning this acquisition, contact: Arturo Garcia, 940-349-8021.

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

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH BIGGS & MATHEWS ENVIRONMENTAL, INC., FOR ENGINEERING SERVICES FOR THE SOLID WASTE CHEMICALS AND RECYCLING CENTER FACILITY IMPROVEMENTS FOR THE SOLID WASTE DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8525-004 – PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SERVICES AWARDED TO BIGGS & MATHEWS ENVIRONMENTAL, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$131,000.00).

WHEREAS, on August 20, 2024, the City Council approved a pre-qualified professional services list of state certified engineers for professional engineering services for the Solid Waste and Recycling Department (Ordinance 24-1562), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Biggs & Mathews Environmental, Inc., to provide professional engineering services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

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

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

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

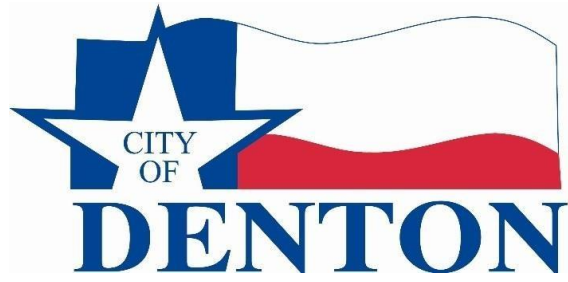
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



DocuSign City Council Transmittal Coversheet

PSA	8525-004
File Name	HOME CHEMICAL COLLECTIONS FACILITY
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and **Biggs & Mathews Environmental, Inc.** with its corporate office at 1700 Robert Road, STE 100, Mansfield, Texas 76063 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Home Chemical Collections Facility Improvements (the "PROJECT").

SECTION 1 **Scope of Services**

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

SECTION 2 **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$131,000 in the manner and in accordance with the fee schedule as set forth in Attachment A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

SECTION 3 **Terms of Payment**

Payments to the ENGINEER will be made as follows:

A. Invoice and Payment

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

SECTION 4 Obligations of the Engineer

A. General

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

B. Standard of Care

The ENGINEER shall perform its services:

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

C. Subsurface Investigations

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

D. Preparation of Engineering Drawings

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

E. Engineer's Personnel at Construction Site

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

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

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

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

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

G. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

H. Record Drawings

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

I. Right to Audit

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

J. INSURANCE

(1) ENGINEER'S INSURANCE

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

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

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

(2) GENERAL INSURANCE REQUIREMENTS

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

Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.

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

K. Independent Consultant

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

L. Disclosure

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

M. Asbestos or Hazardous Substances

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

N. Permitting Authorities - Design Changes

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

O. Schedule

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

P. Equal Opportunity

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.
- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and

ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

SECTION 5 **Obligations of the City**

A. City-Furnished Data

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

B. Access to Facilities and Property

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

C. Advertisements, Permits, and Access

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

D. Timely Review

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

E. Prompt Notice

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

F. Asbestos or Hazardous Substances Release.

(1) CITY acknowledges ENGINEER will perform part of the work at CITY's

facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.

- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

G. Contractor Indemnification and Claims

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

H. Contractor Claims and Third-Party Beneficiaries

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

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."

- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.
- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

I. CITY's Insurance

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement

cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

J. Litigation Assistance

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

K. Changes

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

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

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

B. Reuse of Project Documents

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

C. Force Majeure

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

D. Termination

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
 - b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.
- (2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:
- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
 - b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
 - c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.
- (3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

E. Suspension, Delay, or Interruption to Work

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

F. Indemnification

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

G. Assignment

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

H. Jurisdiction

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

I. Severability and Survival

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

J. Observe and Comply

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

K. Immigration Nationality Act

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

right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

L. Prohibition on Contracts with Companies Boycotting Israel

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

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

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

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

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

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

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

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

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

Q. Prohibition Against Personal Interest in Contracts

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City’s Ethic Ordinance 23-1165 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City’s Conflict of Interest Questionnaire.

R. Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract

unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

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

The contractor shall:

1. Log onto the State Ethics Commission Website at :
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

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

S. Agreement Documents

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

Attachment A - Scope of Services, Compensation, Project Schedule and Location Map

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

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

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

BY:
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:
ENGINEER
Biggs & Mathews Environmental, Inc.

Signed by:
Gregory Adams Principal

403AE82FE1304E9...
Authorized Agent, Title

Full Name: Gregory Adams

2024- 1229366

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

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

DocuSigned by:
Brian Boerner
DCD14331B89A4A9...

Signature

Director of Solid Waste

Title

SWR

Department

Date Signed: 10/22/2024

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn
4B070831B4AA438...

BY: _____

ATTACHMENT A

SCOPE OF SERVICES

**City of Denton Landfill
Home Chemical Collections Facility
Improvements
Design and Construction Phase Services**



September 16, 2024



BIGGS & MATHEWS ENVIRONMENTAL

1700 Robert Road, Suite 100 ♦ Mansfield, Texas 76063 ♦ 817-563-1144

TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
FIRM REGISTRATION No. F-256 AND No. 10194895

TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS
FIRM REGISTRATION No. 50222

1 SCOPE OF SERVICES

Introduction

The City of Denton owns and operates the City of Denton Landfill, which is a Type I Municipal Solid Waste Disposal Facility that is located in Denton, Texas. The City currently offers solid waste disposal, recycling, yard waste and brush composting, and home chemical collection to residential and commercial clients. The City has requested that Biggs & Mathews Environmental, Inc. (BME) submit this proposal to provide professional services for improvements to the Home Chemical Collections (HCC) Facility.

The HCC facility consists of a canvas structure supported by metal trusses with large overhead doors on each end. During working hours, the doors are opened to allow customers to drive through to drop off items for collection. Proposed improvements include:

- Additional concrete pavement on the east and south sides of the structure.
- Site grading to improve drainage on the east side of the building.
- Two large commercial fans to improve ventilation within the structure.
- Upgrades to the structures grounding system.
- An eye wash and shower station with cold water supply.
- About 300 linear feet of new potable water line.
- New signage.

Project Scope

Task 1 Preliminary Design

This phase of the project will include:

- Collecting data, identifying the design criteria, and performing a survey.
- Coordination with the City staff to discuss the design criteria and evaluate the options.
- Developing cost estimates for the preliminary designs.

BME will present the preliminary design to the City in a Preliminary Design Report that will include:

- A list of the selected improvements.
- A list of the design parameters.
- The preliminary plans.
- The preliminary cost estimate.
- The design and construction schedule.

Task 2 Design

This task provides the final design of the improvements presented in the Preliminary Design Report. The scope of the final design will depend upon the decisions that are made during the preliminary design, but it may include the following items:

- Facility Plan
- Grading Plan
- Paving Plan
- Utility Plans
- Traffic Plan
- Erosion Control Plan
- Signage Plan
- Construction Details
- Equipment Details

BME will prepare bid packages that include construction drawings, specifications, and contract documents. Current copies of the standard procurement documents will be provided by the City. The construction drawings and specifications will provide a level of detail suitable for bidding and constructing the project.

Task 3 Bid and Award Services

BME will assist the City during the bidding and award phase of the project. This includes attending the prebid conference, responding to questions from potential bidders, reviewing bid packages, and assisting the City with bid evaluations and awards.

Task 4 Construction Management

BME will provide construction management services throughout the duration of the project. Construction management services include providing a construction manager, construction phase engineering, construction management, and contract administration. Our scope of services assumes that the construction manager will be onsite one day a week for the duration of the project.

Construction phase engineering services will include:

- Coordination with the City.
- Review and approval of contractors' submittals.
- Responding to contractors' requests for information.
- Review of requests for modifications and providing recommendations to the City.
- Field observations to verify that the construction is in substantial accordance with the project plans and specifications.
- Revisions to construction drawings, if necessary.

Construction management services will include:

- Site visits to observe construction activity and progress.
- Coordination with the contractors.
- Review and approval of schedules.
- Schedule CQA field work and surveys.

Contract administration services will include:

- Review and verification of contractor's pay requests.
- Reconciliation of quantities.
- Issuance of change orders and field orders.
- Preparation of a punch list for work to be completed for substantial completion.
- Completion of the final walk-through with the City to verify work that is completed.

Task 5 Construction Quality Assurance Services

BME will provide construction quality assurance (CQA) and record surveying services for all phases of the construction. CQA services include observation and monitoring, field testing, laboratory testing, management of quality assurance activities and preparation of reports.

Task 6 Construction Documentation Report

Upon completion of the project, BME will prepare a Final Construction Report. The Final Construction Report will include:

- Record drawings
- Construction Quality Assurance tests results and field reports
- Material submittals
- Operation and Maintenance manuals

2 PROJECT SCHEDULE

We are prepared to begin work on this project within 3 weeks of notice to proceed. We anticipate that the preliminary design will take about 2 months, the final design will take about 3 months, the bid and award phase will take about 3 months, and that construction will take about 6 months.

3 PROJECT BUDGET

The actual cost for this project will depend upon the final design. Since that will not be known until the first task has been completed, we suggest the following budget:

Summary of Estimated Costs

TASK	COST
Task 1 Preliminary Design	\$7,000.00
Task 2 Design	
- Concrete Pavement	\$16,600.00
- Grading	\$6,000.00
- Ventilation Fans	\$16,000.00
- Grounding	\$20,000.00
- Eye Wash / Shower	\$4,200.00
- Waterline	\$8,000.00
- Signage	\$1,200.00
Task 3 Bid and Award Services	\$1,000.00
Task 4 Construction Management	\$30,000.00
Task 5 Construction Quality Assurance Services	\$15,000.00
Task 6 Construction Documentation Report	\$6,000.00
Total Estimated Cost:	\$131,000.00

Services that are beyond those described in this proposal and are authorized by the City will be billed at the rates provided on the following Schedule of Charges.

BIGGS & MATHEWS ENVIRONMENTAL, INC.

**SCHEDULE OF CHARGES
2024**

PERSONNEL CHARGES

Category	Billing Rate Range \$ Per Hour
Administrative/Project Assistant	60 – 80
Sr. Administrative/Project Assistant	80 – 100
Designer/Technician/Field Services Technician	60 – 80
Sr. Designer/Sr. Technician/ Sr. Field Services Technician	75 – 110
Engineer/Scientist	80 – 125
Project Engineer/Scientist	95 – 150
Senior Project Engineer/Scientist	125 – 175
Principal Engineer/Scientist	175 – 250

Depositions and expert witness testimony, including preparation time, will be billed at 1.5 times the above hourly rates.

OUTSIDE SERVICES

Charges for special outside services, equipment, and facilities not furnished by Biggs and Mathews will be billed at cost plus 15%. Such charges may include, but shall not be limited to the following services:

Printing and photographic reproduction	Tolls
Rented vehicles	Rented equipment
Transportation on public carriers	Shipping charges
Subconsultants	Meals and lodging
Special fees, permits, insurance, etc.	Consumable materials

COMMUNICATIONS

The cost of communications including telephone charges, e-mail, express mail, postage and routine copying costs will be charged at a flat rate of 3% of total gross labor charges.

DIRECT CHARGES

Reproduction – black and white, per 8.5x11” sheet (non-routine)	\$ 0.10
Reproduction – color, per 8.5x11” sheet	\$ 1.00
Reproduction – per 22x34” sheet	\$ 3.00
Auto/Truck per mile	\$ 1.00
Auto/Truck per day	\$100.00
Storage of samples per month per container*	\$ 5.00
Disposal per container*	\$ 50.00
Survey Equipment per day	\$ 250.00

*A container is defined as a standard core box, a capped Shelby tube, or a sealed five-gallon bucket.

SUPPLEMENTAL SCHEDULES OF CHARGES (Schedules available upon request)

- Soils Laboratory
- Chemical Laboratory
- Chargeable Equipment Schedule

Payment

Monthly invoices are to be paid within 30 days from invoice date. Interest on late payments will be charged at a rate of 18% per annum.

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.

BIGGS & MATHEWS ENVIRONMENTAL, INC.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

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

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes No

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

4 I have no Conflict of Interest to disclose.

Signed by:
Gregory Adams

10/22/2024

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>. 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: EC001B8BA82240238AC1D1666467DDD9	Status: Sent
Subject: Please DocuSign: City Council Contract 8525-004 Home Chemical Collections Facility Improvements	
Source Envelope:	
Document Pages: 29	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Crystal Westbrook
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	crystal.westbrook@cityofdenton.com
	IP Address: 198.49.140.10


Record Tracking

Status: Original	Holder: Crystal Westbrook	Location: DocuSign
10/18/2024 9:46:22 AM	crystal.westbrook@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 10/18/2024 9:59:39 AM Viewed: 10/18/2024 9:59:45 AM Signed: 10/18/2024 10:00:58 AM


Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Christa Christian christa.christian@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 10/18/2024 10:01:00 AM Resent: 10/18/2024 10:19:14 AM Viewed: 10/18/2024 12:05:55 PM Signed: 10/18/2024 1:30:43 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 10/18/2024 1:30:45 PM Viewed: 10/18/2024 1:59:15 PM Signed: 10/18/2024 2:02:39 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Gregory Adams gadams@biggsandmathews.com Principal Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 128.92.63.242	Sent: 10/18/2024 2:02:41 PM Viewed: 10/18/2024 4:26:29 PM Signed: 10/22/2024 9:46:37 AM
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ID: 4888da04-504a-45fb-9bb9-93e91f56ea7e

Signer Events	Signature	Timestamp
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Brian Boerner
 brian.boerner@cityofdenton.com
 Director of Solid Waste
 Security Level: Email, Account Authentication (None)

Signed by:

 DCD14331B89A4A9...
 Signature Adoption: Pre-selected Style
 Using IP Address: 72.158.228.38
 Signed using mobile

Sent: 10/22/2024 9:46:40 AM
 Viewed: 10/22/2024 9:47:44 AM
 Signed: 10/22/2024 9:50:20 AM

Electronic Record and Signature Disclosure:
 Accepted: 10/22/2024 9:47:44 AM
 ID: 0fd6cdfc-779f-4d38-9cf7-45854bbbd8ef

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

Sent: 10/22/2024 9:50:23 AM
 Viewed: 10/22/2024 8:09:44 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
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 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Lauren Thoden
 lauren.thoden@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

COPIED

Sent: 10/18/2024 10:01:01 AM
 Viewed: 10/18/2024 8:45:22 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Gretna Jones
 gretna.jones@cityofdenton.com
 Legal Secretary
 City of Denton
 Security Level: Email, Account Authentication (None)

COPIED

Sent: 10/22/2024 9:50:23 AM
 Viewed: 10/22/2024 8:35:26 PM

Carbon Copy Events	Status	Timestamp
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Arturo Garcia
Arturo.Garcia@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 9/24/2024 9:53:16 AM
ID: 9732cec7-cdc4-42a0-9bbe-2aa7bb30ab0e

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	10/18/2024 10:19:13 AM
Envelope Updated	Security Checked	10/18/2024 10:19:13 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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



City of Denton

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

Legislation Text

File #: PUB24-234, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of Change Order No. 7 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. 7, in the not-to-exceed amount of \$1,087,043.85, for a total contract award aggregated to \$43,389,120.11).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of Change Order No. 7 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. 7, in the not-to-exceed amount of \$1,087,043.85, for a total contract award aggregated to \$43,389,120.11).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The work to be provided under this change order to contract 7670 includes riser pole termination delay charges, exploratory underground work to verify the location of existing utilities, installation of current transformers on riser poles, removal of 15kV feeders, and installation of service to existing convenience store/gas station.

- Riser Pole Termination Delay: Work to be performed by Beta Engineering was delayed due to improperly manufactured and installed riser poles owned by Denton Municipal Electric. Specifically, the termination of conductors on the riser poles was delayed due to pole fabrication errors and improperly installed fasteners. These poles were purchased and installed under separate City contracts. Work production days were lost by Beta Engineering trying to coordinate remedies from all entities involved. The cost includes 19 days of lost labor and approximately 440 hours of idle equipment costs. In accordance with contract 7670, Beta Engineering is due to recover these delay costs through a change order. DME is working with Risk to recover these costs from the pole manufacturer and pole installer.
- Exploratory Underground Work and Repair: The scope of work for the Hickory GIS Substation project includes relocating overhead distribution lines to underground. This change order covers exploratory costs to cut Bonnie Brae and Hickory Street and the use of hydro excavation to verify the depths of underground utilities. The cost includes time and material for the use of hydro excavation and the demolition of asphalt and the restoration of the initial exploratory bore path.

- CT Installation on Riser Poles: Current transformers (CT) are required on each of the 3 riser poles. This installation was not included Beta Engineering’s scope of work. The cost for this installation includes the labor and equipment to install the CTs and material, labor, and equipment to install the associated conduit on the riser pole.
- Removal of 15kV Underground Feeders: Although relocating existing overhead distribution lines to underground was in the scope of work, the removal of the underground distribution lines fed from the existing substation was not in Beta Engineering’s scope of work. The cost includes the removal of 6 underground 15kV feeders extending out of the existing demoed substation, and associated asphalt repair is included in the cost of this change order.
- Convenience Store Service: Installing service to three-phase customers was not included in Beta Engineering’s scope of work. The only customer that uses three-phase service is a convenience store located at Bonnie Brae and Oak Street. Cost includes labor to install new poles and transfer connections.

The costs of Change Order #7 are detailed below:

Project Description	Contract Estimate
Riser Pole Termination Delay	\$617,317.87
Exploratory Underground Work and Repair	218,979.67
CT Installation on Riser Poles	166,259.56
Removal of 15kV Underground Feeders	81,036.13
Convenience Store Service	3,450.62
Total	\$1,087,043.85

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

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

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

On May 12, 2023, Purchasing approved Change Order #2 with Beta Engineering, LLC, in the not-to-exceed amount of \$37,000, for a total contract amount of \$41,317,000.

On September 14, 2023, Purchasing approved Change Order #3 with Beta Engineering, LLC, to reduce the contract in the amount of -\$1,325.61, for a total contract amount of \$41,315,674.39.

On March 7, 2024, Purchasing approved Change Order #4 with Beta Engineering, LLC, to reduce the contract in the amount of -\$13,102, for a total contract amount of \$41,302,572.39.

On July 16, 2024, City Council approved Change Order #5 with Beta Engineering, LLC, in the not-to-exceed amount of \$248,569.09, for a total contract amount of \$41,551,141.48.

On October 22, 2024, City Council approved Change Order #6 with Beta Engineering, LLC, in the not-to-exceed amount of \$750,934.78, for a total contract amount of \$42,302,076.26.

RECOMMENDATION

Award Change Order No. 7 with Beta Engineering, LLC, for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric, in a not-to-exceed amount of \$1,087,043.85, for a total amended contract price of \$43,389,120.11.

PRINCIPAL PLACE OF BUSINESS

Beta Engineering, LLC
Pineville, LA

ESTIMATED SCHEDULE OF PROJECT

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

FISCAL INFORMATION

This contract will be funded using DME’s Capital Improvement Plan budget account 603234500. The third-year Purchase Order will include Change Order 7 amount of \$1,087,043.85. The total amended amount of this contract is \$43,389,120.11.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Original Ordinance, Contract, Ordinances, and Change Orders 1-6
- Exhibit 3: Ordinance and Change Order 7

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

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

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

ORDINANCE NO. 21-2701

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

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the design and construction of the Hickory Gas Insulated Substation (GIS) for Denton Municipal Electric; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

<u>RFP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
7670	Beta Engineering, LLC	\$40,469,000.00

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

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the

written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

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

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

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

The motion to approve this ordinance was made by Gerard Hudspeth and seconded by Paul Meltzer. This ordinance was passed and approved by the following vote [6 - 1]:

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

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



 GERARD HUDSPETH, MAYOR

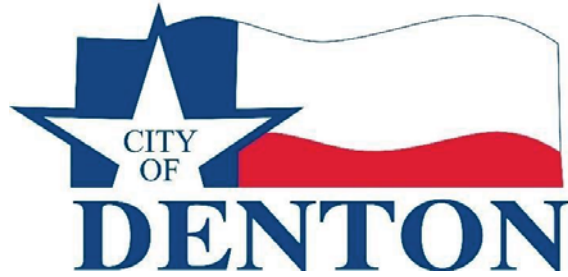
ATTEST:
ROSA RIOS, CITY SECRETARY



BY: *Rosa Rios*

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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



DocuSign City Council Transmittal Coversheet

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

DESIGN BUILD AGREEMENT

BY AND BETWEEN

CITY OF DENTON (as Owner)

AND

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

FOR THE CONSTRUCTION OF THE HICKORY GIS SUBSTATION

DATED AS OF DECEMBER 14, 2021

LIST OF EXHIBITS

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

(2) Form of Final Notice to Proceed

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

4894-5228-1604, v. 1

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

DESIGN BUILD AGREEMENT

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

RECITALS

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

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

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

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

ARTICLE I

DEFINITIONS

SECTION 1.1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 1.2. Rules of Interpretation.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

THE WORK AND OBLIGATIONS OF THE PARTIES

SECTION 2.1. The Work

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

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

SECTION 2.2. Specific Obligations for the Work

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

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

SECTION 2.3. Spare Parts

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

SECTION 2.4. Contractor's Tools and Equipment

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

SECTION 2.5. Employment of Personnel

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

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

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

SECTION 2.6. Clean-up and Non-Interference

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

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

SECTION 2.7. Safety and Security

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

SECTION 2.8. Emergencies

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

SECTION 2.9. Approvals, Certificates, Permits and Licenses

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

SECTION 2.10. Taxes

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

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

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

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

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

SECTION 2.12. Progress Meeting and Reports

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

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

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

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

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

SECTION 2.14. Interpretation

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

SECTION 2.15. Operational Supervision

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

SECTION 2.16. Responsibility for Subcontractors

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

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

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

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

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

SECTION 2.17. Key Personnel

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

SECTION 2.18. Co-operation and Coordination

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

SECTION 2.19. Start-Up, Commissioning and Testing

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

SECTION 2.20. Owner-Supplied Equipment

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

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

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

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

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

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

or

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SECTION 2.21. Owner Obligations

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

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

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

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

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

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

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

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

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

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

SECTION 2.22. Commercial Activities

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

ARTICLE III

CONSTRUCTION SCHEDULE AND COST

SECTION 3.1. Commencement of the Work and Contract Completion Date

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

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

SECTION 3.2. Project Milestone Schedule and Facility CPM Schedule

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

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

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

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

SECTION 3.3. Delays

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

ARTICLE IV

COMPENSATION

SECTION 4.1. Compensation

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

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

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

SECTION 4.3. Monthly Billing

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

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

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

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

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

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

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

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

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

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

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

SECTION 4.4. Contents of Progress Invoices

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

SECTION 4.5. Final Payment; Liens

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

(a) Contractor shall complete all Work (other than any Work under **Sections 6.1** and **6.2** to the extent the Warranty Period applicable thereto extends beyond the date of the final payment), including Punch List Work; and

(b) Contractor shall execute and deliver to Owner Contractor's final waiver of liens in the form attached hereto as **Exhibit C-2** and final waivers of liens (in the form attached hereto as **Exhibit C-2**) executed by all Major Subcontractors.

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

SECTION 4.6. Effect of Payment

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

SECTION 4.7. Security of Performance

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

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

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

SECTION 4.8. Wire Transfer Instructions

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

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

ARTICLE V

CHANGES IN THE WORK

SECTION 5.1. Change Order

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

SECTION 5.2. Individuals Authorized to Make Changes

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

SECTION 5.3. Change Orders

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

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

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

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

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

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

SECTION 5.4. If No Agreement

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

ARTICLE VI

INSPECTION AND WARRANTY

SECTION 6.1. Warranty

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

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

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

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

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

SECTION 6.2. Engineering and Design Warranty

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

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

SECTION 6.3. Inspection and Testing

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

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

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

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

SECTION 6.4. Correction of Defects

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

SECTION 6.5. Limitations

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

SECTION 6.6. Title

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

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

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

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

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

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

ARTICLE VII

REPRESENTATIVES AND NOTICES

SECTION 7.1. Owner's Representative

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

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

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

SECTION 7.2. Contractor's Project Manager

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

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

SECTION 7.3. Notices

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

With a copy to:

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

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

SECTION 7.4. Changes

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

SECTION 7.5. Ordinary Course

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

ARTICLE VIII

SITE

SECTION 8.1. Site Investigation

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

SECTION 8.2. Lines and Grades

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

SECTION 8.3. Specifications and Drawings

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

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

SECTION 8.4. Use of Premises

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

SECTION 8.5. Cleaning Up

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

SECTION 8.6. Underground Facilities

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

SECTION 8.7. Other Contracts

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

ARTICLE IX

COMPLETION OF THE WORK

SECTION 9.1. Mechanical Completion

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

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

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

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

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

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

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

SECTION 9.2. Substantial Completion

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

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

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

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

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

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

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

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

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

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

SECTION 9.3. Punch List

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

SECTION 9.4. Remedy of Failure to Achieve Performance Guarantees

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

SECTION 9.5. Final Completion

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

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

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

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

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

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

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

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

SECTION 9.6. Schedule Guarantee and Delay Damages

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

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

SECTION 9.7. Payment of Delay Damages

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

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

SECTION 9.8. Payment of Early Substantial Completion

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

ARTICLE X

DEFAULT AND TERMINATION

SECTION 10.1. Contractor Default

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

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

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

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

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

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

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

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

SECTION 10.2. Right to Terminate for Cause

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

SECTION 10.3. Termination by Owner for Cause

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

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

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

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

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

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

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

SECTION 10.4. Termination by Owner for Convenience

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

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

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

SECTION 10.5. Stopping Work

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

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

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

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

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

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

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

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

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

SECTION 10.6. Suspension of the Work

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

SECTION 10.7. Owner Default

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

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

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

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

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

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

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

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

SECTION 10.8. Delivery of Documents

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

ARTICLE XI

DISPUTE RESOLUTION

SECTION 11.1. Dispute Resolution

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

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

SECTION 11.2. Consideration by Senior Management

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

SECTION 11.3. Mediation

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

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

SECTION 11.4. Jurisdiction

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

ARTICLE XII

INDEMNITY AND LIMITATIONS OF LIABILITY

SECTION 12.1. General Liability

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

SECTION 12.2. Liability for Owner Property

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

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

SECTION 12.3. Trespass

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

SECTION 12.4. Intellectual Property Rights Infringement Indemnity

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

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

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

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

SECTION 12.5. Owner's Use of Drawings and Specifications

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

SECTION 12.6. Consequential Damages

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

SECTION 12.7. Compliance with Laws

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

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

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

SECTION 12.8. Limitation of Liability

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

ARTICLE XIII

DRUG, ALCOHOL, SAFETY AND HAZARDOUS MATERIALS

SECTION 13.1. Drug and Alcohol Policy

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

SECTION 13.2. Safety Materials

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

SECTION 13.3. Safety Precautions

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

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

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

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

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

SECTION 13.4. Hazardous Materials

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

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

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

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

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

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

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

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

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

ARTICLE XIV

INSURANCE

SECTION 14.1. STANDARD PROVISIONS

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

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

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or as otherwise specified herein:

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

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

SECTION 14.2. SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

A. General Liability Insurance

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

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

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

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

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

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

B. Automobile Liability Insurance

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

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

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

C. Workers Compensation Insurance

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

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

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

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

E. Professional Liability Insurance

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

F. Builder's Risk Insurance

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

G. Commercial Crime

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

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

i. Definitions:

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

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

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

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

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

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

ARTICLE XV

OWNERSHIP OF PLANS; REPRESENTATIONS AND WARRANTIES

SECTION 15.1. Title to Plans and Specifications

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

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

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

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

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

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

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

SECTION 15.2. Confidentiality

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

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

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

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

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

SECTION 15.4. Representations and Warranties of Contractor.

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

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

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

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

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

ARTICLE XVI

FORCE MAJEURE

SECTION 16.1. Force Majeure

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

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

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

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

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

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

SECTION 16.2. Applicability of Force Majeure

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

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

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

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

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

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

ARTICLE XVII

OTHER PROVISIONS

SECTION 17.1. Assignment

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

SECTION 17.2. Independent Contractor

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

SECTION 17.3. No Waiver

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

SECTION 17.4. Gratuities

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

SECTION 17.5. Severability

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

SECTION 17.6. Governing Law

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

SECTION 17.7. Counterparts

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

SECTION 17.8. Entire Agreement

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

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

SECTION 17.9. Agreement Authors

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

SECTION 17.10. Survival of Obligations

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

SECTION 17.11. No Third Party Beneficiaries

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

SECTION 17.12. Further Assurances

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

SECTION 17.13. Exclusivity of Remedies

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

SECTION 17.14. Right to Audit

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

SECTION 17.15. Proportionate Liability

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

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

[Remainder of Page Left Blank Intentionally]

EXHIBIT B
FORM OF CHANGE ORDER

CHANGE ORDER NO. Date

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

Description of Change:

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

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

_____ Increase _____ Decrease _____ No Effect _____ Calendar Days

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

ACCEPTED BY CONTRACTOR

ACCEPTED BY OWNER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Its: _____

Its: _____

EXHIBIT C
FORM OF PARTIAL LIEN WAIVERS AND RELEASE

EXHIBIT C-1
FORM OF PARTIAL LIEN WAIVER AND RELEASE

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

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

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

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

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

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

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

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

Notary Public In and For
The State of Texas

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

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

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

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

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

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

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

Notary Public In and For
The State of Texas

EXHIBIT C-2
FORM OF FINAL LIEN WAIVER AND RELEASE

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

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

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

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

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

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

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

Notary Public In and For
The State of Texas

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

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

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

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

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

Date _____

(Company name)

By _____
(Signature)

(Title)

STATE OF TEXAS §
COUNTY OF _____ §

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

Notary Public In and For
The State of Texas

EXHIBIT D-1
FORM OF MECHANICAL COMPLETION CERTIFICATE

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

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

[_____]

By: _____

Printed Name: _____

Its: _____

EXHIBIT D-2
FORM OF SUBSTANTIAL COMPLETION CERTIFICATE

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

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

[_____]

By: _____

Printed Name: _____

Its: _____

EXHIBIT D-3
FORM OF FINAL COMPLETION CERTIFICATE

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

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

By: _____

Printed Name: _____

Its: _____

EXHIBIT E-1 LNT

January

[Contractor Name]

[Address]

[Address]

Telephone:

Facsimile:

Attention: [_____]

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

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

RECITALS

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

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

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

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

1. NOTICE TO PROCEED

1.1 Owner hereby directs Contractor to commence the LNT Scope of Work (as hereinafter defined) in accordance with all terms of the “Contract” and the LNT Pricing Schedule attached as **Exhibit B** and Scope of Work attached as **Exhibit A**. Contractor shall commence performing the LNT Work immediately upon the execution of this LNT Agreement.

1.2 Contractor shall not incur any costs during the performance of the LNT Work to be paid by the Owner in excess of \$4,355,263 Dollars without obtaining prior written approval from the Owner.

2. EPC CONTRACT

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

3. SCOPE OF WORK

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

4. PAYMENT

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

5. AMENDMENTS AND WAIVERS

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

6. SOLE AGREEMENT

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

7. NOTICES

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

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

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

8. SEVERABILITY

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

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

9. COUNTERPARTS

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

10. ADVICE OF COUNSEL

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

11. GOVERNING LAW

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

[OWNER NAME]

By: _____

Name: _____

Title: _____

Acceptance

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

[CONTRACTOR NAME]

By: _____

Name: _____

Title: _____

Exhibit A

Scope of Work

Contactors Services

Engineering

SITE DEVELOPMENT – THROUGH IFC

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

GIS BUILDING – THROUGH IFC

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

PRELIMINARY ENGINEERING TO SUPPORT PERMITTING

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

Procurement

GENERAL

- Performance and Payment Bond
- Builder's Risk Insurance

138kv GIS

- Issue Purchase Order

138/13.2kV Transformer

- Issue Purchase Order

Exhibit B

Payment Schedule

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

EXHIBIT E-2 LNTP

[Date], 20__

[Contractor Name]

[Address]

[Address]

Telephone:

Facsimile:

Attention: [_____]

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

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

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

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

[OWNER NAME]

By: _____

Name: _____

Title: _____

Acceptance

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

[CONTRACTOR NAME]

By: _____

Name: _____

Title: _____

EXHIBIT F
PERMITS

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

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

12	US Army Corps of Engineers (USACE) Section 404/401 Permit	USACE/ TCEQ	N/A	N/A
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EXHIBIT H
FORM OF PERFORMANCE SECURITY

EXHIBIT H-1
FORM OF PERFORMANCE BOND

1
2
3
4
5
6
7

PERFORMANCE BOND

THE STATE OF TEXAS §
 § **KNOW ALL BY THESE PRESENTS:**
COUNTY OF DENTON §

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

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

24 **NOW, THEREFORE**, the condition of this obligation is such that if the said Principal
 25 shall faithfully perform it obligations under the Contract and shall in all respects duly and
 26 faithfully perform the Work, including Change Orders, under the Contract, according to the plans,
 27 specifications, and contract documents therein referred to, and as well during any period of
 28 extension of the Contract that may be granted on the part of the City, then this obligation shall be
 29 and become null and void, otherwise to remain in full force and effect.

30 **PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in
 31 Denton County, Texas or the United States District Court for the Eastern District of Texas,
 32 Sherman Division.

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

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

7 PRINCIPAL:
8 _____
9 _____

10 BY: _____
11 Signature

12 ATTEST:
13 _____
14 _____
15 _____

16 (Principal) Secretary _____ Name and Title

17 Address: _____
18 _____
19 _____
20 _____

21 _____
22 Witness as to Principal

23 SURETY:
24 _____
25 _____

26 BY: _____
27 Signature

28 _____ Name and Title

29 Address: _____
30 _____
31 _____

32 _____
33 Witness as to Surety Telephone Number: _____

34
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41 *Note: If signed by an officer of the Surety Company, there must be on file a certified extract
42 from the by-laws showing that this person has authority to sign such obligation. If
43 Surety's physical address is different from its mailing address, both must be provided.
44 The date of the bond shall not be prior to the date the Contract is awarded.

45

EXHIBIT H-2
FORM OF PAYMENT BOND

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PAYMENT BOND

THE STATE OF TEXAS
COUNTY OF DENTON

§
§
§

KNOW ALL BY THESE PRESENTS:

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

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

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

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

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

4

PRINCIPAL:

ATTEST:

BY: _____
Signature

(Principal) Secretary

Name and Title

Address: _____

Witness as to Principal

SURETY:

ATTEST:

BY: _____
Signature

(Surety) Secretary

Name and Title

Address: _____

Witness as to Surety

Telephone Number: _____

5

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

9

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

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END OF SECTION

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EXHIBIT H-3
FORM OF MAINTENANCE BOND

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MAINTENANCE BOND

THE STATE OF TEXAS §
 § **KNOW ALL BY THESE PRESENTS:**
COUNTY OF DENTON §

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

WHEREAS, the Principal has entered into a certain written contract with the City awarded
the ____ day of _____, 20 ____, which Contract is hereby
referred to and a made part hereof for all purposes as if fully set forth herein, to furnish all
design, materials, equipment labor and other accessories as defined by law, in the prosecution of the
Work, including any Work resulting from a duly authorized Change Order (collectively herein,
the “Work”) as provided for in said contract and designated as _____ ; and

WHEREAS, Principal binds itself to use such materials and to so construct the Work in
accordance with the plans, specifications and Contract Documents that the Work is and will
remain free from defects in design, materials, or workmanship for and during the period of **three (3) years**
after the date of Substantial Completion of the Work and any extension thereof as provided in the Contract
(“Warranty Period”); and

WHEREAS, Principal binds itself to repair or reconstruct the Work in whole or in part
upon receiving notice from the City of the need therefor at any time within the Warranty
Period.

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

6 **PROVIDED, HOWEVER**, if Principal shall fail so to repair or reconstruct any timely
7 noticed defective Work, it is agreed that the City may cause any and all such defective Work to
8 be repaired and/or reconstructed with all associated costs thereof being borne by the Principal and
9 the Surety under this Maintenance bond; and

10
11 **PROVIDED FURTHER**, that if any legal action be filed on this Bond, venue shall lie in
12 Denton County, Texas or the United States District Court for the Eastern District of Texas,
13 Sherman Division; and

14
15 **PROVIDED FURTHER**, that this obligation shall be continuous in nature and
16 successive recoveries may be had hereon for successive breaches.

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18
19

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

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PRINCIPAL:

BY: _____
 Signature

ATTEST:

14 (Principal) Secretary
15
16
17
18
19 _____

Name and Title
Address: _____

20 Witness as to Principal

SURETY:

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BY: _____
Signature

29 ATTEST:
30
31 _____

Name and Title
Address: _____

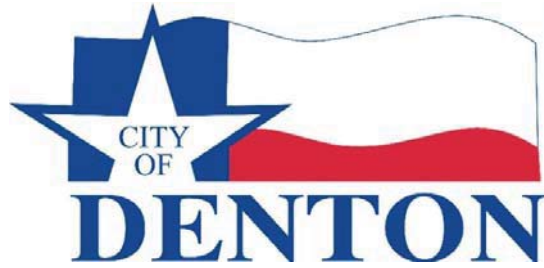
32 (Surety) Secretary
33
34 _____

Telephone Number: _____

35 Witness as to Surety
36
37 *Note: If signed by an officer of the Surety Company, there must be on file a certified extract
38 from the by-laws showing that this person has authority to sign such obligation. If
39 Surety's physical address is different from its mailing address, both must be provided.
40 The date of the bond shall not be prior to the date the Contract is awarded.

41

EXHIBIT I
FORM OF BI-WEEKLY PROGRESS REPORT



City of Denton

Hickory GIS Substation

BI-WEEKLY PROGRESS REPORT

Month / Year

BI-WEEKLY PROGRESS REPORT- MONTH / YEAR

TABLE OF CONTENTS

1.0 EXECUTIVE SUMMARY 5
2.0 SAFETY 5
3.0 PERMITS 5
4.0 ENGINEERING 5
5.0 PROCUREMENT 5
6.0 CONSTRUCTION PROGRESS 5
7.0 COMMISSIONING & TESTING 6
8.0 PROJECT CHANGES 6
9.0 PROJECT SCHEDULE..... 6
10.0 CRITICAL ACTION ITEMS..... 6

APPENDIX A – PHOTOS

APPENDIX B – PROJECT SCHEDULE

EXECUTIVE SUMMARY

This progress report covers the project execution activities for the design, procurement and construction of the Hickory GIS for the weeks of of XYZ.

Safety:

Schedule:

Contractual:

1.0 SAFETY

In order to track our performance, we are tracking the following safety statistics; hours worked, first aid cases, property damage incidents and OSHA recordable incidents:

2.0 PERMITS

The permitting matrix was updated as follows:

ENGINEERING

Engineering progress for the month includes the following:

- X,Y,Z

PROCUREMENT

Procurement Packages awarded to date:

- CXYZ - 1

Procurement Packages currently in Bid & Procurement process:

- CXYZ - 2

3.0 CONSTRUCTION PROGRESS

Construction Progress for the week is as follows:

Civil

Structural

Mechanical

Electrical

Building

4.0 COMMISSIONING & TESTING

Update:

5.0 PROJECT CHANGES

Contractor Change Notices:

Potential Change Orders:

Executed Change Orders to date:

6.0 PROJECT SCHEDULE

The project schedule is included in Exhibit M.

7.0 CRITICAL ACTION ITEMS

The Action Item list is filled out and updated through our bi-weekly coordination meetings, however, below are Action Items that are either past due or need attention soon to avoid contract impacts:

None to report at this time.

* * * * *

BETA[®] Project Organization Chart

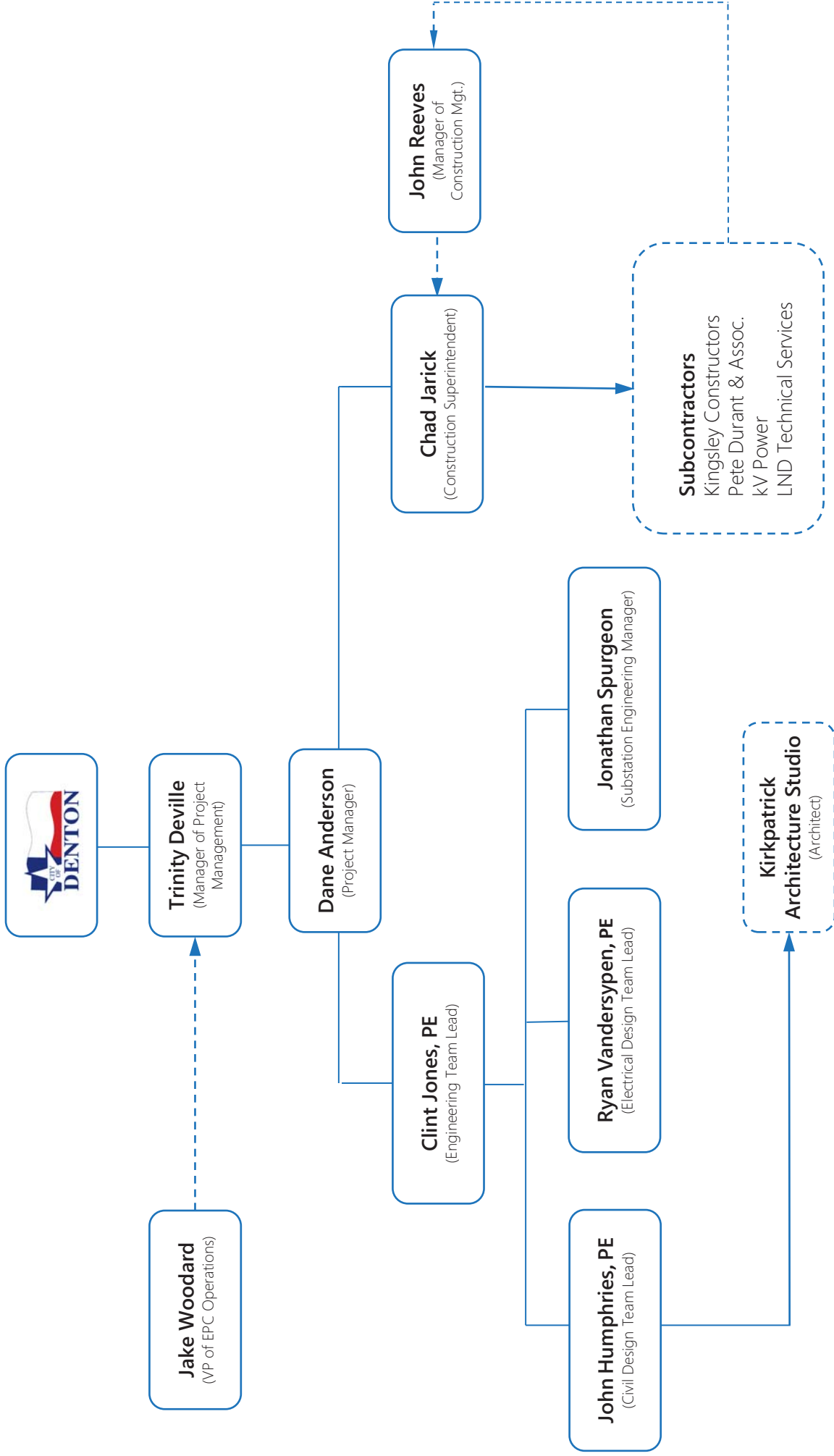


EXHIBIT K
GUARANTEES AND PERFORMANCE TESTS

Not Used

EXHIBIT L – Not Used

EXHIBIT M

CITY OF DENTON

DME 138/13.2KV HICKORY GIS SUBSTATION PROJECT

PROJECT SCHEDULE

ID	Task Name	Start	Finish	Duration	2022	2023	2024	2025
1	DME HICKORY 138/13.2KV GIS SUBSTATION PROJECT	Fri 1/14/22	Tue 4/15/25	848 days				
2	LIMITED NOTICE TO PROCEED	Fri 1/14/22	Fri 1/14/22	1 day				
3	ENGINEERING	Mon 1/17/22	Fri 1/6/23	265 days				
4	PERMITTING	Mon 1/17/22	Wed 7/13/22	128 days				
5	SITE DEVELOPMENT DESIGN	Thu 1/20/22	Wed 3/16/22	8 wks				
6	GIS & CONTROL BUILDING DESIGN	Thu 1/20/22	Wed 4/13/22	12 wks				
7	CIVIL/STRUCTURAL DESIGN	Thu 1/20/22	Wed 7/6/22	24 wks				
8	ELECTRICAL DESIGN	Thu 1/20/22	Wed 1/4/23	50 wks				
9	UNDERGROUND LINE DESIGN	Mon 7/4/22	Fri 1/6/23	27 wks				
10	PROCUREMENT	Thu 2/17/22	Wed 5/8/24	580 days				
11	138/13.2KV SUBSTATION TRANSFORMERS	Thu 2/17/22	Wed 5/8/24	116 wks				
12	138KV GAS INSULATED SWITCHGEAR	Thu 4/7/22	Wed 4/5/23	13 moons				
13	138KV OUTDOOR HV EQUIPMENT	Thu 5/19/22	Wed 5/3/23	50 wks				
14	18KV UNDERGROUND CABLE MATERIAL	Mon 1/14/22	Fri 3/15/24	70 wks				
15	SUBSTATION MATERIAL (STEEL, BUS, GROUNDING, ETC.)	Thu 12/1/22	Thu 5/4/23	22 wks				
16	138KV UNDERGROUND CABLE MATERIAL	Mon 2/27/23	Fri 1/5/24	45 wks				
17	FINAL NOTICE TO PROCEED	Thu 5/26/22	Thu 5/26/22	1 day				
18	HICKORY GIS SUBSTATION CONSTRUCTION	Mon 10/3/22	Wed 5/29/24	483 days				
19	MOBILIZE FOR CONSTRUCTION	Mon 10/3/22	Fri 10/7/22	1 wk				
20	TEMPORARILY RELOCATE HICKORY STREET DIST LINE	Mon 10/10/22	Fri 10/21/22	2 wks				
21	SITE GRADING (CUT/FILL, GRADING, DRAINAGE, ETC.)	Mon 10/17/22	Fri 12/2/22	7 wks				
22	FOUNDATION CONSTRUCTION	Mon 11/28/22	Fri 2/10/23	55 days				
23	BELOW GRADE GROUNDING, CONDUIT AND DUCT BANKS	Mon 1/30/23	Fri 5/5/23	70 days				
24	PERIMETER WALL FOUNDATION CONSTRUCTION	Thu 3/9/23	Wed 5/24/23	11 wks				
25	BUILDING FOUNDATION CONSTRUCTION	Thu 3/9/23	Wed 4/19/23	6 wks				
26	GIS BUILDING CONSTRUCTION	Thu 4/20/23	Wed 9/27/23	23 wks				
27	OUTDOOR SUBSTATION ELECTRICAL CONSTRUCTION	Thu 5/4/23	Wed 8/23/23	16 wks				
28	PERIMETER WALL CONSTRUCTION	Wed 5/17/23	Tue 2/6/24	38 wks				
29	18KV SWITCHGEAR ENCLOSURE RELOCATE AND INSTALL	Thu 7/6/23	Wed 7/19/23	2 wks				
30	RETAINING WALL CONSTRUCTION/ACCESS ROAD PAVING	Thu 8/31/23	Wed 9/27/23	4 wks				
31	GIS INSTALLATION	Thu 9/28/23	Wed 12/20/23	12 wks				
32	SUBSTATION TRANSFORMER INSTALLATION	Thu 5/9/24	Wed 5/29/24	3 wks				
33	138KV UNDERGROUND TRANSMISSION CONSTRUCTION	Thu 10/12/23	Mon 12/4/23	38 days				
34	138KV HICKORY-LOGUST DUCT BANK INSTALLATION	Thu 11/2/23	Wed 11/1/23	3 wks				
35	138KV HICKORY-LOGUST U/G CABLE INSTALLATION	Wed 1/23/24	Mon 12/4/23	23 days				
36	COMPLETION	Wed 1/23/24	Thu 6/6/24	112 days				
37	TESTING	Wed 1/31/24	Tue 2/13/24	6 wks				
38	SUBSTATION TRANSFORMER TESTING	Thu 5/30/24	Wed 6/5/24	5 days				
39	PARTIAL ENERGIZATION	Thu 6/6/24	Thu 6/6/24	1 day				
40	UNDERGROUND TRANSMISSION AND DISTRIBUTION COMPLETION	Fri 6/7/24	Fri 10/25/24	101 days				
41	18KV DUCT BANK INSTALLATION	Fri 6/7/24	Thu 8/15/24	10 wks				
42	18KV UNDERGROUND CABLE INSTALLATION (8 cks)	Fri 6/28/24	Thu 9/12/24	11 wks				
43	18KV DISTRIBUTION CUTOVER (8c/ks)	Fri 7/19/24	Thu 10/17/24	13 wks				
44	138KV HICKORY-RD WELLS DUCT BANK INSTALLATION	Fri 8/6/24	Thu 8/29/24	2 wks				
45	138KV HICKORY-RD WELLS U/G CABLE INSTALLATION	Fri 8/30/24	Thu 9/19/24	15 days				
46	138KV HICKORY-BONNIE BRAE U/G CABLE INSTALLATION	Fri 9/20/24	Thu 10/3/24	15 days				
47	138KV HICKORY-BONNIE BRAE U/G CABLE INSTALLATION	Fri 10/4/24	Thu 10/24/24	15 days				
48	18KV OVERHEAD DISTRIBUTION LINE DEMOLITION	Fri 10/11/24	Thu 10/24/24	2 wks				
49	FINAL ENERGIZATION COMPLETE	Fri 10/25/24	Fri 10/25/24	1 day				
50	CLOSEOUT	Mon 10/28/24	Tue 4/15/25	122 days				
51	CONSTRUCTION CLOSEOUT	Mon 10/28/24	Fri 1/17/25	12 wks				
52	PROJECT CLOSEOUT	Mon 12/02/25	Tue 4/15/25	62 days				

Project Summary Task



EXHIBIT N

Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
betaengineering.com

Classification	Rate Type	Unit of Measure	Rate
President	N/A	Hour	200
Vice President	N/A	Hour	200
Project Executive	N/A	Hour	185
Senior Project Manager	N/A	Hour	175
Project Manager III	N/A	Hour	160
Project Manager II	N/A	Hour	145
Project Manager I	N/A	Hour	130
Scheduling Specialist	N/A	Hour	120
Project Coordinator III	N/A	Hour	130
Project Coordinator II	N/A	Hour	115
Project Coordinator I	N/A	Hour	100
Administrative Assistant	N/A	Hour	65
Construction Manager IV	N/A	Hour	160
Construction Manager III	N/A	Hour	140
Construction Manager II	N/A	Hour	120
Construction Manager I	N/A	Hour	105
Procurement Agent III	N/A	Hour	85
Procurement Agent II	N/A	Hour	80
Procurement Agent I	N/A	Hour	75
Project Engineer	N/A	Hour	155
Engineer V	N/A	Hour	155
Engineer IV	N/A	Hour	145
Engineer III	N/A	Hour	130
Engineer II	N/A	Hour	115
Engineer I	N/A	Hour	105
Technician III	N/A	Hour	120
Technician II	N/A	Hour	110
Technician I	N/A	Hour	100
Designer III	N/A	Hour	85
Designer II	N/A	Hour	75
Drafter I	N/A	Hour	65

Classification	Rate Type	Unit of Measure	Rate
The above rates include all direct and indirect labor costs included but not limited to payroll taxes, benefits, insurance, workers compensation, overhead and profit.			
Overtime rates will be applied to the above hourly rates at 1.5 times for all hours above 10 hours per day or 40 hours per week and for any work on weekends and holidays.			
Level I Software: Structural Design, Foundation Design, AutoCAD, Vortex, Vibrec	N/A	Hour	10.00
Level II Software: Autodesk Revit, Navisworks, PLS-Cad, Autodesk Inventor, AutoCAD Electrical, AutoCAD Civil 3D, MicroStation	N/A	Hour	20.00
Level III Software: CDEGS, SYMCAP	N/A	Hour	30.00
Reproduction – Black & White Large Scale Drawings (D Size)	N/A	Each	1.50
Reproduction- Color Large Scale Drawings (D Size)	N/A	Each	10.00
Documents – Black & White Single-sided Copies 8 x 11, 8 x 14	N/A	Each	0.10
Documents – Black & White Single-sided Copies 11 x 17	N/A	Each	0.25
Documents – Black & White Double-sided Copies 8 x 11, 8 x 14	N/A	Each	0.15
Documents – Black & White Double-sided Copies 11 x 17	N/A	Each	0.38
Documents – Color Single-sided Copies 8 x 11, 8 x 14	N/A	Each	1.00
Documents – Color Single-sided Copies 11 x 17	N/A	Each	2.50
Documents – Color Double-sided Copies 8 x 11	N/A	Each	1.50
Documents – Color Double-sided Copies 11 x 17	N/A	Each	4.00
Other Expenses Associated with Outsourced Labor, Material or Equipment	N/A	Each	Cost + 10%

BETA ENGINEERING, LLC

BY: DocuSigned by:
George Brashear
E7EBFE2AFAC44F0...
AUTHORIZED SIGNATURE

Printed Name: George Brashear

Title: Executive Vice President

318.730.4303

PHONE NUMBER

george.brashear@betaengineering.com

EMAIL ADDRESS

2021- 827510

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: DocuSigned by:
Sara Hensley
5238DB296270423...
SARA HENSLEY
INTERIM CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: DocuSigned by:
Rosa Rios
1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: DocuSigned by:
Marcella Lunn
4B070831B4AA438...

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

DocuSigned by:
Antonio Puente
E3760944C2BF4B5... Antonio Puente
SIGNATURE PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 Name of vendor who has a business relationship with local governmental entity.

Beta Engineering, LLC

2 **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

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

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes No

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

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

5

George A. Brashear

August 19, 2021

Signature of vendor doing business with the governmental entity

Date

Certificate Of Completion

Envelope Id: D5F87594CD3A4C2C93CF7637E174F3B0	Status: Completed
Subject: Please DocuSign: City Council Contract 7670 Hickory GIS Substation Design Build	
Source Envelope:	
Document Pages: 125	Signatures: 5
Certificate Pages: 6	Initials: 1
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
11/29/2021 12:16:47 PM	Christa.Christian@cityofdenton.com	



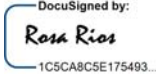
Signer Events

Signer Events	Signature	Timestamp
Christa Christian christa.christian@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 11/29/2021 12:58:57 PM Viewed: 11/29/2021 12:59:09 PM Signed: 11/29/2021 12:59:35 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 11/29/2021 12:59:38 PM Viewed: 11/29/2021 2:43:16 PM Signed: 11/29/2021 2:44:26 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Marcella Lunn marcella.lunn@cityofdenton.com Catherine Clifton, Interim City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 68.185.202.16 Signed using mobile	Sent: 11/29/2021 2:44:29 PM Viewed: 11/29/2021 2:45:54 PM Signed: 11/29/2021 5:26:10 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

George Brashear george.brashear@betaengineering.com Executive Vice President Beta Engineering, LLC Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 76.88.4.158	Sent: 11/29/2021 5:26:13 PM Viewed: 11/29/2021 5:30:38 PM Signed: 11/29/2021 8:30:12 PM
Electronic Record and Signature Disclosure: Accepted: 11/29/2021 5:30:38 PM ID: f567f1ad-3a93-45f1-99e7-185388c031aa		

Signer Events	Signature	Timestamp
<p>Antonio Puente Antonio.Puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 11/29/2021 8:42:03 PM ID: e76b626b-ab78-4de6-9726-d7bcd34dd118</p>	<p>DocuSigned by:  E3760944C2BF485...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 174.246.128.156 Signed using mobile</p>	<p>Sent: 11/29/2021 8:30:15 PM Viewed: 11/29/2021 8:42:03 PM Signed: 11/29/2021 8:42:33 PM</p>
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 198.49.140.104</p>	<p>Sent: 11/29/2021 8:42:36 PM Viewed: 12/15/2021 8:15:34 AM Signed: 12/15/2021 8:16:03 AM</p>
<p>Sara Hensley sara.hensley@cityofdenton.com Interim City Manager City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:  5236DB296270423...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 12/15/2021 8:16:07 AM Viewed: 12/15/2021 8:18:11 AM Signed: 12/15/2021 8:18:17 AM</p>
<p><input type="checkbox"/>osa <input type="checkbox"/>ios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:  1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 12/15/2021 8:18:20 AM Viewed: 12/15/2021 9:14:47 AM Signed: 12/15/2021 9:15:09 AM</p>
<p>Electronic Record and Signature Disclosure: Accepted: 12/15/2021 9:14:47 AM ID: d5f7d80b-dfaa-4af9-83ca-1bd9a6b27ef6</p>		

<input type="checkbox"/> Person Signer Events	Signature	Timestamp
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<input type="checkbox"/> gent Deliver <input type="checkbox"/> Events	Status	Timestamp
ntermediar <input type="checkbox"/> Deliver <input type="checkbox"/> Events	Status	Timestamp
Certified Deliver <input type="checkbox"/> Events	Status	Timestamp
Car <input type="checkbox"/> on Cop <input type="checkbox"/> Events	Status	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em; color: blue;">COPIED</div>	<p>Sent: 11/29/2021 12:59:38 PM</p>

Carion Cop Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 11/29/2021 8:42:35 PM Viewed: 11/30/2021 9:05:54 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 12/15/2021 9:15:12 AM
Mark Zimmerer mark.zimmerer@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 11/23/2021 1:52:42 PM ID: 3bdd0863-bf0a-485f-a75b-0c586de97b56	COPIED	Sent: 12/15/2021 9:15:12 AM

Fitness Events	Signature	Timestamp
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Notar Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	11/29/2021 12:58:57 PM
Certified Delivered	Security Checked	12/15/2021 9:14:47 AM
Signing Complete	Security Checked	12/15/2021 9:15:09 AM
Completed	Security Checked	12/15/2021 9:15:13 AM

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

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Withdrawing your consent

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

Consequences of changing your mind

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

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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.

How to contact City of Denton:

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

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

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

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

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

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

To withdraw your consent with City of Denton

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

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

ORDINANCE NO. 22-1540

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF CHANGE ORDER NO. 1 TO THE DESIGN-BUILD AGREEMENT BETWEEN THE CITY OF DENTON AND BETA ENGINEERING, LLC, FOR THE DESIGN AND CONSTRUCTION OF THE HICKORY GAS INSULATED SUBSTATION FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7670 – CHANGE ORDER NO. 1 IN THE NOT-TO-EXCEED AMOUNT OF \$811,000.00, FOR A TOTAL CONTRACT AWARD AGGREGATED TO \$41,280,000.00).

WHEREAS, on December 14, 2021, by Ordinance No. 21-2701, the Council awarded a contract to Beta Engineering, LLC, in the amount of \$40,469,000.00, for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric; and

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that a change order be authorized to amend such contract agreement with respect to the scope of work and an increase in the payment amount; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 1, increasing the amount of the contract between the City and Beta Engineering, LLC, which is on file in the office of the Purchasing Agent, in the amount of Eight Hundred Eleven Thousand and 0/100 (\$811,000.00) dollars, is hereby approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to \$41,280,000.00.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Jesse Davis and seconded by Brian Beck. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	_____	_____	_____
Vicki Byrd, District 1:	<u>✓</u>	_____	_____	_____
Brian Beck, District 2:	<u>✓</u>	_____	_____	_____
Jesse Davis, District 3:	<u>✓</u>	_____	_____	_____
Alison Maguire, District 4:	<u>✓</u>	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	_____	_____	_____
Chris Watts, At Large Place 6:	<u>✓</u>	_____	_____	_____

PASSED AND APPROVED this the 16th day of August, 2022.



GERARD HUDSPETH, MAYOR

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: 



APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: 
Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o,
ou=City of Denton,
email=marcella.lunn@cityofden
ton.com, c=US
Date: 2022.07.25 10:10:42
-05'00'



DocuSign City Council Transmittal Coversheet

FILE	7670
File Name	Hickory GIS Substation, Change Order 1
Purchasing Contact	Christa Christian
City Council Target Date	AUGUST 16, 2022
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	22-1540



Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
betaengineering.com

June 30, 2022

Denton Municipal Electric
 1671 Spencer Road
 Denton, TX 76205

Attn: Mr. Mark Zimmerer, PE
 Subject: City of Denton Hickory GIS Substation Project
 Beta Project No. B661

Dear Mark,

This letter serves as a formal request for a Contract Amendment to incorporate scope changes in the Design Build Agreement for the Construction of the Hickory GIS Substation dated December 14th, 2021. The additional scope items have been separated into three categories as follows:

- A. **Items to be Included in the Contract Amendment** – Beta requests a Contract Amendment to incorporate the following scope changes as soon as possible so that these items can be incorporated in the project without delay.

Item	Description	Price
A1	<p>As a result of a force-majeure event outside of Beta's control, it is not possible to achieve the Contract Completion Date of October 24, 2024 with Beta-Purchased transformers GT-06111 and GT-06112 installed at the new Hickory GIS Substation.</p> <p>The new Hickory GIS Substation shall use Owner-Supplied transformers GT-01950 and GT-02289. Unless otherwise noted, only the work performed by Beta to complete integration of Owner-Supplied transformers to the new Hickory GIS Substation shall be subject to a 3-year warranty period.</p> <p>Owner-Supplied transformers GT-01950 and GT-02289 shall be inspected and tested at McKinney Substation prior to disassembly and relocation to the new Hickory GIS Substation. This testing shall be performed by Waukesha under supervision by Beta at no additional cost to the contract. Upon reassembly at the new Hickory GIS Substation, Owner-Supplied transformers GT-01950 and GT-02289 shall be re-tested by Waukesha under supervision by Beta at no additional cost to the contract.</p>	\$0
A2	<p>"Per the definitions and Section 5.3(b)(6) of our design build Agreement:</p> <p>""Adjusted Reference Price" means the Reference Price for Copper, Steel and PVC Resin adjusted up or down five percent (5%), as applicable.""</p> <p>""Commodity Price Change Order" means a change order pursuant to Section 5.3(b)(6) and shall be; (a) a credit to Owner for quantities of Copper, Steel and PVC Resin, if the Copper Index Price, the Steel Index Price or the PVC Resin Price is less than ninety five percent (95%) of the Reference Price for such commodity on the day such commodity is purchased by Contractor for the Work; and/or (b) a price increase to Contractor for the quantities of Copper,</p>	(\$9,000)

DME Hickory GIS Substation
 Beta Ref. No. B661-L001
 March 7, 2022
 Page 2

Steel and PVC Resin, if the Steel Index Price, the Cooper Index Price or the PVC Resin Price is greater than one hundred and five percent (105%) of the Reference Price on the day such commodity is purchased by Contractor for the Work. The Section 5.3(b)(6) Change Order shall be for the quantity of the commodity purchased (Copper, Steel or PVC Resin) multiplied by the difference between the Adjusted Reference Price and applicable Steel Index Price, Copper Index Price or PVC Resin Price. Contractor shall provide commercially reasonable documentation to Owner documenting the basis for the Commodity Price Change Order associated with each requested Change Order.""

""Reference Price"" means \$4.74/lb for Copper, \$1,330/ton for PVC Resin and \$1,919/ton for Steel.""

Based on Reference Price for copper of \$4.74 per lb, the Adjusted Reference Price is \$4.503 per lb.

For the 138kV transmission cable, Beta's purchase order was based on a copper price of \$4.4659 per lb (please refer to the attached quote). Per the attached clarifications, the cable price per foot is adjusted based on fluctuations in the cost of copper as follows:

$FP = BP - \{W_{tcu} * (CP_{bid} - CP_{order})\} - \{W_{tal} * (AP_{bid} - AP_{order})\}$ where

FP is Final Adjusted Price [\$/ft]

BP is Bid Price [\$/ft]

W_{tcu} is Amount of Copper used in the cable construction [lbs/ft]

CP_{bid} is Copper Price base in the quotation [\$/lb]

CP_{order} is Copper price COMEX as per the hedge contract for the delivery month [\$/lb]

W_{tal} is Amount of Aluminum used in the cable construction [lbs/ft]

AP_{bid} is Aluminum price base in the quotation [\$/lb]

AP_{order} is Aluminum Mid-West U.S. Transaction price as per the hedge contract for the delivery month [\$/lb]

Beta's purchase of 138kV cable was on a Bid Price of \$155.68/ft

The Final Adjusted Price at \$4.503/lb is \$156.3605/ft

This results in a cost savings of \$8,846 which will be credited back to DME as the Commodity Price Change Order."

DME Hickory GIS Substation
 Beta Ref. No. B661-L001
 March 7, 2022
 Page 3

A3	<p>"Per DME's direction given via Brian Ehsani email on 6/8/22 and subsequent meetings, Beta is proceeding with modifications to the single line diagrams (SOL and ROL drawings), panel elevations BOM drawings, and three line (TL and PT) drawings detailed in Brian's email. In addition, Beta will include two new ROL sheets that reflect only the MOD controls per B&V's comments to Engineering Submittal #2. These modifications will consist of rearranging the breaker numbering and bay positions on the one-lines and three-line diagrams to reflect the physical arrangement of the GIS to ensure optimum functionality for DME's operations team. This change will also require appropriately rearranging the protection and control relaying to accurately reflect the new arrangement of the bays. The panel elevation BOM drawings will be updated to reflect DME's ring bus standard where the breaker panel protects the descending asset.</p> <p>The additional hours for these modifications are as follows:</p> <p>Technician II – 66 hours Engineer III – 74 hours Engineer V – 42 hours"</p>	\$22,000
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- B. Items to be listed as “Optional” in the Contract Amendment** – The following items shall be listed as “Optional” items in the Contract Amendment. These items would not be incorporated Beta’s scope until accepted by DME. These optional items are valid for acceptance through April 3, 2022.

Item	Description	Price
B1	The Beta-purchased SPX transformers GT-06111 and GT-06112 shall be delivered to the McKinney Substation Site or Underwood Substation Site . Transformers shall be assembled and tested by Manufacturer under supervision by Beta. High/Medium voltage connections and control wiring to be installed and tested by others.	\$0
B2	<p>Owner-Supplied transformers GT-01950 and GT-02289 shall be disassembled and relocated to the new Hickory GIS Substation by DME.</p> <p>Reassembly, testing, and pre-commissioning of Owner-Supplied transformers at new Hickory GIS Site shall be performed by DME.</p> <p>Any additional work performed by Beta to complete integration of Owner-Supplied transformers to the new Hickory GIS Substation shall be subject to a 3-year warranty period.</p>	\$0

DME Hickory GIS Substation
 Beta Ref. No. B661-L001
 March 7, 2022
 Page 4

Item	Description	Price
B3	<p>Owner-Supplied transformers GT-01950 and GT-02289 shall be disassembled and relocated to the new Hickory GIS Substation by Beta.</p> <p>Reassembly, testing, and pre-commissioning of Owner-Supplied transformers at new Hickory GIS Site shall be performed by Beta. This work shall be subject to a 1-year warranty.</p> <p>Any additional work performed by Beta to complete integration of Owner-Supplied transformers to the new Hickory GIS Substation shall be subject to a 3-year warranty period.</p> <p>Owner supplied transformers shall be subject to section 2.20 “Owner-Supplied Equipment” and related Section 2.13 “ Care, Custody and Control/Risk of Loss” shown in the Design Build Agreement.</p>	\$372,000
B4	<p>Per Siemens Energy quote and technical exceptions, the GIS equipment located inside the GIS Equipment Room is rated for a maximum temperature of 40 C.</p> <p>Based on our discussions, HVAC in the GIS Equipment Room had been previously considered but was removed from the project scope as unnecessary.</p> <p>Kirkpatrick Architecture Services has determined that an additional 60 tons of cooling capacity would be required to maintain a temperature of 85 F in the GIS Equipment Room. Five (5) 15-ton Bard Wall mount units are proposed with one (1) unit acting as a spare.</p> <p>This proposal is for the addition of the five (5) 15-ton Bard wall mount units, and associated GIS building electrical modifications, per the attached quote.</p> <p>No additional substation modification will be required for this addition.</p> <p>There is an estimated schedule impact of 2 weeks for revisions to the GIS Building construction drawings.</p> <p>There is a 30-week lead time for the additional A/C units and 2 weeks required for installation.</p>	\$426,000

Please issue a letter confirming acceptance of the “A” items included in this request and indication of the “B” items Beta should proceed with. We will add a single Milestone Payment for the “A” items. This Milestone Payment” would be called “Change Order No. 1 – Commodity Change Order and Drawing Updates”. We anticipate invoicing for 100% of this milestone in August 2022.

If you would like Beta to proceed with option B3, I would suggest the addition of a single Milestone Payment. Milestone Payment would be called “Changes Order No. 1 – Owner-Supplied Transformer Relocation”. We anticipate invoicing for 100% of this milestone in February 2023, following the testing, disassembly, relocation, reassembly.

DME Hickory GIS Substation
Beta Ref. No. B661-L001
March 7, 2022
Page 5

If you would like Beta to proceed with option B4, I would suggest the addition of a single Milestone Payment. Milestone Payment would be called "Changes Order No. 1 – GIS Equipment Room AC Addition". We anticipate invoicing for 100% of this milestone in June 2023, following the installation of AC Units in the GIS Equipment Room.

Upon receipt of your response, I will prepare and submit the Change Order Form in accordance with Article V of the Design Build Agreement.

Please call me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeremy Katusak", written over a horizontal line.

Jeremy Katusak, PE, PMP
Project Manager

EXHIBIT B
FORM OF CHANGE ORDER

CHANGE ORDER NO. 1 6/30/2022

In accordance with **Article V** of that certain Engineering, Procurement and Construction Agreement, dated December 14, 2021 (the "**Agreement**"), between Beta Engineering, LLC ("**Contractor**") and City of Denton ("**Owner**"), Contractor and Owner agree as follows:

Description of Change:

- A1. Use DME supplied transformers from McKinney Substation instead of two new units
 Already purchased by Beta from Waukesha
- A2. Reduce cost of underground transmission cable due to copper index pricing changes
- A3. Cost to redesign relaying drawings after design was completed.
- B1. Direction to Beta to delivery two new Waukesha transformers to McKinney or Underwood Substation
- B3. Cost for Beta to disassemble, move, reassemble, and test the McKinney transformers. Beta has agreed to assume responsibility for these two transformers while they are in possession in accordance with Section 2.12 and 2.20 of the contract.
- B4. Cost to add air conditioning to GIS room to ensure GIS equipment and other electronics operate below maximum designed temperature.

Original Contract Price	\$ <u>40,469,000.00</u>
Previous Change Orders	\$ <u>0.00</u>
Amount of this Change Order	\$ <u>811,000.00</u>
New Contract Price	\$ <u>41,280,000.00</u>

This Change Order will modify the Contract Completion Date as follows:

_____ Increase _____ Decrease X No Effect _____ Calendar Days

Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement. Except as modified hereby, the Agreement shall remain in full force and effect and unmodified.

ACCEPTED BY CONTRACTOR

By: _____

Printed Name: Jake Woodard

Its: Vice President

ACCEPTED BY OWNER

By: _____

Printed Name: Christa Christian

Its: Senior Buyer

DocuSigned by:

E7EBFE2AFAC44F0...
 George Brashear Executive Vice President

THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED as to financial and operational obligations and business terms.

DocuSigned by: *Antonio Puente* Antonio Puente
E3760944C2BF4B5... PRINTED NAME
SIGNATURE

DME General Manager

TITLE

Electric

DEPARTMENT

CITY OF DENTON, TEXAS

DocuSigned by: *Sara Hensley*
BY: 5236DB296270423...
SARA HENSLEY
CITY MANAGER

ATTEST:
ROSA RIOS, CITY SECRETARY

DocuSigned by: *Rosa Rios*
BY: 1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by: *Marcella Lunn*
BY: 4B070831B4AA438...

Certificate Of Completion

Envelope Id: 94F678F5D65D46A3BD42196B327FB50F	Status: Completed
Subject: Please DocuSign: City Council Contract 7670 - Change Order 1	
Source Envelope:	
Document Pages: 8	Signatures: 5
Certificate Pages: 6	Initials: 1
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

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Status: Original	Holder: Christa Christian	Location: DocuSign
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Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Tabitha Millsop tabitha.millsop@cityofdenton.com Assistant Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 7/15/2022 11:30:21 AM Viewed: 7/18/2022 4:39:18 PM Signed: 7/18/2022 4:39:23 PM
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Electronic Record and Signature Disclosure:
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Marcella Lunn marcella.lunn@cityofdenton.com Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/18/2022 4:39:25 PM Viewed: 7/20/2022 2:28:45 PM Signed: 7/20/2022 2:30:00 PM
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Electronic Record and Signature Disclosure:
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George Brashear george.brashear@betaengineering.com Executive Vice President Beta Engineering, LLC Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 76.88.4.158	Sent: 7/20/2022 2:30:02 PM Viewed: 7/20/2022 3:07:31 PM Signed: 7/20/2022 3:46:06 PM
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ID: 335582d1-8563-4409-9160-fc4ab365bafb

Signer Events	Signature	Timestamp
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Antonio Puente
 Antonio.Puente@cityofdenton.com
 DME General Manager
 Security Level: Email, Account Authentication (None)

DocuSigned by:

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 Signature Adoption: Pre-selected Style
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Sent: 7/20/2022 3:46:09 PM
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 Signed: 7/20/2022 4:08:14 PM

Electronic Record and Signature Disclosure:
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Completed
 Using IP Address: 198.49.140.10

Sent: 7/20/2022 4:08:17 PM
 Viewed: 8/17/2022 8:25:01 AM
 Signed: 8/17/2022 8:25:17 AM

Electronic Record and Signature Disclosure:
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Sara Hensley
 sara.hensley@cityofdenton.com
 City Manager
 City of Denton
 Security Level: Email, Account Authentication (None)

DocuSigned by:

 5236DB296270423...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

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 Viewed: 8/17/2022 8:26:31 AM
 Signed: 8/17/2022 8:26:34 AM

Electronic Record and Signature Disclosure:
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Rosa Rios
 rosa.rios@cityofdenton.com
 City Secretary
 Security Level: Email, Account Authentication (None)

DocuSigned by:

 1C5CA8C5E175493...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Sent: 8/17/2022 8:26:36 AM
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 Signed: 8/17/2022 1:37:27 PM

Electronic Record and Signature Disclosure:
 Accepted: 8/17/2022 1:35:56 PM
 ID: 13d5b5c5-0c34-43e9-8926-f9e57ed87447

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<input type="checkbox"/> Agent Deliver Events	Status	Timestamp
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<input type="checkbox"/> Intermediar Deliver Events	Status	Timestamp
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<input type="checkbox"/> Certified Deliver Events	Status	Timestamp
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<input type="checkbox"/> Car on Cop Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

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Sent: 7/15/2022 11:30:21 AM

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Car Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/20/2022 4:08:16 PM Viewed: 7/20/2022 4:16:09 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 8/17/2022 1:37:30 PM
Mark Zimmerer mark.zimmerer@cityofdenton.com Electric Engineering Supervisor Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 7/18/2022 1:28:41 PM ID: 79c223f8-d900-4558-9eb9-21104dba1e4e	COPIED	Sent: 8/17/2022 1:37:32 PM
Witness Events	Signature	Timestamp
Notar Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/15/2022 11:29:40 AM
Certified Delivered	Security Checked	8/17/2022 1:35:56 PM
Signing Complete	Security Checked	8/17/2022 1:37:27 PM
Completed	Security Checked	8/17/2022 1:37:32 PM
Attachment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

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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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

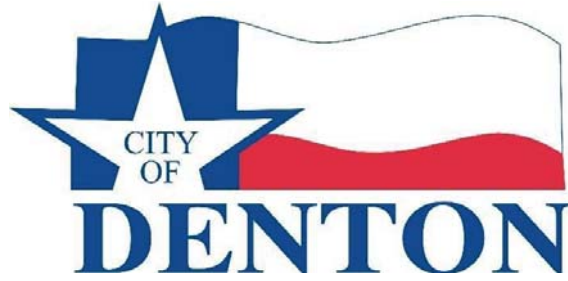
** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

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- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



DocuSign Transmittal Coversheet

File Name	7670 - Hickory GIS Substation , CO 2
Purchasing Contact	Christa Christian
Contract Expiration	10/6/23



Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
betaengineering.com

May 8, 2023

Denton Municipal Electric
 1671 Spencer Road
 Denton, TX 76205

Attn: Mr. Mark Zimmerer, PE
 Subject: City of Denton Hickory GIS Substation Project
 Beta Project No. B661

Dear Mark,

This letter serves as a formal request for a Contract Amendment to incorporate scope changes in the Design Build Agreement for the Construction of the Hickory GIS Substation dated December 14th, 2021. The additional scope items have been separated into two categories as follows:

- A. **Items to be Included in the Contract Amendment** – Beta requests a Contract Amendment to incorporate the following scope changes as soon as possible so that these items can be incorporated in the project without delay.

N/A

- B. **Items to be listed as “Optional” in the Contract Amendment** – The following items shall be listed as “Optional” items in the Contract Amendment. These items would not be incorporated Beta’s scope until accepted by DME. These optional items are valid for acceptance through May 31, 2023.

Item	Description	Price
B1	<p>During the relocation survey of the McKinney Substation transformers by Beta and Waukesha, it was discovered that unit GT-01950 had evidence of a gasket leak. Beta shall hire Waukesha to regasket the unit, including the following:</p> <p>Waukesha® Service will drain existing oil (est. 7,886 gal.) into Waukesha® Service supplied oil storage tanker. Follow oil removal with dry-air.</p> <ul style="list-style-type: none"> • Waukesha® Service to provide dry-air, purge tank, and perform confined space entry requirements prior to internal tank access. • Waukesha® Service to perform leak repair / re-gasket, per the following: <ul style="list-style-type: none"> o Remove existing 138kV HV bushings and turrets, install new gaskets, and re-install. o Remove existing 13.2kV LV & HO bushings and turrets, install new gaskets, and re-install o Remove radiators w/manifolds, install new gaskets, and re-install radiators. o Remove and regasket peripheral devices – gauges, PRD, SPR, etc. o Re-gasket manhole covers on lid and side manholes on tank wall. • Waukesha® Service to seal up transformer and perform pressure test (3 PSI) to ensure no leaks. • Waukesha® Service to perform vacuum oil filling / hot oil processing, per the 	\$37,000

DME Hickory GIS Substation
Beta Ref. No. B661-L001
March 7, 2022
Page 2

Item	Description	Price
	following procedure: <ul style="list-style-type: none">o Vacuum leak test the hoses and equipment.o Pull vacuum to 1 Torr or less and hold for 48 hrs.o Fill with heat oil to 50-60 deg C while holding a vacuum of 5 Torr or less.o Break vacuum and top off with nitrogen.o Check oil levels per nameplate. Beta Engineering/City of Denton to provide any make-up oil if required.	

Please issue a letter indicating if the “B1” item is accepted or rejected.

If you would like Beta to proceed with option B1, I would suggest the addition of a single Milestone Payment. Milestone Payment would be called “Changes Order No. 21 – Owner-Supplied Transformer GT-01950 Regasket”. We anticipate invoicing for 100% of this milestone in October 2023, following the repair, testing, disassembly, relocation, reassembly.

Upon receipt of your response, I will prepare and submit the Change Order Form in accordance with Article V of the Design Build Agreement.

Please call me if you have any questions.

Sincerely,



Jeremy Katusak, PE, PMP
Project Manager

waukesha®

City of Denton/Beta Engineering

Service Quotation #9131976

RE: Waukesha Transformers at McKinney Substation in Denton,
TX

3/3/2022





Service Quotation

Date: 3/3/2022

Jeremy Katusak, PE, PMP
Project Manager
City of Denton/Beta Engineering
2520 E McKinney St
Denton, TX 76209
956.455.3419
jeremy.katusak@betaengineering.com

Quote Number #9131976

RE: Waukesha Transformer at McKinney Substation in Denton, TX



CONTACT INFORMATION

Business Development Manager

Sean Gallagher
Waukesha
MOB 214.548.2911
sean.gallagher@spx.com

Channel Partner

James De La Cruz
Keasler Associates
MOB 972.569.7084
james@keasler.com

Territory General Manager







Perry Reeder
GE Grid
MOB 262.349.0392
perry.reeder@ge.com

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Table of Contents

	SCOPE OF WORK.....	4
	PERFORMANCE.....	6
	CLARIFICATIONS TO SCOPE OF WORK.....	7
	SCHEDULE OF PRICING	7
	COMMENTS/EXCEPTIONS TO CONTRACT DOCUMENTS.....	8
	TERMS & CONDITIONS STATEMENT	8
	CUSTOMER AUTHORIZATION	9
	Waukesha® Service Service Technician & Specialist Rate Schedule	10
	PROLEC-GE WAUKESHA, INC./SERVICE AND COMPONENTS DIVISION STANDARD TERMS AND CONDITIONS OF SALE..	12



SCOPE OF WORK

Prolec-GE Waukesha, Inc. Service Group (referred to as Waukesha® Service throughout the rest of this proposal) is pleased to provide crew and equipment to perform the following scope of work:

Substation:	McKinney Substation, 2520 E McKinney St, Denton, TX 76209	
Equipment:	Waukesha Transformer	Waukesha Transformer
Unit ID#:	T1	T2
Serial Number:	GT-02289	GT-01950
Gallons of Oil:	7,320	7,886
Voltage:	138kV-13.2kV	138kV-13.2kV
MVA:	15/20/25	15/20/25

15/20/25 MVA Waukesha Transformer installation at McKinney Substation in TX

- Mobilize Waukesha® Service personnel and equipment to Beta Engineering/City of Denton station in Denton, TX. **Note:** Waukesha allows up to 2 hours of site orientation / site specific training at no cost. Additional training will be at additional costs at \$150/hr.

Origination Site

- Same SOW for both transformers.
- Mobilize Waukesha® Service personnel and equipment to McKinney Substation in Denton, TX. **Note:** Waukesha allows up to 2 hours of site orientation / site specific training at no cost. Additional training will be at additional costs at \$150/hr.
- Beta Engineering/City of Denton personnel will be responsible for de-energization, disconnection, isolation, and grounding of equipment, to include all bushings, bus work, connections, etc. (as required).
- Waukesha® Service to provide man lift, crane, test equipment, and confined space entry requirements (as necessary) on site.
- Perform the following transformer tests (as applicable) identified below. Additional tests are available upon request at time of service per T&M rates.
 - TTR – transformer turns ratio as found DETC and all LTC Tap positions
 - Core insulation resistance (if externally accessible)
 - SFRA
 - Power factor of winding insulation.
 - Single-phase excitation. As found DETC tap and LTC Positions 16R, 1R, N & 1L
 - Power factor and capacitance of bushing with test taps, Hot collar testing w/o test tap.
 - Power Factor Testing of Arrestors (transformer mounted)
 - Overall Power Factor of transformer windings & bushings
 - Winding Resistance
 - Core Ground (megger)
 - Insulation Resistance (megger)
 - Oil sample for DGA/oil quality testing
- Waukesha® Service will **not** drain existing oil, transformers will be moved oil filled.
- In preparation for transformer move, Waukesha® Service will remove the following ancillary parts:
 - 138kV high voltage bushings
 - 13.2kV low voltage bushings
 - Conservator tank and structure (as required)
 - Transformer cooler and/or radiator assemblies, bracing, manifolds/headers, and fans (as required)
 - Electrical control boxes/CT conduits (as required)
 - Any additional parts requiring removal per Beta Engineering/City of Denton provided shipping drawing
- Waukesha® Service will package/crate all ancillary parts in preparation for move
- Waukesha® Service will load all ancillary parts (bushings, radiators, fans, control boxes, conservator (as required)) onto transportation trucks in preparation for move
 - Waukesha® Service will provide all transportation for ancillary parts move
- Waukesha® Service will load transformer onto transportation trucks in preparation for move
 - Waukesha® Service will provide all transportation for main transformer move as per the Beta Engineering/City of Denton provided shipping drawing
 - Waukesha® Service will provide all crane and rigging to load main transformer on trailer in preparation for move as per the Beta Engineering/City of Denton provided shipping drawing



Destination Site

- Mobilize Waukesha® Service personnel and equipment to Beta Engineering/City of Denton Hickory Substation. **Note: Waukesha allows up to 2 hours of site orientation / site specific training at no cost. Additional training will be at additional costs at \$150/hr.**
- Waukesha® Service to provide man lift, crane, test equipment, and confined space entry requirements (as necessary) on site.
- Waukesha® Service will unload all ancillary parts (bushings, radiators, fans, control boxes, conservator (as required)) in preparation for transformer storage or assembly
 - If the transformer is placed in storage unassembled, Waukesha® Service will not un-package/un-crate all parts and will place in storage location as directed by Beta Engineering/City of Denton
 - If the transformer will be energized or will be stored fully assembled, Waukesha® Service will un-package/un-crate parts in preparation for transformer assembly
- Waukesha® Service will unload transformer from transportation trucks and place on pad as directed by Beta Engineering/City of Denton
 - Waukesha® Service will provide all crane and rigging to load main transformer on pad
- **See Regasket for GT-01950**
- To prepare to test and energize transformer, Waukesha® Service will install the following ancillary parts:
 - 138kV high voltage bushings
 - 13.2kV low voltage bushings
 - Conservator tank and structure (as required)
 - Transformer cooler and/or radiator assemblies, bracing, manifolds/headers, and fans (as required)
 - Electrical control boxes/CT conduits (as required)
 - Any additional parts requiring removal per Beta Engineering/City of Denton provided shipping drawing
- Waukesha® Service to seal up transformer and perform pressure test (3 PSI) to ensure no leaks.
- Waukesha® Service to check oil levels per nameplate. Beta Engineering/City of Denton to provide any make-up oil if required.
- Perform the following transformer tests (as applicable) identified below. Additional tests are available upon request at time of service per T&M rates.
 - TTR – transformer turns ratio as found DETC and all LTC Tap positions
 - Core insulation resistance (if externally accessible)
 - SFRA
 - Power factor of winding insulation.
 - Single-phase excitation. As found DETC tap and LTC Positions 16R, 1R, N & 1L
 - Power factor and capacitance of bushing with test taps, Hot collar testing w/o test tap.
 - Power Factor Testing of Arrestors (transformer mounted)
 - Overall Power Factor of transformer windings & bushings
 - Winding Resistance
 - Core Ground (megger)
 - Insulation Resistance (megger)
- Beta Engineering/City of Denton personnel will be responsible to perform reconnection, re-energization, ground removal, etc. (as required)
- If transformer will be placed in service, Waukesha® Service recommends minimum of 48 hours hold/soak period prior to re-energization.
- Waukesha® Service to demobilize personnel and equipment from site and provide final report w/test results.

REGASKET SOW FOR UNIT GT-01950

- **Waukesha® Service will drain existing oil (est. 7,886 gal.) into Waukesha® Service supplied oil storage tanker. Follow oil removal with dry-air.**
- **Waukesha® Service to provide dry-air, purge tank, and perform confined space entry requirements prior to internal tank access.**
- **Waukesha® Service to perform leak repair / re-gasket, per the following:**
 - **Remove existing 138kV HV bushings and turrets, install new gaskets, and re-install.**
 - **Remove existing 13.2kV LV & HO bushings and turrets, install new gaskets, and re-install**
 - **Remove radiators w/manifolds, install new gaskets, and re-install radiators.**
 - **Remove and regasket peripheral devices – gauges, PRD, SPR, etc.**
 - **Re-gasket manhole covers on lid and side manholes on tank wall.**
- **Waukesha® Service to seal up transformer and perform pressure test (3 PSI) to ensure no leaks.**
- **Waukesha® Service to perform vacuum oil filling / hot oil processing, per the following procedure:**
 - **Vacuum leak test the hoses and equipment.**
 - **Pull vacuum to 1 Torr or less and hold for 48 hrs.**
 - **Fill with heat oil to 50-60 deg C while holding a vacuum of 5 Torr or less.**
 - **Break vacuum and top off with nitrogen.**
 - **Check oil levels per nameplate. Beta Engineering/City of Denton to provide any make-up oil if required.**



PERFORMANCE

Work is quoted based upon Waukesha® Service crews working 7 days a week, 8–12 hours per day and 24 hours per day while oil is processing. Work scope is estimated to take *10 days* to complete, depending on weather conditions.

- Proposed Start Date: _____ Q1 2023 _____
- Availability of service personnel and equipment is subject to prior sale.



CLARIFICATIONS TO SCOPE OF WORK

Unless specifically addressed in scope of work, the following assumptions have been made in preparation of our offer:

- Purchaser shall be responsible for switching, lock out and grounding of any equipment necessary to establish safe work area.
- Purchaser shall provide suitable, free, clear, unlimited and compacted access route, roads and area around work location for access of service equipment.
- Purchaser shall disconnect and reconnect all external protection, control and relay wiring, as required.
- Purchaser shall disconnect and reconnect all external bushing terminations or bus work, as required.
- Purchaser shall disassemble and reassemble any deluge systems, as required.
- Waukesha will compile all crating and waste material in designated area; however, purchaser shall be responsible for disposal of solid wastes.
- Purchaser shall provide drum and dispose of all waste, flush and scrap oil generated in execution of work.
- Purchaser shall provide communication and sanitation facilities.
- No provisions have been included for secondary oil containment as may be required for compliance to local site SPCC programs.
- If required, purchaser shall provide a PCB report showing PCB concentration of the unit within 90 days prior to start of scheduled work.
 - If PCB concentration is higher than 49 PPM, Waukesha® Service will be unable to complete the work.
 - If PCB concentration is 1–49 PPM, an additional decontamination charge will be assessed. Proper disposal of the oil shall be the responsibility of the purchaser.
- When oil handling is part of work scope, Waukesha® Service prefers to have a metals-in-oil screen done prior to start of job to detect any potential silicone contamination. In the event that silicone is discovered during the processing, additional charges will apply for addition of anti-foaming compounds and a decontamination fee after completion of job.
- Waukesha® Service intends to utilize its own personnel and equipment; however, if scheduling conflicts occur, Waukesha® Service reserves the right to hire subcontractors to assist with the work.



SCHEDULE OF PRICING

The pricing for the work scope as defined above is \$343,721.00 for performance by Q1 2023.

Change Order 1 – Regasket **\$32,500.00**

Payment terms and conditions are subject to credit approval.

Unless specifically noted, prices do not include:

- Any site specific or customer required access and/or safety training
- Any special and/or site-specific safety, PPE or environmental requirements
- Use of union labor
- Local Sales or Use tax

Requested changes to work scope or delays outside the control of Waukesha® Service shall be billed in accordance with Waukesha® Service Rate Schedule (included).

NOTE: Price is based on 4 Waukesha® Service technicians for 12 days (2 travel days, 10 days on site). The above price is provided on Fixed Priced basis, however, it is not a “not to exceed price”. If added time on site, parts or materials, added mob/demobs, additional oil processing / circulation / leak repair / etc., is required, this will be calculated & billed on a T&M basis, as applicable. Invoicing for any T&M adders will be calculated and billed on actual hours/expenses/materials.



COMMENTS/EXCEPTIONS TO CONTRACT DOCUMENTS

The price is contingent upon gaining valid shipping clearances at the time of shipment. If clearance is not available due to highway construction, changes in state regulations, changes in bridge limitations or other items beyond our control, Waukesha® Service will not be responsible for any additional shipping or handling charges. The purchaser is responsible for supplying suitable and compacted access route, roads and area around foundation.



TERMS & CONDITIONS STATEMENT

- Work shall be performed in accordance with Prolec-GE Waukesha, Inc. – Service & Components Division Terms and Conditions of Sale (attached)
- Bid is valid for a period of 60 days

Waukesha® Service thanks you for the opportunity to provide a quotation for this work. We look forward to your consideration of this offering and welcome any questions you may have regarding this quotation for your service requirements.

Best Regards,

A handwritten signature in black ink, appearing to read "S. Gallagher".

Sean Gallagher
Business Development Manager
Prolec GE Waukesha
Ph# 214.548.2911
E-mail: sean.gallagher@spx.com



CUSTOMER AUTHORIZATION

Customer hereby requests that Waukesha® Service perform the above-referenced Services in accordance with the provisions of this quotation #9131976, including all commercial terms and clarifications and forms the basis of contract with Prolec-GE Waukesha, Inc.

Customer's Authorization / Purchase Order Number for Accounting Purposes: Beta

Billing Address:

City of Denton
215 E McKinney St
Denton, TX 76201-4299 USA
Department - Accounts Payable

DocuSigned by:
Christa Christian
By: Christa Christian
Name: Christa Christian
Title: Senior Buyer
Date: 5/12/2023

DocuSigned by:
George Brashear George Brashear
E7EBFE2AFAC44F0...
Executive Vice President 5/12/2023

DS
ME



Waukesha[®] Service

Service Technician & Specialist Rate Schedule

Waukesha[®] Service maintains a nationwide staff of trained and experienced field service specialists and technicians who are available to provide advisory assistance, installation, inspection, commissioning, testing, troubleshooting, start-up, technical studies and maintenance and repair services of electrical apparatus.

Technical professionals are classified in two categories, dependent on the degree of expertise and complexity of the service required:

Service Specialist

The Service Specialist has specific experiences and/or educational training along with factory training and experience in design, assembly, installation or testing. This expert is required for special diagnosis, repairs, inspection, failure analysis and complex technical evaluations. Typical scopes of work for these services involve LTCs, engineering services, project management, forensics analysis, condition assessments, electrical testing, etc.

Service Technician

The Service Technician has specialized factory training and experience. This Technician can act as a consultant for customer's personnel with respect to correct installation, testing, maintenance or service requirements consistent with Waukesha[®] Service guidelines.

WAUKESHA[®] SERVICE SPECIALIST AND SERVICE TECHNICIAN RATES

CLASSIFICATION	HOURLY RATE	DAILY PER DIEM	HOURLY OVERTIME RATE	HOURLY SUNDAY & HOLIDAY RATE
Service Specialist	\$200	\$265	\$300	\$400
Service Technician	\$150	\$265	\$225	\$300

- Hourly** rate applies to all time worked or traveled during a workday.
- Overtime** rate applies to all hours worked in excess of eight hours on weekdays and all time worked or traveled on Saturdays.
NOTE: Our standard workday is 10–12 hours based on site conditions.
- Sunday and Holiday** rate applies to all hours worked or traveled on Sundays and/or holidays.

In lieu of Per Diem, charges for travel and living expenses will be billed at cost plus an 18% handling charge.

Per Diem

Unless requested otherwise from the purchaser, a daily per diem rate will be billed for each day required for project execution along with travel days to/from the project. Per Diem rates exclude the cost of airfare to/from the job site.

Traveling Time

Billing for traveling time will be done at the applicable rate based on actual time traveled.

Traveling time and expenses for each technical professional will include leaving and returning to the employee's headquarters.

Minimum Billing

Minimum billing for one day's service will be charged for each day or fraction thereof that a technical professional spends on the customer's premises.

Standby Time

When technical professionals are on the customer's premises but are unable to perform the services requested because of circumstances beyond the control of Waukesha[®] Service personnel, the purchaser will be charged at the applicable rate.



WAUKESHA® SERVICE TECHNICIAN & SPECIALIST RATE SCHEDULE (CONTINUED)

OTHER CHARGES

The following charges will be in addition to the service rates stated previously:

A. Expendable Small Tools

When a particular job requires the furnishing of small expendable tools not normally carried by the technical professional, a charge for such tools will be billed at the cost of acquisition.

B. Material Furnished by Waukesha® Service

All Waukesha® Service material used on the job will be billed at current prices.

C. Material Purchased from Subcontractors or Other Vendors

When the job requires the purchase of materials or services from subcontractors or other vendors, such items will be billed at cost plus an 18% handling charge.

D. Special Tools and Equipment Furnished by Waukesha® Service

Rental charge shall be made for all specialized tools, equipment and instruments. Refer to Waukesha® Service Equipment Rental Rate Schedule.

E. Company Vehicle Mileage Rate

Cost of mileage for standard company vehicles to travel to and from the standard job site will be billed at a rate of \$0.95 per mile. Any vehicle requiring a CDL endorsement to drive shall be billed at a rate of \$2.50 per mile for travel to and from the job site.

PRODUCT WARRANTY WORK

Product warranty work on Waukesha® Service-supplied equipment will be performed F.O.B. factory or at the customer's site, at Waukesha® Service's option. Work at the customer's site will be accomplished during a normal eight-hour straight time day. If the purchaser requests that product warranty work be performed during any other time period, purchaser will be invoiced for the premium time portion of the work, i.e. the difference between the applicable rate and the overtime rate for the services performed.

TERMS OF PAYMENT

Net 30 days from date of invoice.

TERMS AND CONDITIONS

See Prolec-GE Waukesha, Inc. – Service & Components Division Terms and Conditions of Sale.



PROLEC-GE WAUKESHA, INC./SERVICE AND COMPONENTS DIVISION
STANDARD TERMS AND CONDITIONS OF SALE
(Rev. 1/31/22)

1. **ACCEPTANCE AND GOVERNING PROVISIONS.** No orders for services and/or goods (individually and collectively, “Work,”) are binding upon Seller until accepted in writing by an authorized representative of Seller. Seller’s acceptance of Buyer’s order is conditioned upon Buyer’s acceptance of these terms and conditions (the “Terms”) and Buyer’s agreement to be bound by and comply with these Terms. These Terms and the terms of Seller’s quotation, and all referenced attachments constitute the entire agreement between Buyer and Seller, and no amendment or modification shall be binding on Seller unless signed by an authorized representative. Seller’s failure to object to provisions contained in any purchase order or other document of Buyer shall not be construed as a waiver by Seller of these Terms or an acceptance of any such provisions. Any conflicting or additional terms or conditions set forth by Buyer in a purchase order or other document are not binding upon Seller, and Seller expressly objects to them.
2. **LIMITED WARRANTY.** (a) For a period of one (1) year from the date of performance of services or delivery of goods under the order accepted by Seller, Seller warrants, to the original purchaser, the services performed by or on behalf of Seller to be free from defects in workmanship and the goods manufactured by Seller to be free from defects in title, material, and workmanship. (b) If within such period it shall be proven to Seller’s reasonable satisfaction that any services or goods are defective, then such services shall be corrected and, at Seller’s option, such goods repaired or replaced or substitute goods obtained. Buyer shall bear the costs of any removal, decontamination, and reinstallation of the goods and adjacent structures, equipment, and other obstructions not directly included in the warrantable goods. Seller’s obligation is conditioned upon Seller’s receipt of written notice of any alleged nonconformity or defect within 10 days after its discovery and, with respect to goods, at Seller’s option, return of such goods to Seller’s factory, with all freight and insurance to and from the repair facility to be at Buyer’s expense. With respect to goods not manufactured by Seller, Seller makes no warranty other than good title and agrees to transfer to Buyer the original manufacturer’s warranty, which shall provide the exclusive remedy for any defect. (c) The foregoing warranties state Seller’s entire warranty and Buyer’s sole and exclusive remedy related to the Work. EXCEPT AS EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. (d) This warranty shall not apply to any loss or damage resulting from: (i) normal wear and tear; (ii) alteration, neglect, misuse, abuse, or improper installation, operation, maintenance, or storage by Buyer or a third party; (iii) accident, fire, flood, or acts of God; or (iv) inaccurate or incomplete information or data supplied or approved by Buyer. Buyer shall defend and indemnify Seller for any loss or damage of Seller arising out of clauses (i) through (iv) above and any breach by Buyer of its covenants and obligations under these Terms.
3. **PATENTS AND TRADEMARKS.** (a) If notified promptly by Buyer in writing and provided with authority, information, and assistance, Seller shall defend or may at any time settle, at Seller’s option, any suit or proceeding alleging that any goods designed and sold by Seller pursuant to the order accepted by Seller infringe any U.S. patent or trademark. Seller shall pay any damages awarded in such suit or proceeding up to the amount of the depreciated purchase price of such goods. In the event any such goods are held to constitute such infringement and the use of the goods is enjoined, Seller shall, at its option and expense: (i) procure for Buyer the right to continue using the goods; (ii) replace the goods with non-infringing goods; (iii) modify the goods so that they become non-infringing; or (iv) remove the goods and return the depreciated purchase price. The foregoing constitutes the entire liability of Seller and the sole and exclusive remedy of Buyer for patent or trademark infringement related to the goods. (b) Notwithstanding the foregoing, section (a) above shall not apply to any suit or proceeding alleging infringement resulting from or related to Seller’s compliance with the instructions, specifications or design of Buyer or the use of goods of Seller in combination with other goods or materials. Buyer shall defend and pay any damages awarded in such suit or proceeding.
4. **DELIVERY AND DELAY.** (a) Unless otherwise agreed to in a writing signed by Seller: (i) goods shall be delivered FCA Seller’s Premises, with delivery to the initial carrier constituting delivery to Buyer (Incoterms® 2010); (ii) title to the goods and risk of damage or loss shall pass to Buyer upon delivery to the initial carrier; (iii) transportation costs shall be paid by Buyer; and (iv) Buyer shall have sole responsibility for filing any claims with any carrier for delay, loss, or damage. If Seller selects the freight forwarder, then Buyer authorizes Seller to clear the goods for export under U.S. Export Regulations, including CFR 15, Part 30. If Buyer selects the freight forwarder, then Buyer shall authorize its freight forwarder to file the EEI and export clearance documentation required by US law, and Buyer assumes all responsibility for export clearance. (b) Dates of delivery or other performance are estimates and are based on timely receipt from Buyer of accurate and complete approved drawings and technical data. Seller shall not be liable for any delay beyond its reasonable control or caused by accident; bad weather; embargo; act of Buyer or third parties; labor disputes; national emergency; riots; non-delivery of suppliers; delays of carriers or delivery agents; inability to obtain labor, materials, or manufacturing facilities; acts of God; or government restrictions, prohibitions, or requirements. In the event of any such delay, Seller’s time period for delivery or performance shall be extended accordingly. Regardless of the cause, Seller shall have no liability for penalties of any nature as a result of a delay. During any period of shortage due to the stated or similar causes, Seller may prorate its supply of material among its internal demand and its customers in whatever manner it chooses. (c) Buyer shall provide, at its own expense, ready and sufficient routes and access for Seller’s vehicles and equipment to all site(s) for services and delivery point(s) for goods, free of any and all obstructions, conditions, and insufficiencies that would impede or prevent the performance of services and/or the delivery of goods.
5. **LIMITATION OF LIABILITY.** (a) Except to the extent specifically provided under Section 3 above, Seller shall not be liable under any theory of relief, including, without limitation, breach of warranty, breach of contract, tort (including negligence), strict liability, or otherwise, arising out of or related to an order or Seller’s acts or omissions for: (i) incidental, special, punitive, or consequential damages of any nature, including, without limitation, economic loss or damages, whether for loss of revenue and/or profits, increased operating costs, loss of use, cost of capital or substitute facilities and services, downtime costs, delay costs, claims of any third parties for any of the above, or otherwise; or (ii) any damage or loss in excess of the purchase price actually paid by Buyer. (b) Any action by Buyer must be commenced within one (1) year after the cause of action has accrued.



6. **CHANGES, SUBSTITUTIONS, AND CANCELLATION.** (a) Any changes requested by Buyer are not effective unless accepted in writing by an authorized representative of Seller at Seller's corporate offices or factory. Any changes accepted by Seller that affect the specifications or scope of work of an order shall entitle Seller to an adjustment to the price, delivery schedule, or other terms affected by such change, as appropriate. (b) Seller may furnish suitable substitutes for materials unobtainable due to regulations of governmental authorities or unavailability of materials from suppliers. Details of design and construction in any quotation are approximate and subject to revision by Seller. If changes in performance of services or in materials, design, layout, or arrangement of goods are desired or required by conditions of which Seller was unaware or that were unforeseen by Seller, the price is subject to revision. (c) Buyer may cancel an order only with the written consent of Seller and upon payment of cancellation charges. In the event Seller accepts such cancellation of all or any part of the Work, Buyer shall be liable for the higher of: (i) 25% of the purchase price; (ii) any loss incurred by Seller, including, without limitation, costs of engineering, reconditioning, labor, materials, and Seller's margin; or (iii) costs required by any cancellation and delay policy of Seller.

7. **APPROVALS, INSPECTION, AND ACCEPTANCE.** (a) Buyer's approval, or failure to disapprove, of drawings submitted under an order constitutes Buyer's acceptance of equipment design, specifications, and other data contained in Seller's submittals. (b) Inspection of goods at Seller's factory by Buyer, or Buyer's representatives, will be permitted insofar as such inspection does not interfere with Seller's production and provided that complete written details of such inspection are submitted to Seller 10 days in advance. (c) Work shall be deemed accepted, and any claim of Buyer against Seller with respect to an order shall be waived and not enforceable, unless: (i) Buyer has promptly inspected the Work, and written notice from Buyer of any defect has been received by Seller within 48 hours of rejection of any goods inspected at Seller's factory or, if no factory inspection has taken place, then within 30 days following any performance of services and/or delivery of goods; and (ii) Buyer has given Seller reasonable advance notice and authorization to attend any tests designed to demonstrate that Seller's performance is nonconforming or goods are defective, and the test conditions are mutually agreed to by Buyer and Seller. (d) Goods may not be returned without obtaining written authorization and shipping instructions from an authorized representative of Seller.

8. **PRICES, PAYMENT, AND CREDIT.** (a) Unless other terms have been expressly stated by Seller in writing, Seller's prices: (i) are FCA Seller's Premises (Incoterms® 2010); (ii) do not include customs duties or any domestic or foreign sales, use, excise, VAT, or similar taxes under existing or future laws (with Buyer to be charged for same, unless Buyer has provided Seller with an appropriate tax exemption certificate); (iii) are valid for 30 days from the quotation date; and (iv) do not include costs for installation of goods. All quoted prices are in U.S. Dollars and are subject to correction for clerical errors. (b) Unless otherwise agreed in writing and subject to credit approval, payment terms shall be net 30 days from completion of services performed within the continental U.S. and/or from the date of shipment for goods sold within the U.S. Unless otherwise agreed in writing, payment shall be cash in advance or letter of credit for all services performed outside the continental U.S. and all export sales of goods from the U.S.; and no later than 60 days prior to the schedule start date for services and each scheduled shipment date for goods, Buyer shall wire transfer funds to Seller's account or cause to be issued for Seller's benefit an irrevocable letter of credit in U.S. Dollars in the full amount of the purchase price, plus prepaid freight if applicable, such letter of credit (i) to be issued or confirmed by a prime U.S. bank acceptable to Seller; (ii) to be subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 500) and to be otherwise acceptable in form and substance to Seller; and (iii) to provide for payment to Seller of the full amount of the purchase price plus prepaid freight in U.S. Dollars, on presentation by Seller of sight drafts, Seller's invoice, and such other documents as shall be reasonably required by the letter of credit. All banking and other charges for such letter of credit are for the account of Buyer. (c) Partial payments shall become due with partial performance of services or partial shipments of goods. Seller will charge 1½% per month (or such lower percentage as required by applicable law) of the unpaid invoice balance, commencing 30 days following completion of services or the shipment date of goods. Any delay in performance of services or delivery of an installment of goods shall not relieve Buyer of its obligation to accept and make payment for remaining performance or installments. If Buyer is notified by Seller that the goods are ready for shipment and there is an unreasonable delay in shipment for reasons beyond Seller's control (including Buyer's failure to provide shipping instructions), the completion date of the goods shall be treated as the date of shipment for payment purposes, and completed goods shall be held at Buyer's risk of loss or damage, with Buyer paying all storage and insurance expenses. (d) Seller may, at its option, decline to provide services or deliver goods, except for cash in advance, or stop goods in transit whenever, for any reason, Seller doubts Buyer's financial responsibility.

9. **GOODS FOR RE-EXPORT.** If the ultimate destination of Work is outside the U.S., then Buyer shall designate such country on its purchase order. In the event that Buyer purchases Work for re-export without so notifying Seller, Buyer shall have sole liability and shall defend and indemnify Seller for any loss or damage (including, without limitation, claims of governmental authorities) arising from the export from the U.S. or import into another country of such Work, including, without limitation, those related to packaging, labeling, marking, warranty, contents, use, or documentation of the goods. Seller shall have sole responsibility for obtaining any required export licenses. Buyer shall neither take, nor solicit Seller to take, any action that would violate any anti-boycott, anti-corruption, or any export or import statutes or regulations of the U.S. or other governmental authorities and shall defend and indemnify Seller for any loss or damage arising out of or related to such action.

10. **PROPRIETARY INFORMATION.** Seller retains title to all engineering and production prints, drawings, technical data, and other information and documents that relate to the services and goods sold to Buyer. Unless advised by Seller in writing to the contrary, all such information and documents disclosed or delivered by Seller to Buyer are to be deemed proprietary to Seller and shall be used by Buyer solely for the purpose of inspection, installation, and maintenance and not used or disclosed by Buyer for any other purpose.

11. **EXCLUSIONS.** In no event shall Seller have any obligation (a) to identify or correct any defective wiring or equipment, to identify or correct any code violations, or to remove from Buyer's premises any defective equipment unless expressly stated in the applicable scope of work; or (b) to identify, correct, abate, clean up, control, or remove from Buyer's premises any toxic or hazardous material.

12. **MISCELLANEOUS.** All rights and remedies of Seller under these Terms are in addition to its rights at law and in equity. Any delegation or assignment by Buyer of any of its responsibilities or rights without Seller's prior written consent shall be void. The validity, performance, and interpretation of these Terms and any referenced attachment shall be governed by the law of the State of Wisconsin, U.S.A., including the United Nations Convention on Contracts for the International Sale of Goods when applicable, without reference to principles of conflicts of laws. The invalidity or illegality of any provision of these Terms shall not render invalid or illegal any other provision. Seller's failure at any time to require performance by Buyer of any of these Terms shall not serve as a waiver or diminish Seller's right to demand strict compliance with such provision or with other of these Terms.



Beta EngineeringCity of Denton

2520 E McKinney St, Denton, TX 76209

INSURANCE REQUIREMENTS

Certificates of insurance must be on file with Beta EngineeringCity of Denton (“Company”) prior to commencement of Work, and such coverage must remain in effect for the duration of this Agreement. Waukesha shall provide thirty (30) days' written notice to Company prior to cancellation or non-renewal of any of the insurance policies required herein. Failure of Company to enforce the insurance requirements listed below will not relieve Contractor of responsibility for maintaining these coverages.

POLICIES	LIMITS
Workers' Compensation:	Statutory
Employer's Liability: Each Accident:	\$1,000,000
Employer's Liability Disease Each Employee:	\$1,000,000
Employer's Liability Disease Policy Limit	\$1,000,000
Commercial General Liability: coverage for products/completed operations, contractual liability and personal injury.	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate
Automobile Liability: Combined Single Limit, for all owned, non-owned and hired automobiles.	\$1,000,000

ADDITIONAL ENDORSEMENTS REQUIRED AND TO BE STATED ON CERTIFICATES OF INSURANCE:

Company must be included as additional insureds for the Work on a primary and non-contributory basis, with respect to General Liability.

All policies applicable to the Work must contain a waiver of subrogation in favor of Company.

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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

Change Request Proposal

Project: B661 / Hickory GIS Substation
 (name and address) 2600 W. Hickory St.
 Denton, TX

Change request number: 1007
 Description: Addition of conduit run from PME for HK213 to Owner-Supplied padmount transformer for street lighting, installation of porches at riser poles, additional parking lot repair (removed in Rev 2), and credit for Owner-Supplied distribution materials

Customer: City of Denton

Notice to Proceed

Submitted date:
 Received date:
 Rough order of magnitude: 0.00

Status: Proposed
 Origination date: 08/07/23

Quotation

Submitted date: 08/23/23
 Due date:
 Submitted amount: -1,325.61
 Requested days delay: 0

Notes

Revision 2 dated 9/6/2023 removes the additional parking lot repair. This will be moved to a separate change request for your consideration.

Revision 1 dated 8/23/2023

This change request is for:

- (1) The addition of conduit from PME for HK213 to an Owner-Supplied padmount transformer and pad intended to power the street light circuit. This change is needed as a result of the request to power the street lighting from outside the substation. Engineering cost accounts for 8 additional manhours by Engineer III and 16 hours by Technician III. Please refer to the attached sketch, subcontractor proposal, and Exhibit N of the Design Build Agreement dated as of December 14th, 2021.
- (2) The installation of porches for the risers was based on the riser drawings received post-award and the clarification email on the porch design/responsibility. Please refer to attached subcontractor proposal.
- (3) Additional parking lot repair. The owner of the apartment complex next to the new Hickory GIS Substation has requested parking lot repairs outside of the area of work to reduce the aesthetic impact of our work (i.e. eliminating the appearance of patchwork repairs). This includes the stipping, approaches, and the Southern half of the parking lot.
- (4) Credit to Owner for supply the following Distribution materials: 4' x 6' Pull Box - Qty 2, 300 KVA 120/240 Delta - Qty 1, 50 KVA 120/240 Pad mount - Qty 1, Single Phase PCC - Qty 3, Transformer pad concrete 83x83x8 - Qty 1, Single phase pad fibercrete - Qty 1

Revenue Detail

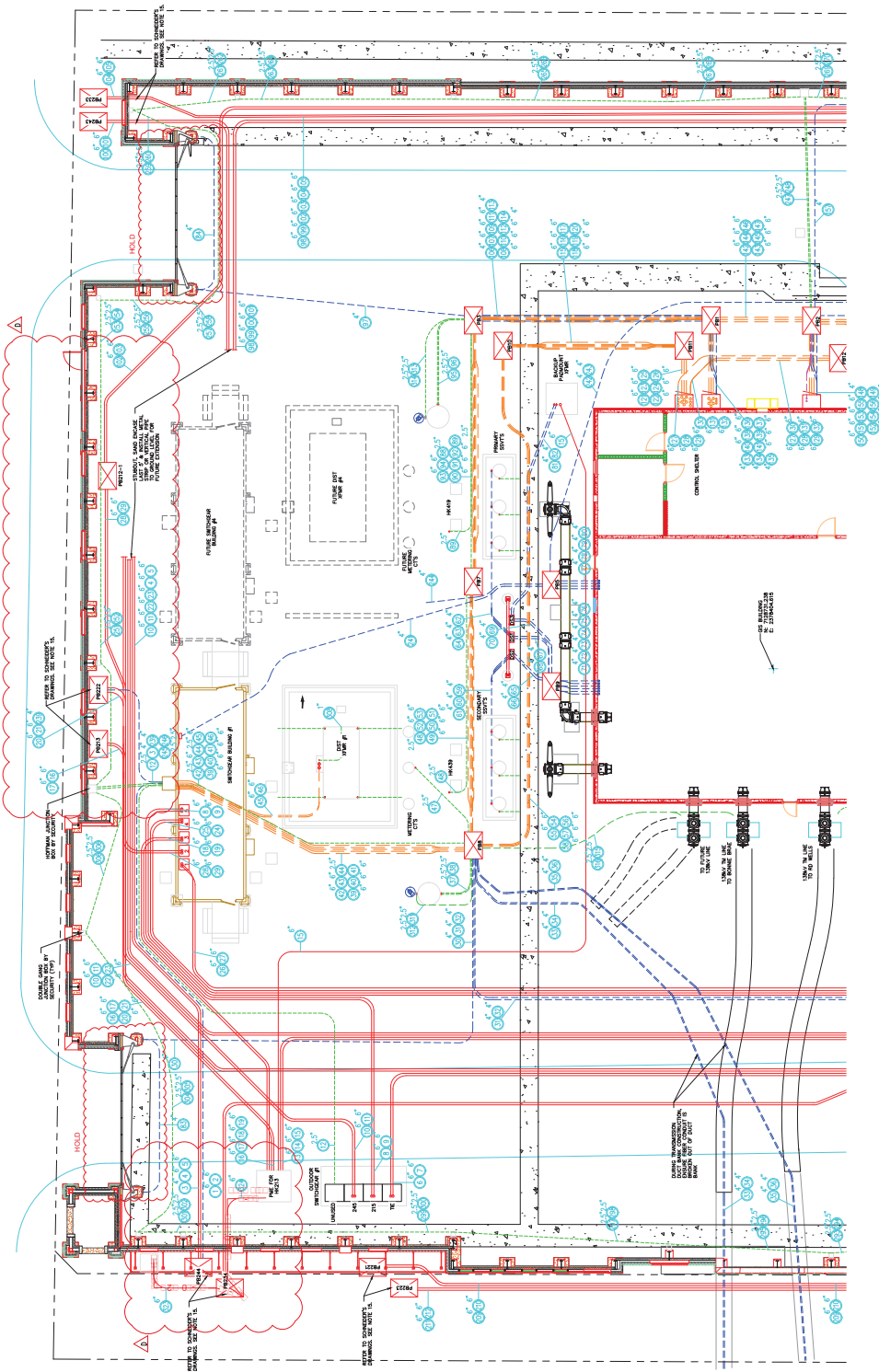
Billing Item	Description	Revenue
CO3.1	Street Light XFMR Conduit	35,934.40
CO3.2	Street Light XFMR Conduit Eng	2,960.00
CO3.3	Porch Installation	26,603.70
CO3.4	Distribution Material Credit	-66,823.71
Total Revenue For CR 1007		-1,325.61

Approvals

Customer: City of Denton
 DocuSigned by: Christa Christian
 Auth: Christa Christian
 By: 6A8283DE08F4429...
 Date: 9/14/2023

Contractor: Beta Engineering, LLC
 By: [Signature]
 Date: 09/07/23

DS
 ME



LEGEND

- 2" CONDUIT
- 4" CONDUIT
- 6" CONDUIT
- DISTRIBUTION FEEDER
- FUTURE (BY OTHERS)
- SECURITY CONDUIT
- 4" X 6" PULLBOX (X20)
- FUTURE STUBOUT
- CONDUIT CALLOUT

BEVA ELECTRICAL ENGINEERING 1000 W. MAIN ST. SUITE 200 PINEVILLE, LOUISIANA 71378			DENTON ELECTRIC 1000 W. MAIN ST. SUITE 200 PINEVILLE, LOUISIANA 71378			HICKORY SUBSTATION PARTIAL CONDUIT PLAN	SHEET 1 of 1 REV. D
ISSUED FOR CONSTRUCTION	REVISION TO CONDUIT #1	REVISION TO CONDUIT #2	REVISION TO CONDUIT #3	REVISION TO CONDUIT #4	REVISION TO CONDUIT #5	REVISION TO CONDUIT #6	REVISION TO CONDUIT #7
DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE
BY	BY	BY	BY	BY	BY	BY	BY
DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
C 03/02/23	B 12/28/22	A 08/15/22	A 08/15/22	A 08/15/22	A 08/15/22	A 08/15/22	A 08/15/22
REVISION PER COMMENTS AND RE-ISSUED FOR CONSTRUCTION	REVISION PER COMMENTS AND RE-ISSUED FOR CONSTRUCTION	REVISION PER COMMENTS AND RE-ISSUED FOR CONSTRUCTION	REVISION PER COMMENTS AND RE-ISSUED FOR CONSTRUCTION	REVISION PER COMMENTS AND RE-ISSUED FOR CONSTRUCTION	REVISION PER COMMENTS AND RE-ISSUED FOR CONSTRUCTION	REVISION PER COMMENTS AND RE-ISSUED FOR CONSTRUCTION	REVISION PER COMMENTS AND RE-ISSUED FOR CONSTRUCTION



EXHIBIT N

Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
betaengineering.com

Position	Count	Rate	Total
President	1	200	200
Chief President	1	200	200
Project Executive	1	0	0
Senior Project Manager	1	0	0
Project Manager III	1	0	0
Project Manager II	1	0	0
Project Manager I	1	0	0
Chemical Specialist	1	20	20
Project Coordinator III	1	0	0
Project Coordinator II	1	0	0
Project Coordinator I	1	0	0
Construction Assistant	1	0	0
Construction Manager I	1	0	0
Construction Manager III	1	0	0
Construction Manager II	1	20	20
Construction Manager I	1	0	0
Procurement Clerk III	1	0	0
Procurement Clerk II	1	0	0
Procurement Clerk I	1	0	0
Project Engineer	1	0	0
Engineer	1	0	0
Engineer I	1	0	0
Engineer III	1	0	0
Engineer II	1	0	0
Engineer I	1	0	0
Technician III	1	20	20
Technician II	1	0	0
Technician I	1	0	0
Designer III	1	0	0
Designer II	1	0	0
Drafter I	1	0	0

KINGSLEY CONSTRUCTORS, INC.

25250 Borough Park Dr., Ste 106
The Woodlands, Texas 77380

Phone 281-363-1979
Fax 281-363-1993

CHANGE REQUEST

KCI CO#: 3

TO: **Beta Engineering, LLC**
4725 Highway 23 East
Pineville, LA 71360

Attn: Jeremy Katusak	DATE: 8/23/2023
JOB NAME/LOCATION: Hickory Substation	
KCI JOB NUMBER: 222050	

THE FOLLOWING WORK IS HEREBY DIRECTED BY THIS CHANGE ORDER:

The below proposal is to cover the costs of installing additional conduit running from the Tranformer to the PME.

KCI Assumed Material: \$5,639.54
 - (100) LF of 3" Sch 40 Conduit
 - (6) Ea 3" Sch 40 90° Elbows
 - (2) Ea 3" Sch 40 45° Elbows
 - (10) CY of Concrete,
 - Lumber

SubContractor: \$615.00
 - (1) Density Test
 - (1) Concrete Testing

Labor & Equipment: \$24,992.76
 - (1) Superintendent
 - (1) Foreman
 - (3) Skilled Laborer
 - (1) Excavator
 - (1) Trench Roller
 - (3) Days

Installation of Porches - this line item is to cover the installation of porches for the risers. Details provided in April 2023.

Pecan Grove Apartment Paking Lot

Total = \$83,475.90

* Provision & Installation of the 15KV cable will be completed by others.

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL AMOUNT
ADDITIONS					
1	Street Light Transformer Conduit Runs	1	LS	\$ 31,247.30	\$ 31,247.30
2	Installation of Porches	7	EA	\$ 3,304.80	\$ 23,133.60
3	Pecan Grove Parking Lot	1	LS	\$ 29,095.00	\$ 29,095.00
NET CHANGE ORDER AMOUNT					\$ 83,475.90

THIS CHANGE ORDER BECOMES PART OF THE ABOVE REFERENCED EXISTING CONTRACT AND IS SUBJECT TO THE SAME TERMS AND CONDITIONS UNLESS STIPULATED OTHERWISE. NO OTHER WORK IS AUTHORIZED UNLESS ITEMIZED IN PRIOR OR SUBSEQUENT CHANGE ORDERS. COMMENCEMENT OF THE ABOVE LISTED WORK SHALL CONSTITUTE ACCEPTANCE PER THE ORIGINAL CONTACT TERMS

OWNER APPROVAL BY:	ISSUED BY:
TITLE: _____ DATE: _____	Brandon Britt _____
_____	TITLE: Sr Project Manager _____
_____	8/23/2023

Jeremy Katusak

From: Jeremy Katusak
Sent: Wednesday, August 23, 2023 8:56 AM
To: Zimmerer, Mark J
Cc: Tenorio, Cody R; Noah Rebouche; Logan Barton; Jake Woodard; B661Contract
Subject: RE: B661 - Known Change Requests

Good morning Mark,

Schneider Engineering has clarified that the pole mount transformer is being relocated from one pole to another. I'll proceed with putting together the change request to include the following:

- Include the Porch Install Cost
- Include Street Light Transformer
- Include Parking Lot Repair
- Include DME supplied Material Credit previously submitted

Thank you,



Jeremy Katusak, PE, PMP
Project Manager
956.455.3419
Jeremy.Katusak@betaengineering.com

From: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Sent: Wednesday, August 23, 2023 7:53 AM
To: Jeremy Katusak <jeremy.katusak@betaengineering.com>
Cc: Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>
Subject: RE: B661 - Known Change Requests

From External Sender

Jeremy,

For this change order, I would like to propose:

- Include the Porch Install Cost
- Include Street Light Transformer
- Include Parking Lot Repair
- Include DME supplied Material Credit
- Include the DME supplied pole mounted transformer. We should have this in stock so I would like to get it now before it is used on other projects.

Let me know your thoughts.

Thanks,
Mark Zimmerer, P.E.
Electric Engineering Supervisor
1671 Spencer Road
Denton, TX 76205
Denton Municipal Electric
Office: (940) 349-7169

From: Jeremy Katusak <jeremy.katusak@betaengineering.com>
Sent: Tuesday, August 22, 2023 5:55 PM
To: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>
Subject: B661 - Known Change Requests
Importance: High

This message has originated from an **External Source**. Please be cautious regarding links and attachments.

Good Afternoon Mark,

Per our discussion today, I've put together 2 spreadsheets covering all known/anticipated Change Requests.

1. Installation of porches at riser poles
2. Additional pull box material and installation based on distribution clarifications
3. Additional engineering and material to add Owner-supplied transformer outside of Screen Wall as power source for street lights
4. Parking lot repair requested by apartment owner
5. Credit for distribution materials that may be provided by DME
6. Redesign of distribution due to City delays in easement acquisition
7. Additional credit for pole mounted transformer

As noted in the spreadsheets, Beta does not currently have an estimate on the impact of the distribution redesign. This is pending Schneider Engineering's sketch, DME approval, City approval, and the necessary supplier/subcontractor quotes to determine the financial impact of the change.

We are also awaiting additional information from Schneider Engineering to proceed with the request for the pole mounted transformer.

In the spreadsheet titled "B661_20230822 Change Request_Proposed", I've highlighted in green which Change Requests I'd suggest we move forward with at this time. These changes include:

- Installation of porches at riser poles
- Additional engineering and material to add Owner-supplied transformer outside of Screen Wall as power source for street lights
- Credit for distribution materials that may be provided by DME
 - a. Please note that we are still waiting for Schneider Engineering's confirmation on the nameplates

The net impact to the contract value for these 3 changes would be \$940.13 in DME's favor. Please let me know if I can put together the formal paperwork for approval.

Thank you,

Jeremy Katusak

From: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Sent: Tuesday, August 22, 2023 1:42 PM
To: Jeremy Katusak; Key, Randy A
Cc: Noah Rebouche; B661Contract; Chad Jarick; Tenorio, Cody R; Tenorio, Cody R; Tenorio, Cody R
Subject: RE: Junction box

Yes sir.

They are \$6,937.00 each.


Thanks,
Mark Zimmerer, P.E.
Electric Engineering Supervisor
1671 Spencer Road
Denton, TX 76205
Denton Municipal Electric
Office: (940) 349-7169

From: Jeremy Katusak <jeremy.katusak@betaengineering.com>
Sent: Tuesday, August 22, 2023 1:16 PM
To: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>; Key, Randy A <Randy.Key@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>; Chad Jarick <chad.jarick@betaengineering.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>
Subject: RE: Junction box

Thank you, Mark.

Do you still have any 4'x6' pull boxes in stock?

Thank you,

 **BETA**[®]
betaengineering.com Jeremy Katusak, PE, PMP
Project Manager
956.455.3419
Jeremy.Katusak@betaengineering.com

From: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Sent: Tuesday, August 22, 2023 1:12 PM
To: Jeremy Katusak <jeremy.katusak@betaengineering.com>; Key, Randy A <Randy.Key@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>;

Chad Jarick <chad.jarick@betaengineering.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>

Subject: RE: Junction box

Jeremy/Noah,

Please see below pricing and attached nameplates for your review. We do have this material in stock. Please let us know if you would like to proceed.

300 KVA 120/240 Delta - \$39,011.58
50 KVA 120/240 Pad mount - \$9,846.32
Single Phase PCC - \$615.00 x 3 = \$1,845
Transformer pad concrete 83x83x8 - \$1861.28
Single phase pad fibercrete - \$385.53

Totaling - \$52,949.71

Thanks,
Mark Zimmerer, P.E.
Electric Engineering Supervisor
1671 Spencer Road
Denton, TX 76205
Denton Municipal Electric
Office: (940) 349-7169

From: Jeremy Katusak <jeremy.katusak@betaengineering.com>

Sent: Friday, August 18, 2023 2:31 PM

To: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>; Key, Randy A <Randy.Key@cityofdenton.com>

Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>;

Chad Jarick <chad.jarick@betaengineering.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>

Subject: RE: Junction box

Good Afternoon Mark,

Please see attached. I've highlighted the material in question on Schneider's BOM and have attached the reference material I currently have available. Not shown on this BOM are the two pull boxes Kingsley had also requested. Please let me know if any of this material is available and how much credit we would apply for each.

Kingsley is hoping we'll be able to at least get the (2) pull boxes early next week. I've attached the Pull Box Details to this email; they're the same 4' x 6' boxes that they were originally supposed to purchase from you. Please let me know if this would be possible.

Thank you,



Jeremy Katusak, PE, PMP

Project Manager

956.455.3419

Jeremy.Katusak@betaengineering.com

From: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Sent: Friday, August 4, 2023 1:12 PM
To: Jeremy Katusak <jeremy.katusak@betaengineering.com>; Key, Randy A <Randy.Key@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>;
Chad Jarick <chad.jarick@betaengineering.com>; Tenorio, Cody R <Cody.Tenorio@cityofdenton.com>
Subject: RE: Junction box

Jeremy,

We need more details on what is needed. Can you provide a BOM to help clarify?

Thanks,
Mark Zimmerer, P.E.
Electric Engineering Supervisor
1671 Spencer Road
Denton, TX 76205
Denton Municipal Electric
Office: (940) 349-7169

From: Jeremy Katusak <jeremy.katusak@betaengineering.com>
Sent: Friday, August 4, 2023 8:51 AM
To: Zimmerer, Mark J <Mark.Zimmerer@cityofdenton.com>
Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; B661Contract <B661Contract@betaengineering.com>;
Chad Jarick <chad.jarick@betaengineering.com>
Subject: FW: Junction box

This message has originated from an **External Source**. Please be cautious regarding links and attachments.

Good morning Mark,

In addition to the pull boxes that Kingsley needs, I was wondering if DME happened to have (3) junction boxes per the detail below for the distribution scope that Beta could purchase.

We're also looking at options for single phase transformer (50kVA, 120/240V) and three phase transformer (300kVA, 120/240) called out in Schnieder's drawing and the associated pads. Does DME have this material?

As you suggested, Beta would put together a change request showing a billing line item that is a credit back to DME for the purchase.

Thank you,



Jeremy Katusak, PE, PMP

Project Manager

956.455.3419

betaengineering.com

Jeremy.Katusak@betaengineering.com

From: Greg W. Baumbach <gbaumbach@se-texas.com>

Sent: Thursday, July 20, 2023 9:57 AM

To: Jeremy Katusak <jeremy.katusak@betaengineering.com>

Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; Chad Jarick <chad.jarick@betaengineering.com>

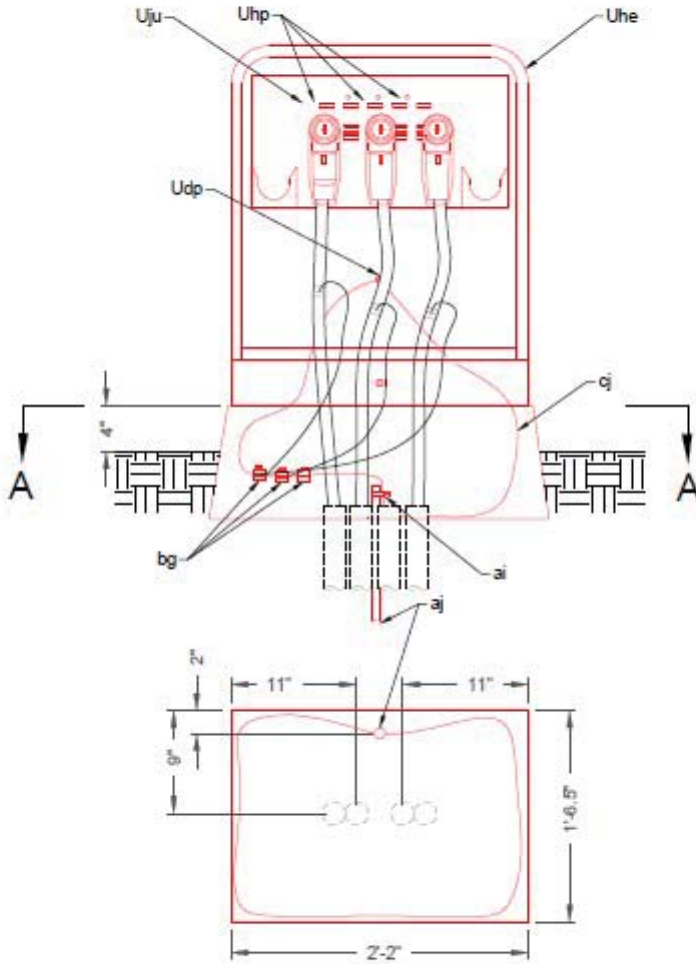
Subject: RE: Junction box

Jeremy,



Denton uses the following standard for the junction box. I do not have their approved manufacturers for their warehouse numbers, but I am sure they can provide it to us. Or they might be willing to provide the equipment, which is what I thought was happening for some of this equipment such as the service transformers, etc.

NOTES:

1. PLACE ONE ARRESTOR (#28732000) ON JUNCTION IF NOT ALL SPOTS ARE USED.



SECTION A-A

		<p>JUNCTION ENCLOSURE, 1 PHASE</p>	<p>DPCC-1</p>
<p>PURNAME DPCC-1.FLD</p>	<p>DRAWN BY: GURUPROEBS, LLC</p>	<p>APPROVED BY:</p>	<p>DATE: 03/03/20</p>

PARTS LIST -			
ITEM	QTY.	DESCRIPTION	WAREHOUSE#
ai	1	CLAMP, GROUND ROD, 5/8"	28772040
aj	1	ROD, GROUND, CU, 5/8" X 8'	28540000
bg	3	CONN, 1-BOLT, #1/0 - #8 STR	28773685
cj	10	WIRE, BARE #2 CU SD	28016160
Udp	1	LUG,TRF GRD STUD,6SOL-1/0STR	28773680
Uhe	1	CABINET, PRI CONN, 1PH	28584315
Uhp	3 OR 4	ELBOW, LOADBREAK, 200A	AS REQUIRED
Uju	1	JUNCTION, 4PT, 200A	28732175
Uju	1	JUNCTION, 3PT, 200A	28775700
	1	CLEANER, CABLE	28718000
	1	SILICONE, GREASE 2 OZ. TUBE	40524000

GREG BAUMBACH, P.E.

gbaumbach@se-texas.com



Schneider Engineering, LLC

TX Reg. #F-1594

191 Menger Springs Parkway – Boerne, TX 78006

O: 830.249.3887 | C: 830.660.1471

www.se-texas.com



From: Jeremy Katusak <jeremy.katusak@betaengineering.com>

Sent: Thursday, July 20, 2023 9:14 AM

To: Greg W. Baumbach <gbaumbach@se-texas.com>

Cc: Noah Rebouche <noah.rebouche@betaengineering.com>; Chad Jarick <chad.jarick@betaengineering.com>

Subject: FW: Junction box

From External Sender

Greg,

Please see below. Is this the same type of junction box we'll need for JB1 and JB2?

Thank you,



betaengineering.com

Jeremy Katusak, PE, PMP

Project Manager

956.455.3419

Jeremy.Katusak@betaengineering.com

Certificate Of Completion

Envelope Id: 61E3D18FB6444BEDA54F28ACDD715A08	Status: Completed
Subject: 7670 hickory GIS Substation Design Build Change Order 3 - SOW Reduction	
Source Envelope:	
Document Pages: 15	Signatures: 1
Certificate Pages: 5	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped 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: 198.49.140.10

Record Tracking

Status: Original	Holder: Christa Christian	Location: DocuSign
9/14/2023 2:43:26 PM	Christa.Christian@cityofdenton.com	

Signer Events

Christa Christian
 christa.christian@cityofdenton.com
 Purchasing Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:


 6A8263DE08F4429...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Timestamp

Sent: 9/14/2023 2:47:40 PM
 Viewed: 9/14/2023 2:47:50 PM
 Signed: 9/14/2023 2:48:00 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Mark Zimmerer
 mark.zimmerer@cityofdenton.com
 Electric Engineering Supervisor
 Security Level: Email, Account Authentication (None)


 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Sent: 9/14/2023 2:48:09 PM
 Viewed: 9/14/2023 2:53:43 PM
 Signed: 9/14/2023 2:53:50 PM

Electronic Record and Signature Disclosure:
 Accepted: 9/14/2023 2:53:43 PM
 ID: 0890ffb4-4aca-419b-9910-6e08d0956ed6

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

George Brashear
 george.brashear@betaengineering.com
 Executive Vice President
 Beta Engineering, LLC
 Security Level: Email, Account Authentication (None)

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Sent: 9/14/2023 2:54:00 PM

Electronic Record and Signature Disclosure:
 Accepted: 5/12/2023 10:49:37 AM
 ID: 4ec1115c-d2d5-4923-b4a6-b5b76c361fb2

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	<div style="border: 1px solid blue; padding: 5px; display: inline-block;"> COPIED </div>	Sent: 9/14/2023 2:54:00 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/14/2023 2:47:40 PM
Certified Delivered	Security Checked	9/14/2023 2:53:43 PM
Signing Complete	Security Checked	9/14/2023 2:53:50 PM
Completed	Security Checked	9/14/2023 2:54:00 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

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To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

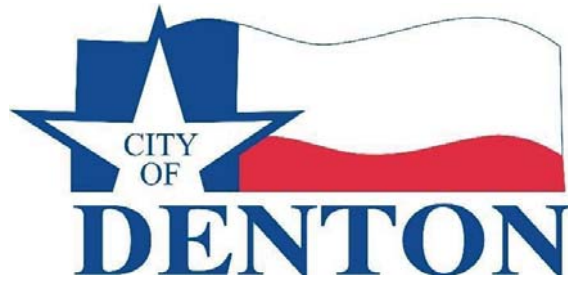
** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



DocuSign Transmittal Coversheet

File Name	7670 - Hickory GIS Substation, Change Order 4
Purchasing Contact	Christa Christian
Contract Expiration	12/30/2099

Change Request Proposal

Project: B661 / Hickory GIS Substation
 (name and address) 2600 W. Hickory St.
 Denton, TX

Change request number: 1011
 Description: B661 55Ft Wooden Pole Credit- DME to supply poles

Customer: City of Denton

Notice to Proceed

Submitted date:
 Received date:
 Rough order of magnitude: 0.00

Status: Proposed
 Origination date: 02/27/24

Quotation

Submitted date: 02/27/24
 Due date:
 Submitted amount: -13,102.00
 Requested days delay: 0

Revenue Detail

Billing Item	Description	Revenue
		-13,102.00
Total Revenue:		-13,102.00

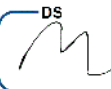
Contractor Pricing

Phase Code / Description	Cost Type	Quantity	UM	Amount
250-00-003 15kV Pole Equip & Mat'l 55Ft Class 1 QTY 6	P Procurement		Lot	-10,818.00
250-00-003 15kV Pole Equip & Mat'l 55Ft Class H2 QTY 1	P Procurement		Lot	-2,284.00
Contractor Pricing Total:				-13,102.00
Total:				-13,102.00
Mark-up:				0.00
Total Contractor Price for CR 1011				-13,102.00

Approvals

DocuSigned by:
 Customer: City of Denton
 Authorized Representative: *Christa Christian*
 By: Christa Christian
 Date: 3/7/2024

Contractor: Beta Engineering, LLC
 By: *[Signature]*
 Date: 3-4-23



Certificate Of Completion

Envelope Id: A06A39F1753C4F3AA01D4CBFA9B8F74B	Status: Completed
Subject: ***Purchasing Approval*** 7670 Hickory GIS Substation CO #4	
Source Envelope:	
Document Pages: 2	Signatures: 1
Certificate Pages: 5	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelope 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: 198.49.140.10

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Status: Original	Holder: Christa Christian	Location: DocuSign
3/7/2024 8:53:29 AM	Christa.Christian@cityofdenton.com	

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Christa Christian
 christa.christian@cityofdenton.com
 Purchasing Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

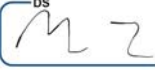
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Electronic Record and Signature Disclosure:
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Mark Zimmerer
 mark.zimmerer@cityofdenton.com
 Electric Engineering Supervisor
 Security Level: Email, Account Authentication (None)


 Signature Adoption: Drawn on Device
 Using IP Address: 47.190.47.120
 Signed using mobile

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 Signed: 3/7/2024 9:22:55 AM

Electronic Record and Signature Disclosure:
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

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Sent: 3/7/2024 9:22:56 AM

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Carbon Copy Events	Status	Timestamp
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Dane Anderson dane.anderson@betaengineering.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 1px solid blue; padding: 5px; display: inline-block; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	Sent: 3/7/2024 9:22:58 AM
George Brashear george.brashear@betaengineering.com Executive Vice President Beta Engineering, LLC Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 5/12/2023 10:49:37 AM ID: 4ec1115c-d2d5-4923-b4a6-b5b76c361fb2	<div style="border: 1px solid blue; padding: 5px; display: inline-block; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	Sent: 3/7/2024 9:22:58 AM Viewed: 3/7/2024 9:42:17 AM
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Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	3/7/2024 9:22:55 AM
Completed	Security Checked	3/7/2024 9:22:58 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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.

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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.

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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •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. 24-1344

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF CHANGE ORDER NO. 5 TO THE DESIGN-BUILD AGREEMENT BETWEEN THE CITY OF DENTON AND BETA ENGINEERING, LLC, FOR THE DESIGN AND CONSTRUCTION OF THE HICKORY GAS INSULATED SUBSTATION FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7670 – CHANGE ORDER NO. 5 IN THE NOT-TO-EXCEED AMOUNT OF \$248,569.09, FOR A TOTAL CONTRACT AWARD AGGREGATED TO \$41,551,141.48).

WHEREAS, on December 14, 2021, by Ordinance No. 21-2701, the City Council awarded a contract to Beta Engineering, LLC, in the amount of \$40,469,000 for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric; and

WHEREAS, on August 16, 2022, City Council awarded a Change Order No. 1 to Beta Engineering, LLC, in the amount of \$811,000.00; and

WHEREAS, on May 12, 2023, Purchasing awarded a Change Order No. 2 to Beta Engineering, LLC; in the amount of \$37,000.00; and

WHEREAS, on September 14, 2023, Purchasing awarded a Change Order No. 3 to Beta Engineering, LLC, to reduce the contract in the amount of \$1,325.61; and

WHEREAS, on March 7, 2024, Purchasing awarded a Change Order No. 4 to Beta Engineering, LLC, to reduce the contract in the amount of \$13,102.00; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that a change order be authorized to amend such contract agreement with respect to the scope of work and an increase in the payment amount; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 5, increasing the amount of the contract between the City and Beta Engineering, LLC, which is on file in the office of the Purchasing Agent, in the amount of Two Hundred Forty-Eight Thousand Five Hundred Sixty-Nine and 09/100 (\$248,569.09) dollars, is hereby approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to \$41,551,141.48.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Jill Jester and seconded by Joe Holland. This ordinance was passed and approved by the following vote [6 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vicki Byrd, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Beck, District 2:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Paul Meltzer, District 3:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joe Holland, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brandon Chase McGee, At Large Place 5:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jill Jester, At Large Place 6:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED this the 16th day of July, 2024.



 GERARD HUDSPETH, MAYOR

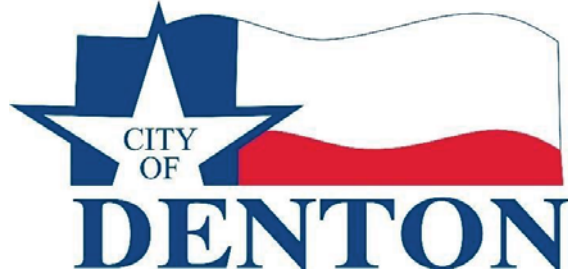
ATTEST:
 LAUREN THODEN, CITY SECRETARY

BY: Lauren Thoden



APPROVED AS TO LEGAL FORM:
 MACK REINWAND, CITY ATTORNEY

BY: Benjamin N. Samples, A.A.



DocuSign City Council Transmittal Coversheet

RFP	7670
File Name	Hickory GIS Substation, Change Order 5
Purchasing Contact	Christa Christian
City Council Target Date	JULY 16, 2024
Piggy Back Option	No
Contract Expiration	N/A
Ordinance	24-1344

DME Hickory GIS Substation
 June 10, 2024
 Page 2



Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
 betaengineering.com

June 30, 2022

Denton Municipal Electric
 1671 Spencer Road
 Denton, TX 76205

Attn: Mr. Mark Zimmerer, PE
 Subject: City of Denton Hickory GIS Substation Project
 Beta Project No. B661

Dear Mark,

This letter serves as a formal request for a Contract Amendment to incorporate scope changes in the Design Build Agreement for the Construction of the Hickory GIS Substation dated December 14th, 2021. The additional scope items have been separated into three categories as follows:

- A. **Items to be Included in the Contract Amendment** – Beta requests a Contract Amendment to incorporate the following scope changes as soon as possible so that these items can be incorporated in the project without delay.

Item	Description	Price
A1	48Ft. Conduit Run around Apartment Complex Labor & Equipment - (3) days -(1) Operator - Skid Steer - Hydrovac Trailer - Walk Behind Trencher - (1) Pusher - (2) Skilled Laborer	\$16,691.07

DME Hickory GIS Substation

June 10, 2024

Page 3

<p>A2</p>	<p>HK 221, HK 223, and HK 232 South Conduit runs</p> <p>Additional Scope of Work: -Demolition of additional asphalt, sidewalk & curb -Installation of Curb for approx. 102 LF -Installation of Sidewalk & Ramps approx. 102 LF -Additional Asphalt approx. 102 LF -Additional Demolition & Haul off of Asphalt -Slowed production due to working in the street -Additional Flowable Fill -original bid included 178 cy and the new route includes 468 cy in addition to concrete pricing escalation. -Additional time for excavation to dig 10' 10" deep x 48" wide per the IFC profile</p>	<p>\$157,193.52</p>
<p>A3</p>	<p>Anti-Graffiti Wall Covering for Exterior Screen Wall per DME request</p> <p>Sherwin Williams Anti-Graffiti 1K siloxane to the exterior of the screen wall.</p>	<p>\$74,684.50</p>

Upon receipt of your response, I will prepare and submit the Change Order Form in accordance with Article V of the Design Build Agreement.

Please call me if you have any questions.


Sincerely,

 Kevin Vercher
 Project Manager

EXHIBIT B
FORM OF CHANGE ORDER

In accordance with **Article V** of that certain Engineering, Procurement and Construction Agreement, dated December 14, 2021 (the "**Agreement**"), between Beta Engineering, LLC ("**Contractor**") and City of Denton ("**Owner**"), Contractor and Owner agree as follows:

Description of Change:

- A1. Extra 48ft. conduit run around neighboring Apartment complex
- A2. Extra work associated with HK 221, HK 223, and HK 232 South Conduit runs
- A3. Anti-Graffiti Wall Covering for Exterior Screen Wall per DME request

Original Contract Price	\$ <u>40,469,000.00</u>
Previous Change Orders	<u>\$833,572.39</u>
Amount of this Change Order	\$ <u>248,569.09</u>
New Contract Price	\$ <u>41,551,141.48</u>

This Change Order will modify the Contract Completion Date as follows:

_____ Increase _____ Decrease _____ No Effect X Calendar Days

Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement. Except as modified hereby, the Agreement shall remain in full force and effect and unmodified.

Accepted By Contractor

By: Jake Woodward

Printed Name: Jake Woodward

Its: 7/2/24

Accepted By Owner

DocuSigned by:
Sara Hensley
By:.....5238DB296270423.....

Printed Name: Sara Hensley

Its: 7/17/2024

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and ay first above written.

THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED as to financial and operational obligations and business terms.

DocuSigned by:
Terrance Naulty Terrance Naulty
B6F331381088478...
SIGNATURE PRINTED NAME

Asst. GM Denton Municipal Electric
TITLE

Denton Municipal Electric
DEPARTMENT

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: *Lauren Thoden* _____
DocuSigned by:
D09D09CAD33D487...

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Benjamin N. Samples, II* _____
DocuSigned by:
AB7F931ADF45405...

Certificate Of Completion

Envelope Id: D36C86C6A9C24333BB2E7665C7EDF640

Status: Completed

Subject: Please DocuSign: City Council Contract 7670 Hickory GIS Substation, Change Order 5

Source Envelope:

Document Pages: 5

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

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Christa.Christian@cityofdenton.com

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Signature

Timestamp

Christa Christian

Completed

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christa.christian@cityofdenton.com

Viewed: 7/2/2024 11:21:17 AM

Purchasing Supervisor

Signed: 7/2/2024 11:21:30 AM

City of Denton

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Security Level: Email, Account Authentication (None)

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Lori Hewell



Sent: 7/2/2024 11:21:32 AM

lori.hewell@cityofdenton.com

Viewed: 7/2/2024 11:54:02 AM

Purchasing Manager

Signed: 7/2/2024 11:54:14 AM

City of Denton

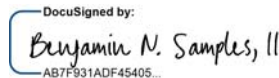
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Not Offered via DocuSign

Benjamin N. Samples, II



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Benjamin.Samples@cityofdenton.com

Viewed: 7/2/2024 11:55:23 AM

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Signed: 7/2/2024 11:57:24 AM

Signature Adoption: Pre-selected Style

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Terrance Naulty



Sent: 7/2/2024 11:57:25 AM

Terrance.Naulty@cityofdenton.com

Present: 7/2/2024 2:56:51 PM

Asst. GM Denton Municipal Electric

Viewed: 7/2/2024 2:58:25 PM

City of Denton


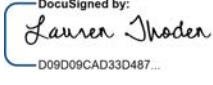
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Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:
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Signer Events	Signature	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 7/2/2024 3:00:05 PM Viewed: 7/17/2024 9:09:28 AM Signed: 7/17/2024 9:09:54 AM</p>
<p>Sara Hensley sara.hensley@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:  5236DB298270423...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 47.190.47.120 Signed using mobile</p>	<p>Sent: 7/17/2024 9:09:55 AM Viewed: 7/17/2024 9:59:19 AM Signed: 7/17/2024 9:59:29 AM</p>
<p>Lauren Thoden lauren.thoden@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:  D09D09CAD33D487...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 7/17/2024 9:59:30 AM Viewed: 7/17/2024 11:16:53 AM Signed: 7/17/2024 11:17:29 AM</p>

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Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 7/2/2024 11:21:31 AM</p>
<p>Getna Jones getna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 7/2/2024 3:00:05 PM Viewed: 7/2/2024 3:18:28 PM</p>

Carbon Copy Events	Status	Timestamp
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 7/17/2024 11:17:30 AM
Mark Zimmerer mark.zimmerer@cityofdenton.com Electric Engineering Supervisor Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/28/2024 12:35:14 PM ID: 86efe65c-e67f-4380-aca6-fa87063d585e	COPIED	Sent: 7/17/2024 11:17:31 AM

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Envelope Summary Events	Status	Timestamps
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Completed	Security Checked	7/17/2024 11:17:31 AM

Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

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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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To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

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To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •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.

By checking the 'I Agree' box, I confirm that:

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- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

ORDINANCE NO. 24-2080

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF CHANGE ORDER NO. 6 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. 6, IN THE NOT-TO-EXCEED AMOUNT OF \$750,934.78, FOR A TOTAL CONTRACT AWARD AGGREGATED TO \$42,302,076.26).

WHEREAS, on December 14, 2021, by Ordinance No. 21-2701, the City Council awarded a contract to Beta Engineering, LLC, in the amount of \$40,469,000, for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric; and

WHEREAS, on August 16, 2022, City Council awarded a Change Order No. 1 to Beta Engineering, LLC, in the amount of \$811,000.00; and

WHEREAS, on May 12, 2023, Purchasing awarded a Change Order No. 2 to Beta Engineering, LLC; in the amount of \$37,000.00; and

WHEREAS, on September 14, 2023, Purchasing awarded a Change Order No. 3 to Beta Engineering, LLC, to reduce the contract in the amount of \$1,325.61; and

WHEREAS, on March 7, 2024, Purchasing awarded a Change Order No. 4 to Beta Engineering, LLC, to reduce the contract in the amount of \$13,102.00; and

WHEREAS, on July 16, 2024, City Council awarded a Change Order No. 5 to Beta Engineering, LLC, in the amount of \$248,569.09; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that a change order be authorized to amend such contract agreement with respect to the scope of work and an increase in the payment amount; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 6, increasing the amount of the contract between the City and Beta Engineering, LLC, which is on file in the office of the Purchasing Agent, in the amount of Seven Hundred Fifty Thousand Nine Hundred Thirty-Four and 78/100 (\$750,934.78) dollars, is hereby approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to \$42,302,076.26.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Jill Jester and seconded by Brian Beck. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>X</u>	_____	_____	_____
Vicki Byrd, District 1:	<u>X</u>	_____	_____	_____
Brian Beck, District 2:	<u>X</u>	_____	_____	_____
Paul Meltzer, District 3:	<u>X</u>	_____	_____	_____
Joe Holland, District 4:	<u>X</u>	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	<u>X</u>	_____	_____	_____
Jill Jester, At Large Place 6:	<u>X</u>	_____	_____	_____

PASSED AND APPROVED this the 22nd day of October, 2024.



 GERARD HUDSPETH, MAYOR

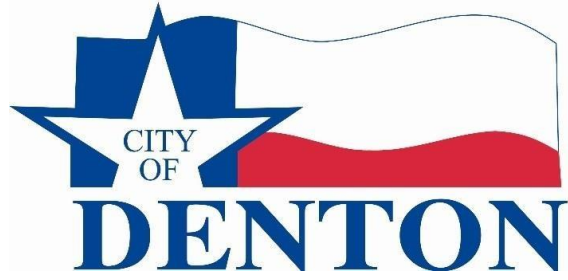
ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: Lauren Thoden



APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



DocuSign City Council Transmittal Coversheet

RFP	7670
File Name	Hickory GIS Substation, Change Order 6
Purchasing Contact	Christa Christian
City Council Target Date	OCTOBER 22, 2024
Piggy Back Option	No
Contract Expiration	N/A
Ordinance	24-2080

DME Hickory GIS Substation
 July 25, 2024



Beta Engineering
 4725 Highway 28 East
 Pineville, LA 71360
 318.487.9599
 betaengineering.com

July 25, 2024

Denton Municipal Electric
 1671 Spencer Road
 Denton, TX 76205

Attn: Mr. Mark Zimmerer, PE
 Subject: City of Denton Hickory GIS Substation Project
 Beta Project No. B661

Dear Mark,

This letter serves as a formal request for a Contract Amendment to incorporate scope changes in the Design Build Agreement for the Construction of the Hickory GIS Substation dated December 14th, 2021. The additional scope items have been separated into three categories as follows:

- A. **Items to be Included in the Contract Amendment** – Beta requests a Contract Amendment to incorporate the following scope changes as soon as possible so that these items can be incorporated in the project without delay.

Item	Description	Price
A1	<p>HK 221/223 South Exploratory Work</p> <p>This change order covers the estimated costs to cut Bonnie Brae and Hickory St. according to the bore profile, to verify depths and underground utilities.</p> <p>The proposed NTE cost includes the following:</p> <ul style="list-style-type: none"> - (20) days of Hydro Excavation - this cost could fluctuate based on actual usage. If Beta uses less than (20) days, a credit will be given, if Beta uses more than (20) days, the pricing will be charged at a day rate for each day over (20) days. - (3) days to sawcut, remove and dispose of asphalt - In the event the client does not wish to proceed with the bore after the exploration, the client will receive an additional change order to restore everything as it was. 	\$126,557.52

DME Hickory GIS Substation
 July 25, 2024

A2	<p>Access Control System</p> <p>Scope of Work:</p> <p>This proposal is based on our review of the Drawings prepared by CRUX, marked PR#4, dated 6-25-2024 and For Review, dated 6-18-2024. Drawings prepared by Kirkpatrick, El.OW and EO.IB, marked PR #4, dated 6-25-2024.</p> <p>Our scope includes furnishing and installation of access controls and video surveillance components, network switches, CAT 6 cabling, fiber optic cabling, low voltage power supplies, conduit, junction boxes and miscellaneous mounting hardware. All fiber will run to communication room 104 and will terminate and connect to network switch provided by the city of Denton for the connection to their existing Genetec system.</p> <p>The access-controlled gates will be triggered to open by the access control system signaling the gate controller. However, the drawings do not include free egress controls to open the gates to exit. We have included an alternate proposal to provide surface mounted loop detectors at the two east gates for exiting.</p> <p>Proposal includes, engineering drawings, product data submittals, permits, programming, testing and commissioning.</p> <p>Clarifications and exclusions:</p> <ul style="list-style-type: none"> • The acceptance of this proposal is not to effect or delay in any way the payment or retainage from the original contract. • Drawing El.OW have been priced based on changes discussed in several previous meetings and emails. (Only conduits for cameras and access control to be run all the way around the interior of screen wall. Power to be provided as needed to the access control, camera, and wall lights, through the 4" conduit at each gate. By others) (No 2" electrical conduit looping the interior of the GIS building, 2" data conduit only) <p>Add free egress at the two east gates, so that a vehicle just pulls up to the gate and it opens (without a card reader or a toll tag reader) This includes, trenching, an exit loop, loop detector in an outdoor-rated enclosure, and connection to the NEMA enclosure.</p>	\$629,461.80
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DME Hickory GIS Substation
July 25, 2024

A3	60Ft Wooden Poles DME to provide the following as deductive change order to Beta. 14' tangent fiberglass arms (Maclean) X2 60' Class 1 Wood Pole X2	(\$5084.54)
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Upon receipt of your response, I will prepare and submit the Change Order Form in accordance with Article V of the Design Build Agreement.

Please call me if you have any questions.

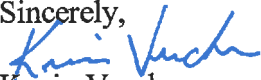
Sincerely,

Kevin Vercher
Project Manager

EXHIBIT B
FORM OF CHANGE ORDER

CHANGE ORDER NO. 6 7/25/2024

In accordance with **Article V** of that certain Engineering, Procurement and Construction Agreement, dated December 14, 2021 (the "**Agreement**"), between Beta Engineering, LLC ("**Contractor**") and City of Denton ("**Owner**"), Contractor and Owner agree as follows:

Description of Change:

- A1. HK 221/223 South Exploratory Work
- A2. Access Control System
- A3. 60ft Wooden Pole and accessories


Original Contract Price	\$ 40,469,000.00
Previous Change Orders	<u>\$1,082,141.48</u>
Amount of this Change Order	\$ <u>750,934.78</u>
New Contract Price	\$ <u>42,302,076.26</u>

This Change Order will modify the Contract Completion Date as follows:

_____ Increase _____ Decrease X No Effect _____ Calendar Days

Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement. Except as modified hereby, the Agreement shall remain in full force and effect and unmodified.


Accepted By Contractor

By: 

Printed Name: Jake Woodward

Its: 9/11/24

Accepted By Owner

By:  DocuSigned by:

Printed Name: Sara Hensley

Its: 10/23/2024

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and ay first above written.

THIS AGREEMENT HAS BEEN
 BOTH REVIEWED AND APPROVED
 as to financial and operational obligations
 and business terms.

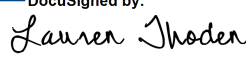
Signed by:
 Antonio Puente, Jr.
E3760944C2BF4B5...

SIGNATURE PRINTED NAME


DME General Manager
 TITLE

Electric
 DEPARTMENT

ATTEST:
 LAUREN THODEN, CITY SECRETARY

BY: 
D09D09CAD33D487...

APPROVED AS TO LEGAL FORM:
 MACK REINWAND, CITY ATTORNEY

BY: 
4B070831B4AA438...

Certificate Of Completion

Envelope Id: FB302AC52D724267A748B49A467675C8	Status: Completed
Subject: Please DocuSign: City Council Contract 7670 Hickory GIS Substation, Change Order 6	
Source Envelope:	
Document Pages: 6	Signatures: 4
Certificate Pages: 6	Initials: 1
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: 198.49.140.10


Record Tracking

Status: Original	Holder: Christa Christian	Location: DocuSign
9/11/2024 9:06:10 AM	Christa.Christian@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
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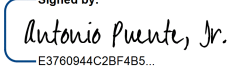
Electronic Record and Signature Disclosure:
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Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 9/11/2024 9:08:15 AM Viewed: 9/12/2024 8:04:52 AM Signed: 9/12/2024 8:04:59 AM
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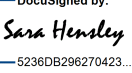
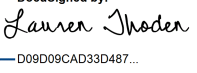
Electronic Record and Signature Disclosure:
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Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 9/12/2024 8:05:02 AM Viewed: 9/12/2024 1:18:22 PM Signed: 9/12/2024 1:19:15 PM
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Electronic Record and Signature Disclosure:
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Antonio Puente, Jr. Antonio.Puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 9/12/2024 1:19:17 PM Viewed: 9/12/2024 1:34:05 PM Signed: 9/12/2024 1:34:45 PM
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Electronic Record and Signature Disclosure:
Accepted: 9/12/2024 1:34:04 PM
ID: d733068e-c527-4816-96cc-ca6a8cad04a6

Signer Events	Signature	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 9/12/2024 1:34:48 PM Viewed: 10/23/2024 9:02:37 AM Signed: 10/23/2024 9:03:12 AM</p>
<p>Sara Hensley sara.hensley@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:  5236DB296270423...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 10/23/2024 9:03:15 AM Viewed: 10/23/2024 9:10:40 AM Signed: 10/23/2024 9:10:53 AM</p>
<p>Lauren Thoden lauren.thoden@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:  D09D09CAD33D487...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 10/23/2024 9:10:56 AM Viewed: 10/23/2024 10:17:42 AM Signed: 10/23/2024 10:17:52 AM</p>

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 9/11/2024 9:08:15 AM</p>
<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 9/12/2024 1:34:48 PM Viewed: 9/13/2024 4:24:16 PM</p>

Carbon Copy Events	Status	Timestamp
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City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 10/23/2024 10:17:54 AM
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Mark Zimmerer mark.zimmerer@cityofdenton.com Electric Engineering Supervisor Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 10/21/2024 8:25:29 AM ID: 274364d1-2109-4a71-9d3c-3036c587bcc1	COPIED	Sent: 10/23/2024 10:17:55 AM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	10/23/2024 10:17:52 AM
Completed	Security Checked	10/23/2024 10:17:55 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •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.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF CHANGE ORDER NO. 7 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. 7, IN THE NOT-TO-EXCEED AMOUNT OF \$1,087,043.85, FOR A TOTAL CONTRACT AWARD AGGREGATED TO \$43,389,120.11).

WHEREAS, on December 14, 2021, by Ordinance No. 21-2701, the City Council awarded a contract to Beta Engineering, LLC, in the amount of \$40,469,000, for the design and construction of the Hickory Gas Insulated Substation for Denton Municipal Electric; and

WHEREAS, on August 16, 2022, City Council awarded a Change Order No. 1 to Beta Engineering, LLC, in the amount of \$811,000.00; and

WHEREAS, on May 12, 2023, Purchasing awarded a Change Order No. 2 to Beta Engineering, LLC; in the amount of \$37,000.00; and

WHEREAS, on September 14, 2023, Purchasing awarded a Change Order No. 3 to Beta Engineering, LLC, to reduce the contract in the amount of \$1,325.61; and

WHEREAS, on March 7, 2024, Purchasing awarded a Change Order No. 4 to Beta Engineering, LLC, to reduce the contract in the amount of \$13,102.00; and

WHEREAS, on July 16, 2024, City Council awarded a Change Order No. 5 to Beta Engineering, LLC, in the amount of \$248,569.09; and

WHEREAS, on October 22, 2024, City Council awarded a Change Order No. 6 to Beta Engineering, LLC, in the amount of \$750,934.78; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that a change order be authorized to amend such contract agreement with respect to the scope of work and an increase in the payment amount; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. Change Order No. 7, increasing the amount of the contract between the City and Beta Engineering, LLC, which is on file in the office of the Purchasing Agent, in the amount of One Million Eighty-Seven Thousand Forty-Three and 85/100 (\$1,087,043.85) dollars, is hereby

approved and the expenditure of funds therefore is hereby authorized in accordance with said change order. The total purchase order amount increases to \$43,389,120.11.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

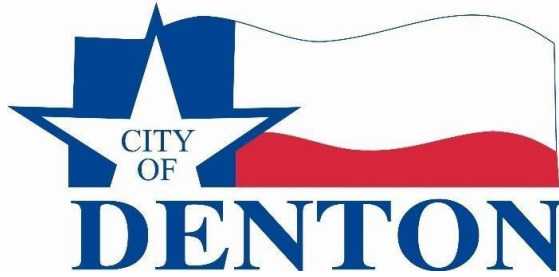
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Marcella Lunn
BY: _____



DocuSign City Council Transmittal Coversheet

RFP	7670
File Name	HICKORY GIS SUBSTATION, CHANGE ORDER 7
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	No
Contract Expiration	
Ordinance	

DME Hickory GIS Substation
September 17, 2024



Beta Engineering
4725 Highway 28 East
Pineville, LA 71360
318.487.9599
betaengineering.com

September 17, 2024

Denton Municipal Electric
1671 Spencer Road
Denton, TX 76205

Attn: Mr. Mark Zimmerer, PE
Subject: City of Denton Hickory GIS Substation Project
Beta Project No. B661

Dear Mark,

This letter serves as a formal request for a Contract Amendment to incorporate scope changes in the Design Build Agreement for the Construction of the Hickory GIS Substation dated December 14th, 2021. The additional scope items have been separated into three categories as follows:

- A. **Items to be Included in the Contract Amendment** – Beta requests a Contract Amendment to incorporate the following scope changes as soon as possible so that these items can be incorporated in the project without delay.

Item	Description	Price
A1	<p>Southwire Riser Pole Delay</p> <p>The explanation of the change order:</p> <ul style="list-style-type: none"> - 13 days of lost termination work @ \$23,326.00 per day \$303,238.00 - 6 days of lost termination work for extra labor @\$23,326.00 per day \$139,956.00 - Approximately 440 hours of Idle Equipment \$118,004.06 - 8 Weather Days <p>**See Attached File for Detailed Breakdown</p>	\$617,317.87

DME Hickory GIS Substation
 September 17, 2024

Item	Description	Price
A2	<p>HK 221/223 South Exploratory Work – Phase 2</p> <p>The explanation of the change order:</p> <p>This change order covers the estimated costs for KCI to cut Bonnie Brae and Hickory St. according to the bore profile, to verify depths and underground utilities. The proposed NTE cost includes the following: - (20) days of Hydro Excavation - this cost could fluctuate based on actual usage. If KCI uses less than (20) days, a credit will be given, if KCI uses more than (20) days, the below pricing will be charged at a day rate for each day over (20) days. - (3) days to sawcut, remove and dispose of asphalt - In the event the client does not wish to proceed with the bore after the exploration of the second area, the client will receive an additional change order to restore everything as it was. - Line 3 pricing is to restore the original bore path. This price includes the following: (5) Man Crew (1) Skid Steer (1) Trench Roller (1) Jumping Jack (1) Mini Excavator (1) Loader (25) Road Plates for a 2 month rental until KCI can asphalt the entire area at once for a cost savings to the client (1) Asphalt remediation Striping (20) CY of Flowable Signage and Barricade Extension * City Water Department has agreed to supply backfill material</p> <p>A) HK 221/223 South Exploratory Work Area 2-- \$126,557.52 B) Backfill and Repair of Original Exploratory Run Area 1-- \$92,422.15</p>	\$218,979.67

DME Hickory GIS Substation
 September 17, 2024

Item	Description	Price
A3	<p>CT Conduit on 3 Riser Poles, CT Management Box</p> <p>The explanation of the change order: Installation of the CT conduit on the 3 riser poles. Time will take approximately 1 week per pole with 5-man crew, two men in basket, foreman and two-man ground crew. Price is broken into material and labor to install conduit and labor to install and wire CT's.</p> <p>- Conduit work</p> <p>Materials no taxes - \$28,770.00 Labor and Equipment - \$104,938.00</p> <p>Install CT's and wire CT's</p> <p>Labor and Equipment - \$21,475.70</p> <p>- CT Management Box - \$11,075.82</p>	\$166,259.56

Item	Description	Price
A4	<p>15 KV Removal</p> <ul style="list-style-type: none"> ● Mobilize to job site ● Cut asphalt to access manhole in intersection of Bonnie Brae and Oak Street ● Remove riser on P#7827 and pull out cable from P#7827 to old substation including entering 2 manholes to cut cable Feeder 5 ● Repair asphalt over manhole ● Remove riser on P#1885 and pull out cable from P#1885 to old substation including entering 2 manholes to cut cable Feeder 6 ● Remove riser on P#7842 and pull out cable from P#7842 to old substation Feeder 3 ● Remove riser on P#4438 and pull out cable from P#4438 to old substation Feeder 4 ● Remove riser on P#5 and pull out cable from P#5 to old substation Feeder 1 ● Remove cable from pull boxes in new substation to old substation. Riser run already removed by DME Feeder 2 ● Remove cable from old substation to switchgear west of old substation Feeder 8 ● Remove cable from old substation to under build on transmission structure west of old substation Feeder 7 	\$81,036.13

DME Hickory GIS Substation
September 17, 2024

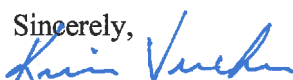
Item	Description	Price
A5	Secondary Service install for Service Station <input type="checkbox"/> Pick up pole at DME <input type="checkbox"/> Coordinate hand diggers to dig new pole hole <input type="checkbox"/> Set new pole <input type="checkbox"/> Transfer electrical contacts <input type="checkbox"/> Remove old pole	\$3,450.62

DME Hickory GIS Substation
September 17, 2024

Upon receipt of your response, I will prepare and submit the Change Order Form in accordance with Article V of the Design Build Agreement.

Please call me if you have any questions.

Sincerely,



Kevin Vercher
Project Manager

EXHIBIT B
FORM OF CHANGE ORDER

CHANGE ORDER NO. 7 9/17/2024

In accordance with **Article V** of that certain Engineering, Procurement and Construction Agreement, dated December 14, 2021 (the "**Agreement**"), between Beta Engineering, LLC ("**Contractor**") and City of Denton ("**Owner**"), Contractor and Owner agree as follows:

Description of Change:

Al. Southwire Riser Pole Delay

Original Contract Price	\$ <u>40,469,000.00</u>
Previous Change Orders	\$ <u>1,833,076.26</u>
Amount of this Change Order	\$ <u>1,087,043.85</u>
New Contract Price	\$ <u>43,389,120.11</u>

This Change Order will modify the Contract Completion Date as follows:

_____ Increase _____ Decrease X No Effect _____ Calendar Days

Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement. Except as modified hereby, the Agreement shall remain in full force and effect and unmodified.

Accepted By Contractor

By: 

Printed Name: Jake Woodard

Its: 9/26/24

Accepted By Owner

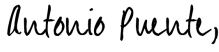
By:

Printed Name:

Its:

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and ay first above written.

THIS AGREEMENT HAS BEEN
 BOTH REVIEWED AND APPROVED
 as to financial and operational obligations
 and business terms.

Signed by:

 E3760944C2BE4B5...

SIGNATURE PRINTED NAME
 Antonio Puente, Jr.

DME General Manager


 TITLE
 Electric

 DEPARTMENT

ATTEST:
 LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
 MACK REINWAND, CITY ATTORNEY

DocuSigned by:

 4B070831B4AA438...

BY: _____

Certificate Of Completion

Envelope Id: 38219E4A37FE494AA6106F853FD54F38	Status: Sent
Subject: Please DocuSign: City Council Contract 7670 Change Order 7	
Source Envelope:	
Document Pages: 8	Signatures: 2
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Crystal Westbrook
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	crystal.westbrook@cityofdenton.com
	IP Address: 198.49.140.10


Record Tracking

Status: Original	Holder: Crystal Westbrook	Location: DocuSign
10/28/2024 1:50:05 PM	crystal.westbrook@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 10/28/2024 1:53:51 PM Viewed: 10/28/2024 1:54:02 PM Signed: 10/28/2024 1:54:26 PM

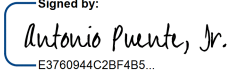
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 10/28/2024 1:54:28 PM Viewed: 10/28/2024 2:44:26 PM Signed: 10/28/2024 2:45:21 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/28/2024 2:45:22 PM Viewed: 10/30/2024 1:06:30 PM Signed: 10/30/2024 1:07:30 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Antonio Puente, Jr. antonio.puente@cityofdenton.com DME General Manager Denton Municipal Electric Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/30/2024 1:07:32 PM Viewed: 10/30/2024 1:30:15 PM Signed: 10/30/2024 1:30:31 PM
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Signer Events	Signature	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		Sent: 10/30/2024 1:30:34 PM
<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		
<p>Lauren Thoden lauren.thoden@cityofdenton.com 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>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	Sent: 10/28/2024 1:54:28 PM
<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	Sent: 10/30/2024 1:30:33 PM Viewed: 10/30/2024 1:58:13 PM
<p>City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		

Carbon Copy Events	Status	Timestamp
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Mark Zimmerer

mark.zimmerer@cityofdenton.com

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 10/21/2024 8:25:29 AM
ID: 274364d1-2109-4a71-9d3c-3036c587bcc1

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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-235, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a contract between the City of Denton and Invoice Cloud, Inc., amending the contract approved by City Council on September 28, 2021, in the not-to-exceed amount of \$1,500,000.00; said first amendment to provide additional funding for charges through the contract term for online billing portal and payment services for the Customer Service Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 7697 - providing for an additional first amendment expenditure amount not-to-exceed \$375,000.00, with the total contract amount not-to-exceed \$1,875,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a contract between the City of Denton and Invoice Cloud, Inc., amending the contract approved by City Council on September 28, 2021, in the not-to-exceed amount of \$1,500,000.00; said first amendment to provide additional funding for charges through the contract term for online billing portal and payment services for the Customer Service Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 7697 – providing for an additional first amendment expenditure amount not-to-exceed \$375,000.00, with the total contract amount not-to-exceed \$1,875,000.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Pursue Organizational Excellence.

INFORMATION/BACKGROUND

Invoice Cloud online payment solution provides secure, private, and Payment Card Industry (PCI) compliant solutions with real-time integration with the utility billing system to electronically accept online payments using all major credit and debit card brands, as well as eCheck and digital wallet methods for Google Pay. Invoice Cloud’s comprehensive online payment solution provides increased operation savings in both time and money through streamlined self-service functions such as:

- Flexible online payment options that meet business rules and help customers pay their bills on time when it suits their budget, whether registered or not. Registered customers can schedule recurring payments to pay a certain amount on the same day every month. Registered or non-registered customers can set up autopay for the full invoice amount on the invoice due date or schedule one-time future payments via credit/debit card or ACH.
- Fully integrated IVR provides a seamless customer experience that promotes self-service and the ability to reduce inbound customer calls. Enhanced features include Caller ID authentication, the ability to store payment information (Tokenization) for future customer payments, and offer customers the ability to request a text message with a secure payment link to their mobile phone.
- Pay by text which sends customers a text notification with a direct link to the payment site with no long-in or reauthentication required. Customers can create calendar and SMS text reminders in calendar applications such as Apple and MS Outlook, or schedule one-time text reminders.

- Improved customer communications that engage more customers to utilize online payment options without calling, walking in, or mailing physical checks through targeted and automated messaging. Ability to send automated, event-driven email and text reminders and notifications with a link to make payment without being redirected to the log-in site.

The anticipated business gains based on Invoice Cloud’s documented results were the following.

- Increased Customer Awareness & Satisfaction
- Reduction of Bill Print/Mail Costs (Up to \$140,000 Annually)
- Decreased Account Delinquency (Up to 13% Reduction)
- Reduced Payment Calls (Up to 10 Hours Weekly)

These are the actual results.

- Reduction of Bill Print/Mail Costs - \$70,000 Annually at Current
- Decreased Account Delinquency – 14.6% Reduction
- Reduced Payment Calls – 23 Hours Weekly

Performance results indicate that customer awareness and satisfaction with the platform are high. Additionally, since the implementation of Invoice Cloud, customer adoption of electronic payments has increased by almost 40% from 375,000 transactions per year to approximately 550,000 creating the need for additional funding.

The City’s contract with Invoice Cloud expires on September 27, 2026, but a formal solicitation will be released in Spring 2025; however, the NTE amount will be exhausted by February 2025. The additional funding requested by this amendment will help complete FY2024-25 and continue the online account management and payment services until a new contract can be procured.

PRIOR ACTION/REVIEW (Council, Boards, Commission)

On September 28, 2021, City Council approved a contract with Invoice Cloud, Inc., in the not-to-exceed amount of \$1,500,000.00. (Ordinance 21-2119).

RECOMMENDATION

Award Amendment No. 1 with Invoice Cloud, Inc., to provide additional funding for charges through the contract term for online billing portal and payment services for the Customer Service Department, in a not-to-exceed amount of \$375,000, for a total amended contract amount of \$1,875,000.

PRINCIPAL PLACE OF BUSINESS

Invoice Cloud, Inc.
Braintree, MA

ESTIMATED SCHEDULE OF PROJECT

This contract will expire on September 27, 2026.

FISCAL INFORMATION

These services will be funded from Customer Service account 870100.7912. Requisitions will be entered on an as-needed basis. The total amended amount of this contract is \$1,875,000.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Original Ordinance and Contract
- Exhibit 3: Ordinance and Amendment

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Christa Foster, 940-349-7412.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. 21-2119

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH INVOICE CLOUD, INC., FOR INTEGRATED ONLINE PAYMENT SOLUTIONS FOR THE CUSTOMER SERVICE DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 7697 – AWARDED TO INVOICE CLOUD, INC., FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$1,500,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for Integrated Online Payment Solutions for the Customer Service Department; and

WHEREAS, the City Manager, or a designated employee, has received and reviewed and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies or services, shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
7697	Invoice Cloud, Inc.	\$1,500,000.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items and

of the submitted proposals wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted..

SECTION 4. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Brian Beck and seconded by Vicki Byrd. This ordinance was passed and approved by the following vote [7 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vicki Byrd, District 1:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Beck, District 2:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jesse Davis, District 3:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alison Maguire, District 4:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deb Armintor, At Large Place 5:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Paul Meltzer, At Large Place 6:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

PASSED AND APPROVED this the 28th day of September, 2021.



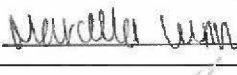
 GERARD HUDSPETH, MAYOR

ATTEST:
 ROSA RIOS, CITY SECRETARY

 BY: Rosa Rios



APPROVED AS TO LEGAL FORM:
CATHERINE CLIFTON, INTERIM CITY ATTORNEY

BY: 
Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o=City of
Denton,
email=marcella.lunn@cityofdenton.
com, c=US
Date: 2021.09.22 09:06:43 -05'00'

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND INVOICE CLOUD, INC.
(CONTRACT 7697)**

09/28/2021

THIS CONTRACT (the "Contract") is made and entered into this _____, 2021, by and between Invoice Cloud, Inc., a Delaware corporation, whose address is 30 Braintree Hill Office Park, Suite 303, Braintree, Massachusetts 02184, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City's document RFP 7697- Integrated Utility Payment Solutions, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's RFP 7697 (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Insurance Requirements (**Exhibit "D"**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit "E"**);
- (f) Contractor's Proposal (**Exhibit "F"**);
- (g) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "G"**);
- (h) Biller Agreement (**Exhibit "H"**); and
- (i) Statement of Work and Biller Order form – *City of Denton, Texas* (**Exhibit "I"**).

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

Prohibition on Contracts with Companies Boycotting Israel

Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. *By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.* Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. *By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant to Chapter 2252, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.* Failure to meet or maintain the requirements under this provision will be considered a material breach.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR
DocuSigned by:
BY: Tom Griffin
1603C2ADED154DD...
AUTHORIZED SIGNATURE

CITY OF DENTON TEXAS
DocuSigned by:
BY: Sara Hensley
5238DB296270423...
SARA HENSLEY, INTERIM CITY MANAGER

Printed Name: Tom Griffin

Title: President
6178997213

PHONE NUMBER
tgriffin@invoicecloud.com

EMAIL ADDRESS
tgriffin@invoicecloud.com

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

ATTEST:
ROSA RIOS, CITY SECRETARY

DocuSigned by:
BY: Rosa Rios
1C5CA8C5E175493...

APPROVED AS TO LEGAL FORM:

DocuSigned by:
BY: Marcella Lunn
4B070831B4AA438...

THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED as to financial and operational obligations and business terms.

DocuSigned by:
Ryan Adams Ryan Adams
78544D73C38F499...
SIGNATURE PRINTED NAME

Director

TITLE
Customer Service and Public Affairs

DEPARTMENT

Exhibit A Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed \$1,500,000. City of Denton will provide notice once eighty-percent (80%) of the contract not-to-exceed amount has been encumbered. Pricing shall be per Exhibit F attached.

2. The Quantities

The quantities indicated on Exhibit F are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

3. Contract Terms

As set forth in the Biller Agreement attached hereto as Exhibit I, the Contract term shall commence as of the execution date of the Biller Order Form attached hereto as Exhibit H, and continue for a period of one (1) year after the Go Live Date (“Initial Term”) and will automatically renew for each of additional successive four (4) one-year terms (“Renewal Term”) unless terminated as set forth herein. “Term” as used herein shall mean the Initial Term and any Renewal Term. This Agreement may be terminated by either party effective at the end of the Initial or any Renewal Term by such party providing written notice to the other party of its intent not to renew no less than ninety (90) days prior to the expiration of the then-current term. Additionally, this Agreement may be terminated by either party with cause in the event of a material breach of the terms of this Agreement by the other party and the breach remains uncured for a period of 30 days following receipt of written notice by the breaching party. Upon any early termination of this Agreement by Contractor as a result of breach, the City shall remain liable for all fees and charges incurred, and all periodic fees owed through the end of the calendar month following the effective date of termination. Upon any termination or expiration of this Contract, the City’s password and access will be disabled and the City will be obligated to pay the balance due on the City’s account computed in accordance with the Charges and Payment of Fees section set forth in the Biller Agreement. The City agrees that Contractor may charge such unpaid fees to the City’s Debit Account or credit card or otherwise invoice the City for such unpaid fees. Unless otherwise defined herein, capitalized terms used in this Section 3 shall have the meanings assigned to them in Exhibits H, I and J.

4. Limitations

The City is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on City property; disclaimers and limitations of warranties; disclaimers and limitation of liability for damages; waivers, disclaimers, and limitation on litigation or settlement to another

Contract # 7697

party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on the City, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

5. Prohibition against Personal Interest in Contracts

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

6. No Waiver of Sovereign Immunity

The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

7. Records Retention

The Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. With the exception of Customer Data that Biller reserves the right to remove and/or delete from its systems in accordance with Section 3 of the Biller Agreement attached hereto as Exhibit I, the Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Contractor shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

Exhibit C

Standard Purchase Terms and Conditions

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton’s Contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent hereinafter referred to as Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City’s Procurement Department and the Supplier. No Terms and Conditions contained in the Seller’s proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the Contract/purchase order these written provisions will take precedence.

The Contractor agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 shall apply only to a solicitation to purchase services to be performed principally at the City’s premises or on public rights-of-way.

1. **CONTRACTOR’S OBLIGATIONS.** The Contractor shall fully and timely provide all services described in the Solicitation and in the Contractor’s Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the Contract is signed by the City, and shall continue in effect until terminated in accordance with the terms of the Contract.

3. **INTENTIONALLY DELETED**

4. **INTENTIONALLY DELETED**

5. **INTENTIONALLY DELETED**

6. **INTENTIONALLY DELETED**

7. **INTENTIONALLY DELETED**

8. **INTENTIONALLY DELETED**

9. **INTENTIONALLY DELETED**

10. **WORKFORCE**

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property:

Contract # 7697

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

Immigration: The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

Environmental Protection: The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

12. INTENTIONALLY DELETED

13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

iv. damage to the property of the City or the City's agents, employees or contractors,

which is not covered by insurance required to be provided by the Contractor;
vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. Except as otherwise specified in the Contract Documents to the contrary, the Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the Contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the Contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. FINAL PAYMENT AND CLOSE-OUT:

A. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit;

17. RIGHT TO AUDIT:

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request; *provided, however*, that Contractor shall be afforded additional time upon request supported by reasonable justification. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 5% or greater. If an overpayment of 5% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within thirty (30) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to

Contract # 7697

include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. SUBCONTRACTORS:

A. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the

Contract.

B. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

19. WARRANTY-PRICE:

The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

20. INTENTIONALLY DELETED

21. INTENTIONALLY DELETED

22. WARRANTY – SERVICES: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources.

23. INTENTIONALLY DELETED

24. RIGHT TO ASSURANCE: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified

after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. STOP WORK NOTICE: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

26. DEFAULT: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report required to be submitted by the Contractor to the City.

27. INTENTIONALLY DELETED

28. INTENTIONALLY DELETED

29. FRAUD: Fraudulent statements by the Contractor on any Offer or in any report required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. DELAYS:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

31. INTENTIONALLY DELETED

32. INSURANCE: The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Exhibit D** for services only. The successful firm shall procure and maintain insurance of the types and in the minimum amounts set forth in Exhibit D.

A. General Requirements:

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required to the City as verification of coverage prior to contract execution and within thirty (30) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the

City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

vi. All applicable endorsements, naming the City as an additional insured as set forth in Exhibit D, waivers, and notices of cancellation as well as the Certificate of Insurance shall contain the following information:

City of Denton
Materials Management Department
901B Texas Street
Denton, Texas 76209

vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy as set forth in Exhibit D. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements.

x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to request adjustments to the insurance coverage, limits, and exclusions required under this Contract when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor. In the event that the City requests such adjustments, the parties shall negotiate in good faith to amend this Contract to achieve the parties' intentions set forth herein.

xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract; *provided, however*, that nothing herein shall prohibit Contractor from replacing its carriers or coverages provided that Contractor continues to maintain limits and coverages in accordance with the requirements herein. xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

xiv. The insurance coverages specified in the solicitation are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL PUBLIC RECORDS:** Contractor shall comply with all applicable Texas public records and/or open records laws. To the extent required by Texas law, Contractor shall (a) keep and maintain public records required by the City to perform the service under the Agreement; (b) upon request from the City's custodian of public records provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for under applicable Texas public records law; *provided, however*, that the City will notify Contractor in advance of the City's intention to release any Confidential Information to give Contractor a reasonable opportunity to seek protective legal treatment for such Confidential Information as needed; (c) ensure that public records that are Confidential Information are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if Contractor does not transfer the records to the City; and (d) upon completion of the Contract, transfer, at no cost to the City, all public records in possession of Contractor. Upon transfer, Contractor shall destroy any duplicate public records that are Confidential Information. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City. This paragraph shall survive the expiration or termination of this Contract. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of records is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

36. INTENTIONALLY DELETED

Contract # 7697

37. **CONFIDENTIALITY:** In order to provide services to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information may substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information except as: (i) permitted under this Contract; (ii) required to perform the service or (iii) required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

38. INTENTIONALLY DELETED

39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract.

Contract # 7697

In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

44. INDEPENDENT CONTRACTOR: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

45. ASSIGNMENT-DELEGATION: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City; *provided further, however,* that Contractor shall the right to assign this Contractor to any successor of substantially all of its business or assets without the previous written consent of the City, and any such successor shall be bound by all of the provisions hereof. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

Contractor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

46. WAIVER: No claim or right arising out of a breach of the Contract can be discharged in whole
Contract # 7697

or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

47. MODIFICATIONS: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Contractor invoice shall have any force or effect to change the terms, covenants, and conditions of the Contract.

48. INTERPRETATION: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

49. DISPUTE RESOLUTION:

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted
Contract # 7697

in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

52. **HOLIDAYS:** The following holidays are observed by the City:

- | |
|---------------------------|
| New Year's Day (observed) |
| MLK Day |
| Memorial Day |
| 4th of July |
| Labor Day |
| Thanksgiving Day |
| Day After Thanksgiving |
| Christmas Eve (observed) |
| Christmas Day (observed) |
| New Year's Day (observed) |

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or onsite work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

55. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** Contractor shall not engage in any discriminatory Contract # 7697

employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this Contract.

B. Americans with Disabilities Act (ADA) Compliance: Contractor shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. INTENTIONALLY DELETED

57. RIGHT TO INFORMATION: The City of Denton reserves the right to use any and all information presented in any response to the City's RFP, whether amended or not, except as prohibited by law or as otherwise prohibited under the terms of this Contract. Selection of rejection of the submittal does not affect this right.

58. LICENSE FEES OR TAXES: Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

59. PREVAILING WAGE RATES: The contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website www.wdol.gov for Denton County, Texas (WD-2509).

60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS: The Contractor shall comply with all State, Federal, and Local laws and requirements. Contractor must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; and (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

61. FEDERAL, STATE, AND LOCAL REQUIREMENTS: Contractor shall demonstrate on-site compliance with the applicable requirements of the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Contractor shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Contractor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

62. DRUG FREE WORKPLACE: The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply Contract # 7697

with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Contractor and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Contractor shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

64. FORCE MAJEURE: The City of Denton and Contractor shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, pandemic/epidemic, or other unavoidable cause not attributable to the fault or negligence of the City of Denton or Contractor. In the event of an occurrence under this Section, the party invoking Force Majeure will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the party invoking Force Majeure continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay; *provided, however,* that under no circumstance will an event of Force Majeure excuse an obligation of the party invoking Force Majeure under this Section to make payments when due under this Contract. The party invoking Force Majeure shall promptly notify the other party, the City of Denton Procurement Manager in the case of the city, by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

65. INTENTIONALLY DELETED

66. NO WAIVER OF SOVEREIGN IMMUNITY: The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

67. RECORDS RETENTION: Contractor shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. Contractor shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. Contractor shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract. Notwithstanding the above, upon termination or expiration of this Contract, Contractor reserves the right to remove and/or delete any remaining Customer Data (as such term is defined in the Biller Agreement attached hereto as Exhibit I) no less than 60 days after termination or expiration except as prohibited by applicable law or in the event of exigent circumstances.

Exhibit D
INSURANCE REQUIREMENTS AND
WORKERS' COMPENSATION REQUIREMENTS

Upon contract execution, 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.

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, 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**.
- Contractor shall maintain commercially reasonable deductibles on all policies required hereunder.
- Liability policies shall be endorsed to provide the following:
 - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers. For the avoidance of doubt, nothing herein shall require Contractor to name the City of Denton or its Officials, Agents, Employees or volunteers as an Additional Insured on Contractor's Cyber coverage.
 - 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: Contractor shall endeavor to provide 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 double the occurrence limits .
- 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 marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

A. **General Liability Insurance:**

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

Automobile Liability Insurance:

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **\$500,000** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- all hired and non-owned autos.

Workers' Compensation Insurance

Contractor shall purchase and maintain Workers' Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease

Cyber

Cyber coverage provided protection for business liability for a data breach, cyber extortion, business interruption due to malicious cyber attacks or malware infections. A Cyber policy will be required anytime a system interfaces with the City of Denton's servers or houses sensitive information such as customer or employee data. When Cyber coverage is required commercial crime is also required. Limits of not less than \$500,000 are required unless other limits are individually approved by the City.

Exhibit E
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this Contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interested Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at :
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line.
(EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

RFP #7697 | Integrated Online Payment Solution

Exhibit 4. Estimated Annual Cost of Service

All pricing should be based on the information below. Additionally, provide an attachment which models our annual cost of service based on the annual statistics provided.

Payment Types	# of Payments	\$ of Payments	Average \$ per Payment	Payment Channel	Total Payments
Online Portal/IVR	463,608	\$93,584,604.82	\$201.86	Customer Self-Service Payment	428,107
Online Credit Card	351,873			Web Portal	387,028
Online E-Check	111,735			IVR	41,079
Online Chargebacks	1103	(\$536,026.45)	(\$485.97)	Agent Assisted Payment	35,501

Table 1. Customer Engagement, Electronic Bill Presentation and Payment Pricing. Utility Billing Pricing based on 65,300 bills per month and \$201.86 average credit card payment. Pricing Reference Interlocal agreement.

Service Description	Fee	City-provided Volume (Exhibit 4)	Total Price
Integration, Deployment and Training NOTE: Includes integration with NORTHSTAR	No charge		\$0.00
Account Access—monthly access to branded Customer and Biller Portals NOTE: The monthly access fee covers maintenance, support, upgrades, and full access to the Invoice Cloud service for the biller and its customers	\$50.00 \$0.00		\$0.00
HelpDesk Support and Marketing—access to Invoice Cloud HelpDesk, client services team, and marketing support to help you achieve the industry's highest payment and paperless adoption.	No charge		\$0.00

RFP #7697 | Integrated Online Payment Solution

Service Description	Fee	City-provided Volume (Exhibit 4)	Total Price
Paperless Billing — per suppressed paper bill	\$0.20 \$0.00		\$0.00
Electronic Payment Fees -- Absorbed Price Model (Paid by Denton)			
Gateway model with the City of Denton using Wells Fargo for Processing — Per transaction cost — Paid by the City of Denton	\$0.75 \$0.65	351,873	\$228,717.45
eCheck / ACH – One-time ACH — per transaction — Paid by City of Denton	\$0.50 up to \$125,000	111,735	\$55,867.50
eCheck / ACH—Autopay — per transaction Paid by City of Denton	\$0.50		
Miscellaneous Fees			
Credit Card Chargeback	\$5.00	1,103	\$5,515.00
ACH Reject	\$5.00		
IVR — per transaction	\$0.35 \$0.00	41,709	\$0.00
Point-of-Sale Card Readers (Optional)			
NorthStar Cash Receiving compatible credit card swipes	No charge		\$0.00
Online Bank Direct (optional)			
Online Bank Payment Consolidation (Optional) – Per Transaction Fee for each matched check (optional)	\$0.25		

Exhibit G

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ
For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 Name of vendor who has a business relationship with local governmental entity. Invoice Cloud, Inc.

2 Check this box if you are filing an update to a previously filed questionnaire.
(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

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4 I have no Conflict of Interest to disclose.

5 DocuSigned by: Tom Griffin 9/21/2021
1603C2ADED154DD...

Biller Agreement - Exhibit I

Billers shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments. Billers shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments.

5. Billing and Renewal. Biller shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments. Biller shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments. If Biller believes Biller's bill or payment is incorrect, Biller shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments.

5A. Non-Appropriation of Funds. Neither party may terminate this Agreement with thirty (30) days' written notice to the other party. Biller shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments.

6. Term and Termination. This Agreement shall be in effect for an initial term of one (1) year and shall be renewed for successive one (1) year terms ("Renewal Term") unless terminated as set forth herein. "Term" as used herein shall mean the Initial Term and any Renewal Term. Biller's password and access will be disabled and Biller will be obligated to pay the balance due on Biller's account computed in accordance with the Charges and Payment of Fees section above. Biller agrees that Invoice Cloud may charge such unpaid fees to Biller's Debit Account.

7. Invoice Cloud Responsibilities. Invoice Cloud shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments. Invoice Cloud shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments. (the "Statement of Work")

8. Limited Warranty. EXCEPT WHERE SHOWN OTHERWISE, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. THE SERVICE IS PROVIDED ON AN "EXCEPT WHERE SHOWN OTHERWISE" BASIS. THE SERVICE IS PROVIDED ON AN "EXCEPT WHERE SHOWN OTHERWISE" BASIS. THE SERVICE IS PROVIDED ON AN "EXCEPT WHERE SHOWN OTHERWISE" BASIS.

9. Biller's Responsibilities. Biller shall be responsible for all activity occurring under Biller's accounts and shall abide by all applicable laws, and regulations in connection with Biller's and its customers' and payers' use of the Service, including those related to data privacy, communications, export or import of data.

Biller shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments.

Rev 5.1.2

This Biller Agreement is a part of the Biller Agreement. Biller shall be responsible for the accuracy of the information provided to the Service, including but not limited to the accuracy of the information provided to the Service in connection with the processing of payments.

Biller Agreement - Exhibit I

any false information to gain access to the Service and that Biller's billing information is correct. Biller's Users consent from Biller's customers and payer. Biller's software and service providers and providing to Invoice Cloud the information required to integrate with Biller's bi...

processors and Biller's Customers, as requested. Any change in a return/cancellation policy must be submitted to Invoice Clou... in return for preparing a refund to be deposited to the Customer's account; nor may Biller give cash/check refunds to a...

10. Indemnification. Biller and damages (including, without limitation, Biller's costs, and reasonable attorneys' fees) arising out... apply to any claim or complaint relating to Biller's failure to resolve a payment dispute concerning debts owed to Biller or Biller's negligence...

11. Fees.

Biller's software and service providers and providing to Invoice Cloud the information required to integrate with Biller's bi... "Implementation"...

- Custom development and features which are not stated on the SOW and Biller Order Form change requests and modifications to existing platform functionality not stated in the SOW and Biller Order Form;
- Additional integrations or integration modifications after Go Live Date, not provided for in the Biller Order Form or Statement of Work;
- Changes to bill presentment (web and PDF templates), billing system integrations, and other Service components coded or configured to Biller's specifications after Biller has signed off on the relevant specification or Service is live;
- Custom data extracts and file requests that are not part of the Implementation signed off on by both parties;
- Data conversion not listed in the SOW, or repetitive re-loading of data due to Biller error.

12. Limitation of Liability. INVOICE CLOUD'S AGGREGATE LIABILITY SHALL BE UP TO AND NOT EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM BILLER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL INVOICE CLOUD AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) DAMAGES ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, EVEN IF THE PARTY FROM WHICH SUCH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to Biller.

13. Export Control. The Biller agrees to comply with United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies.

Biller's software and service providers and providing to Invoice Cloud the information required to integrate with Biller's bi...

Rev 5.1.2

Tiller's software and service providers and providing to Invoice Cloud the information required to integrate with Biller's bi...

14. Notice. Either party may give notice by electronic mail to the other party's email address (for Biller, that address on record on the Biller Order Form) or by written communication sent by first class mail or pre-paid post to the other party's address on record in Invoice Cloud's account information for Biller, and for Invoice Cloud, to Invoice Cloud, Inc., [] Braintree Hill Office Park, Suite 1[], Braintree, MA [] 21[] [] Attention [] Client Services or helpdesk@invoicecloud.com. Such notice shall be deemed to have been given upon the expiration of [] hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

15. Assignment. This Agreement may not be assigned by either party without the prior written approval of the other party, but may be assigned without such party's consent to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Invoice Cloud shall provide prompt written notice of assignment to Biller.

16. Insurance.

Invoice Cloud agrees to maintain in full force and effect during the Term of the Agreement, at its own cost, the following coverages []

- a. Commercial General or Business Liability Insurance with minimum combined single limits of One Million ([], [], []) each occurrence and Two Million ([2], [], [], []) general aggregate.
- b. Umbrella Liability Insurance with minimum combined single limits of Five Million ([], [], []) each occurrence and Five Million ([], [], []) general aggregate.
- c. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million (\$1,000,000) for any one occurrence, with respect to each of the Invoice Cloud's owned, hired or non-owned vehicles assigned to or used in performance of the Services.
- d. Errors and Omissions Insurance (Professional Liability and Cyber Insurance) with limits of liability of at least One Million Dollars ([], [], []) per claim and in the aggregate.

17. Immigration Laws. Invoice Cloud represents and warrants that it has complied and will comply with all applicable immigration laws with respect to the personnel assigned to the Biller.

18. Beta Products. In the event that there is any functionality labelled "Beta" on the Biller Order Form, such functionality is provided "AS IS" WITHOUT ANY EXPRESS, OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY INVOICE CLOUD AND ITS LICENSORS AND PAYMENT PROCESSORS. INVOICE CLOUD'S AGGREGATE LIABILITY WITH RESPECT TO SUCH FUNCTIONALITY SHALL BE UP TO AND NOT EXCEED [] []

19. General.

(a) With respect to agreements with municipalities, localities or governmental authorities, this Agreement shall be governed by the law of the state wherein such municipality, locality or governmental authority is established, without regard to the choice or conflicts of law provisions of any jurisdiction. With respect to Billers who are not with municipalities, localities or governmental authorities, this Agreement shall be governed by Massachusetts law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction. No text or information set forth on any other purchase order, preprinted form or document (other than a Biller Order Form and any add on Biller Order Form, if applicable), and no documentation (including any implementation planning documents) except as specifically referenced in this Biller Agreement, shall modify, add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Biller and Invoice Cloud as a result of this agreement or use of the Service. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Invoice Cloud in writing. All rights and obligations of the parties in Sections [] [] 1[] 12, 1[] 1[] and 1[](a) and (b) shall survive termination of this Agreement. This Agreement, together with any applicable Biller Order Form, comprises the entire agreement between Biller and Invoice Cloud and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral between the parties regarding the subject matter contained herein. Biller agrees that Invoice Cloud can disclose the fact that Biller is a paying customer and the version of the Service that Biller is using.

(b) Additional terms and conditions and definitions applicable to this Agreement and the Biller Order Form are found at www.invoicecloud.com/biller-terms-and-conditions (the "Biller T+C") and are agreed to by Invoice Cloud and the Biller.

EXHIBIT I

Invoice Cloud

Statement of Work

City of Denton

Overview

The Invoice Cloud (IC) suite of services (The Service) will give the *City of Denton* (Biller) and its customers the ability to accept online payments for invoiced and non-invoiced items. The Service will allow the *City of Denton* to offer online payment processing in a securely hosted real-time environment. Customers will be able to locate, view and print bills or invoices and payment records online and pay using credit cards, debit cards, and electronic checks.

Definitions:

1. Biller – Merchant / *City of Denton*
2. Payer – Client customer, resident, person paying a bill or invoice
3. EBPP – Electronic Bill Presentment & Payment
4. Bill – Bill and Invoice are used synonymously throughout this document
5. RTDR - Real-Time Data Refresh – collects and aggregates the data as soon as a user accesses a specific function
6. NTDR – Near-Time Data Refresh – integration that happens periodically; the data is collected immediately but it is not aggregated until later – data can be processed every day, every hour or even every few minutes

1. Security and Industry Compliance

Invoice Cloud maintains full compliance with current applicable Payment Card Industry (PCI) standards, Cardholder Information Security Program (CISP) regulations and National Automated Clearinghouse Association (NACHA) rules and guidelines. Invoice Cloud will abide by such guidelines for the security of all cardholder data that Invoice Cloud possesses.

- a. **PCI** - Invoice Cloud will provide compliant storage of Biller's customer payment information that is certified by Visa/MasterCard. Data security measures are addressed during collection and transmission via SSL with our patent pending encryption technology. All confidential information will be treated in accordance with the PCI standards.
- b. **Software as a Service (SaaS) Architecture** – All Biller customer financial and payment information and the invoice presentment and payment processing application is housed offsite from Biller.
- c. **Browser Compatibility** - Invoice Cloud supports the most current version of the industry's most common browsers.

2. Data Integration

Invoice Cloud does maintain an integration with *Harris Northstar*. The integration for the *City of Denton* will include the functionality found in Appendix B.

3. Payer Portal

The Payer Portal is an electronic bill presentment and online payment portal where a Biller's customer (Payer) can view a bill and then proceed, within the same user interface, to make an online payment.

- a. Invoice Cloud will present bills electronically through a payer portal that is branded for Biller or via an email notification, if the Payer provides an email address.
- b. The electronic invoice presentment will simulate the paper invoice Biller uses and will be available in PDF and/or html format.

- c. The Service may provide the Payer the option of making a payment via credit card (Visa, MasterCard, American Express and Discover) or electronic check (also referred to as ACH, e-check, EFT).
- d. The Service provides the Payer a one-time online payment option without registration, and the capability to register to access Payer's account history, schedule a payment, or set up AutoPay payments.
- e. A Payer will have the ability to choose their payment date (also known as scheduled payments).
- f. The system will accept partial, full, or overpayments as defined by the Biller.
- g. The Payer will register with the Service using the authentication method designated by Biller.
- h. Linking Accounts - After registering with the Service, the Payer will be able to login into their account(s). If the Payer has multiple accounts and uses the same authentication information for all accounts, the Payer will be able to link their account and view from a single registration. The Payer will then have the option to choose which account they would like to pay or view in further detail.
- i. The Payer will receive an email confirmation of payment after any payment process.
- j. The Payer will have the ability to search and access historical bills once they register with the Service. The Service will store twenty-four (24) months of rolling history from the point of Biller's first invoice file upload to the Service. This includes invoice history and account history.
- k. Biller has the option of allowing the Payer to pay via different payment methods which include online, IVR, IC Biller Portal, Pay by Text, CloudCSRConnect and CloudPOSConnect.
- l. Payers who have scheduled a payment or registered for AutoPay will receive email notification from the Service of pending payments.
- m. The Service includes shopping cart functionality.
- n. The Service will allow the Payer the option to elect paperless billing.
- o. A Payer registered for paperless billing will be automatically placed back on paper billing if their email address is undeliverable; notification of the Payer's undeliverable email address will be sent to Biller via email.
- p. The Service complies with Federal E-Signature Act for paperless billing and AutoPay by providing a system in which a Payer must confirm enrollment in paperless billing and/or AutoPay by responding to an email sent after the Payer registers for paperless billing and/or AutoPay through online self-service.

4. **Biller Portal**

The Biller Portal is an administrative portal where Biller staff will have access to reporting, search customers, search invoices, search payments, initiate payments or credits, login as a Payer, modify email templates, etc.

- a. Biller can log in as the Payer on either the Biller or Payer Portal and make a payment on behalf of the Payer. There is an audit trail for who made the payment, and the source of every payment (CSR, Pay by Text, AutoPay, Web, IVR, etc.).
- b. Biller will have the capability of blocking future payments by specific Payer and payment method type (i.e. Credit Card or E-Check (ACH)).
- c. **Permissions** – The Biller Portal includes a table of role based permissions, determined by the Biller's System Administrator. Each permission is applied to a user ID on an individual basis to maximize flexibility. The system administrator can allow or disallow access to functions such as viewing data, creating reports, resending email notices, processing payments, credits or refunds, editing email templates and more. Since it is controlled by Biller administrator, changes can be made quickly on an as needed basis.
- d. **Administrative Email Notifications** - Biller may set up the system to send several administrative notifications and request system notifications be sent to multiple staff members. This allows different departments to get the information they need in a timely manner. The notifications include:
 - ACH Reject Notifications
 - Batch Close Notifications
 - Daily Management Report
 - File Processing Notifications

- Month End Billing Invoice
 - Paperless Customer Email Bounce Daily Report
 - Request System Notifications (this is the ticketing system available in the Invoice Cloud payer portal).
 - Status Notifications (notifications of planned outages, new features, etc.)
- e. **Biller Controlled Configuration Options** – The Biller Portal includes several Biller controlled configurable options to customize the way payments and customer accounts are handled. The Biller will be able to configure for:
- allowing Auto-Pay and scheduled payments
 - allowing customers to update their phone or mailing address through the payer portal
 - allowing customers to pay less than, or more than the balance due based on receivable type
 - updating Refund Policy description
 - updating customer service phone number

5. **Biller Portal - Reporting**

Biller can access a selection of pre-configured reports. Biller can request reports for daily, monthly, or date range activity. Most reports can be exported to excel files or scheduled for download as a custom report, as indicated by asterisk (*) in the report name. All stored payment data is truncated, and this is reflected in all reports.

- a. Reports:
- b. Search Customers*
- c. Search Invoices
- d. Search Payment Transactions*
- e. Monthly Summary
- f. Registration Report*
- g. Autopay Report*
- h. Paperless Report*
- i. Data Synchronization History
- j. EFT/ACH Rejects*
- k. View Scheduled Payments*
- l. Invoice File History
- m. Import Errors
- n. Daily Payments Received*
- o. Total Outstanding Invoices
- p. Email Notification Summary
- q. Email Statistics
- r. Email Tracking
- s. Bounced Email Report
 - Email Statistics
 - Email Tracking
 - Bounced Email Report

6. **Payer Email Notifications**

Invoice Cloud provides a set of customizable email notification templates for each invoice type that are delivered for numerous events surrounding electronic invoice presentation and payment activity. Email notifications may be customized through the Biller Portal using a Word style editor and options to insert secure hyperlinks to website, links to electronic documents such as newsletter or bill inserts, and/or variable fields selected from the Biller's data file.

- a. Three (3) email notifications can be scheduled. The first notification is based on the number of days from the invoice due date. Second and third notifications will only be sent to Payers with an

outstanding balance, not those with a scheduled payment, or Payers who have signed up for Auto-Pay.

- b. At the discretion of Biller, Payer email notifications can be delivered for each of the following events.
- First Invoice Email Notification
 - Second Invoice Email Notification
 - Third Invoice Email Notification
 - Payment Transaction Receipt
 - Declined Auto Pay Transaction
 - Late Fee Email Notification
 - Declined Scheduled Payment Notification
 - Registered Customer Welcome Email
 - AutoPay Registration Notification
 - Paperless Registration Notification
 - ACH Reject/Chargeback Notices (with reason codes and descriptors)
 - Credit Card Expiration Notification
 - Scheduled Payment Confirmation
 - AutoPay Reminder Notification
 - FlexPay Confirmation Notification
 - Scheduled Payment Reminder
 - Paperless Off Confirmation
 - Online Bank Direct Payment Receipt
 - Check 21 Payment Receipt
 - Linked Accounts First Notice Notification
 - Linked Accounts Second Notice Notification
 - Linked Accounts Third Notice Notification
 - AutoPay Off Confirmation
 - Conveyed Customer Notification
 - Multiple Registered Customers Welcome Email
 - Recurring Scheduled Payment Confirmation
 - Recurring Scheduled Payment Canceled

7. **Business Rules**

The Invoice Cloud solution is designed for flexibility for customers and Billers. There are many rules currently available and we will also undertake the creation of new business rules as we both agree. Each bill type operates independently and can accept different payment types as well as other business rules. At Biller's option, multiple business rules can be applied to each bill type. Invoice Cloud provides flexibility regarding business rules to support specific needs, including:

- a. Ability to allow partial payments, over payments, full balance only, or late fees.
- b. Ability to allow payments beyond the due date - The service is designed to accommodate Biller specific business rules like allowing payments beyond their due date.
- c. Ability to allow for multiple payment types for one customer for the same bill - The service allows multiple payment types from one customer for the same bill when partial payments are allowed. Credit/debit card and e-check (ACH) can be run separately and an unlimited number of remittance types can be used. For example, a customer can pay part of a bill with a checking account, another part with a credit card and the remainder with a second credit card of a different type.

8. **Implementation Process**

Invoice Cloud assigns an Implementations Manager (IM) to each Biller. The IM will be the Biller's primary contact during the implementation process and coordinates all necessary resources from Biller, Biller software company, Invoice Cloud, and any sub-contractors. The IM will provide the Biller with the following documents to facilitate the project:

- a. **New Biller Questionnaire & Questionnaire Key** – Documents critical information needed to setup and initiate the service including information on business rules and feature selection.
- b. **Project Timeline** – Details project schedule and milestones.
- c. **Testing & Training Plan** – This plan walks the Biller through a set of user acceptance testing criteria and facilitates training on the service.

9. **Support & Training**

- a. **Business Hours** – The business hours will be Monday through Friday from 8 a.m. to 8 p.m. Eastern Standard Time. Note: Biller Support hours are 8 a.m. to 8 p.m. EST. Payer Support hours are currently 8 a.m. to 4 p.m. EST.
- b. **Help Desk** - The Service will provide a helpdesk ticketing system for Biller within the Biller Portal to get help from Invoice Cloud client support team. This tool will allow Biller to track and retain resolutions for historical reference.
- c. **Payer Support** – The Payer Support is two tiered with Biller staff as the first line of support regarding account, registration and billing questions. Issues with the Invoice Cloud service operation or incorrect credit card charges will be routed to Invoice Cloud Client Support via telephone or a Biller helpdesk ticket.
- d. **Biller Support** - If Biller encounters an inquiry which they cannot resolve Biller will create a helpdesk support ticket. Invoice Cloud Customer Support will address the issue and if applicable provide training to Biller to allow the address of tickets in a timely matter; often within twenty-four (24) business hours. Biller and technical support is available during business hours.
 - i. **Routine Technical Support** - Technical Support is available during business hours. Biller may call customer support directly; however, the use of the helpdesk ticketing system is encouraged as the preferred method of contact. Invoice Cloud staff views all tickets as they are submitted and routes them to the appropriate person for resolution.
 - ii. **Emergency After-Hours Support** – The helpdesk service is monitored after business hours and emergency support issues are addressed within one (1) hour. An emergency support issue is defined as an issue involving the system being down and inoperable and does not include Payer payment issues. Biller may request email notification be provided in the event the system is down and inoperable.
- e. **Service Enhancements** - Most enhancements do not require action on the part of Biller. Upgrades as agreed are done at the Invoice Cloud server level, so there are no mandatory actions for Biller to take. Support levels are not affected by enhancements.
- f. **Biller Training**- Biller staff will be guided in how to use the system through in-house training, documentation, remote live sessions, and access to our client support team.
 - All standard training will be done remotely. Invoice Cloud's training personnel will provide sessions for both Payer and Biller portals for Biller's staff.
 - Separate training is conducted for Biller's technical staff regarding the uploading of bill files and any other applicable processes.
 - Ongoing phone and Go-To-Meeting training will be provided during the first *month of use at no additional cost to Biller*.

10. **Marketing**

Invoice Cloud provides marketing support that our Billers can use to promote the EBPP and IC payment solutions to its Payers, at no charge. Invoice Cloud's marketing group will schedule a 1-hour conference call to

review Invoice Cloud's recommended best practices for promoting the service. Sample templates will be provided for each item and customizations can be made upon request. The marketing collateral that Invoice Cloud provides may include:

- Bill Inserts
- Newsletters
- Envelope Teasers
- Pay Button Link
- Posters with Acrylic Stands for Payment Counters
- Business card sized take-away cards with QR code
- Local cable/TV station announcement

11. CloudIVRConnect™

The IC CloudIVRConnect allows Billers to accept payments via our interactive voice response system. It provides customers with 24-hour access to account status and billing information (total balance due, past due amount, last payment made, next billing date etc.). The following options are available:

- Provides for a toll-free call and a caller ID number set by the Biller
- Supports messaging in both English and Spanish
- Provides for a customizable initial greeting (includes City/County/Company name) – all remaining prompts are standard
- Ability to pay with credit card (Visa, MasterCard, Discover, American Express), debit card, or eCheck (ACH)
- Replays information with Invoice Cloud generated confirmation #

12. CloudSMSConnect™

The IC CloudSMSConnect allows Billers to accept payments via SMS text messaging. The following options are available:

- Provides interactive registration and service sign-up confirmation
- Sends notification when new bills are available for payment
- Ability to pay with credit card (Visa, MasterCard, Discover, American Express), debit card, or eCheck (ACH)
- Allows for payment utilizing a stored-payment method

13. CloudStore™

The IC CloudStore allows Billers to accept payments for non-invoiced services like books, t-shirts, etc., fire, police, building permits, or activity programs. The following options are available:

- Accept electronic check and or credit/debit cards.
- Customer receives immediate email confirmation of payment.
- Department receives email notification of purchase event for instant fulfillment services.
- Ability to apply convenience fees, if required.
- Reporting by service type.
- Linked to Biller branded payment portal.
- Each service type can have its own online registration form.
- Can be setup to accept payments over the counter.

14. Online Bank Direct™

The IC Online Bank Direct (OBD) allows Billers to electronically import echeck (ACH) payments initiated from consumer bank bill sites. The following options are available:

- Auto-matching of payments with open invoices

- Email consumer a payment notification for those customers with an email address on file
- Ability to apply a single payment to multiple invoices
- Custom search capabilities to locate matching invoice(s)
- Electronic deposit of corresponding echecks

This SOW contains many products, services and payment methods. Only the specific products, services and payment methods selected by the **City of Denton**, as outlined in the Biller Order Form, are included in the delivery of products, services and payment methods.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

City of Denton

Invoice Cloud, Inc.

DocuSigned by:
Sara Hensley
By: 5238DB298270423...

DocuSigned by:
Tom Griffin
By: 1603C2AED154DD...

Printed Name: Sara Hensley

Printed Name: Thomas E. Griffin

Title: Interim City Manager

Title: President

Date: 9/29/2021

Date: 9/21/2021

Appendix A: System Modifications

As outlined below, Invoice Cloud has agreed to make the following changes to the setup and functionality of our platform:

NONE

Appendix B: Integration Supported Features

Harris – Northstar	CIS	
PRODUCTS		
EBPP	Supported	
Invoice Types	#42 – Utilities, #1 – Water, #2 - Electric	
IVR	Supported	
Pay by Text	Supported	
Cloud POS Connect	Supported	
Cloud CSR Connect	Not Supported	
KIOSK	Supported	
DATA EXCHANGE	Method	Frequency
Invoices	Web Service	Each Billing Cycle
Payments	Data Pump	Near Time
AutoPay Flags	Data Pump	Near Time
Paperless Flags	Data Pump	Near Time
Account Balances	RTDR	Real Time
Block Payment Method (Credit/ACH)	Manual	Via Biller Portal
INVOICE FILES		
IC Translates file	Supported	
Historical Data (2 years shown online)	Supported	
BILL PRESENTMENT		
PDF Extraction (Partial/Full)	Supported	
Templates	Supported	
Link to PDFs	Supported	
BATCH CLOSE		
Standard or Custom	Custom	
CUSTOM OPTIONS		
Single Sign-on	Supported	
Branded Biller Portal	Supported	
Branded Payer Portal	Supported	

Appendix C: Biller Deliverables

Deliverable
Sample Invoice File (.bif)
Web services installed
Firewall access granted – White listing
SSO User name & password conversion data if applicable
Auto Pay Conversion data if applicable
Paperless conversion data if applicable



Bill Order Form

SALES INFORMATION			
IC Sales Rep	Rich Dickerson	Vertical	Utility
Order Date	8/19/2021	Billing Software	Harris - Northstar

BILLER INFORMATION			
Ownership Type	Government	Phone	(940) 349-8200 Fax
Legal Name	City of Denton	Website URL	cityofdenton.com
Address 1	215 E McKinney St	Bus. Open Date	1866
Address 2		Federal Tax ID	
City	Denton	<i>*Federal Tax ID and Legal Name must match on all documents</i>	
State	TX	ZIP	76201

BILLER CONTACT	
Primary Contact Name	Christa Foster
Phone	(940) 349-7412
Email Address	christa.foster@cityofdenton.com

SIGNING AUTHORITY			
Name	Sara Hensley	Title	Deputy City Manager
Phone		Fax	
		Email Address	sara.hensley@cityofdenton.com

BILLER BANK ACCOUNT (FOR INVOICE CLOUD AND NETWORK FEES, AND AS PROVIDED IN THE BILLER AGREEMENT)			
Note: Must include voided business check or bank letter for each unique account			
Billing Method	Direct Debit		
Routing #	121000248	Last 4 Acct #	1529

PAYMENT METHODS ACCEPTED	
Payment Methods	[VISA/Mastercard/Discover] [PayPal] [ACH/EFT]

BILLER PRICING (see Invoice Type Parameter Sheet(s) for invoice-type-specific pricing)*			
Description	Interval	Cost Type	Cost
Billor Portal Access Fee	Monthly	Fixed (\$)	\$0.00
Invoice Presentment For Paperless Customers	Monthly	Fixed (\$)	\$0.00
Credit Card - Chargeback Fee Non-Submitter	Per Transaction	Fixed (\$)	\$5.00
EFT - ACH Reject Fee Non-Submitter	Per Transaction	Fixed (\$)	\$5.00
PayPal Brands - Chargeback Fee (PayPal Brands)	Per Transaction	Fixed (\$)	\$5.00

HARDWARE					
Card Reader Type		Quantity		Cost per Reader	
Card Reader				Billing Interval	

Shipping Address (if different than location address)	
--	--

DATA RETENTION		
Months to Keep	24	*Additional Fees apply if greater than 24 months

IMPLEMENTATION CHARGES			
Description	Interval	Cost	
Implementation (per SOW)	One-Time	\$0.00 (WAIVED)	

NOTES/SPECIAL HANDLING
Gateway model with City of Denton using Wells Fargo for processing through BridgePay. Northstar cash receipting compatible credit card readers.


[signature page follows]

CERTIFICATION AND AGREEMENT

- A. By signing below, the Biller hereby ratifies its authorization for Invoice Cloud, Inc. ("Invoice Cloud") to execute debit/credit entries to the Biller Bank Account(s) indicated above at the depository financial institution(s) named above and to debit/credit the same such account(s). The Biller acknowledges that the origination of ACH transactions to its account(s) must comply with the provisions of U.S. law. This authority is to remain in full force and effect until (i) Invoice Cloud has received written notification (by electronic or U.S. mail) from the Biller of its revocation in such time and manner as to allow Invoice Cloud a reasonable opportunity to act on it, **but not less than 10 business days notice**; and (ii) all obligations of the Biller to Invoice Cloud that have arisen under this Agreement and all other agreements have been paid in full. The Biller must also notify Invoice Cloud, in writing, (by electronic or U.S. mail) when a change in Biller Bank Account account number(s) or bank has occurred at which time this authorization shall apply to such new/changed Biller Bank Account. This notification must be received **no less than 10 business days in advance of any change**. A fee will be charged for any returned or rejected ACH debits.
- B. By signing below, the Biller named: (1) has read, agreed to, ratifies the Biller Agreement, Biller T+Cs (referenced in the Biller Agreement) and other Order Forms previously executed by the Biller, and (2) certifies to Invoice Cloud that he/she is authorized to sign this Order Form; (3) certifies that all information and documents submitted in connection with this Order Form are true and complete; (4) authorizes Invoice Cloud or its agent to verify any of the information given, including credit references, and to obtain credit reports ; (5) agrees to pay the Monthly Access Fee through the last day of the month following the effective date of termination as provided in the Billing Agreement; (6) agrees that Biller and each transaction submitted will continue to be bound by the Order Form and the Biller Agreement in its entirety and any new agreement forms executed herewith; (7) agrees that Biller will submit transactions only in accordance with the information in this Biller Order Form and Biller Agreement and will immediately inform Invoice Cloud, by email (contracts@invoicecloud.com) if any information in this Order Form changes, and (8) In the event of non-payment of any sums due, Invoice Cloud reserves the right to withdraw such sums from the Biller Bank Account at any time to ensure payment of the same.
- C. Pay by Text: Standard data rates and text messaging rates may apply based on the payer's plan with their mobile phone carrier. Payer can opt out of text messaging at any time with Invoice Cloud. Partial payment or overpayment is not supported. Biller may not use the service for activities that violate any law, statute, ordinance or regulation.
- D. This Biller Order Form will become effective only when signed by Invoice Cloud.

In WITNESS WHEREOF, the parties have executed this Agreement as of this day

Accepted by Biller:

X 
 5236DB296270423...
 Corporate Officer / Authorized Official

Printed Name

Title

Accepted by Invoice Cloud, Inc.:

X 
 Corporate Officer

Printed Name

Title



**BILLER ORDER FORM INVOICE
TYPE PARAMETER SHEET**

Invoice Type Parameters must be completed for each invoice type

Invoice Type	Utility Billing	Pricing Model	Non-Submitter
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CURRENT BILLING DETAILS

Please indicate how many bills are sent monthly by placing the bill count for each month below:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
65300	65300	65300	65300	65300	65300	65300	65300	65300	65300	65300	65300

Avg CC Transaction \$	70.00	Max Invoice \$	5000.00	Bill Frequency	Monthly	Avg. Bills Per Month	65300
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PRODUCTS AND SERVICES

Products and Services	[EBPP] [IVR] [OBD]
-----------------------	--------------------

TRANSACTIONAL PRICING (Paid by Biller)

Payment Source Description	Payment Method	Fee Rate %	Fee Amount \$	Additional Fee \$	Biller Pays Network Fees
All Payment Sources	Credit/Debit/PayPal		\$0.65		Yes
All Payment Sources	ACH/EFT		\$0.50		Yes
Auto Pay	ACH/EFT		\$0.50		Yes
Online Bank Direct	All Payment Methods		\$0.25		Yes

TRANSACTIONAL PRICING EXCEPTIONS

SERVICE FEES (Paid by Payer)

Payment Source Description	Payment Method	Fee Amount	Calculation Type	Max Payment \$	Min. Fee (S) per Transaction
All Payment Sources	Credit/Debit/PayPal			\$125000.00	
All Payment Sources	ACH/EFT			\$125000.00	
IVR Surcharge	All Payment Methods				

SERVICE FEE EXCEPTIONS

BILLER BANK ACCOUNT (FOR DEPOSITS AND CHARGEBACKS)

Note: must include voided business check or bank letter for each unique account

Routing #	121000248	Last 4 Acct #	1529
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NOTES / SPECIAL HANDLING

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A CONTRACT BETWEEN THE CITY OF DENTON AND INVOICE CLOUD, INC., AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON SEPTEMBER 28, 2021, IN THE NOT-TO-EXCEED AMOUNT OF \$1,500,000.00; SAID FIRST AMENDMENT TO PROVIDE ADDITIONAL FUNDING FOR CHARGES THROUGH THE CONTRACT TERM FOR ONLINE BILLING PORTAL AND PAYMENT SERVICES FOR THE CUSTOMER SERVICE DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 7697 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$375,000.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$1,875,000.00).

WHEREAS, on September 28, 2021, City Council awarded a contract to Invoice Cloud, Inc. in the amount of \$1,500,000.00, for integrated online payment solutions for the Customer Service Department; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The First Amendment, increasing the amount of the contract between the City and Invoice Cloud, Inc., which is on file in the office of the Purchasing Agent, in the amount of Three Hundred Seventy-Five Thousand and 0/100 (\$375,000.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to \$1,875,000.00.

SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

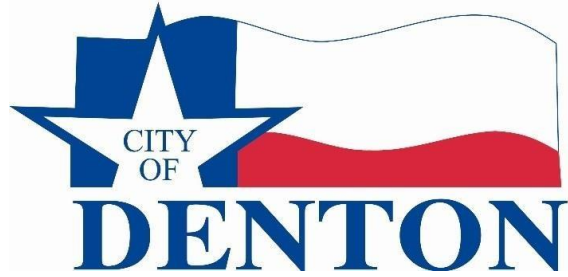
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Marcella Lunn*



DocuSign City Council Transmittal Coversheet

RFP	7697
File Name	Integrated Utility Payment Solutions - amendment
Purchasing Contact	Christina Dormady
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND INVOICE CLOUD INC.

THIS FIRST AMENDMENT TO CONTRACT 7697 (this “Amendment”) by and between the City of Denton, Texas (“City”) and INVOICE CLOUD INC. (“Contractor”) to that certain contract executed on September 28, 2021, in the original not-to-exceed amount of \$1,500,000 (the “Agreement”); for services related to the **integrated utility payment solutions**.

WHEREAS, the City deems it necessary to further expand the services provided by Contractor to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount **\$375,000** with this First Amendment for an aggregate not-to-exceed amount of \$1,875,000; and

WHEREAS, this amendment incorporates any previously executed documents between the parties including but not limited to pricing adjustments.

WHEREAS, the City deems it necessary to further expand the goods/services provided by Contractor to the City; and

WHEREAS, the original not-to-exceed amount may not be increased by more than 25.0% as provided in Texas Local Government Code Sec. 252.048; and

NOW THEREFORE, the City and Contractor (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following First Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. Section 1 of Exhibit A to the Agreement ("Total Contract Amount") is hereby DELETED in its entirety and REPLACED with the following provision:

"1. Total Contract Amount

The contract total for services shall not exceed \$1,875,000. City of Denton will provide notice once eighty-percent (80%) of the contract not-to-exceed amount has been encumbered. Pricing shall be per Exhibit F attached."

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the Contractor, have each executed this Amendment, by and through their respective duly authorized representatives and officers on this date _____.

“CONTRACTOR”
Invoice Cloud Inc.

By: _____
AUTHORIZED SIGNATURE, TITLE
Marcella Lunn

“CITY”
CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
By Marcella Lunn
4B070831B4AA438...

ATTEST:
LAUREN THODEN, CITY SECRETARY

By: _____

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

Signed by:
William J Shepherd William J Shepherd
575122744 SIGNATURE PRINTED NAME

Executive Manager Business Services
TITLE

Denton Municipal Electric
DEPARTMENT

Certificate Of Completion


Envelope Id: 488751A0681949BDAAA35187C3DA2A87	Status: Sent
Subject: Please DocuSign: City Council Contract 7697 Integrated Utility Payment Solutions - amendment	
Source Envelope:	
Document Pages: 3	Signatures: 2
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Christina Dormady
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	christina.dormady@cityofdenton.com
	IP Address: 198.49.140.104

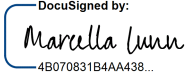
Record Tracking

Status: Original	Holder: Christina Dormady	Location: DocuSign
10/29/2024 2:20:26 PM	christina.dormady@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Christina Dormady christina.dormady@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 10/29/2024 2:22:47 PM Viewed: 10/29/2024 2:22:55 PM Signed: 10/29/2024 2:23:27 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/29/2024 2:23:29 PM Viewed: 10/29/2024 10:22:21 PM Signed: 10/30/2024 9:33:00 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/30/2024 9:33:02 AM Viewed: 10/30/2024 12:58:03 PM Signed: 10/30/2024 12:58:17 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

William J Shepherd william.shepherd@cityofdenton.com Executive Manager Business Services Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/30/2024 12:58:18 PM Viewed: 10/30/2024 1:00:35 PM Signed: 10/31/2024 8:10:43 AM
Electronic Record and Signature Disclosure: Accepted: 10/30/2024 1:00:35 PM ID: 4528db69-f41a-4eaa-a9b8-305852739871		

Signer Events	Signature	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		Sent: 10/31/2024 8:10:44 AM
<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		
<p>Lauren Thoden lauren.thoden@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 10/29/2024 2:23:30 PM Viewed: 10/29/2024 8:16:05 PM</p>
<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	COPIED	<p>Sent: 10/31/2024 8:10:45 AM Viewed: 10/31/2024 9:49:08 AM</p>
<p>City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		

Carbon Copy Events	Status	Timestamp
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Autumn Perkins

Autumn.perkins@cityofdenton.com

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent

Hashed/Encrypted

10/29/2024 2:22:47 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-236, **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 Flow-Line Construction, Inc., for the construction of the Granada Sanitary Sewer Improvements and Lift Station Decommissioning Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8573 - awarded to Flow-Line Construction, Inc., in the not-to-exceed amount of \$1,487,590.50).



City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: November 18, 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 Flow-Line Construction, Inc., for the construction of the Granada Sanitary Sewer Improvements and Lift Station Decommissioning Project for the Water Utilities Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8573 – awarded to Flow-Line Construction, Inc., in the not-to-exceed amount of \$1,487,590.50).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Granada Lift Station, which was built in 1974, has reached the end of its useful life. It has been determined that the lift station can be removed due to the installation of wastewater gravity mains in the area. The new gravity main installation reduces disruption to the current site and offers cost savings compared to replacing the lift station. This involves installing approximately 1,500 linear feet of 12-inch sanitary sewer line through the existing lift station site to the south and then discharging it into an existing sanitary sewer manhole in the Creekside subdivision. Removing the lift station will benefit the city by eliminating the costs associated with its operation and maintenance while still providing wastewater service to the community.

The Granada Sanitary Sewer Improvements and Lift Station Decommissioning Project has a total estimated cost of \$1,487,590.50. This estimate includes a \$1,352,355.00 total base bid amount and a contingency of \$135,235.50. A contingency allowance, if any, is for the sole use of the City and will be subject to written authorization by the City’s Project Manager and Program Manager.

Price	\$1,352,355.00
Contingency (10%)	\$135,235.50
Total	\$1,487,590.50

Competitive Sealed Proposals were sent to 1,117 prospective suppliers, including 77 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Three (3) proposals were received, with two (2) meeting specifications. References were checked, and proposals were evaluated based upon published criteria including key personnel, experience, probable performance, safety, schedule, and price. Best and Final Offers (BAFO)

were requested from the top firm. Based upon this evaluation Flow-Line Construction, Inc. was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	911, 912, 913, and 914
Notifications sent for Solicitation sent in IonWave:	1,117
Number of Suppliers that viewed Solicitation in IonWave:	19
HUB-Historically Underutilized Business Invitations sent out:	132
SBE-Small Business Enterprise Invitations sent out:	368
Responses from Solicitation:	3
Responses Meeting Specifications:	2

RECOMMENDATION

Award a contract with Flow-Line Construction, Inc., for the construction of the Granada Sanitary Sewer Improvements and Lift Station Decommissioning Project for the Water Utilities Department, in a not-to-exceed amount of \$1,487,590.50.

PRINCIPAL PLACE OF BUSINESS

Flow-Line Construction, Inc.
Dallas, TX

SUSTAINABILITY MEASURES

The Granada Sanitary Sewer Improvements and Lift Station Decommissioning Project reduces operating costs, eliminates vulnerability to power outages, and has a lower environmental impact. Converting to a gravity sewer main eliminates the risk associated with mechanical failure, which often results in accidental spillage.

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with an estimated final completion within 270 days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed.

FISCAL INFORMATION

These services will be funded from Water Utilities account 640460545.1360.40100. Requisition #166598 has been entered into the Purchasing software system for the amount of \$787,978, with the remainder to be funded from Capital Improvement Projects 24/25. The budgeted amount for this item is \$1,487,590.50.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Pricing Evaluation
- Exhibit 3: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: David Brown, 940-349-8480.

Legal point of contact: Marcella Lunn at 940-349-8333.

Exhibit 2

CSP 8573 - Pricing Evaluation for Granada Sewer Improvements and Lift Station

Respondent's Business Name:	Flow-Line Construction, Inc.	Mountain Cascade of Texas, LLC
Principal Place of Business (City and State):	Dallas, TX	Alvarado, TX
TOTAL PROPOSAL AMOUNT		
Base Proposal Amount	\$1,352,355.00	\$2,295,459.00

10% Contingency:	\$135,235.50
Total Contract NTE Amount:	\$1,487,590.50

Evaluation		
Scoring Criteria	Flow-Line Construction, Inc.	Mountain Cascade of Texas, LLC
Offeror's Key Personnel - 15%	11.00	11.00
Quality, Reputation, and Ability to Complete Similar Projects on Schedule and Within Budget - 25%	20.00	13.33
Detailed Schedule and Written Plan - 15%	9.00	12.00
Offeror's Safety Record - 5%	3.67	3.00
Price, Total Cost of Ownership - 40%	40.00	23.57
Total Score:	83.67	62.90

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FLOW-LINE CONSTRUCTION, INC., FOR THE CONSTRUCTION OF THE GRANADA SANITARY SEWER IMPROVEMENTS AND LIFT STATION DECOMMISSIONING PROJECT FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8573 – AWARDED TO FLOW-LINE CONSTRUCTION, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$1,487,590.50).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the construction of the Granada Sanitary Sewer Improvements and Lift Station Decommissioning Project for the Water Utilities Department; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the competitive sealed proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function [Health and sanitation services]; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered competitive sealed proposal for materials, equipment, supplies, or services shown in the “Competitive Sealed Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the competitive sealed proposal.

<u>CSP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8573	Flow-Line Construction, Inc.	\$1,487,590.50

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

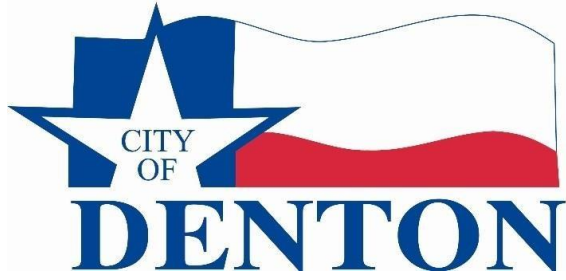
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Marcella Lunn*



DocuSign City Council Transmittal Coversheet

RFP	8573
File Name	Granada Sewer Improvements
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

1 4.5 Liquidated Damages:

2 A. Contractor recognizes that *time is of the essence* to achieve Milestones, Substantial
 3 Completion, and Final Acceptance of the Work, and City will suffer financial and other
 4 losses if the Work is not completed within the times specified in the Contract Documents.
 5 The Contractor also recognizes the delays, expense and difficulties involved in proving,
 6 in a legal or arbitration proceeding, the actual loss suffered by the City if the Work related
 7 to the Milestones, Substantial Completion, or Final Acceptance is not completed on time.
 8 Accordingly, instead of requiring any such proof, Contractor agrees that liquidated
 9 damages for delay (but not as a penalty):

- 10 1. *Substantial Completion*: If the Contractor neglects, refuses, or fails to achieve
 11 Substantial Completion, as defined in the Supplementary Conditions, within the time
 12 (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, Contractor
 13 shall pay City Six Hundred Twenty-Five Dollars (\$625.00) for each day that expires
 14 after such time, until Substantial Completion is achieved.
- 15 2. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within
 16 the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.3, for
 17 completion and readiness for Final Payment, Contractor shall pay City Six Hundred
 18 Twenty-Five Dollars (\$625.00) for each day that expires after such time, until the
 19 date determined by City as stated in the City-issued Letter of Final Acceptance.

20 **Article 5. CONTRACT DOCUMENTS**

21 5.1 CONTENTS:

22 A. The Contract comprises the entire agreement between City and Contractor concerning the
 23 Work and consists of this Agreement and the items set forth below. The Contract
 24 Documents consist of all items below other than this Agreement:

- 25 1. Attachments to this Agreement:
 - 26 a. Proposal Form
 - 27 1) Proposal Form
 - 28 2) Unit Price Proposal Form
 - 29 3) Vendor Compliance to State Law Non-Resident Offeror
 - 30 4) State and Federal documents (*project specific*)
 - 31 b. Current Prevailing Wage Rate Table
 - 32 c. Worker’s Compensation Affidavit
 - 33 d. General Conditions.
 - 34 e. Supplementary Conditions.
- 35 2. The following located in File 8573 at:

36

37 [https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&](https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1)
 38 [dbid=0&repo=MaterialsManagement&cr=1](https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1)
 39

 - 40 a. Specifications described in the Table of Contents (Section 00 00 00) of the
 41 Project’s Contract Documents.
 - 42 b. Drawings.
 - 43 c. Addenda.
 - 44 d. Documentation submitted by Contractor prior to Notice of Award.

- 1 3. The following which shall be issued after the Effective Date of this Agreement and
- 2 delivered to the City within ten (10) days of the Effective Date and before beginning
- 3 Work:
- 4 a. Payment Bond
- 5 b. Performance Bond
- 6 c. Maintenance Bond
- 7 d. Power of Attorney for the Bonds
- 8 e. Form 1295 – Certificate of Interested Parties (email to City’s Materials
- 9 Management department)
- 10 f. Insurance Certificate
- 11 4. Specifications specifically made a part of the Contract Documents by attachment or,
- 12 if not attached, as incorporated by reference and described in the Table of Contents
- 13 of the Project’s Contract Documents.
- 14 5. The following which may be delivered or issued after the Effective Date of the
- 15 Agreement and, if issued, become an incorporated part of the Contract Documents:
- 16 a. Notice to Proceed.
- 17 b. Field Orders.
- 18 c. Change Orders.
- 19 d. Letter of Final Acceptance.
- 20
- 21

1 **Article 6. INDEMNIFICATION**

2 **6.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own**
 3 **EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS,**
 4 **AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR**
 5 **PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE**
 6 **OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND**
 7 **SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS,**
 8 **AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES**
 9 **UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS**
 10 **SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS**
 11 **ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING**
 12 **SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION**
 13 **OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED**
 14 **TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL**
 15 **COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN**
 16 **DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**

17
 18 **6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD**
 19 **HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS,**
 20 **SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS**
 21 **FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY**
 22 **OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF,**
 23 **RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE**
 24 **PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES,**
 25 **SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT.**
 26 **THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO**
 27 **OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT**
 28 **ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN**
 29 **WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE**
 30 **CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT**
 31 **LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND**
 32 **LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH**
 33 **CLAIMS AND CAUSES OF ACTIONS.**

34
 35 **Article 7. MISCELLANEOUS**

36 **7.1 Capitalized Terms.**

37 Unless otherwise stated herein, capitalized terms used in this Agreement which are defined
 38 in Article 1 of the General Conditions will have the meanings indicated in the General
 39 Conditions.

40 **7.2 Assignment of Contract.**

41 This Agreement, including all of the Contract Documents may not be assigned by the
 42 Contractor without the advance express written consent of the City.

1 7.3 Successors and Assigns.

2 City and Contractor each binds itself, its partners, successors, assigns and legal
 3 representatives to the other party hereto, in respect to all covenants, agreements and
 4 obligations contained in the Contract Documents.

5 7.4 Severability.

6 Any provision or part of the Contract Documents held to be unconstitutional, void or
 7 unenforceable by a court of competent jurisdiction shall be deemed stricken, and all
 8 remaining provisions shall continue to be valid and binding upon City and Contractor.

9 7.5 Venue and Waiver of Sovereign Immunity.

10 This Agreement, including all of the Contract Documents is performable in the State of
 11 Texas. Venue shall be in the state district courts of Denton County, Texas. The City's
 12 sovereign immunity is waived only to the extent set forth and in accordance with the
 13 provisions of Subchapter I, Chapter 271 of the Texas Local Government Code or as otherwise
 14 specifically waived by law. The City does not waive its sovereign immunity to suit in federal
 15 court.

16 7.6 Authority to Sign.

17 Contractor hereby certifies that the person signing the Agreement on its behalf is the duly
 18 authorized signatory of the Contractor.

19 7.7 Prohibition on Contracts with Companies Boycotting Israel.

20 Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government
 21 Code, the City is prohibited from entering into a contract with a company for goods or
 22 services unless the contract contains a written verification from the company that it: (1) does
 23 not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms
 24 "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section
 25 808.001 of the Texas Government Code. By signing this contract, Contractor certifies that
 26 Contractor's signature provides written verification to the City that Contractor: (1) does not
 27 boycott Israel; and (2) will not boycott Israel during the term of the contract.

28 7.8 Prohibition on Contracts with Companies Boycotting Certain Energy Companies

29 Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government
 30 Code, City is prohibited from entering into a contract with a company for goods or services
 31 unless the contract contains written verification from the company that it (1) does not boycott
 32 energy companies; and (2) will not boycott energy companies during the term of the contract.
 33 The terms "boycott energy company" and "company" shall have the meanings ascribed to
 34 those terms in Section 809.001 of the Texas Government Code. By signing this agreement,
 35 Contractor certifies that Contractor's signature provides written verification to the City that
 36 Contractor: (1) does not boycott energy companies; and (2) will not boycott energy
 37 companies during the term of the agreement. Failure to meet or maintain the requirements
 38 under this provision will be considered a material breach.

39 7.9 Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm
 40 Trade Associations.

41 Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government
 42 Code, City is prohibited from entering into a contract with a company for goods or services

1 unless the contract contains written verification from the company that it (1) does not have a
 2 practice, policy, guidance, or directive that discriminates against a firearm entity or firearm
 3 trade association; and (2) will not discriminate during the term of the contract against a
 4 firearm entity or firearm trade association. The terms “discriminate against a firearm entity
 5 or firearm trade association,” “firearm entity” and “firearm trade association” shall have the
 6 meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. **By**
 7 **signing this agreement, Contractor certifies that Contractor’s signature provides written**
 8 **verification to the City that Contractor: (1) does not have a practice, policy, guidance, or**
 9 **directive that discriminates against a firearm entity or firearm trade association; and (2)**
 10 **will not discriminate during the term of the contract against a firearm entity or firearm**
 11 **trade association.** Failure to meet or maintain the requirements under this provision will be
 12 considered a material breach.

13 7.10 Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign
 14 Terrorist Organization

15 Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with
 16 companies that do business with Iran, Sudan, or a foreign terrorist organization. **By signing**
 17 **this agreement, Contractor certifies that Contractor’s signature provides written**
 18 **verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not**
 19 **ineligible to enter into this agreement and will not become ineligible to receive payments**
 20 **under this agreement by doing business with Iran, Sudan, or a foreign terrorist**
 21 **organization.** Failure to meet or maintain the requirements under this provision will be
 22 considered a material breach.

23 7.11 Termination Right for Contracts with Companies Doing Business with Certain Foreign-
 24 Owned Companies

25 The City of Denton may terminate this Contract immediately without any further liability if
 26 the City of Denton determines, in its sole judgment, that this Contract meets the requirements
 27 under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority
 28 of stock or other ownership interest of the company is held or controlled by individuals who
 29 are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly
 30 controlled by the Government of China, Iran, North Korea, Russia, or other designated
 31 country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated
 32 country.

33 7.12 Immigration Nationality Act.

34 Contractor shall verify the identity and employment eligibility of its employees who perform
 35 work under this Agreement, including completing the Employment Eligibility Verification
 36 Form (I-9). Upon request by City, Contractor shall provide City with copies of all I-9 forms
 37 and supporting eligibility documentation for each employee who performs work under this
 38 Agreement. Contractor shall adhere to all Federal and State laws as well as establish
 39 appropriate procedures and controls so that no services will be performed by any Contractor
 40 employee who is not legally eligible to perform such services. **CONTRACTOR SHALL**
 41 **INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES,**
 42 **LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY**
 43 **CONTRACTOR, CONTRACTOR’S EMPLOYEES, SUBCONTRACTORS,**
 44 **AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right
 45 to immediately terminate this Agreement for violations of this provision by Contractor.
 46

47 7.13 No Third-Party Beneficiaries.

1 This Agreement gives no rights or benefits to anyone other than the City and the Contractor
2 and there are no third-party beneficiaries.
3

4 7.14 No Cause of Action Against Engineer.

5 Contractor, its subcontractors and equipment and materials suppliers on the Project or their
6 sureties, shall maintain no direct action against the Engineer, its officers, employees, and
7 subcontractors, for any claim arising out of, in connection with, or resulting from the engineering
8 services performed. Only the City will be the beneficiary of any undertaking by the Engineer.
9 The presence or duties of the Engineer's personnel at a construction site, whether as on-site
10 representatives or otherwise, do not make the Engineer or its personnel in any way
11 responsible to Contractor or any other entity for those duties that belong to the City, and do
12 not relieve Contractor or any other entity of its obligations, duties, and responsibilities,
13 including, but not limited to, all construction methods, means, techniques, sequences, and
14 procedures necessary for performing, coordinating and completing all portions of the Work
15 in accordance with the Contract Documents and any health or safety precautions required by
16 such Work. The Engineer and its personnel have no authority to exercise any control over
17 any construction contractor or other entity or their employees in connection with their work
18 or any health or safety precautions.

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SIGNATURE PAGE TO FOLLOW

1 IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective
2 as of the date subscribed by the City's City Manager or his designee ("Effective Date").
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CITY OF DENTON

BY: _____


TITLE: _____

DATE: _____

CONTRACTOR
FLOW-LINE CONSTRUCTION, INC.

BY:  _____
33C800E1E473454
AUTHORIZED AGENT

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations and
business terms.

Signed by:
 Stephen D Gay
FEB48BB9726E4A9...
SIGNATURE PRINTED NAME
General Manager
TITLE
water Utilities and Street Ops
DEPARTMENT

Eduardo Hernandez
NAME
President
TITLE
214,390.00
PHONE NUMBER
eduardo.hernandez@flow-lineconstruction.com
EMAIL ADDRESS

ATTEST:
LAUREN THODEN, CITY SECRETARY

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TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

 _____
4B070831B4AA438...

SECTION 00 41 01
PROPOSAL FORM - CSP

TO: City of Denton
 c/o: Purchasing Division
 901-B Texas Street
 Denton, Texas 76209

FOR: **CSP No. 8573 – Granada Sanitary Sewer Improvements and Lift Station Decommissioning**

1 Enter into Agreement

The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with City in the form included in the Proposal Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Unit Price Proposal and within the Contract Time indicated in this Proposal and in accordance with the other terms and conditions of the Contract Documents.

2 OFFEROR Acknowledgements and Certification

- 2.1 In submitting this Proposal, Offeror accepts all of the terms and conditions of the INVITATION TO OFFORERS and INSTRUCTIONS TO OFFORERS, including without limitation those dealing with the disposition of Offeror’s Bond.
- 2.2 Offeror is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.
- 2.3 Offeror certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 2.4 Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal.
- 2.5 Offeror has not solicited or induced any individual or entity to refrain from proposing.
- 2.6 Offeror has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
 - a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process.
 - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of City (b) to establish proposal prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.
 - c. "collusive practice" means a scheme or arrangement between two or more Offerors, with or without the knowledge of City, a purpose of which is to establish proposal prices at artificial, non-competitive levels.

d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

2.7 The Offeror acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 23-1165.

3 Time of Completion

3.1 The Work will be Substantially Complete as defined in the Supplementary Conditions within **240** Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.2 The Work will be complete for Final Acceptance within **270** Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.3 Offeror accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable), Substantial Completion, and Final Acceptance within the times specified in the Agreement.

4 Attached to this Proposal

4.1 The following documents are attached to and made a part of this Proposal:

- a. Section 00 35 14 – Conflict of Interest Affidavit – CSP
- b. Section 00 41 01 – This Proposal Form – CSP
- c. **Section 00 42 44 – Unit Price Proposal Form – CSP – Excel Electronic Copy (either included in the hard copy Proposal, or submitted via Ionwave)**
- d. Section 00 43 14 – Required Offeror’s Bond – CSP, issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions.
- e. Section 00 43 38 – Proposed Subcontractors Form – CSP
- f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
- g. Section 00 45 14 – Safety Record Questionnaire – CSP
- h. Section 00 45 27 – Contractor Compliance with Workers Compensation Law – CSP
- i. Section 00 45 44 – Corporate Resolution of Authorized Signatories – CSP
- j. Any additional documents required by Paragraph 12 of Section 00 21 16 – Instructions to Offerors

5 Total Proposal Amount

5.1 Offeror will complete the Work in accordance with the Contract Documents for the following proposal amount. In the space provided below, please enter the total proposed amount for this project. This figure will be read publicly by the City at the proposal opening.

5.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

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Total Proposal Amount: \$ 1,357,355.00

6 Proposal Submittal

6.1 It is understood by Offeror that submission of the total proposal amount is only one of the factors for the City's evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

6.2 This Proposal is submitted on August 14, 2024 by the entity named below.

Respectfully submitted,

By: [Signature]
(Signature)

Eduardo M Hernandez
(Printed Name)

Title: President

Company: Flow-Line Construction, Inc.

Address: 4665 W Kiest Blvd
Dallas, Texas 75236

State of Incorporation: Ohio

Email: Eduardo.Hernandez@Flow-LineConstruction.com

Phone: 214-390-2848

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	<u>[Initials]</u>
Addenda No. 2:	<u>[Initials]</u>
Addenda No. 3:	
Addenda No. 4:	
Addenda No. 5:	

END OF SECTION

SECTION 00 42 44 - UNIT PRICE PROPOSAL FORM - CSP



To: City of Denton - Capital Projects
 901-B Texas Street
 Denton, TX 76209
 Erica Garcia/Purchasing Dept.

From: Flow-Line Construction, Inc.
 4665 W. Kiest Blvd
 Dallas, Texas 75236
 Eduardo M. Hernandez
 214-390-2848
Eduardo.Hernandez@flow-lineconstruction.com

PROJ.: **Granada Sanitary Sewer Improvements and Lift Station Decommissioning**

CSP: 8573

OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
1	01 70 00	0170.001 - Mobilization	LS	1	\$ 119,000.00	\$ 119,000.00
2	31 23 16	3100.001 - Site Preparation	LS	1	\$ 130,000.00	\$ 130,000.00
3	01 57 13	0157.001 - Storm Water Pollution Prevention Plan (SWPPP >1 Acre)	LS	1	\$ 1,500.00	\$ 1,500.00
4	01 58 13	0158.001 - Temporary Project Sign	EA	2	\$ 1,100.00	\$ 2,200.00
5	31 25 14	3125.010 - Storm Water Pollution Prevention Device Installation	LS	1	\$ 66,000.00	\$ 66,000.00
6	31 25 14	3125.011 - Remove Storm Water Pollution Prevention Devices	LS	1	\$ 23,000.00	\$ 23,000.00
7	01 58 13	0158.001 - Temporary Project Sign	EA	2	\$ 1,100.00	\$ 2,200.00
8	02 41 14	0241.011 - Grout Fill 8" Utility Line	LF	420	\$ 18.00	\$ 7,560.00
9	02 41 14	9999.001 - Lift Station Demolition	LS	1	\$ 30,000.00	\$ 30,000.00
10	02 41 14	0241.030 - Remove 8" Utility Line	LF	12	\$ 8.00	\$ 96.00
11	02 41 14	0241.031 - Remove 10" Utility Line	LF	311	\$ 10.00	\$ 3,110.00
12	02 41 14	0241.032 - Remove 12" Utility Line	LF	212	\$ 12.00	\$ 2,544.00
13	02 41 14	0241.050 - Remove 4' Utility Manhole	EA	4	\$ 1,200.00	\$ 4,800.00
14	02 41 14	0241.053 - Utility Line Plugging	LS	1	\$ 3,600.00	\$ 3,600.00
15	33 01 30	3301.002 - Post-CCTV Inspection	LF	1,663	\$ 4.00	\$ 6,652.00
16	31 37 00	3137.002 - 6" Concrete Riprap	SY	177	\$ 220.00	\$ 38,940.00
17	32 01 17	3201.001 - Flexible Paving Repair, Residential	SY	654	\$ 130.00	\$ 85,020.00
18	32 01 17	3201.004 - Flexible Paving Repair, Arterial	SY	39	\$ 210.00	\$ 8,190.00
19	32 01 17	3201.008 - Temporary Flexible Paving Repair for Utility Trench	SY	39	\$ 100.00	\$ 3,900.00
20	32 01 29	3201.009 - Concrete Paving Repair, Residential	SY	71	\$ 250.00	\$ 17,750.00
21	32 11 23	3211.006 - 4" Flexible Base, Type A, GR-2	SY	354	\$ 30.00	\$ 10,620.00
22	32 16 13	3216.005 - 4" Concrete Sidewalk	SY	25	\$ 140.00	\$ 3,500.00
23	32 16 13	3216.016 - 6" Concrete Driveway Approach	SY	211	\$ 240.00	\$ 50,640.00
24	32 84 00	3284.002 - Irrigation System Restoration	LS	1	\$ 2,500.00	\$ 2,500.00
25	32 93 00	3293.015 - Toposil	CY	193	\$ 80.00	\$ 15,440.00
26	32 93 00	3293.016 - Seeding	SY	3,459	\$ 4.00	\$ 13,836.00
27	32 31 00	3231.018 - Barbed Wire Fence, Metal Posts	LF	50	\$ 35.00	\$ 1,750.00
28	TxDOT Item 540	9999.002 - TxDOT Guard Rail	LF	55	\$ 70.00	\$ 3,850.00
29	33 05 05	3305.021 - Trench Safety	LF	1,623	\$ 4.00	\$ 6,492.00

SECTION 00 42 44 - UNIT PRICE PROPOSAL FORM - CSP



To: City of Denton - Capital Projects
 901-B Texas Street
 Denton, TX 76209
 Erica Garcia/Purchasing Dept.

From: [Flow-Line Construction, Inc.](#)
 4665 W. Kiest Blvd
 Dallas, Texas 75236
 Eduardo M. Hernandez
 214-390-2848
Eduardo.Hernandez@flow-lineconstruction.com

PROJ.: **Granada Sanitary Sewer Improvements and Lift Station Decommissioning**

CSP: 8573

OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
30	33 05 61, 33 05 62	3305.126 - 4' Concrete Manhole	EA	5	\$ 10,000.00	\$ 50,000.00
31	33 05 61, 33 05 62	3305.127 - 4' Drop Concrete Manhole	EA	1	\$ 15,000.00	\$ 15,000.00
34	33 05 61, 33 05 62	3305.132 - 4' Extra Depth Concrete Manhole	VF	12	\$ 330.00	\$ 3,960.00

SECTION 00 42 44 - UNIT PRICE PROPOSAL FORM - CSP



To: City of Denton - Capital Projects
 901-B Texas Street
 Denton, TX 76209
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From: [Flow-Line Construction, Inc.](#)
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 Eduardo M. Hernandez
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Eduardo.Hernandez@flow-lineconstruction.com

PROJ.: **Granada Sanitary Sewer Improvements and Lift Station Decommissioning**

CSP: 8573

OFFEROR'S APPLICATION - UNIT PRICE PROPOSAL

Item No.	Spec. Section No.	Description	UOM	BID QTY	Unit Price	Extended Price
33	33 05 61, 33 05 62	9999.001 - 4' Shallow Concrete Manhole	EA	1	\$ 7,400.00	\$ 7,400.00
34	33 32 11	3332.001 - Bypass Pumping	LS	1	\$ 28,000.00	\$ 28,000.00
35	33 05 05	3305.019 - Concrete Encasement for Utility Lines	CY	13	\$ 1,000.00	\$ 13,000.00
36	33 05 98	3305.147 - Location of Existing Utilities	LS	1	\$ 12,000.00	\$ 12,000.00
37	33 14 10	3314.050 - 12" DIP Sanitary Sewer Pipe	LF	150	\$ 310.00	\$ 46,500.00
38	33 14 10	3314.051 - 12" DIP Sanitary Sewer Pipe, CSS Backfill	LF	341	\$ 370.00	\$ 126,170.00
39	33 31 14	3331.046 - 8" PVC Gravity Sewer Pipe, CSS Backfill	LF	12	\$ 140.00	\$ 1,680.00
40	33 31 14	3331.053 - 12" PVC Gravity Sewer Pipe	LF	937	\$ 155.00	\$ 145,235.00
41	33 31 14	3331.054 - 12" PVC Gravity Sewer Pipe, CSS Backfill	LF	226	\$ 510.00	\$ 115,260.00
42	33 31 14	3331.056 - 12" PVC Gravity Sewer Pipe, CLSM Backfill	LF	10	\$ 1,500.00	\$ 15,000.00
43	33 31 16	3331.085 - 4" Sewer Service	EA	1	\$ 2,100.00	\$ 2,100.00
44	34 71 13	3471.001 - Traffic Control	MO	4	\$ 4,900.00	\$ 19,600.00
45	34 71 13	3471.002 - Portable Message Sign	WK	4	\$ 440.00	\$ 1,760.00
46	03 30 00	9999.003 - Drilled Piers and Hardware	LS	1	\$ 85,000.00	\$ 85,000.00
TOTAL BASE PROPOSAL:						\$1,352,355.00

SECTION 00 43 39

VENDOR COMPLIANCE TO STATE LAW NON-RESIDENT OFFEROR - CSP

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Texas Government Code Chapter 2252 was adopted for the award of contracts to nonresident offerors. This law provides that, in order to be awarded a best value contract where the offeror also offered the lowest proposal price, nonresident offerors (out-of-state contractors whose corporate offices or principal place of business are outside the State of Texas) propose on projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident offeror by the same amount that a Texas resident offeror would be required to underbid a nonresident offeror in order to obtain a comparable contract in the State which the nonresident's principal place of business is located.

The appropriate blanks in Section A must be filled out by all nonresident offerors in order for your proposal to meet specifications. The failure of nonresident offerors to do so will automatically disqualify that offeror. Resident offerors must check the box in Section B.

A. Nonresident offerors in the State of _____, our principal place of business, are required to be _____ percent lower than resident offerors by State Law. A copy of the statute is attached.

Nonresident offerors in the State of _____, our principal place of business, are not required to underbid resident Offerors.

B. The principal place of business of our company or our parent company or majority owner is in the State of Texas.

OFFEROR:

Flow-Line Construction, Inc. By: Eduardo M Hernandez
Company (Please Print)

4665 W Kiest Blvd Signature: [Signature]
Address

Dallas, Texas 75236 Title: President
City/State/Zip (Please Print)

Date: 8/13/2024

END OF SECTION

"General Decision Number: TX20240016 08/09/2024

Superseded General Decision Number: TX20230016

State: Texas

Construction Type: Heavy

County: Denton County in Texas.

Heavy Construction, Including Treatment Plants (Does not include water/sewer lines)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	07/05/2024

2 07/12/2024
 3 08/09/2024

ASBE0021-003 06/01/2023

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Includes application of all insulating materials, protective coverings, coatings, and finishings to all types of mechanical systems).....	\$ 31.32	7.52

ELEC0020-004 06/01/2024

	Rates	Fringes
Electricians:		
Cable Splicer.....	\$ 29.81	8.84
Electrician.....	\$ 37.95	11.41

* ELEC0220-001 06/02/2024

	Rates	Fringes
Line Construction:		
CABLE SPLICERS.....	\$ 17.12 **	14.5%+3.75
EQUIPMENT OPERATORS.....	\$ 25.83	20.50%+7.75
GROUNDMAN.....	\$ 19.28	4.5%+7.80
LINEMAN.....	\$ 41.31	20.5%+7.25
TRUCK DRIVER.....	\$ 23.14	9.5%+7.25

ENGI0178-001 06/01/2020

	Rates	Fringes
Cranes:		
Hydraulic Crane (35 ton & under).....	\$ 32.35	13.10
Hydraulic over 35 tons, Derricks, Overhead Gentry, Stiffleg, Tower, etc., and Cranes with Piledriving or Caisson attachments.....	\$ 32.60	13.10

IRON0263-010 06/01/2023

	Rates	Fringes
Ironworkers:		
Reinforcing & Structural....	\$ 27.89	7.93

PLUM0100-002 06/01/2024

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 38.76	13.79

SHEE0068-002 11/01/2012

	Rates	Fringes
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Sheet metal worker.....\$ 27.64 8.84

 * SUTX1990-039 08/01/1990

	Rates	Fringes
CARPENTER.....	\$ 10.536 **	
Concrete Finisher.....	\$ 9.603 **	
Form Builder.....	\$ 8.036 **	
Form Setter.....	\$ 9.578 **	
Laborers:		
Common.....	\$ 7.25 **	
Utility.....	\$ 7.25 **	
Pipelayer.....	\$ 7.961 **	
Power equipment operators:		
Backhoe.....	\$ 10.971 **	
Bulldozer.....	\$ 9.942 **	
Front end loader.....	\$ 10.771 **	
Mechanic.....	\$ 9.88 **	
Motor Grader.....	\$ 11.633 **	
Oiler.....	\$ 9.183 **	
Scraper.....	\$ 8.00 **	
TRUCK DRIVER.....	\$ 7.465 **	

 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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 ** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union

average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

State Adopted Rate Identifiers

Classifications listed under the "SA" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R. 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the SA identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the

interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

"General Decision Number: TX20240025 01/05/2024

Superseded General Decision Number: TX20230025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

<http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
 0 01/05/2024

SUTX2011-007 08/03/2011

	Rates	Fringes
CONCRETE FINISHER (Paving and Structures).....	\$ 14.12	**
ELECTRICIAN.....	\$ 19.80	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 13.16	**
Structures.....	\$ 13.84	**
LABORER		
Asphalt Raker.....	\$ 12.69	**
Flagger.....	\$ 10.06	**
Laborer, Common.....	\$ 10.72	**
Laborer, Utility.....	\$ 12.32	**
Pipelayer.....	\$ 13.24	**
Work Zone Barricade Servicer.....	\$ 11.68	**
POWER EQUIPMENT OPERATOR:		
Asphalt Distributor.....	\$ 15.32	**
Asphalt Paving Machine.....	\$ 13.99	**
Broom or Sweeper.....	\$ 11.74	**
Concrete Pavement Finishing Machine.....	\$ 16.05	**
Concrete Saw.....	\$ 14.48	**
Crane Operator, Lattice Boom 80 Tons or Less.....	\$ 17.27	
Crane Operator, Lattice Boom over 80 Tons.....	\$ 20.52	
Crane, Hydraulic 80 Tons or Less.....	\$ 18.12	
Crawler Tractor.....	\$ 14.07	**
Excavator, 50,000 pounds or less.....	\$ 17.19	**
Excavator, over 50,000 pounds.....	\$ 16.99	**
Foundation Drill , Truck Mounted.....	\$ 21.07	
Foundation Drill, Crawler Mounted.....	\$ 17.99	
Front End Loader 3 CY or Less.....	\$ 13.69	**
Front End Loader, over 3 CY.....	\$ 14.72	**
Loader/Backhoe.....	\$ 15.18	**
Mechanic.....	\$ 17.68	
Milling Machine.....	\$ 14.32	**
Motor Grader, Fine Grade....	\$ 17.19	**
Motor Grader, Rough.....	\$ 16.02	**
Pavement Marking Machine....	\$ 13.63	**
Reclaimer/Pulverizer.....	\$ 11.01	**
Roller, Asphalt.....	\$ 13.08	**
Roller, Other.....	\$ 11.51	**
Scraper.....	\$ 12.96	**
Small Slipform Machine.....	\$ 15.96	**
Spreader Box.....	\$ 14.73	**

Servicer.....\$ 14.58 **

Steel Worker (Reinforcing).....\$ 16.18 **

TRUCK DRIVER

Lowboy-Float.....\$ 16.24 **

Off Road Hauler.....\$ 12.25 **

Single Axle.....\$ 12.31 **

Single or Tandem Axle Dump

Truck.....\$ 12.62 **

Tandem Axle Tractor with

Semi Trailer.....\$ 12.86 **

Transit-Mix.....\$ 14.14 **

WELDER.....\$ 14.84 **

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====
** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

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rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

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A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
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- * a conformance (additional classification and rate) ruling

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Branch of Construction Wage Determinations
 Wage and Hour Division
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
 U.S. Department of Labor
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 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

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Administrative Review Board
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

SECTION 00 45 27

CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW - CSP

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on GRANADA SANITARY SEWER IMPROVEMENTS AND LIFT STATION DECOMMISSIONING Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

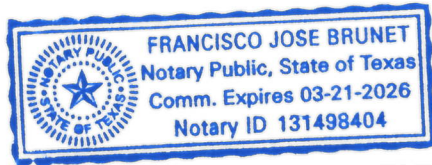
CONTRACTOR:

11 Flow-Line Construction, Inc. By: Eduardo M Hernandez
12 Company (Please Print)
13 4665 W Kiest Blvd Signature: [Signature]
14 Address
15 Dallas, TX 75236 Title: 8/13/2024
16 City/State/Zip (Please Print)

22 THE STATE OF TEXAS §
23
24 COUNTY OF DENTON §

26 BEFORE ME, the undersigned authority, on this day personally appeared
27 Eduardo M Hernandez, known to me to be the person whose name is
28 subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as
29 the act and deed of Flow-Line Construction, Inc. for the purposes and
30 consideration therein expressed and in the capacity therein stated.

31
32 GIVEN UNDER MY HAND AND SEAL OF OFFICE this 13th day of
33 August, 2024.



[Signature]
Notary Public in and for the State of Texas

END OF SECTION

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

**STANDARD GENERAL CONDITIONS
 OF THE CONSTRUCTION CONTRACT
 TABLE OF CONTENTS**

	Page
ARTICLE 1 – DEFINITIONS AND TERMINOLOGY	1
1.01 Defined Terms	1
1.02 Terminology	6
ARTICLE 2 – PRELIMINARY MATTERS	7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance	7
2.02 Copies of Documents	7
2.03 Before Starting Construction	7
2.04 Preconstruction Conference Meeting	8
2.05 Public Meeting	8
2.06 Initial Acceptance of Schedules	8
2.07 Electronic Submittals and Transmittals	8
ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE	8
3.01 Intent	8
3.02 Reference Standards	9
3.03 Reporting and Resolving Discrepancies	9
3.04 Requirements of the Contract Documents	10
3.05 Reuse of Documents	10
ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK	11
4.01 Commencement of Contract Time; Notice to Proceed	11
4.02 Starting the Work	11
4.03 Delays in Contractor’s Progress	11
ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS	12
5.01 Availability of Lands	12
5.02 Use of Site and Other Areas	13
5.03 Subsurface and Physical Conditions	14
5.04 Differing Subsurface or Physical Conditions	15
5.05 Underground Facilities	16
5.06 Hazardous Environmental Conditions at Site	17

ARTICLE 6 – BONDS AND INSURANCE..... 18

 6.01 Licensed Sureties and Insurers..... 18

 6.02 Performance, Payment, and Maintenance Bonds..... 18

 6.03 Certificates of Insurance..... 19

 6.04 Contractor’s Insurance 21

 6.05 Acceptance of Bonds and Insurance; Option to Replace..... 22

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES 22

 7.01 Contractor’s Means and Methods of Construction 22

 7.02 Supervision and Superintendence 22

 7.03 Labor; Working Hours 23

 7.04 Services, Materials, and Equipment..... 23

 7.05 Project Schedule..... 24

 7.06 “Or Equals”..... 24

 7.07 Substitutions 25

 7.08 Concerning Subcontractors and Suppliers..... 27

 7.09 Wage Rates 28

 7.10 Patent Fees and Royalties 29

 7.11 Permits and Utilities..... 29

 7.12 Taxes 30

 7.13 Laws and Regulations 30

 7.14 Record Documents..... 31

 7.15 Safety and Protection 31

 7.16 Hazard Communication Programs 32

 7.17 Emergencies and/or Rectification 32

 7.18 Submittals..... 33

 7.19 Continuing the Work..... 34

 7.20 Contractor’s General Warranty and Guarantee..... 34

 7.21 Indemnification..... 35

 7.22 Delegation of Professional Design Services 36

 7.23 Right to Audit 36

 7.24 Nondiscrimination..... 37

ARTICLE 8 – OTHER WORK AT THE SITE..... 37

 8.01 Other Work..... 37

 8.02 Coordination 38

8.03 Legal Relationships..... 38

ARTICLE 9 – CITY’S RESPONSIBILITIES 39

9.01 Communications to Contractor 39

9.02 Furnish Data 39

9.03 Pay When Due 39

9.04 Lands and Easements; Reports, Tests, and Drawings 39

9.05 Change Orders 39

9.06 Inspections, Tests, and Approvals..... 39

9.07 Limitations on City’s Responsibilities 39

9.08 Undisclosed Hazardous Environmental Condition 39

9.09 Compliance with Safety Program 39

ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION 40

10.01 City’s Project Manager or Duly Authorized Representative 40

10.02 Visits to Site..... 40

10.03 Determinations for Work Performed..... 40

10.04 Decisions on Requirements of Contract Documents and Acceptability of Work 40

ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK 41

11.01 Amending and Supplementing the Contract 41

11.02 Execution of Change Orders 41

11.03 Field Orders 41

11.04 Authorized Changes in the Work – Extra Work 41

11.05 Unauthorized Changes in the Work 41

11.06 Dispute of Extra Work..... 42

11.07 Contract Claims Process 42

11.08 Change of Contract Price..... 43

11.09 Change of Contract Time..... 44

11.10 Notification to Surety 44

ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT 45

12.01 Cost of the Work..... 45

12.02 Allowances 48

12.03 Unit Price Work 48

12.04 Plans Quantity Measurement for Unclassified Excavation or Embankment 49

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK 50

 13.01 Access to Work 50

 13.02 Tests, Inspections 50

 13.03 Defective Work 51

 13.04 Rejecting Defective Work 51

 13.05 Acceptance of Defective Work 52

 13.06 Uncovering Work 52

 13.07 City May Stop the Work 52

 13.08 City May Correct Defective Work 53

ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD 53

 14.01 Progress Payments 53

 14.02 Contractor’s Warranty of Title 56

 14.03 Partial Utilization 56

 14.04 Final Inspection 57

 14.05 Final Acceptance 57

 14.06 Final Payment 57

 14.07 Final Completion Delayed and Partial Retainage Release 58

 14.08 Waiver of Claims 58

 14.09 Correction Period 58

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION 59

 15.01 City May Suspend Work 59

 15.02 City May Terminate for Cause 60

 15.03 City May Terminate for Convenience 61

ARTICLE 16 – FINAL RESOLUTION OF DISPUTES 63

 16.01 Methods and Procedures 63

ARTICLE 17 – MISCELLANEOUS 64

 17.01 Giving Notice 64

 17.02 Computation of Times 64

 17.03 Cumulative Remedies 64

 17.04 Limitation of Damages 64

 17.05 No Waiver 65

 17.06 Survival of Obligations 65

 17.07 Assignment of Contract 65

17.08 Successors and Assigns 65
17.09 Headings 65

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**1.01 *Defined Terms***

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument titled “Agreement”, “Agreement – CSP”, or “Agreement – Unit Price Bid” executed by the City and Contractor for the Work, setting forth the name of the Project, Contract Price, Contract Time and the items included in the Contract.
 3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
 6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 7. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 9. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

10. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.
12. *Change Order*—A document which is prepared by the Contractor or City, approved by the City, and signed by Contractor and City, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Denton is, a Texas home-rule municipal corporation acting by its City Council through its City Manager or his or her designee.
14. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
15. *City Council*—The duly elected and qualified governing body of the City of Denton.
16. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
17. *Contract*—The entire and integrated set of written instruments between the City and Contractor concerning the Work comprised of the Agreement and all Contract Documents, which written instruments supersede all prior negotiations, representations, or agreements, whether written or oral, concerning the Work.
18. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
19. *Contract Documents*—Those items so designated as “Contract Documents.” in the Agreement at Paragraph 5.1.A. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 12.03 in the case of Unit Price Work). The Contract Price does not include any “Incentive”, if applicable.
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (a) achieve Milestones, if any and (bb) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 12.01 of these General Conditions for definition.
24. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day*—A day, unless otherwise defined, shall mean a Calendar Day.
26. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.

27. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
28. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
29. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
30. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
31. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
32. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
33. *Final Acceptance*—The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
34. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
35. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
36. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
37. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
38. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
39. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.

40. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
41. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
42. *Milestone*—A principal event specified in the Contract Documents relating to the performance of an identified portion of the Work by an intermediate Contract Time prior to Final Acceptance of the Work.
43. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
44. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
45. *PCBs*—Polychlorinated biphenyls.
46. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
47. *Plans*—This term will have the same definition of as “Drawings”.
48. *Project* —The Work to be performed under the Contract.
49. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
50. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
51. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising Contractor’s plan to achieve each Milestone and accomplish the Work within the Contract Time.
52. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
53. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
54. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

55. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
56. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
57. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
58. *Specifications or Technical Specifications* —The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Section 00 00 00) of the Project.
59. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
60. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.
61. *Subsidiary or subsidiary*—*These terms will have the same* definition as “Incidental. or incidental”.
62. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
63. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
64. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
65. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
66. *Underground Facilities*—All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid

petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

67. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
68. *Weekend Working Hours*—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.
69. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
70. *Working Day*—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by CityCity. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 1. does not conform to the Contract Documents; or
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to City’s written notice of Final Acceptance.
- D. *Furnish, Install, Perform, Provide*
 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor’s Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

2.02 *Copies of Documents*

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

2.03 *Before Starting Construction*

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.
- B. Preliminary Schedule of Submittals.
- C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Meeting*

- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.

2.05 *Public Meeting*

- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

2.06 *Initial Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.

2.07 *Electronic Submittals and Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, forma and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.

- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

3.04 Requirements of the Contract Documents

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

3.05 Reuse of Documents

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CityCity and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

4.03 *Delays in Contractor's Progress*

- A. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The City shall be liable only to the extent allowed by the provisions of the Contract and as allowed by Subchapter I, Chapter 271 of the Texas Local Government Code.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, that the Contract specifies is to be furnished by the City.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for whom they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Time. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph 4.03. D. The Contractor is responsible for the prompt submission of a request for an adjustment to the Contract Time under this Paragraph to the City. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this Paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with City, as contemplated in Article 8); and

4. Acts of war or terrorism.
- E. Contractor's entitlement to an adjustment of Contract Time or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.
 3. Adjustments of Contract Time or Contract Price are subject to the provisions of Article 11.
- F. Each Contractor request or Change Order seeking an increase in Contract Time or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.08.
 6. Contractor shall also furnish such additional supporting documentation as City may require including, where appropriate, a revised Project Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- G. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from undisclosed Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.03.F and 4.03.G.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which

Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.

1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
 2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

5.02 *Use of Site and Other Areas*

- A. Limitation on Use of Site and Other Areas
1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.
 2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
 4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
 5. ***PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.***
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
- D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.
- E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. Those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
 2. Those drawings known to City of existing physical conditions at or contiguous to the Site, including those drawings known to City depicting existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities.).
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as technical data.

- C. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of their officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any "technical data" is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), notify City in writing about such condition.

- B. *Possible Price and Time Adjustments*
1. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under the Contract; or

- b. The existence of such condition reasonably could have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- C. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions::
- 1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 - 2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data;
 - b. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
- 1. If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.
 - 2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.
 - 3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports known to City relating to Hazardous Environmental Conditions that have been identified at the Site; or
 2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Reliance by Contractor on Technical Data*: Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for a Hazardous Environmental Condition uncovered or revealed at the Site if such Hazardous Environmental Condition was not shown or indicated in Drawings or Specifications or identified if the removal or remediation of such Hazardous Environmental Condition was not identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by the actions of or with any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible and the costs associated with the same.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.17); and (3) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Contractor shall not be required to resume Work in connection with a Hazardous Environmental Condition identified pursuant to Paragraph 5.06.D or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed.
- F. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the Contract Price. City may have such deleted portion of the Work performed by City's own forces or others.
- G. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.CityG OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.***
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

6.02 *Performance, Payment, and Maintenance Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.

- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City’s termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
 - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “additional insureds” on all liability policies.
 - 2. The Contractor’s general liability insurance shall include a “per project” or “per location” endorsement, that shall be identified in the certificate of insurance provided to the City.
 - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
 - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent

financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.

5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If If City agrees in writing that coverage is underwritten may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR,) in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.

13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The Commercial General Liability policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).
- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any

Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written

notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.

- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:
 - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
 - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
 - 3. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
 2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
 3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. the City determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to City.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the City or increase in Contract Time; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

7.07 Substitutions

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
 1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
 3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be substantially similar in substance to the item specified; and

- 3) be well-suited to the same use as the item specified.
- b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or relateds to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

- F. *City Substitution Reimbursement:* Cost savings attributable to acceptance of a substitution shall be paid to City by Contractor by an appropriate Change Order decreasing the Contract Price.
- G. *Effect of City's Determination:* If City approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The City's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.07.D, by timely submittal of a Change Order.

7.08 *Concerning Subcontractors and Suppliers*

- A. Contractor shall perform with its own organization, and with the assistance of workmen under its immediate superintendence, work of c'o k'p'o wo 'value "cu'q'w'p'g'f "k'p'"U'g'e'k'p'"22'65'5: "' Rtqr qugf "Uwdeqptcevtu"Hqto . 'wprguu"otherwise approved by the City.
- B. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- C. The City may require the use of specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work , and will provide such requirements in the Supplementary Conditions.
- D. Contractor shall provide to City as part of the Bid, the identity of all proposed Subcontractors and Suppliers. Such proposed Subcontractor or Supplier shall be deemed acceptable to City unless City raises a substantive, reasonable objection prior to execution of the Agreement.
- E. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- F. No acceptance by City of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of City to the completion of the Work in accordance with the Contract Documents, Contract Price and Contract Time.
- G. Contractor shall be solely responsible for scheduling and coordinating the tasks of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- H. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.
- I. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.09 Wage Rates

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.

- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency, relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
 2. U.S. Army Corps of Engineers Permits
 3. Texas Commission on Environmental Quality Permits
 4. Railroad Company Permits
 5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

7.12 *Taxes*

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to hisits Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts
Sales Tax Division
Capitol Station
Austin, TX 78711; or
 2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

7.13 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected

and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss;

and shall implement, erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.

7.18 Submittals

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
 2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
 3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
 4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
 5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
 6. Contractor shall submit the required number of Samples specified in the Specifications.
 7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
 3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General

Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
 1. Observations by Engineer or City;
 2. Recommendation by Engineer or payment by City of any progress or final payment;
 3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
 4. Use or occupancy of the Work or any part thereof by City;
 5. Any review and acceptance of a Submittal by City;

6. Any inspection, test, or acceptance by others; or
 7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

7.21 *Indemnification*

- A. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM , FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THESE CONTRACT DOCUMENTS. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY, OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR COSTS, EXPENSES AND LEGAL FEES INCURRED IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**
- B. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM FROM AND AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF PROPERTY OF THE CITY, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

7.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.22;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

7.23 *Right to Audit*

- A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract during the term of the Contract and for five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be made available, in Denton County, Texas within ten (10) Business Days of City's written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City

unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.

- B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

7.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with

Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.

- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – CITY’S RESPONSIBILITIES**9.01** *Communications to Contractor*

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

9.02 *Furnish Data*

- A. City shall promptly furnish the data required of City under the Contract Documents.

9.03 *Pay When Due*

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

9.04 *Lands and Easements; Reports, Tests, and Drawings*

- A. City’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

9.05 *Change Orders*

- A. City’s responsibilities with respect to Change Orders are set forth in Article 11.

9.06 *Inspections, Tests, and Approvals*

- A. City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

9.07 *Limitations on City’s Responsibilities*

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

9.08 *Undisclosed Hazardous Environmental Condition*

- A. City’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.09 *Compliance with Safety Program*

- A. While at the Site, City’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION**10.01** *City’s Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City’s Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City’s Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

10.02 *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City’s efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City’s visits and observations are subject to all the limitations on City’s responsibility set forth in Paragraph 9.07. Particularly, but without limitation, during or as a result of City’s visits or observations of Contractor’s Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City’s Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City’s written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

10.04 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City’s written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.

ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK**11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
 - 1. A Field Order; or
 - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
 - 3. City's written interpretation or clarification.

11.02 *Execution of Change Orders*

- A. City and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
 - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

11.03 *Field Orders*

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

11.04 *Authorized Changes in the Work – Extra Work*

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

11.05 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract

Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

11.06 *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

11.07 *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
 - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
 - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
 - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
 - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
 - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.

6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response)).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
 1. deny the Contract Claim in whole or in part;
 2. approve the Contract Claim; or
 3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.
- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

11.08 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. The value of any Work covered by a Change Order will be determined as follows:
 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit will be determined as follows:
 1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent except for:
 - 1) rental fees for Contractor's own equipment; and
 - 2) bonds and insurance;
- b. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
 - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
- c. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
- d. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT**12.01 Cost of the Work**

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith.
 3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
 - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of CityCity. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - f. The cost of utilities, fuel, and sanitary facilities at the Site.
 - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind.
- D. *Contractor's Fee*
1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
 - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

12.02 Allowances

- A. *Specified Allowance*: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.
- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances, have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

12.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
 - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
 - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. there is no corresponding adjustment with respect to any other item of Work.
 - 2. Adjusted unit prices will apply to all units of that item.

- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
 2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
 3. If no unit prices exist, this any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
 4. A significant change in the character of Work occurs when:
 - a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
 - b. a Major Item of work varies by more than 25% from the original Contract quantity.
 5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
 6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

12.04 *Plans Quantity Measurement for Unclassified Excavation or Embankment*

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.

- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Access to Work*

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

13.02 *Tests and Inspections*

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
 - 2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
 - 1. City will coordinate such Testing to the extent possible, with Contractor;

2. Should any Testing under this Section 13.03.D result in a “fail”, “did not pass” or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor’s cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
 3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
 4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover such Work for observation. Such uncovering and the recovering of such Work will be at Contractor’s expense.

13.03 *Defective Work*

- A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.
- B. *City’s Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City’s warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing

of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

13.05 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

13.06 *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

13.07 *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.

13.08 *City May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD**14.01** *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
 - 1. Contractor is responsible for providing all information as required to become a vendor of the City.
 - 2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

C. Review of Applications

1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
 - a. the Work has progressed to the point indicated; and
 - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
 - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
 - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and

may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:

- a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
- b. there are discrepancies in quantities contained in previous applications for payment;
- c. the Contract Price has been reduced by Change Orders;
- d. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
- e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:
 - a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;

- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
 - l. Other items entitle City to a set-off against the payment amount requested; or
 - m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
 3. Partial Utilization by City will not constitute Final Acceptance by City.

14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
 - 1. City will promptly schedule a Final Inspection with Contractor.
 - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

14.06 *Final Payment*

- A. Application for Payment
 - 1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
 - 2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
 - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
 - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
 - 1. After City's acceptance of the Application for Payment and accompanying documentation; and

2. After all Damage Claims have been resolved:
 - a. directly by the Contractor; or
 - b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

14.09 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
 1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed. During a temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the

equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
 3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of City; or
 5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
 6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
 7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
 8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
 2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
 - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site

or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
 4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
 5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
 6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.

- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
1. stop work under the Contract on the date and to the extent specified in the notice of termination;
 2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
 3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
 4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
 - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
 - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
 5. complete performance of such Work as shall not have been terminated by the notice of termination; and
 6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit a termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead

- and profit on such Work calculated and determined in accordance with the Contract Documents;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
 3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

ARTICLE 16 – RESOLUTION OF DISPUTES

16.01 *Methods and Procedures*

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.
- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

- F. If the Contract Claim is not resolved by mediation, City's action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City's Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient.

17.02 *Computation of Time*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Limitation of Damages*

- A. With respect to any and all claims, disputes subject to final resolution, and other matters at issue, neither City, nor any of its officers, directors, elected or appointed officials, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project. Further, the Contractor may only claim and the City may only be liable for those damages that are set forth in Subchapter I, Chapter 271 of the Texas

Local Government Code and the City shall not be liable for any consequential damages, exemplary damages or damages for unabsorbed home office overhead.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

17.06 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

17.07 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

17.08 *Successors and Assigns*

- A. City and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

17.09 *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

17.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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SECTION 00 73 01
 SUPPLEMENTARY CONDITIONS - CSP
 TO
 GENERAL CONDITIONS

Supplementary Conditions

These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are modified or supplemented remain in full force and effect as so modified or supplemented. All provisions of the General Conditions which are not so modified or supplemented remain in full force and effect.

Defined Terms

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions, unless specifically noted herein.

Modifications and Supplements

The following are instructions that modify or supplement specific paragraphs in the General Conditions and other Contract Documents.

SC-1.01 “Defined Terms”

The following Terms listed in the General Conditions are modified as follows:

- Bid – See Proposal.
- Bidder – See Offeror.
- Bidding Documents – See Proposal Documents.
- Bidding Requirements – See Proposal Requirements.

The following Terms are added to the General Conditions as follows:

- Competitive Sealed Proposals – A procurement method by which a governmental entity requests proposals, evaluates and ranks the Offerors, and negotiates a contract with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.
- Daily Value – The City-determined value in dollars as indicated in the Proposal Form as the value of one Day for the purposes of determining the Incentive (if applicable) for Substantial Completion relative to the Contract Time and achievement of Substantial Completion.
- Offeror – The individual or entity that submits a Proposal directly to City.
- Proposal – The offer or proposal of an Offeror submitted in accordance with the requirements set forth in the Instructions to Offerors.
- Proposal Documents – The Proposal Requirements and the Proposed Contract Documents.

1 Proposal Requirements – The Advertisement or Invitation to Offerors, Instructions to Offerors,
 2 Offeror’s Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any
 3 attachments.
 4

5 Substantial Completion – The completion of the Work necessary for the project to function as it
 6 was intended pursuant to the Contract Documents and as specified below, to the reasonable
 7 satisfaction of the City. The date of Substantial Completion shall be memorialized by written
 8 notice given by the City to the Contractor.
 9

10 **SC-5.01A**

11
 12 Easement limits shown on the Drawing are approximate and were provided to establish a basis for
 13 proposals. Upon receiving the final easements descriptions, Contractor shall compare them to the lines
 14 shown on the Contract Drawings.
 15

16 **SC-5.01A.1., “Availability of Lands”**

17
 18 The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of
 19 **JUNE 2024:**
 20

21 **Outstanding Right-Of-Way, and/or Easements to Be Acquired**

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
------------------	-------	------------------------------

NONE

22 The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed,
 23 and do not bind the City.
 24

25 If Contractor considers the final easements provided to differ materially from the representations on the
 26 Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work,
 27 notify City in writing associated with the differing easement line locations.
 28

29 **SC-5.01A.2, “Availability of Lands”**

30 **Utilities or obstructions to be removed, adjusted, and/or relocated**

31
 32
 33 The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated
 34 as of **JUNE 2024**
 35

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
-------------------	----------------------	------------------------------

NONE

36 The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed,
 37 and do not bind the City.
 38

39 **SC-5.03A., “Subsurface and Physical Conditions”**

40
 41 The following are reports of explorations and tests of subsurface conditions at the site of the Work:
 42

1 A Geotechnical Engineering Study Report No. 103-23-482, dated August 9, 2023, prepared by CMJ
 2 Engineering, Inc., a sub-consultant of Kimley-Horn and Associates, Inc., a consultant of the City, providing
 3 additional information on geotechnical conditions at the site.
 4

5 The following are drawings of physical conditions in or relating to existing surface and subsurface
 6 structures (except Underground Facilities) which are at or contiguous to the site of the Work:

- 7 • *Sheet 22, Duplex Pump Station, May 1973, as prepared by Cordell & Associates, Inc.*

8
 9 **SC-5.05 A., “Underground Facilities**

10
 11 The following are additional resources for identification of Underground Facilities which are at or
 12 contiguous to the site of the Work, and which are not necessarily shown in the Drawings:

13 **None**

14
 15 **SC-5.06A., “Hazardous Environmental Conditions at Site”**

16
 17 The following are reports and drawings of existing hazardous environmental conditions known to the City:

18 **None**

19
 20 **SC-6.02, “Performance, Payment, and Maintenance Bonds”**

21
 22 **The “Contract Price” for Performance, Payment, and Maintenance Bonds will be the same as**
 23 **indicated in Article 3 as listed in the Agreement.**

24
 25 **SC-6.03A., “Certificates of Insurance”**

26
 27 The entities listed below are "additional insureds as their interest may appear" including their respective
 28 officers, directors, agents and employees.

- 29
- 30 (1) City
- 31 (2) Consultant: Kimley-Horn and Associates, Inc.
- 32 (3) Other: None

33
 34 **SC-6.04A., “Contractor’s Insurance”**

35
 36 The limits of liability for the insurance required by Paragraph GC-6.04 shall provide the following
 37 coverages for not less than the following amounts or greater where required by laws and regulations:

38
 39 **6.04A. Workers' Compensation, under Paragraph GC-6.04A.**

- 40
- 41 **Statutory limits**
- 42 **Employer's liability**
- 43 **\$100,000 each accident/occurrence**
- 44 **\$100,000 Disease - each employee**
- 45 **\$500,000 Disease - policy limit**

46
 47 **SC-6.04B., “Contractor’s Insurance”**

48
 49 **6.04B. Commercial General Liability, under Paragraph GC-6.04B. Contractor's Liability Insurance**
 50 **under Paragraph GC-6.04B., which shall be on a per project basis covering the Contractor with**
 51 **minimum limits of:**

- 52
- 53 **\$1,000,000 each occurrence**
- 54 **\$2,000,000 aggregate limit**

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The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

The Commercial General Liability Insurance policies shall provide “X”, “C”, and “U” coverage’s. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

SC 6.04C., “Contractor’s Insurance”

6.04C. Automobile Liability, under Paragraph GC-6.04C. Contractor’s Liability Insurance under Paragraph GC-6.04C., which shall be in an amount not less than the following amounts:

(1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

\$1,000,000 each accident on a combined single limit basis. Split limits are acceptable if limits are at least:

- \$250,000 Bodily Injury per person /**
- \$500,000 Bodily Injury per accident /**
- \$100,000 Property Damage**

SC-6.04D., “Contractor’s Insurance”

The Contractor’s construction activities will require its employees, agents, subcontractors, equipment, and material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line of tracks N/A

The Contractor shall conduct its operations on railroad properties in such a manner as not to interfere with, hinder, or obstruct the railroad company in any manner whatsoever in the use or operation of its/their trains or other property. Such operations on railroad properties may require that Contractor to execute a “Right of Entry Agreement” with the particular railroad company or companies involved, and to this end the Contractor should satisfy itself as to the requirements of each railroad company and be prepared to execute the right-of-entry (if any) required by a railroad company. The requirements specified herein likewise relate to the Contractor’s use of private and/or construction access roads crossing said railroad company’s properties.

The Contractual Liability coverage required by Paragraph 5.04D of the General Conditions shall provide coverage for not less than the following amounts, issued by companies satisfactory to the City and to the Railroad Company for a term that continues for so long as the Contractor’s operations and work cross, occupy, or touch railroad property:

- (1) General Aggregate: NONE
- (2) Each Occurrence: NONE
- Required for this Contract X Not required for this Contract

With respect to the above outlined insurance requirements, the following shall govern:

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.

- 1 2. Where more than one railroad company is operating on the same right-of-way or where several
- 2 railroad companies are involved and operated on their own separate rights-of-way, the Contractor
- 3 may be required to provide separate insurance policies in the name of each railroad company.
- 4
- 5 3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a
- 6 railroad company’s right-of-way at a location entirely separate from the grade separation or at-
- 7 grade crossing, insurance coverage for this work must be included in the policy covering the grade
- 8 separation.
- 9
- 10 4. If no grade separation is involved but other work is proposed on a railroad company’s right-of-
- 11 way, all such other work may be covered in a single policy for that railroad, even though the work
- 12 may be at two or more separate locations.
- 13

14 No work or activities on a railroad company’s property to be performed by the Contractor shall be
 15 commenced until the Contractor has furnished the City with an original policy or policies of the insurance
 16 for each railroad company named, as required above. All such insurance must be approved by the City and
 17 each affected Railroad Company prior to the Contractor’s beginning work.

18
 19 The insurance specified above must be carried until all Work to be performed on the railroad right-of-way
 20 has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition,
 21 insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way.
 22 Such insurance must name the railroad company as the insured, together with any tenant or lessee of the
 23 railroad company operating over tracks involved in the Project.

24
 25 **SC 6.04F., “Contractor’s Insurance”**

26 Add Paragraph 6.04F. Environmental Impairment/Pollution
 27 Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing,
 28 removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous
 29 material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water,
 30 including ground water, with a minimum combined bodily injury (including death) and property damage
 31 limit of **\$2,000,000** per occurrence to be obtained upon substantial completion and acceptance of facility by
 32 the City.

33
 34 **SC-7.08C., “Concerning Subcontractors and Suppliers”**

35
 36 The following subcontractors shall be required to be utilized by the Contractor for specific portions of the
 37 Work as indicated below:

38
 39 **Required Subcontractors**

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
NONE	

40
 41 **SC-7.11., “Permits and Utilities”**

42
 43 **SC-7.11A., “Contractor obtained permits and licenses”**

44 The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:

- 45 **1. City of Denton Right-of-Way Permit**
- 46

47 **SC-7.11B. “City obtained permits and licenses”**

48 The following are known permits and/or licenses required by the Contract to be acquired by the City:

49 **NONE**

50

1 **SC-7.11C. “Outstanding permits and licenses”**

2
 3 The following is a list of known outstanding permits and/or licenses to be acquired, if any as of **JUNE**
 4 **2024:**

5
 6 **Outstanding Permits and/or Licenses to Be Acquired**

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
-------	--------------------------------	---------------------------

NONE

7
 8 **SC-8.02., “Coordination”**

9
 10 The individuals or entities listed below have contracts with the City for the performance of other work at
 11 the Site:

Vendor	Scope of Work	Coordination Authority
NONE		

12
 13 **SC-9.01, “Communications to Contractor”**

14
 15 NONE

16
 17 **SC-10.01B., “City’s Project Manager”**

18
 19 The City’s Project Manager for this Contract is **DAVID BROWN**, or his/her successor pursuant to **written**
 20 **notification from the Director of Water Utilities.**

21
 22 **SC-13.02B., “Tests and Inspections”**

23
 24 NONE

25
 26 **SC-14.01G, “Reduction in Payment”**

27
 28 Add Paragraph 14.01G.3:

- 29
 30 *3. City may reduce payments to the Contractor, if the number of Days that have passed after the date*
 31 *listed on the Notice to Proceed exceeds the Contract Time for Substantial Completion.*

32
 33 **SC-16.01C.1, “Methods and Procedures”**

34
 35 NONE

36
 37 **SC – 17.01, “Documents”**

38
 39 *Any documents submitted to the City in electronic format shall be considered equivalent to an original of*
 40 *such document.*

41
 42 **END OF SECTION**

Revision Log		
DATE	NAME	SUMMARY OF CHANGE

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.

FLOW-LINE CONSTRUCTION, INC.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

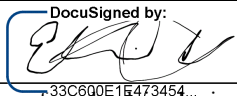
Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4 I have no Conflict of Interest to disclose.

5 DocuSigned by:


10/31/2024

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/hm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 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: 9B7DB1E929FE40A3A5412BB950667840
 Subject: Please DocuSign: City Council Contract 8573 Granada Sewer Improvements
 Source Envelope:
 Document Pages: 108 Signatures: 4
 Certificate Pages: 6 Initials: 1
 AutoNav: Enabled
 Enveloped Stamping: Enabled
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent
 Envelope Originator:
 Erica Garcia
 901B Texas Street
 Denton, TX 76209
 erica.garcia@cityofdenton.com
 IP Address: 198.49.140.104

Record Tracking

Status: Original
 10/28/2024 3:33:02 PM
 Holder: Erica Garcia
 erica.garcia@cityofdenton.com

Location: DocuSign

Signer Events

Erica Garcia
 erica.garcia@cityofdenton.com
 Senior Buyer
 City of Denton
 Security Level: Email, Account Authentication (None)

Signature


Completed
 Using IP Address: 198.49.140.104

Timestamp

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 Viewed: 10/28/2024 3:43:19 PM
 Signed: 10/28/2024 3:44:26 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign


Lori Hewell
 lori.hewell@cityofdenton.com
 Purchasing Manager
 City of Denton
 Security Level: Email, Account Authentication (None)


 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.104

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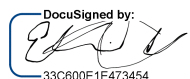
Marcella Lunn
 marcella.lunn@cityofdenton.com
 Senior Deputy City Attorney
 City of Denton
 Security Level: Email, Account Authentication (None)


 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

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 Signed: 10/30/2024 1:06:04 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Eduardo Hernandez
 eduardo.hernandez@flow-lineconstruction.com
 President
 Flow-line Construction
 Security Level: Email, Account Authentication (None)



 Signature Adoption: Drawn on Device
 Using IP Address: 162.203.40.224

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 Signed: 10/31/2024 5:19:37 PM

Electronic Record and Signature Disclosure:
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 ID: d84d3a53-2163-4b3d-8484-a638ee4673de

Signer Events	Signature	Timestamp
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Stephen D Gay
 stephen.gay@cityofdenton.com
 General Manager
 Water Utilities
 Security Level: Email, Account Authentication (None)

Signed by:

 FEB48BB9728E4A9...
 Signature Adoption: Pre-selected Style
 Using IP Address: 172.58.55.234
 Signed using mobile

Sent: 10/31/2024 5:19:41 PM
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 Signed: 10/31/2024 9:11:17 PM

Electronic Record and Signature Disclosure:
 Accepted: 10/31/2024 9:10:34 PM
 ID: 87639cf5-0ff2-49e9-9879-9be6f49c13ee

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Sent: 10/31/2024 9:11:21 PM
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Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Lauren Thoden
 lauren.thoden@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

COPIED

Sent: 10/28/2024 3:44:29 PM

Gretna Jones
 gretna.jones@cityofdenton.com
 Legal Secretary
 City of Denton
 Security Level: Email, Account Authentication (None)

COPIED

Sent: 10/31/2024 9:11:20 PM
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Carbon Copy Events	Status	Timestamp
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

David Brown
David.Brown@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

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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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-237, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Weaver Consultants Group, LLC, for the operation and maintenance of the Landfill Gas Collection and Control System as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8525-005 - Professional Services Agreement for operation and maintenance services awarded to Weaver Consultants Group, LLC, in the not-to-exceed amount of \$52,200.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Weaver Consultants Group, LLC, for the operation and maintenance of the Landfill Gas Collection and Control System as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8525-005 – Professional Services Agreement for operation and maintenance services awarded to Weaver Consultants Group, LLC, in the not-to-exceed amount of \$52,200.00).

INFORMATION/BACKGROUND

The City of Denton Landfill operates a Gas Collection System and flare to process the methane produced by the landfill process. Environmental Services and Sustainability (ESS) plans to execute a contract with Weaver Consultants for their field crew to perform operations and maintenance for the gas collection system. The wells require maintenance and “tuning” to reduce odor and the potential of oxygen intrusion and also to optimize gas extraction to maintain compliance with State and Federal regulations.

Request for Qualifications for state-certified engineers for professional engineering services for the Solid Waste and Recycling Department was solicited using the City’s formal solicitation process. City Council approved a pre-qualified list of professional service firms on August 20, 2024 (Ordinance 24-1562).

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On August 20, 2024, City Council approved RFQ 8525 for state-certified engineers for professional engineering services for the Solid Waste and Recycling Department (Ordinance 24-1562).

RECOMMENDATION

Award a contract with Weaver Consultant Group, LLC, for the operation and maintenance of the Landfill Gas Collection and Control System, in a not-to-exceed amount of \$52,200.

PRINCIPAL PLACE OF BUSINESS

Weaver Consultants Group, LLC
Fort Worth, TX

ESTIMATED SCHEDULE OF PROJECT

The project will be ongoing throughout the fiscal year 2024-2025.

FISCAL INFORMATION

These services will be funded from the Environmental Services and Sustainability budget 890500.7879. Requisition #166825 has been entered into the Purchasing software system in the amount of \$52,200. The budgeted amount for this item is \$52,200.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance and Contract

Respectfully submitted:
Lori Hewell, (940)-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Ami Reeder, 940-349-8008.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH WEAVER CONSULTANTS GROUP, LLC, FOR THE OPERATION AND MAINTENANCE OF THE LANDFILL GAS COLLECTION AND CONTROL SYSTEM AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8525-005 – PROFESSIONAL SERVICES AGREEMENT FOR OPERATION AND MAINTENANCE SERVICES AWARDED TO WEAVER CONSULTANTS GROUP, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$52,200.00).

WHEREAS, on August 20, 2024, the City Council approved a pre-qualified professional services list of state certified engineers for professional engineering services for the Solid Waste and Recycling Department (Ordinance 24-1562), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function [Engineering functions]; and

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Weaver Consultants Group, LLC, to provide professional engineering services for the City of Denton, a copy of which is attached hereto and incorporated by reference herein.

SECTION 2. The City Manager, or their designee, is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

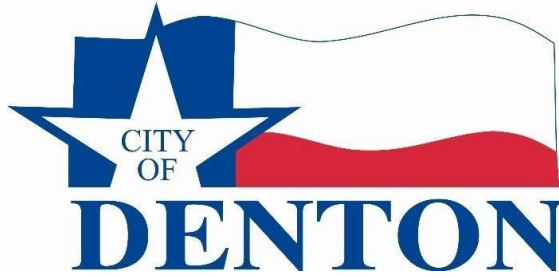
ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

Marcella Lunn

BY: _____



DocuSign City Council Transmittal Coversheet

PSA	8525-005
File Name	2024-2025 GCCS Operations and Maintenance
Purchasing Contact	Christina Dormady
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Weaver Consultants Group, LLC, with its corporate office at 35 East Wacker Drive, Suite 1250, Chicago, IL 60601 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: 2024-2025 GCCS Operations and Maintenance (the "PROJECT").

SECTION 1 **Scope of Services**

- A.** The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.
- B.** Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

SECTION 2 **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$52,200.00 in the manner and in accordance with the fee schedule as set forth in Attachment A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

SECTION 3 **Terms of Payment**

Payments to the ENGINEER will be made as follows:

A. Invoice and Payment

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment A to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the date, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

SECTION 4 Obligations of the Engineer

A. General

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

B. Standard of Care

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

C. Subsurface Investigations

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

D. Preparation of Engineering Drawings

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

E. Engineer's Personnel at Construction Site

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.
- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the

PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, although under no obligation to do so, in that instance, the ENGINEER shall inform the CITY of its observations.

- (3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

F. Opinions of Probable Cost, Financial Considerations, and Schedules

- (1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.
- (2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

G. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or

encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

H. Record Drawings

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

I. Right to Audit

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

J. INSURANCE

(1) ENGINEER'S INSURANCE

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
 - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
 - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
 - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary,

commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.

- i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

(2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services. This section does not apply to worker's compensation and professional liability policies.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.

- f. Insurers for all policies must be authorized to do business in the State of Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.
- g. Any deductible or self insured retention in excess of \$100,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

K. Independent Consultant

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

L. Disclosure

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities of the proposed PROJECT. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

M. Asbestos or Hazardous Substances

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

N. Permitting Authorities - Design Changes

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

O. Schedule

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment A to this AGREEMENT.

P. Equal Opportunity

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents

shall not engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.

- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

SECTION 5 **Obligations of the City**

A. City-Furnished Data

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

B. Access to Facilities and Property

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

C. Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

D. Timely Review

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment A.

E. Prompt Notice

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or

becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

F. Asbestos or Hazardous Substances Release.

- (1) CITY acknowledges ENGINEER will perform part of the work at CITY's facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.
- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

G. Contractor Indemnification and Claims

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

H. Contractor Claims and Third-Party Beneficiaries

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."
- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.
- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

I. CITY's Insurance

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

J. Litigation Assistance

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

K. Changes

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

B. Reuse of Project Documents

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

C. Force Majeure

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

D. Termination

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
- b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.

(2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:

- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
- b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
- c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the ENGINEER'S work effort is suitable for long time storage.

(3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

E. Suspension, Delay, or Interruption to Work

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

F. Indemnification

IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.

G. Assignment

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

H. Jurisdiction

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

I. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

J. Observe and Comply

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

K. Immigration Nationality Act

ENGINEER shall verify the identity and employment eligibility of its employees who perform work under this AGREEMENT, including completing the Employment Eligibility Verification Form (I-9). Upon request by CITY, ENGINEER shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ENGINEER shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any ENGINEER employee who is not legally eligible to perform such services. **ENGINEER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY ENGINEER, ENGINEER’S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ENGINEER, shall have the right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

L. Prohibition on Contracts with Companies Boycotting Israel

Engineer acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

M. Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for

goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

O. Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

P. Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Engineer is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

Q. Prohibition Against Personal Interest in Contracts

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract

resulting from that solicitation as defined in the City's Ethic Ordinance 23-1165 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

R. Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at :
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

S. Limitation of Liability

Notwithstanding any provision to the contrary in this AGREEMENT, ENGINEER'S liability hereunder, including indemnification agreements, shall not exceed the greater of its available and collectible insurance or \$1,000,000.00.

T. Agreement Documents

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be

changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A - Scope of Services, Compensation, and Project Schedule

These documents make up the AGREEMENT documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the AGREEMENT documents, the inconsistency or conflict shall be resolved by giving precedence first to the written AGREEMENT then to the AGREEMENT documents in the order in which they are listed above.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

Duly executed by each party's designated representative to be effective on _____.

BY:
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:
ENGINEER
Weaver Consultants Group, LLC

DocuSigned by:
MATT STUTZ Principal

14974973684442
Authorized Agent, Title

Full Name: MATT STUTZ

2023-1089052

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

Signed by:

Michael Gange

Signature

Director of Environmental Services & Sustainability

Title

Environmental Services & Sustainability

Department

Date Signed: 11/1/2024

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

Marcella Lunn

4B070831B4AA438...



6420 SOUTHWEST BLVD., STE. 206
 FORT WORTH, TEXAS 76109
 PHONE: (817) 735-9770
 FAX: (817) 735-9775

MEMORANDUM

To:	Ami Reeder Randall Morris SC City of Denton	Date:	September 18, 2024
From:	John Pick Nevzat Turan, P.E. Weaver Consultants Group	Projects:	LLCP-011-002-11-05
Re:	Proposal – Fiscal Year 2025 Landfill O&M Proposal City of Denton Landfill		

In accordance with the City of Denton (City)’s request, Weaver Consultants Group (WCG) has prepared this proposal for the operations and maintenance (O&M) of the landfill gas (LFG) collection system at the City of Denton Landfill (CODLF), WCG has developed the following Basic Services, which will achieve the project objectives in a timely and cost-efficient manner. WCG has assembled a project team to provide the City with experienced field service technicians and the design/permitting engineering group in one office if required. This integrated approach between field service and engineering will facilitate ongoing landfill Gas Collection and Control System (GCCS) operations to ensure continued compliance with the applicable regulatory requirements.

Basic Services

Task 1 – Routine Monthly GCCS O&M Services and Monthly O&M Reports

Under this task, WCG will monitor the monthly LFG extraction wells and the blower/flare facility using an Elkins Envision or comparable instrument. Monitoring will include methane (percent by volume), oxygen (percent by volume), carbon dioxide (percent by volume), balance gas (percent by volume), pressures, and LFG temperature.

LFG extraction wells will be monitored and adjusted to maximize LFG collection. WCG will also monitor the condition and performance of the GCCS during the visit. Maintenance of the GCCS will consist of such items as:

- Checking for proper valve operation
- Obstructions in the sampling and testing ports

- Tightness of bolts and clamps
- Check for cover integrity
- Routine operations and maintenance of the system will include:
 - Balancing the well field to maximize LFG quality and flow
 - Monitoring the flare station
- Maintenance of a flare station includes such items as:
 - Testing amperage/voltage output and operation of the blower
 - Checking that the condensate knock-out vessel has been drained
 - Inspecting the flame arrester (does not include flame arrester cleaning)
 - Checking flare pilot system (at ground level) and pilot gas fuel tank levels
 - Checking flare controller set points
 - Checking the field air compressor for signs of stress

WCG will document monitoring activities and any issues of potential concern in a written report that is submitted to the City following each monthly event.

WCG will submit the City Monthly O&M reports no later than the 15th of the following month to document all O&M activities.

Schedule and Budget

Upon obtaining the City's approval, WCG will promptly perform the tasks listed in the scope of work to meet the City's scheduling needs. It is assumed that all submittals to the City will be in electronic format (e.g., PDF) unless otherwise requested. The services will be performed on a "Not to Exceed" time and materials basis consistent with the estimated budget in Table 1. The billing will occur every month for the preceding month on 1/12th (i.e., \$4,350 per month) of the estimated total annual budget in Table 1. Any part of the work that will not be performed will be communicated to the City, and the estimated budget will be reduced accordingly. The estimated cost and proposed Scope of Work are based on WCG's understanding of this project and the information currently available to WCG. If conditions change, unforeseen circumstances are encountered, or work efforts are redirected, the cost estimate may require modification. Additional services will be provided on a time and material basis consistent with the scheduled WCG fee in this proposal.

Table 1
Cost Estimate Table
City of Denton Landfill
Routine Monthly GCCS O&M Services and Monthly O&M Reports

Task	Estimated Cost
Task 1 – Initial Project Coordination (\$4,350/month)	\$52,200
Total:	\$52,200

Proposal Assumptions and Additional Services

We have developed the preceding scope of work and schedule based on our understanding of the services required by the City of Denton. The following includes our assumptions and potential additional services that are not included in this proposal’s scope of services.

- WCG and/or representatives from the City will be the only parties designated to adjust the extraction well field during the contract.
- WCG will have access to the landfill site, as necessary, to perform these services.
- No cost for any additional emergency or non-routine O&M troubleshooting, repairs or maintenance services are included in this proposal.
- The budget does not include any allowance for equipment rental, parts, and supplies if determined to be required during routine O&M work. Incidental amounts of parts and supplies may be purchased without seeking prior authorization from the City; however, if the total spending for parts and supplies exceeds \$300 for any given month, WCG will seek a written authorization from the City. Therefore, we recommend the City budget \$300 per month for potential spending on parts and supplies.
- During the routine O&M work, if WCG staff notices a need for non-routine work, WCG staff will contact the City for guidance to address any issues. Any non-routine work will be performed on a time & material basis using the fee schedule attached to this proposal; however, WCG will develop a separate proposal and seek the City’s written approval prior to performing any non-routine work.
- This proposal does not include any regulatory agency or third-party coordination.
- This proposal does not include perimeter probe readings.

Randall Morris SC

September 18, 2024

Mowing Services. If access to the well field is impaired due to overgrown vegetation over the final cover areas, the city is assumed to mow the site to make it accessible to provide the services outlined in this proposal.

We look forward to providing this service to the City of Denton. Please contact us if you have any questions.

**WEAVER CONSULTANTS GROUP
FEE SCHEDULE
(Effective November 1, 2023)**

I. PROFESSIONAL STAFF

	<u>Unit</u>	<u>U.S. \$</u>
a) Principal/Corporate Consultant	Hr.	250.00
b) Senior Project Director	Hr.	235.00
c) Project Director	Hr.	220.00
d) Senior Project Manager	Hr.	200.00
e) Sr Project Engineer/Scientist/Environmental Specialist/Geologist/Architect/Industrial Hygienist.....	Hr.	185.00
f) Project Manager.....	Hr.	170.00
g) Project Engineer/Scientist/Environmental Specialist/Geologist/Architect/Industrial Hygienist	Hr.	145.00
h) Staff Engineer/Scientist/Environmental Specialist/Geologist/Architect/Industrial Hygienist.....	Hr.	130.00
i) Engineer/Scientist/Environmental Specialist//Geologist/Architect/Industrial Hygienist.....	Hr.	110.00

II. TECHNICAL STAFF

a) Union Engineering Technician-Journeyman	Hr.	145.00
b) Union Engineering Technician	Hr.	140.00
c) Construction Superintendent	Hr.	130.00
d) Construction Manager	Hr.	115.00
e) System Specialist III.....	Hr.	165.00
f) System Specialist II	Hr.	125.00
g) System Specialist I.....	Hr.	115.00
h) System Technician.....	Hr.	100.00
i) Field Engineer/Scientist/Environmental Specialist.....	Hr.	120.00
j) Certified Technician	Hr.	95.00
k) Senior Engineering Technician.....	Hr.	90.00
l) Engineering Technician II	Hr.	80.00
m) Engineering Technician I.....	Hr.	70.00

III. SUPPORT STAFF

a) Senior CAD Designer	Hr.	135.00
b) CAD Designer III.....	Hr.	125.00
c) CAD Designer II.....	Hr.	115.00
d) CAD Designer I.....	Hr.	90.00
e) Technical Assistant.....	Hr.	80.00
f) Clerical/Word Processing	Hr.	80.00

IV. SURVEYING

a) Senior Professional Land Surveyor	Hr.	185.00
b) Professional Land Surveyor.....	Hr.	165.00
c) Survey Field Manager	Hr.	150.00
d) Survey Party Chief III.....	Hr.	140.00
e) Survey Party Chief II.....	Hr.	120.00
f) Survey Party Chief I.....	Hr.	95.00
g) Survey Technician V	Hr.	125.00
h) Survey Technician IV.....	Hr.	110.00
i) Survey Technician III.....	Hr.	95.00
j) Survey Technician II	Hr.	80.00
k) Survey Technician I.....	Hr.	65.00
l) Survey Party - 1 Person/GPS or Robotic	Hr.	185.00
m) Survey Party - 2 Person/GPS or Robotic	Hr.	240.00
n) Geospatial Field Technician (with Drone or Scanner).....	Hr.	210.00
o) Geospatial Technician II	Hr.	125.00
p) Geospatial Technician I	Hr.	105.00

V. GENERAL EXPENSES

a) Automobile Transportation.....	Mi.	0.89
b) Subcontract Service or Rental		Cost+15%
c) Report Preparation (outside services)		Cost+15%
d) Outside Services (e.g., delivery, prints, document scanning, etc.)		Cost+15%
e) Per Diem (food and lodging)	Day	175.00
f) Per Diem (no lodging)	Day	49.00
g) Transportation by Commercial Carrier or Rental Car		Cost+15%
h) Travel Expense		Cost+15%

Any modification to this fee schedule requires the written approval of Weaver Consultants Group

**WEAVER CONSULTANTS GROUP
FEE SCHEDULE
(Effective November 1, 2023)**

VI. TESTING AND EQUIPMENT RENTAL FEES	Unit	U.S. \$
a) pH, Specific Conductance and Temperature Meter	Day	142.00
b) Peristaltic Filter Pump	Day	58.00
c) Electric Purge Pump	Day	55.00
d) Grundfos Pump Control Box	Day	131.00
e) Water Level Indicator (100ft)	Day	47.00
f) Water Level Indicator (100ft plus)	Day	74.00
g) Filter and Hose (for pump)	Ea.	29.00
h) Micropurge Flow Cell and Sonde	Day	154.00
i) Modified Level "D" (Tyveks, Boots, Gloves)/per person/per change of clothing	Ea.	64.00
j) Photoionization Detector Meter	Day	147.00
k) XRF Analyzer (for lead based paint)	Day	158.00
l) Nuclear Density Gauge	Day	83.00
Nuclear Density Gauge	Wk.	357.00
m) Air Sampling Equipment, per pump	Day	64.00
n) Hand Operated Field Probe Equipment	Day	38.00
o) Explosimeter	Day	44.00
p) Gas Analyzer	Day	226.00
q) Thermo Image Camera	Day	25.00
r) Elkins Envision Meter	Day	210.00
s) INFICON IRwin Detector	Day	263.00
r) Flame Ionization Detector	Day	316.00
u) Interface Probe	Day	74.00
v) ATV	Day	64.00
w) Company Truck	Day	113.00
Company Truck (does not include fuel or mileage)	Wk.	536.00
x) Hand-Held Field GPS/G15	Day	188.00
Hand-Held Field GPS (Trimble)	Day	97.00
y) Laser Level	Day	95.00
z) Spatial Imaging Laser Scanner – Republic Only		
aa) Ultrasonic Testing Meter	Day	131.00
bb) Ground Penetrating Radar	Day	298.00
cc) Geonics EM-61	Day	625.00
dd) Survey Grade GPS Unit	Day	428.00
ee) Electric Generator	Day	85.00
ff) Slug Test Equipment	Day	250.00
gg) All Weather Key Alike Locks	Ea.	27.00
hh) Equipment Trailer	Day	95.00
ii) Fluk Meter/Volt Meter/Loop Calibrator	Day	150.00
jj) Four Gas Meter	Day	27.00
kk) Dip Sampler	Day	26.00
ll) Air Compressor/Controller Box	Day	170.00
mm) 12 Volt Marine Battery	Day	31.00
nn) Turbidimeter	Day	47.00
oo) Manometer	Day	47.00
pp) Velocicalc Meter	Day	58.00

UNIT PRICE NOTES:

1. All professional, technical, and support staff time and expenses spent in furtherance of the client's work will be billed. This includes, but is not limited to, proposal, field, travel, research, technical review and reporting, project management, client meeting, and project-specific administrative support.
2. An overtime rate of 1.3 times the regular rate is billed for technical and support staff services for work in excess of 40 hours per week, work between 7:00 p.m. to 5:00 a.m., and work on Saturdays. This overtime rate is increased to 2.0 times the regular rate for work on Sundays and holidays.
3. Unless otherwise agreed to in writing, a monthly interest charge of 18% per annum, will be charged accruing from the date of invoice, on all invoices not paid within 30 days.
4. The unit rates are subject to periodic modification (typically annually). These rate modifications will be incorporated into long-term projects, unless otherwise addressed in the project contract.
5. Litigation Support, Expert Witness, Deposition, and testimony services will be charged at 1.5 times the designated billing rate.

Any modification to this fee schedule requires the written approval of Weaver Consultants Group

**WEAVER CONSULTANTS GROUP
FEE SCHEDULE
(Effective November 1, 2023)**

GENERAL EXPENSE NOTES:

1. Rates quoted are for expenses only, equipment purchased on the client's behalf is marked up 25%.
2. Personnel rates are billed separately from general expenses.
3. Standard non-disposable protective outer-wear or equipment damaged or contaminated by site conditions are billed at replacement cost plus 30%.
4. General expense mark-ups may be negotiated based upon contract size and payment terms.
5. The per diem rates set forth above are the standard rates we typically use for our technical staff on projects. We reserve the right to modify these rates in high cost areas.
6. Mileage rate is based on gasoline price of \$4.50 per gallon. A fuel surcharge may be added if a condition beyond Weaver Consultants Group control warrants it.

TESTING AND EQUIPMENT RENTAL NOTES:

1. Rates for testing and equipment not listed above are available on request.
2. Testing and equipment rental costs are negotiable for specific projects and for on-site laboratory programs.
3. Laboratory unit prices cover equipment and labor costs to perform standard test procedures and laboratory reports with normal turn-around times. Non-standard testing requirements, supervisory and project management costs, data evaluation costs, and environmental sample disposal costs are not included in the testing unit prices and are billed separately.
4. Equipment rental rates are for equipment costs only. Transportation, calibration, and personnel costs are billed separately.
5. Daily and weekly rates cover a maximum of 10 and 50 hours, respectively.
6. SAMPLES WILL NOT BE RETAINED beyond classification and testing unless other arrangements are agreed to in writing. Environmental samples remain the property of the client.

Any modification to this fee schedule requires the written approval of Weaver Consultants Group

Certificate Of Completion

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Subject: Please DocuSign: City Council Contract 8525-005 2024-2025 GCCS Operations and Maintenance	
Source Envelope:	
Document Pages: 27	Signatures: 3
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Christina Dormady
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	christina.dormady@cityofdenton.com
	IP Address: 198.49.140.10


Record Tracking

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10/30/2024 3:19:46 PM	christina.dormady@cityofdenton.com	

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Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/30/2024 3:23:46 PM Viewed: 10/30/2024 3:30:52 PM Signed: 10/30/2024 3:32:12 PM
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Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 10/30/2024 3:32:14 PM Resent: 11/1/2024 9:23:41 AM Viewed: 11/1/2024 1:04:40 PM Signed: 11/1/2024 1:05:38 PM
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MATT STUTZ Mstutz@wcgrp.com Principal N/A Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 47.44.8.162	Sent: 11/1/2024 1:05:41 PM Viewed: 11/1/2024 1:09:29 PM Signed: 11/1/2024 1:17:42 PM
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Michael Gange
michael.gange@cityofdenton.com
Director of Environmental Services & Sustainability
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Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton
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Sara Hensley
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Lauren Thoden
lauren.thoden@cityofdenton.com
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gretna.jones@cityofdenton.com
Legal Secretary
City of Denton
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citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
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Ami Reeder
ami.reeder@cityofdenton.com
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Notary Events	Signature	Timestamp
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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

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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.

How to contact City of Denton:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

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To 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, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

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City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-242, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive bids under IFB 8546 for Power Transformer Disposal (Scrap); and providing an effective date (IFB 8546).



City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive bids under IFB 8546 for Power Transformer Disposal (Scrap); and providing an effective date (IFB 8546).

INFORMATION/BACKGROUND

The City of Denton issued an invitation for bid (IFB) for the removal and scraping or repurposing of power transformers. The power transformers included five (5) used power transformers and two (2) autotransformers located at six (6) substations in and around Denton, Texas. A detailed technical specification and pricing sheet was provided for solicitation.

The IFB was issued on April 12, 2024 and six (6) bids were received. After evaluating the bids, it was recommended to reject all bids due to an alternate proposal from Core Scientific, Inc. After evaluating Core Scientific Inc's proposal for five (5) of the seven (7) transformers, the economic benefit was determined to be in the best public interest to the City. Core Scientific Inc's proposal was \$1.05 million compared to \$294,714 submitted in the IFB. As such, staff plans to bring the sale of these transformers to Core Scientific Inc through a separate bill of sale agenda item in December 2024. DME plans to re-solicit the two (2) remaining transformers at a later date.

This decision aligns with the Local Government Code 252.043, which permits the City Council to reject all bids if necessary.

RECOMMENDATION

Staff recommends rejection of all bids under IFB 8546.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Chris Lutrick, 940-349-7152.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, REJECTING ANY AND ALL COMPETITIVE BIDS UNDER IFB 8546 FOR POWER TRANSFORMER DISPOSAL (SCRAP); AND PROVIDING AN EFFECTIVE DATE (IFB 8546).

WHEREAS, the City has solicited, received, and tabulated competitive bids to evaluate Power Transformer Disposal (Scrap) (IFB 8546) in accordance with the procedures of state laws and the City's ordinances; and

WHEREAS, the City staff recommends, and the City Council has determined, that it is in the best interest of the City that the herein described proposals should be rejected; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. All competitive bids, as described in the "Invitation for Bid", "Bid Proposals", or plans and specifications on file in the Office of the City's Purchasing Agent are filed according to the bid number assigned herein (IFB 8546 – Power Transformer Disposal (Scrap)) are hereby rejected.

SECTION 2. The City Manager, or their designee, is hereby authorized to execute all necessary documents for the rejection of said proposals. The City Manager, or their designee, is hereby authorized, in their discretion, to re-advertise to receive competitive bids, or proceed otherwise, to procure goods and services described in IFB 8546.

SECTION 3. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under the IFB 8546 to reject said proposals to the City Manager, or their designee.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-239, **Version:** 1

AGENDA CAPTION

Consider approval of the October 28, 2024 minutes.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
October 28, 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, October 28, 2024, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Vice Chair Billy Cheek , Devin Taylor, Robert Rayner, and Lee Riback

Also present: General Manager Antonio Puente, Jr. and Deputy City Attorney Marcella Lunn

Absent: Chair Susan Parker, Thomas Plock, and Aaron Newquist

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

There were no presentations from members of the public.

2. CONSENT AGENDA

No agenda items or presentations.

3. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB24-228 Consider approval of the October 14, 2024 minutes.

Board Member Taylor moved to recommend adoption of agenda items 3A. Motion seconded by Board Member Rayner; motion carried.

YES (4): Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, and Lee Riback

NO (0):

B. PUB24-193 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 HM & MF, Ltd., dba Muckleroy & Falls, for construction services of the Denton Solid Waste Fleet Shop project for the Capital Projects and Fleet Services Departments; providing for the expenditure of funds therefor; and providing an effective date (CSP 8570 - awarded to HM & MF, Ltd., dba Muckleroy & Falls, in the not-to-exceed amount of \$9,557,446.50).

Giovanni Pineiro, Construction Projects Manager/Capital Projects made a presentation on item 3B.

Board Members asked questions that Seth Garcia, Deputy Director/Capital Projects and Tom Grammer, Director of Facilities and Fleet answered.

Board Members recommended Seth and Tom to have additional financial information before they go to council.

Board Member Riback moved to recommend adoption of agenda items 3B. Motion seconded by Board Member Taylor; motion carried.

YES (4): Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, and Lee Riback

NO (0):

- C. **PUB24-224** Consider recommending adoption of an ordinance of the City of Denton, Texas establishing the schedule of rates for electric service; amending the energy cost adjustment and transmission cost recovery factor schedules; providing for a repealer; providing for a severability clause; and providing effective dates for this ordinance and the rate schedules.

Vis Bouaphanthavong, Assistant Director of Finance, made a presentation item 3C.

Board Member Taylor asked a question and Vis and Tony Puente, DME General Manager, answered.

Board Member Taylor moved to recommend adoption of agenda items 3C. Motion seconded by Board Member Riback; motion carried.

YES (4): Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, and Lee Riback

NO (0):

D. PUB24-227 Management Reports

1. Electric Vehicle Comparison
 - a. Taylor and Riback asked questions and Tom Grammer, Director of Facilities and Fleet answered.
 - b. Taylor would like to know if a level 2 charger (installed at Development Services) and DC chargers were installed; Tony mentioned we will get back with PUB board with that information.
2. TWDB Utility Systems Revenue Bonds
 - a. Riback asked a question and Jessica William, Chief Financial Officer, answered.
3. Future Agenda Items
4. New Business Action Items
 - a. Riback questions to the Solid Waste Department and Brandi Neal, Administration Manager, Brian Boerner, Solid Waste Director answered.

4. CONCLUDING ITEMS

None

WORK SESSION

- A. **PUB24-223** Receive a report, hold a discussion, of the City of Denton's cart tagging program and its results, which has reduced contamination in curbside recycling over the past four years.

Brandi Neal gave a presentation, update, overview and results on this program.

Board members asked questions that staff answered.

With no further business, the meeting was adjourned at 10:24 AM.

BILLY CHEEK
VICE CHAIR
CITY OF DENTON, TEXAS

MONICA SALCEDO
ADMIN ASSISTANT
CITY OF DENTON, TEXAS

Minutes approved on: 11/18/2024



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-244, **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 Temporary Construction Easement between the City and Core Scientific Inc., a Delaware Corporation; 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

DME General Manager: Antonio Puente, Jr.

DATE: November 18, 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 Temporary Construction Easement between the City and Core Scientific Inc., A Delaware Corporation; providing for an effective date.

Background

The City entered into a seven (7) year Lease Agreement (Lease) with Core Scientific (Core) on September 3, 2021, under which Denton Municipal Electric (DME) leases approximately 31 acres adjacent to the Denton Energy Center for the development of the data center. On August 20, 2024, the City approved amendment number two (2) to the Lease adding an additional 5.56 acres required to convert Phase III of the project from cryptocurrency operation to High Performance Computing (HPC) to support artificial intelligence application.

Core Scientific now intends to convert Phases I and II of the original Lease agreement to HPC and to add Phase IV for same. All told, the total leased property from the City will be 70.13 acres and no cryptocurrency operations will be continued at the project. In addition to the leased acreage, Core also needs area for equipment laydown and storage. Consequently, DME proposes to provide 12.577 acres of land owned by the City as Temporary Construction Easement. The term of the TCE is proposed to be 48 months to allow sufficient time to complete the project and the mobilize construction equipment from the site.

RECOMMENDATION

Approve the ordinance enabling the City Manager to enter into the proposed Temporary Construction Easement.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

Respectfully submitted:
Terry Naulty
Assistant General Manager
Denton Municipal Electric
940-349-7565

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A TEMPORARY CONSTRUCTION EASEMENT BETWEEN THE CITY AND CORE SCIENTIFIC, INC., A DELAWARE CORPORATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City and Core Scientific, Inc. (“Lessee”) entered into that certain Lease Agreement, effective as of September 3, 2021 (the “Initial Lease”) pursuant to which Lessee currently leases the Leased Premises (as defined in the Initial Lease) from the City; and

WHEREAS, the City and Core Scientific have agreed to terms and conditions for Amendment Number 3 to the Initial Lease (“Amendment No. 3”) to enable conversion of Core Scientific cryptocurrency operations to High performance Computing (“HPC”) in support of artificial intelligence applications; and

WHEREAS, Construction activities to accomplish the conversion will begin upon approval of Amendment No. 3; and

WHEREAS, Core Scientific, Inc. requires property adjacent to the HPC operation to facilitate construction and temporary storage of construction materials; and

WHEREAS, the City Council further finds that granting temporary construction easement to enable the construction of the HPC project is in the best interest of the customers of Denton Municipal Electric,

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 their designee, and City Secretary, or their designee, to execute, attest and deliver, respectively, the Temporary Construction Easement, attached as Exhibit “A”, with Core Scientific, Inc.

SECTION 3. The City Council approves and authorizes the City Manager, or their designee, to take such additional actions as the City Manager, or the designee, determines to be necessary and advisable to continue to effectuate the purpose, terms, and conditions of Temporary Construction Easement.

SECTION 4. 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: *Marcella Lunn*

2. Term of Easement. The term of this grant shall commence on the Effective Date and shall expire forty-eight (48) months from the Effective Date. Upon such date this TCE shall no longer show of record on the Property and shall be of no further force or effect without any further action required by either party. In addition, in the event of any breach or default under this TCE by Grantee, Grantor shall have the right, but not the obligation, to terminate the TCE if Grantee has not cured a default within seven (7) days after receiving written notice of such default from Grantor. Upon any termination of this TCE, Grantee shall promptly: (i) yield, vacate, and surrender all use of the Property to Grantor; (ii) remove all machinery, equipment, and other personal property of any kind on the Property; and (iii) return the Property to reasonably the same condition in which it existed immediately prior to the commencement of this TCE. If there is any personal property on the Property as of the date of any termination of this TCE, then in addition to all other rights and remedies available to Grantor in law or in equity, (A) such personal property shall be deemed abandoned by Grantee and, at Grantor's election, shall be the property of Grantor, and/or (B) upon written demand from Grantor, whether at or after the termination of this TCE, Grantee, at no cost to Grantor, immediately shall remove all of such personal property from the Property.

3. Maintenance. Grantee covenants and agrees that it shall cause all activities performed on the Property pursuant to this TCE to be conducted in a manner that does not unreasonably disturb or disrupt any of Grantor's activities on lands immediately adjacent to or in the close vicinity of the Property or unreasonably disrupt any of the activities of the Grantee in close vicinity to the Property; and taken with due care and in accordance with all applicable professional standards and the requirements of any and all applicable city, county, state, and federal laws, rules, regulations, and directives, as amended from time to time, applicable to Grantee's activities on the Property (collectively, the "Laws"), including but not limited to those relating to worker's compensation, immigration, occupational health and safety, waste disposal, storm water discharge/pollution prevention, dust control, environmental contamination, hazardous substances, pesticides, building and construction codes, contractor licensing, and all other laws, rules, regulations, and directives. For the purpose of this TCE, "close vicinity" shall mean within 100 feet. Grantee shall: (a) maintain the Property in good condition, free of all trash, weeds, debris, and any other unsightly material; (b) promptly repair any damage to the Property; and (c) be responsible for using commercially reasonable efforts to restrict access to the Property only to Grantee, its employees, and Grantee's authorized contractors, **AND, TO THE EXTENT ALLOWED BY LAW, WILL INDEMNIFY GRANTOR FROM CLAIMS OF ANY DAMAGE OR INJURY BY ANY UNINVITED PERSONS (INCLUDING, WITHOUT LIMITATION, TRESPASSERS) WITHIN THE PROPERTY.**

4. Insurance. During the term of this TCE, Grantee and its contractor shall maintain: (a) commercial general liability (CGL) insurance (ISO Form CG0001, or equivalent) written on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate), naming Grantor and Grantor Parties as additional insureds, utilizing ISO endorsement CG2026 (11/85 edition, or equivalent), which insurance shall include intermediate form contractual liability insurance applicable to this TCE; (b) \$1,000,000 auto liability insurance; and (c) worker's compensation insurance to the extent and in the amount required by Law. All such insurance policies shall: (a) be taken out with insurers with an A.M. Best rating of A-NIII or better; (b) be non-contributing and apply as primary and not as excess to, any other insurance available to Grantor and Grantor Parties with respect to

claims arising out of this TCE or use of the Property by Grantee; and (c) not be invalidated with respect to the interests of the Grantor and Grantor Parties by reason of any breach or violation by Grantee of any warranties, representations, declarations or conditions contained in the policies. Grantee, and its contractor, shall deliver to Grantor certificates of insurance with the above referenced additional insured endorsement: (i) prior to commencing any of the activities on the Property under this TCE, and (ii) updated certificates of insurance periodically. Grantee shall provide notice to Grantor at least thirty days prior to termination of any policy. No review or approval of any such insurance certificate by Grantor shall derogate or diminish Grantor's rights or Grantee's obligations. To the fullest extent allowed by law, Grantee, on its own behalf and on behalf of all of its insurers, hereby waives all rights of recovery, whether under subrogation or otherwise (INCLUDING THOSE BASED ON NEGLIGENCE, REGARDLESS OF WHETHER IT IS THE PARTIAL NEGLIGENCE OF GRANTOR), whether because of deductible clauses, self-insured retention amounts, inadequacy of limits of any insurance policy, limitations or exclusions of coverage or otherwise, against Grantor and Grantor Parties. Grantee also shall require that all insurance policies related to Grantee's activities on the Property include clauses providing that each insurance underwriter shall waive all of its rights of recovery, by subrogation or otherwise (INCLUDING THOSE BASED ON NEGLIGENCE, REGARDLESS OF WHETHER IT IS THE PARTIAL NEGLIGENCE OF GRANTOR), against Grantor and Grantor Parties.

5. Compensation. Grantee shall pay to Grantor \$5,198/month during the term of this Agreement. Payment of this TCE monthly charge will be billed by Grantor and due from Grantee in accordance with the terms and conditions of the Lease Agreement between City of Denton and Core Scientific Inc. dated September 3, 2021 authorized the Denton City Council by ORDINANCE NO. 21-1486, as amended.

6. Notices. All notices and communications required, necessary, or desired to be given pursuant to this TCE, including, but not limited to, a change of address for purposes of such notices and communication, shall be in writing and shall be deemed given and received (i) upon personal delivery (which shall include delivery by commercial overnight courier), (ii) three (3) days after deposit in the United States Mail, certified mail, return receipt requested, postage prepaid, or (iii) by confirmed facsimile. The addresses for notice are as follows:

Grantor: CITY OF DENTON
215 E, McKinney Street
Denton, TX 76201
Attn: Real Estate Department
Phone: 940-349-8252

With a copy to: CITY OF DENTON
215 E. McKinney Street
Denton, TX 76201
Attn: Legal Department

Grantee: Core Scientific, Inc.

Attn: General Counsel
2800 Northrup Way #220
Belview, WA 98004

1. Miscellaneous. This TCE may be amended only by an instrument signed by all parties. This TCE shall inure to the benefit of, and be binding upon, the successors and assigns of each of Grantor and Grantee; provided that nothing herein shall permit Grantee to assign this TCE without Grantor's prior written consent, which consent may not be unreasonably conditioned or delayed. All entities and persons entering the Property under this TCE and/or performing work on behalf of Grantee shall be agents of Grantee and shall be required in writing to comply with all terms of this Agreement, including without limitation the insurance provisions.

2. Counterparts. This TCE may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. A facsimile or electronic copy of this TCE shall be deemed an original for all relevant purposes.

*The balance of this page intentionally left blank
Signature page attached*

Agreed to as of the Effective Date set forth above on Page 1.

Grantor:

CITY OF DENTON

By: Sara Hensley, City Manager

ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on _____, 2024, by
_____.

Notary Public, in and for the State of _____
My commission expires: _____

ATTEST:
Lauren Thoden, City Secretary

By: _____

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

Signature

Title

Department
Date Signed: _____

APPROVED AS TO LEGAL FORM:
Mack Reinwand, City Attorney

By: _____

Grantee:

Core Scientific, Inc.

By:

ACKNOWLEDGMENT

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2024, by _____.

Notary Public, in and for the State of _____

My commission expires: _____

APPROVED AS TO LEGAL FORM:

By: _____

Title: _____

Exhibit A

TEMPORARY CONSTRUCTION EASEMENT NO. 1

BEING a 2.434 acre tract of land situated in the Johnson, Green, Myers and Brummett Survey, Abstract No. 1699, City of Denton, Denton County, Texas, and being a part of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-367 of the Plat Records of Denton County, Texas, and also being a part of that certain 340.469 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod with cap stamped "TNP" found for the Northwest corner of the above cited Lot 1 and lying in the dedicated South line of Jim Christal Road, a variable width right-of-way, said point also being in the East line of that certain 5.700 acre tract of land described in a Deed to Everette Newland, as recorded in Document No. 2012-19340 of the Official Records of Denton County, Texas;

THENCE North 89°21'52" East along the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 419.23 feet to the **POINT OF BEGINNING** for the herein described easement;

THENCE North 89°21'52" East continuing along the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 252.65 feet to a point

THENCE South 00°00'00" East departing the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 510.11 feet to a point;

THENCE South 19°12'37" West for a distance of 132.91 feet to a point;

THENCE South 89°21'52" West for a distance of 81.29 feet to a point;

THENCE North 00°00'00" West for a distance of 400.08 feet to a point;


THENCE South 89°21'52" West for a distance of 100.01 feet to a point;

THENCE North 45°38'08" West for a distance of 35.36 feet to a point;

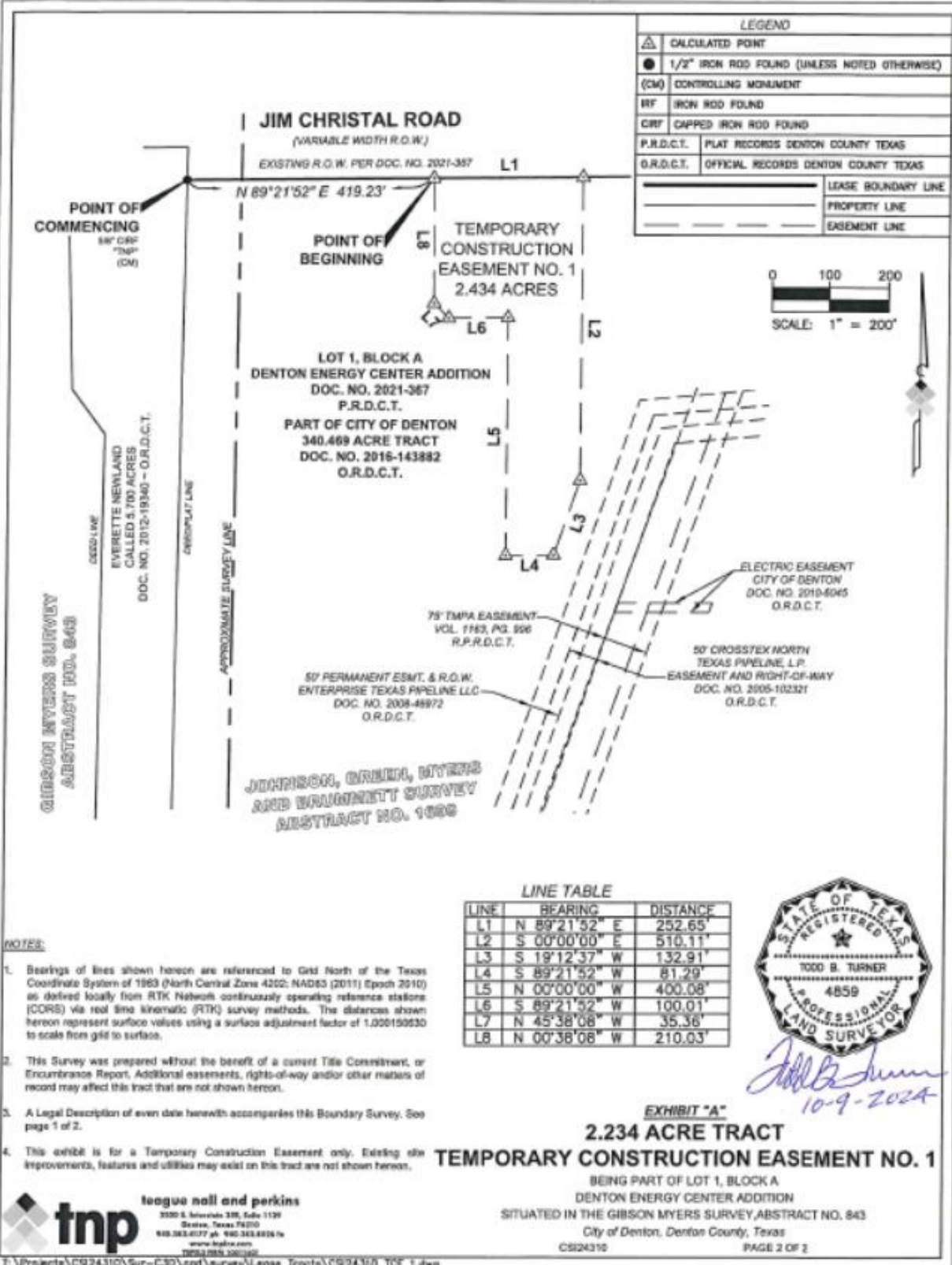
THENCE North 00°38'08" West for a distance of 210.03 feet to the **POINT OF BEGINNING**, and containing 2.434 acres of land, more or less.

SURVEY NOTES:

1. Bearings are referenced to grid north of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83(2011) Epoch 2010) as derived locally from Allterra continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. An Easement Exhibit of even date herewith accompanies this Legal Description. See Page 2 of 2.

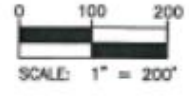

Todd B. Turner, R.P.L.S.
Teague Nail and Perkins
3200 S. I-35E, Suite 1129
Denton, Texas 76210
940-383-4177
TBPELS Firm No. 10011601
Date: October 9, 2024





LEGEND

	CALCULATED POINT
	1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
(CM)	CONTROLLING MONUMENT
RF	IRON ROD FOUND
CRF	CAPPED IRON ROD FOUND
P.R.D.C.T.	PLAT RECORDS DENTON COUNTY TEXAS
O.R.D.C.T.	OFFICIAL RECORDS DENTON COUNTY TEXAS
	LEASE BOUNDARY LINE
	PROPERTY LINE
	EASEMENT LINE



LINE TABLE

LINE	BEARING	DISTANCE
L1	N 89°21'52" E	252.65'
L2	S 00°00'00" E	510.11'
L3	S 19°12'37" W	132.91'
L4	S 89°21'52" W	81.29'
L5	N 00°00'00" W	400.08'
L6	S 89°21'52" W	100.01'
L7	N 45°38'08" W	35.36'
L8	N 00°36'08" W	210.03'



John B. Turner
10-9-2024

NOTES:

- Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83 (2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150530 to scale from grid to surface.
- This Survey was prepared without the benefit of a current Title Commitment, or Encumbrance Report, Additional easements, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
- A Legal Description of even date herewith accompanies this Boundary Survey. See page 1 of 2.
- This exhibit is for a Temporary Construction Easement only. Existing site improvements, features and utilities may exist on this tract are not shown hereon.

EXHIBIT "A"
2.234 ACRE TRACT
TEMPORARY CONSTRUCTION EASEMENT NO. 1
BEING PART OF LOT 1, BLOCK A
DENTON ENERGY CENTER ADDITION
SITUATED IN THE GIBSON MYERS SURVEY, ABSTRACT NO. 843
City of Denton, Denton County, Texas

teague noll and perkins
2320 S. Silverado 230, Suite 1129
Dallas, Texas 75210
972.363.6177 or 972.363.6826 fax
www.tnpsurvey.com
TNP010000000000

T:\Projects\CS24310\Sur-C30\cod\Survey\Lease_Tracts\CS24310_TCE_1.dwg

TEMPORARY CONSTRUCTION EASEMENT NO. 2

BEING an 8.057 acre tract of land situated in the Moses H. Davis Survey, Abstract No. 377 and the William Wibum Survey, Abstract No. 1419, City of Denton, Denton County, Texas, and being a part of that certain 340.469 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod with cap stamped "TNP" found for the Southeast corner of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-367 of the Plat Records of Denton County, Texas, said point being in the South line of the above cited 340.469 acre tract and the North line of that certain 116.154 acre tract of land described in a Deed to Mark Hicks Investments, LLC, as recorded in Document No. 2021-8595 of the Official Records of Denton County, Texas, from which a 1/2 inch iron rod capped "Vannoy 563-7101" found for an interior ell corner of said 340.469 acre tract and the most Northerly Northeast corner of said 116.154 acre tract bears South 89°50'49" East a distance of 322.05 feet;

THENCE North 09°56'56" East departing the South line of said 340.469 acre tract and the North line of said 116.154 acre tract, and along the East line of said Lot 1, for a distance of 96.31 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the beginning of a non-tangent curve to the right;

THENCE in a Northerly direction, continuing along the East line of said Lot 1, and along said non-tangent curve to the right having a central angle of 00°35'33", a radius of 14310.00 feet, a chord bearing of North 06°42'58" East, a chord distance of 147.99 feet and an arc length of 147.99 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the end of said curve;

THENCE North 09°00'45" East continuing along the East line of said Lot 1, for a distance of 410.85 feet to the **POINT OF BEGINNING** for the herein described easement;

THENCE North 09°00'45" East continuing along the East line of said Lot 1, for a distance of 202.44 feet to a 5/8 inch iron rod with cap stamped "TNP" found at an angle point;

THENCE North 06°09'44" East continuing along the East line of said Lot 1, for a distance of 100.69 feet to a point;

THENCE North 90°00'00" East departing the East line of said Lot 1, for a distance of 675.10 feet to a point;

THENCE South 00°00'00" East for a distance of 600.09 feet to a point;

THENCE North 90°00'00" West for a distance of 475.07 feet to a point;

THENCE North 00°00'00" West for a distance of 300.05 feet to a point;

THENCE North 90°00'00" West for a distance of 242.55 feet to the **POINT OF BEGINNING**, and containing 8.057 acres of land, more or less.

SURVEY NOTES:

1. Bearings are referenced to grid north of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83(2011) Epoch 2010) as derived locally from Altimera continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. An Easement Exhibit of even date herewith accompanies this Legal Description. See Page 2 of 2.

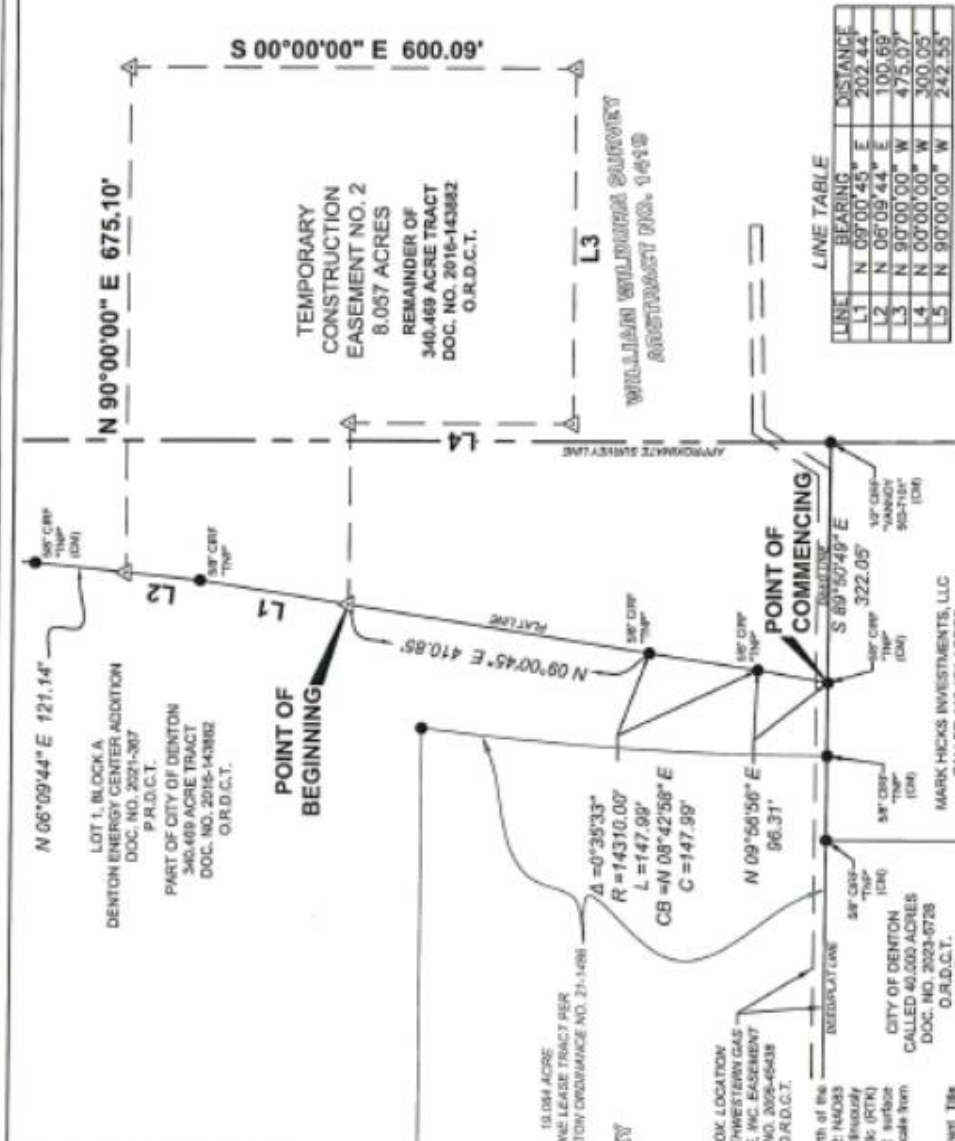


Todd B. Turner, R.P.L.S.
Teague Nail and Perkins
3200 S. I-35E, Suite 1129
Denton, Texas 76210
940-383-4177
TBP&S Firm No. 10011601
Date: October 9, 2024



LEGEND

▲	CALCULATED POINT
●	1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
(CM)	CONTROLLING MONUMENT
RF	IRON ROD FOUND
CRF	CAPPED IRON ROD FOUND
P.R.D.C.T.	PLAT RECORDS DENTON COUNTY TEXAS
O.R.D.C.T.	OFFICIAL RECORDS DENTON COUNTY TEXAS
---	LEASE BOUNDARY LINE
---	PROPERTY LINE
---	EASEMENT LINE



LINE TABLE

LINK	BEARING	DISTANCE
L1	N 09°00'45" E	202.44
L2	N 06°09'44" E	100.69
L3	N 90°00'00" W	475.07
L4	N 00°00'00" W	300.06
L5	N 90°00'00" W	242.55



EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT NO. 2

SITUATED IN THE WILLIAM WILBERN SURVEY, ABSTRACT NO. 1419 AND THE MOSES H. DAVIS SURVEY, ABSTRACT NO. 377
 City of Denton, Denton County, Texas

- NOTES:**
1. Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4302; NAD83 (2011) Epoch 2010) as defined locally from RTK Network continuously operating reference stations (CORS) via real time kinematics (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
 2. This Survey was prepared without the benefit of a current Title Commitment, or Encumbrance Report. Additional encumbrances, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
 3. A Legal Description of even data herewith accompanies this Boundary Survey. See page 1 of 2.
 4. This exhibit is for a Temporary Construction Easement only. Existing site improvements, features and utilities may exist on this tract are not shown hereon.

tnp
 TERRY N. PUGH
 1300 W. WILSON ST. SUITE 1100
 DENTON, TEXAS 76201-8818 TX
 www.tnp.com
 (817) 382-8177

10-9-2024
Todd R. Turner

TEMPORARY CONSTRUCTION EASEMENT NO. 3

BEING a 2.086 acre tract of land situated in the Moses H. Davis Survey, Abstract No. 377, City of Denton, Denton County, Texas, and being a part of that certain 340.469 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod with cap stamped "TNP" found for the Southeast corner of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-367 of the Plat Records of Denton County, Texas, said point being in the South line of the above cited 340.469 acre tract and the North line of that certain 116.154 acre tract of land described in a Deed to Mark Hicks Investments, LLC, as recorded in Document No. 2021-8595 of the Official Records of Denton County, Texas, from which a 1/2 inch iron rod capped "Vannoy 563-7101" found for an interior ell corner of said 340.469 acre tract and the most Northerly Northeast corner of said 116.154 acre tract bears South 89°50'49" East a distance of 322.05 feet;

THENCE North 08°56'56" East departing the South line of said 340.469 acre tract and the North line of said 116.154 acre tract, and along the East line of said Lot 1, for a distance of 47.54 feet to the POINT OF BEGINNING for the herein described easement;

THENCE North 09°56'56" East continuing along the East line of said Lot 1, for a distance of 48.76 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the beginning of a non-tangent curve to the right;

THENCE in a Northerly direction, continuing along the East line of said Lot 1, and along said non-tangent curve to the right having a central angle of 00°35'33", a radius of 14310.00 feet, a chord bearing of North 08°42'58" East, a chord distance of 147.99 feet and an arc length of 147.99 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the end of said curve;

THENCE North 09°00'45" East continuing along the East line of said Lot 1, for a distance of 258.95 feet to a point;


THENCE North 90°00'00" East departing the East line of said Lot 1, for a distance of 166.33 feet to a point;

THENCE South 00°00'00" East for a distance of 450.07 feet to a point;

THENCE North 90°00'00" West for a distance of 237.74 feet to the POINT OF BEGINNING, and containing 2.086 acres of land, more or less.

SURVEY NOTES:

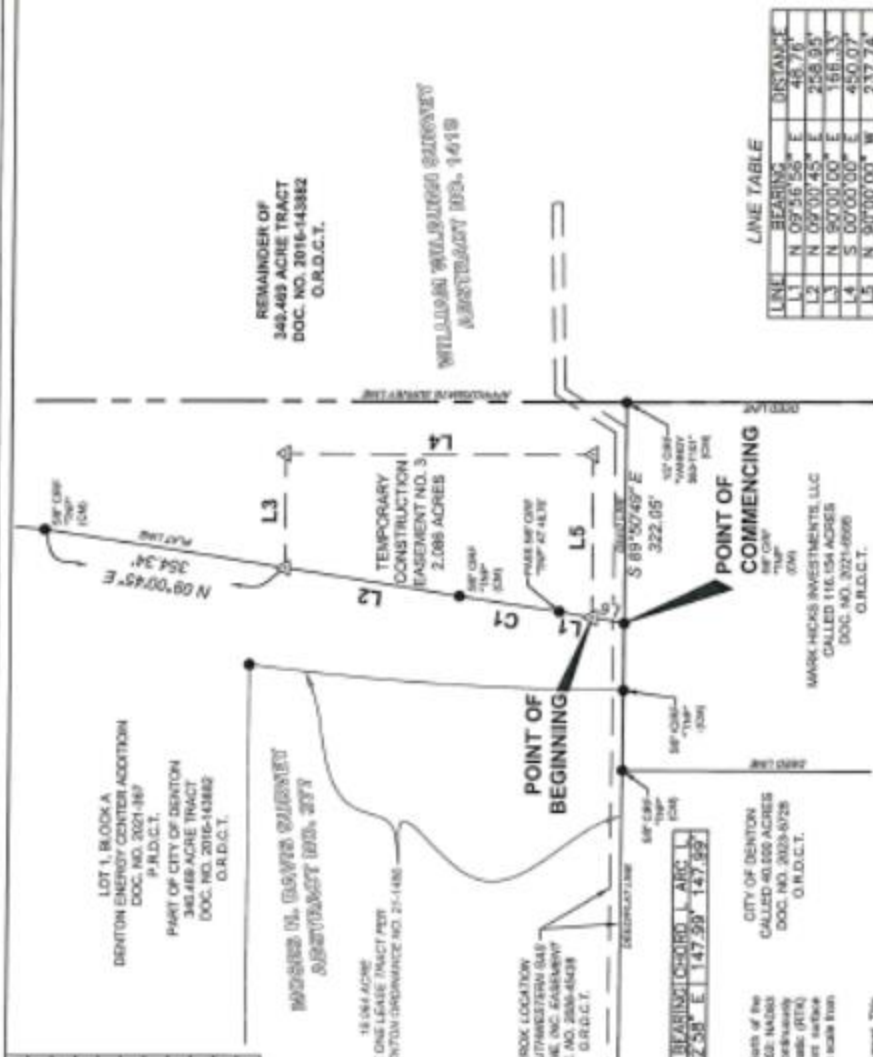
1. Bearings are referenced to grid north of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83(2011) Epoch 2010) as derived locally from Altimera continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. An Easement Exhibit of even date herewith accompanies this Legal Description. See Page 2 of 2.


Todd B. Turner, R.P.L.S.
Teague Nail and Perkins
3200 S. I-35E, Suite 1129
Denton, Texas 76210
940-383-4177
TBPELS Firm No. 10011801
Date: October 9, 2024



LEGEND

	CALCULATED POINT
	1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
	(O&M) CONTROLLING INSTRUMENT
	IRON ROD FOUND
	IRON ROD FOUND
	PLAT RECORD DENTON COUNTY TOWNS
	O.R.D.C.T. OFFICIAL RECORDS DENTON COUNTY TOWNS
	LEASE BOUNDARY LINE
	PROPERTY LINE
	EASEMENT LINE



CURVE TABLE

CHORD	DELTA	ANGLE	BEARING	CHORD	BEARING	CHORD	ARC
C1	07:35:33	143:10:00	N 08°42'58"	E 147°59'	147.99'		

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 09°56'56"	E 48.78'
L2	N 09°00'45"	E 258.05'
L3	N 90°00'00"	E 158.33'
L4	S 00°00'00"	E 250.07'
L5	N 90°00'00"	W 237.74'
L6	N 09°56'56"	E 47.54'



EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT NO. 3

SITUATED IN THE MOSES H. DAVIS SURVEY, ABSTRACT NO. 377
 City of Denton, Denton County, Texas
 CDD04119

tnp
 tnp survey and mapping
 1001 S. Lamar, Suite 1128
 Denton, Texas 76201
 817.321.2077 or 817.321.2078
 www.tnpsurvey.com



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-245, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an Ordinance of The City of Denton, a Texas Home-Rule Municipal Corporation (THE "CITY"), authorizing the City Manager to execute a third amendment to the lease agreement between the City and Core Scientific Inc., a Delaware Corporation; providing for an effective date.



AGENDA INFORMATION SHEET

DEPARTMENT: Denton Municipal Electric

DME General Manager: Antonio Puente, Jr.

DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an Ordinance of The City of Denton, a Texas Home-Rule Municipal Corporation (THE "CITY"), authorizing the City Manager to execute a third amendment to the lease agreement between the City and Core Scientific Inc., a Delaware Corporation; providing for an effective date.

Background

The City entered into a seven (7) year Lease Agreement (Lease) with Core Scientific (Core) on September 3, 2021, under which Denton Municipal Electric (DME) leases approximately 31 acres adjacent to the Denton Energy Center for the development of the data center. On August 20, 2024, the City approved amendment number two (2) to the Lease adding an additional 5.56 acres required to convert Phase III of the project from cryptocurrency operation to High Performance Computing (HPC) to support artificial intelligence application.

Core Scientific now intends to convert Phases I and II of the original Lease agreement to HPC and to add Phase IV for same. All told, the total leased property from the City will be 70.13 acres and no cryptocurrency operations will be continued at the project. The Lease Amendment No. 3 is complex as it involves the leasing of both DEC property and additional property purchased by the City in 2022 for a future solid waste transfer station just South of the DEC. To accommodate the property needs of Core Scientific to fully convert the project to HPC the Lease Amendment includes provisions that allow the City to cure any potential private use concerns on property purchased with tax-exempt bonds. In the event the City determines it would like to either defease, refund or repay the debt associated with the leased property, Core shall pay the City the cost associated with the private use remedy option chosen by the City.

The new Lease rental rate will be a sufficient to provide greater than the commercial value of the leased priority from the DEC and sufficient to cover the annual debt payment associated with the land for the future solid waste transfer station. Core Scientific will be hosting a major hyperscaler at the project with the total real property investment associated with the project anticipated to be close to \$4 billion.

In addition to the investment made in the facilities and computing equipment, Core will be constructing an onsite office building to house an estimated 300+ full time employees required for the operation and maintenance of the HPC data center.

RECOMMENDATION

Recommend approval the ordinance enabling the City Manager to enter into the third amendment to the Lease Agreement.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

Exhibit 3: Presentation

Respectfully submitted:
Terry Naulty
Assistant General Manager
Denton Municipal Electric
940-349-7565

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION (THE “CITY”), AUTHORIZING THE CITY MANAGER TO EXECUTE A THIRD AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY AND CORE SCIENTIFIC INC., A DELAWARE CORPORATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City and Core Scientific, Inc. (“Lessee”) entered into that certain Lease Agreement, effective as of September 3, 2021 (the “Initial Lease”) pursuant to which Lessee currently leases the Leased Premises (as defined in the Initial Lease) from the City; and

WHEREAS, the City and Core Scientific, Inc. entered into the second amendment to the Initial Lease (“Amendment No. 2”) on August 20, 2024 which is incorporated herein; and

WHEREAS, the City and Core Scientific have agreed to terms and conditions for Amendment Number 3 to the Initial Lease (“Amendment No. 3”) as Exhibit “A” and incorporated herein for all purposes; and

WHEREAS, Lessee requested additional leased property to accommodate Lessee’s intent to convert the entire project from cryptocurrency operation to High Performance Computing operations to host artificial intelligence applications on the Leased Premises; and

WHEREAS, the City Council further finds that Amendment No. 3 to the Lease is in the best interest of the customers of Denton Municipal Electric,

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 their designee, and City Secretary, or their designee, to execute, attest and deliver, respectively, Amendment No. 3 to the Lease, attached as Exhibit “A”, with Core Scientific, Inc.

SECTION 3. The City Council approves and authorizes the City Manager, or their designee, to take such additional actions as the City Manager, or the designee, determines to be necessary and advisable to continue to effectuate the purpose, terms, and conditions of Amendment No. 3 to the Lease.

SECTION 4. 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 [___ - ___]:

_____ CITY

_____ LESSEE

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Marcella Lunn*

THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment to Lease Agreement (this "Amendment"), is made as of October 22, 2024, by and between the CITY OF DENTON, a Texas home-rule municipal corporation (the "City"), and CORE SCIENTIFIC INC, a Delaware corporation ("Lessee" and, together with City, collectively, the "Parties" and, each, individually, a "Party"), with reference to the following facts:

RECITALS

WHEREAS, on September 3, 2021, City Council approved Ordinance No. 21-1486, for Lease Agreement between the City and Lessee for the initial development of a data center (the "Initial Lease"); the Initial Lease as amended by this Amendment is referred to herein as the "Lease"), pursuant to which Lessee currently leases the Leased Premises (as defined in the Initial Lease) from the City; and

WHEREAS, on August 1, 2023, Denton City Council approved Ordinance No. 23-768 for Amendment No. 1 to the Lease which extended the Initial Term to 14 years with one seven (7) year extension; and

WHEREAS, on August 20, 2024, City Council approved Ordinance No. 24-1296 for Amendment No. 2 to the Lease which increased the leasehold estate an additional 5.56 acres; and

WHEREAS, the City and Lessee are party to a Power Purchase Agreement ("PPA") dated September 3, 2021 and certain amendments to the PPA the Term of which was intended to be mirrored in the Lease Agreement; and

WHEREAS, the PPA Term is for an Initial Term of 14 years with two (2) seven (7) year extension options;

WHEREAS, Lessee has requested to lease an additional 42.963 acres of property described and depicted on **Exhibit B** hereto as areas 4,5 and 8, which is owned by the City, (the "Additional Lease Area") to facilitate the conversion of the current cryptocurrency mining operations to High Performance Computing to support artificial intelligence ("HPC Project"); and

WHEREAS, City deems it beneficial to the public to provide the Additional Lease Area to Lessee for the HPC Project; and

WHEREAS, The City intends to provide electric service to the HPC Project under terms and conditions of an amendment to the PPA.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants and the foregoing Recitals which are hereby incorporated into this Agreement, and for other good and valuable consideration, the receipt the City and Lessee hereby agree to amend the Initial Lease as follows:

_____ CITY

_____ LESSEE

1. Defined Terms. References. Unless otherwise specifically defined herein, each capitalized term used herein that is defined in the Initial Lease shall have the meaning assigned to such term in the Initial Lease. As used herein, the term “Effective Date” shall mean the first date after which both Parties have executed this Amendment.

2. Lease. All references in the Initial Lease to the “Agreement” shall mean the Initial Lease between the City of Denton and Core Scientific Inc. dated September 3, 2021 as amended on August 1, 2023, as amended August 20, 2024, and by this Amendment.

3. Amendment. The Initial Lease is hereby amended as follows:

- a) The recitals set forth herein are hereby added to the Initial Lease and incorporated therein as if set forth in their entirety.
- b) Exhibit A to the Initial Lease shall be amended and replaced with Exhibit A attached hereto and made a part hereof.
- c) Exhibit B to the Initial Lease shall be replaced with Exhibit B attached hereto and made a part hereof.
- d) Section 2.1 of the Initial Lease is hereby deleted in its entirety and replaced with:

“Section 2.1 Rent.

- A. In consideration for the use of the Lease Premises herein granted, which encompasses the real property identified in this Agreement and the Additional Lease Area, Lessee shall pay to the City the following monthly rental amounts (the “Rent”). The monthly Rent shall be in the sum of \$53,949.81 (Fifty-three thousand, nine hundred forty nine dollars and 81cents) per month. On or prior to the Effective Date, Lessee shall pay City a sum equal to one month’s Rent, which shall be the next monthly rent payment due under this Agreement. All other future monthly Rent payments will be due on or before the first day of the month to which the Rent payment relates. As a courtesy, City will include the amount of the monthly Rent for the subsequent month in the monthly invoice provided by City to Lessee pursuant to the PPA. 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 Effective 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 remaining days in such month.
- B. The Rent for the Leased Premises shall be increased, but not decreased, at the end of each two (2) year period during the Lease Term, with the first adjustment occurring on the first day of January 2025, consistent with adjustment for the leased property in the Initial Lease, and future

_____ CITY

_____ LESSEE

adjustments occurring every other January 1st thereafter, by a percentage amount equal to the percentage change in the United States Consumer Price Index for all urban consumers (“CPI-U”) for the Dallas-Fort Worth Bureau of Labor Statistics which occurred during the previous two year period based upon the then current and available month’s data compared to the data for the same month two-years prior.

e) A new Section 5.8 is added as follows:

Section 5.8 – Other Consideration

- A. In consideration of the City’s lease of property under this Agreement, Lessee, its affiliates, successors, or assigns shall not intervene in any activities related to the permitting of a solid waste transfer station on properties owned by the City.
- B. At the sole discretion of Lessor, Lessee shall pay to the City one of the following amounts in the event that Lessor exercises their right to complete any of the below actions.
 - 1. **Defeasance** - In the event Lessor determines that defeasance of a portion of the tax-exempt bonds issued to purchase the Leased Premises is in Lessors best interest, Lessor may, in cooperation with the City’s bond counsel and municipal advisor and at the discretion of the City’s Chief Financial Officer, complete defeasance on all or a portion of the debt. Defeasance may occur when private use levels exceed levels set by federal tax law or when defeasance is determined a reasonable and appropriate portfolio management activity by Lessor. The determination of such defeasance amount shall correlate with the total land described herein as Leased Premises. Lessor will provide notice to Lessee at least 30 days prior to defeasance. If defeasance is complete, Lessor shall invoice Lessee for the total cost associated with the Leased Premises described herein. Lessee shall pay Lessor within ten (10) business days of invoice date.
 - 2. **Bond Repayment.** In the event the Lessor determines that it will redeem of all or the portion of the tax exempt bonds issued to purchase the leased premises at a future call date, as permitted in the bond ordinances for such tax exempt bonds, Lessor, in cooperation with the City’s bond counsel and financial advisors and at the discretion of the City’s Chief Financial Officer, will determine the redemption amount associated with the Leased Premises for such bonds being redeemed, and will provide notice to Lessee at least 30 days prior to the call date and such redemption amounts. Lessor shall invoice Lessee for such redemption amounts and Lessee shall pay Lessor within ten (10) business days.

3. **Bond Refunding.** In the event Lessor determines it will refund all or a portion of the tax-exempt bonds used to purchase the Leased Premises, Lessor, in cooperation with the City's bond counsel and financial advisors and at the discretion of the City's Chief Financial Officer, will determine the issuance costs associated with the refunding of the Leased Premises, and will provide notice to Lessee at least 30 days prior to the refunding date and such issuance cost amounts. Lessor shall invoice Lessee for such issuance cost amounts and Lessee shall pay Lessor within ten (10) business days.

(f) A new Section 6.2F is added as follows:

F. LESSEE SHALL INDEMNIFY, DEFEND, RELEASE AND HOLD HARMLESS THE CITY, CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL DAMAGES, FINES, PENALTIES, 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 NUISANCE OR OTHER LAND USE CLAIM RELATED TO ANY OF LESSEE'S OPERATIONS, ACTS, OR OMISSIONS WITH RESPECT TO THE LEASED PREMISES.

5. Conflicts. In the event of a conflict or ambiguity between the Initial Lease and this Amendment, the terms of this Amendment shall control.

6. No Further Amendments. Except as amended hereby or by any prior amendment, the Initial Lease remains unchanged and all provisions shall remain fully effective between the Parties.

7. Binding Effect; No Partnership. The provisions of this Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Nothing herein contained shall be deemed to create a partnership or joint venture between any of the Parties.

8. Governing Law. This Amendment shall be governed by the laws of the State of Texas, without giving effect to its conflicts of law rules which would result in the application of laws of another jurisdiction.

9. Headings. The headings contained in this Amendment are intended solely for convenience and shall not affect the rights of the Parties to this Amendment.

10. Counterparts. This Amendment may be (i) executed in any number of separate counterparts, each of which when executed and delivered shall be deemed an original and all of which together shall constitute one instrument; and (ii) delivered by executed counterpart of a signature page in original, portable document format (PDF), facsimile, email, or other electronic means and any Party delivering in such a manner shall be legally bound.

_____ CITY

_____ LESSEE

11. Severability. The provisions of this Amendment are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Amendment.

12. No Third Party Beneficiary. Nothing contained herein is intended to be for, or to inure to, the benefit of any person other than the undersigned and their respective successors and permitted assigns, except as otherwise expressly provided in this Amendment.

[Signatures to follow]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first written above.

CITY OF DENTON

By: _____
Sara Hensley, City Manager

ATTEST:
Lauren Thoden, City Secretary

By: _____

THIS AMENDMENT HAS BEEN BOTH
REVIEWED AND APPROVED
As all terms, including all financial and
operational obligations and business terms.

APPROVED AS TO LEGAL FORM:
Mack Reinwand City Attorney

By: Marcella Lunn

Signature
Antonio Puente
General Manager
Denton Municipal Electric

Department
Date Signed: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS §
COUNTY OF DENTON §

This instrument was acknowledged before me on the ____ day of _____, 2023,
by Sara Hensley, Interim City Manager of the City of Denton, on behalf of said municipality.

NOTARY PUBLIC, STATE OF TEXAS

_____ CITY

_____ LESSEE

CORE SCIENTIFIC, INC.

By: _____

Name: _____

Title: _____

LESSEE NOTARY

THE STATE OF _____ §

COUNTY OF _____ §

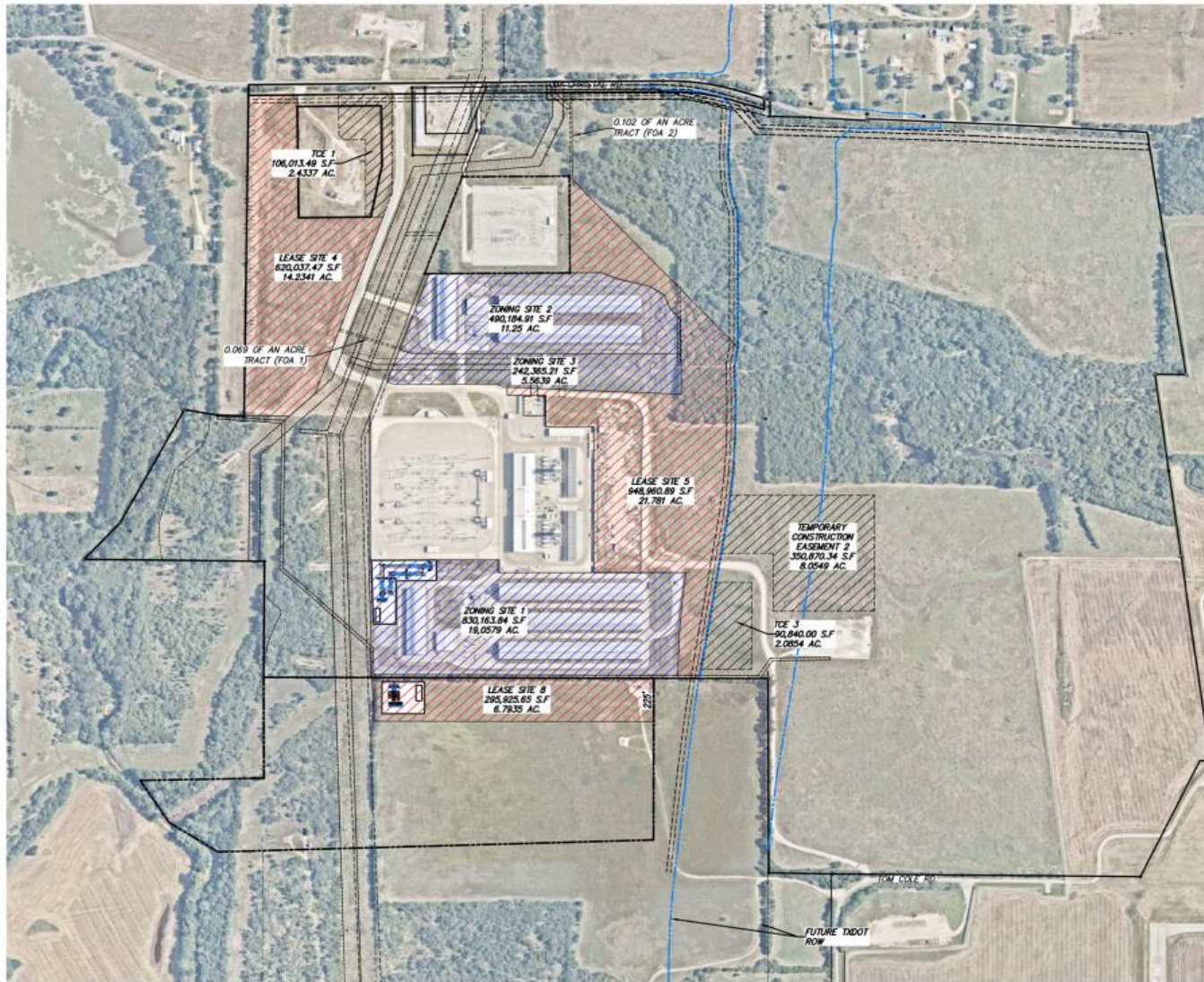
This instrument was acknowledged before me on the ____ day of _____, 2023, by _____, on behalf of said company.

NOTARY PUBLIC, STATE OF TEXAS

_____ CITY

_____ LESSEE

EXHIBIT A



LAND LEASE LEGEND		
LOT	LOT AREA (S.F.)	LOT AREA (ACRES)
Zoning Site 1	830,163.84	19.0579
Zoning Site 2	490,184.91	11.2531
Zoning Site 3	242,365.21	5.5639
Lease Site 4	620,037.47	14.2341
Lease Site 5	948,960.89	21.7851
Lease Site 8	295,925.65	6.7935
TOTALS	1,244,886.54	28.6877

TEMPORARY CONSTRUCTION EASEMENTS		
LOT	LOT AREA (S.F.)	LOT AREA (ACRES)
TCE 1	106,013.49	2.4337
TCE 2	350,870.34	8.0549
TCE 3	90,840.00	2.0854
TOTALS	547,723.83	12.5740

TRACTS OF LAND FOR FIBER CONDUIT DUCT BANKS		
LOT	LOT AREA (S.F.)	LOT AREA (ACRES)
FOA 1	3,005.64	0.0690
FOA 2	4,443.12	0.1020
TOTALS	7,448.76	0.1710

1 LAND LEASE AND EASEMENTS EXHIBIT
SCALE: 1"=300'-0"



____ CITY

____ LESSEE

Exhibit B
Leased Premises

Site One

BEING a 19.064 acre tract of land situated in the Moses H. Davis Survey, Abstract No. 377, City of Denton, Denton County, Texas, being part of a called 340.469 acre tract of land described in a Deed to the City of Denton, a Texas home-rule municipal corporation, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod found for an interior Southwest corner of the above cited 340.469 acre tract and the Northwest corner of a called 116.154 acre tract of land described in a Deed to the Mark Hicks Investments, LLC, as recorded in Document No. 2021-8595 of the Official Records of Denton County, Texas, from which a 1/2 inch iron rod with cap stamped "Vannoy 563-7101" found for an interior ell corner of said 340.469 acre tract, same being the Northeast corner of a called 152 acre tract of land described in a Deed to Walter B. (Bud) Wolf, as recorded in Volume 533, Page 541 of the Deed Records of Denton County, Texas bears North 00°26'46" East, a distance of 599.88 feet;

THENCE South 89°50'49" East along the South line of said 340.469 acre tract and North line of said 116.154 acre tract, for a distance of 506.72 feet to a 5/8 inch iron rod with cap stamped "TNP" set for the POINT OF BEGINNING of the herein described tract;

THENCE North 01°31'40" West departing the South line of said 340.469 acre tract and the North line of said 116.154 acre tract, for a distance of 608.71 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE South 89°59'35" East for a distance of 611.28 feet to an "X" cut set in concrete;

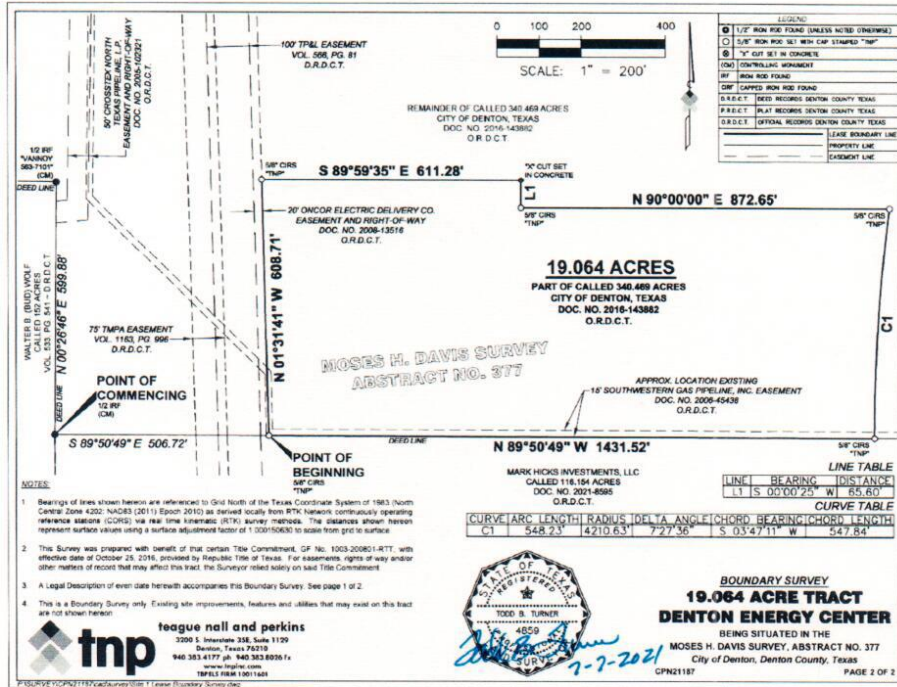
THENCE South 00°00'25" West for a distance of 65.60 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE North 90°00'00" East for a distance of 872.65 feet to a 5/8 inch iron rod with cap stamped "TNP" set at the beginning of a non-tangent curve to the left;

THENCE in a Southern direction, along said non-tangent curve to the left having a central angle of 07°27'36", a radius of 4210.63 feet, a chord bearing of South 03°47'11" West, a chord distance of 547.84 feet and an arc length of 548.23 feet to a 5/8 inch iron rod with cap stamped "TNP" set in the South line of said 340.469 acre tract and the North line of said 116.154 acre tract, from which a 1/2 inch iron rod with cap stamped "Vannoy 563-7101" found for the Northeast corner of said 116.154 acre tract and an interior ell corner of said 340.469 acre tract bears South 89°50'49" East, a distance of 420.07 feet;

Ex B

THENCE North 89°50'49" West along the South line of said 340.469 acre tract and the North line of said 116.154 acre tract, for a distance of 1431.52 feet to the POINT OF BEGINNING, and containing 19.064 acres of land, more or less.



Site Two

BEING an 11.256 acre tract of land situated in the Moses H. Davis Survey, Abstract No. 377 and the Johnson, Green, Myers and Brummett Survey, Abstract No. 1699, City of Denton, Denton County, Texas, being part of a called 340.469 acre tract of land described in a Deed to the City of Denton, a Texas home-rule municipal corporation, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod found for the Southwest corner of Lot 1, Block 1 of Krum Tap Electrical Switch Station, per Plat recorded in Document No. 2010-3 of the Plat Records of Denton County, Texas;

THENCE North 89°39'01" East along the South line of said Lot 1, for a distance of 21.24 feet to a 5/8 inch iron rod with cap stamped "TNP" set for the POINT OF BEGINNING of the herein described tract:

Ex B

THENCE North 89°39'01" East continuing along the South line of said Lot 1, passing a 5/8 inch iron rod found for the Southeast corner of same at a distance of 658.12 feet, and continuing for a total distance of 806.50 to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE South 67°31'07" East, for a distance of 85.93 to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE South 75°20'51" East, for a distance of 150.68 to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE South 56°48'38" East, for a distance of 80.84 to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE South 21 °23'05" East, for a distance of 76.31 to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE South 43°26'26" East, for a distance of 72.63 to a 5/8 inch iron rod with cap stamped "TNP" set;

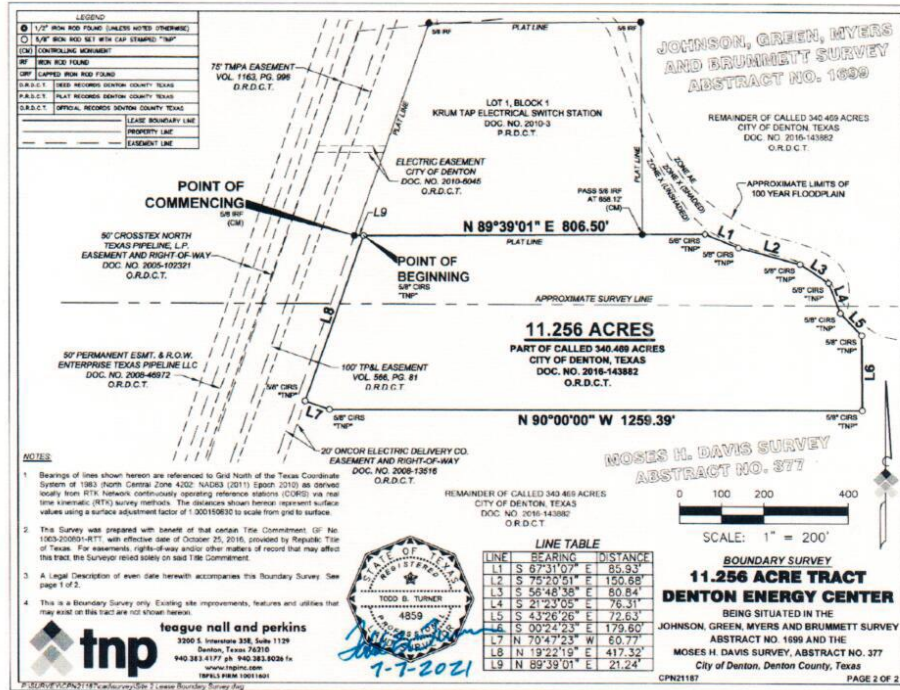
THENCE South 00°24'23" East, for a distance of 179.60 to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE North 90°00'00" West, for a distance of 1259.39 to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE North 70°47'23" West, for a distance of 60.77 to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE North 19°22'19" East, for a distance of 417.32 to the POINT OF BEGINNING, and containing 11.256 acres of land, more or less.

Ex B



LEGEND

- 1/2" IRON ROD FOUND (WALERS NOTES (THERMIX))
- 1/2" IRON ROD SET WITH CAP (THERMIX "TMP")
- (CM) CONCRETE MONUMENT
- RF IRON ROD FOUND
- CM CAPED IRON ROD FOUND
- P.R.D.C.T. PLAT RECORDS DENTON COUNTY TEXAS
- P.R.D.C.T. PLAT RECORDS DENTON COUNTY TEXAS
- P.R.D.C.T. PLAT RECORDS DENTON COUNTY TEXAS
- P.R.D.C.T. PLAT RECORDS DENTON COUNTY TEXAS
- PLAT RECORDS DENTON COUNTY TEXAS
- PLAT RECORDS DENTON COUNTY TEXAS
- PLAT RECORDS DENTON COUNTY TEXAS

POINT OF COMMENCING
 (CM)

80' CROSSTEX NORTH TEXAS PIPELINE L.P. EASEMENT AND RIGHT-OF-WAY DOC. NO. 2006-107231 O.R.D.C.T.

50' PERMANENT ESMT. & R.O.W. ENTERPRISE TEXAS PIPELINE LLC DOC. NO. 2006-46972 O.R.D.C.T.

NOTES

- Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (Zone Central Zone 4300, NAD83 (2011) Epoch 2010) as derived locally from RTN network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.00116830 to scale from grid to surface.
- This Survey was prepared with benefit of that certain Title Commitment of No. 1963-200891-RTT, with effective date of October 25, 2016, provided by Republic Title of Texas. For easements, rights-of-way and/or other matters of record that may affect this tract, the Surveyor relied solely on said Title Commitment.
- A Legal Description of each date herewith accompanies this Boundary Survey. See page 1 of 2.
- This is a Boundary Survey only. Existing site improvements, features and utilities that may exist on this tract are not shown hereon.

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 19953 MAIN 10011001



LINE TABLE

LINE	BEARING	DISTANCE
L1	S 67°31'07" E	85.93'
L2	S 74°50'51" E	150.65'
L3	S 56°48'38" E	80.84'
L4	S 21°23'05" E	76.31'
L5	S 43°26'26" E	72.63'
L6	S 03°24'23" E	179.90'
L7	N 70°47'23" W	60.77'
L8	N 19°22'19" E	417.32'
L9	N 89°39'01" E	21.24'

SCALE: 1" = 200'

BOUNDARY SURVEY
11.256 ACRE TRACT
DENTON ENERGY CENTER
 BEING SITUATED IN THE JOHNSON, GREEN, MYERS AND BRUMMETT SURVEY ABSTRACT NO. 1699 AND THE MOSES H. DAVIS SURVEY, ABSTRACT NO. 377
 City of Denton, Denton County, Texas

Site 3

LEGAL DESCRIPTION

BEING a 5.566 acre tract of land situated in the Moses H. Davis Survey, Abstract No. 377, City of Denton, Denton County, Texas, and being a part of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-367 of the Plat Records of Denton County, Texas, and also being a part of that certain 340.469 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod found for the Southwest corner of Lot 1, Block 1 of Krum Tap Electrical Switch Station, per Plat recorded in Document No. 2010-3 of the Plat Records of Denton County, Texas;

THENCE North 89°39'01" East along the South line of said Lot 1, for a distance of 21.24 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Northwest corner of an 11.256 acre tract previously surveyed by Todd B. Turner, RPLS No. 4859, per Boundary Survey dated July 7, 2021;

THENCE South 19°22'19" West along the West line of said 11.256 acre tract, for a distance of 417.32 to a 5/8 inch iron rod with cap stamped "TNP" found for the Southwest corner of said 11.256 acre tract, same being the **POINT OF BEGINNING** for the herein described tract:

THENCE South 70°47'23" East along the South line of said 11.256 acre tract, for a distance of 60.77 feet to a 5/8 inch iron rod with cap stamped "TNP" found for an angle point in the South line of said 11.256 acre tract;

THENCE North 90°00'00" East continuing along the South line of said 11.256 acre tract, for a distance of 1259.39 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Southeast corner of said 11.256 acre tract;

THENCE South 00°24'23" East departing the South line of said 11.256 acre tract, for a distance of 210.45 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

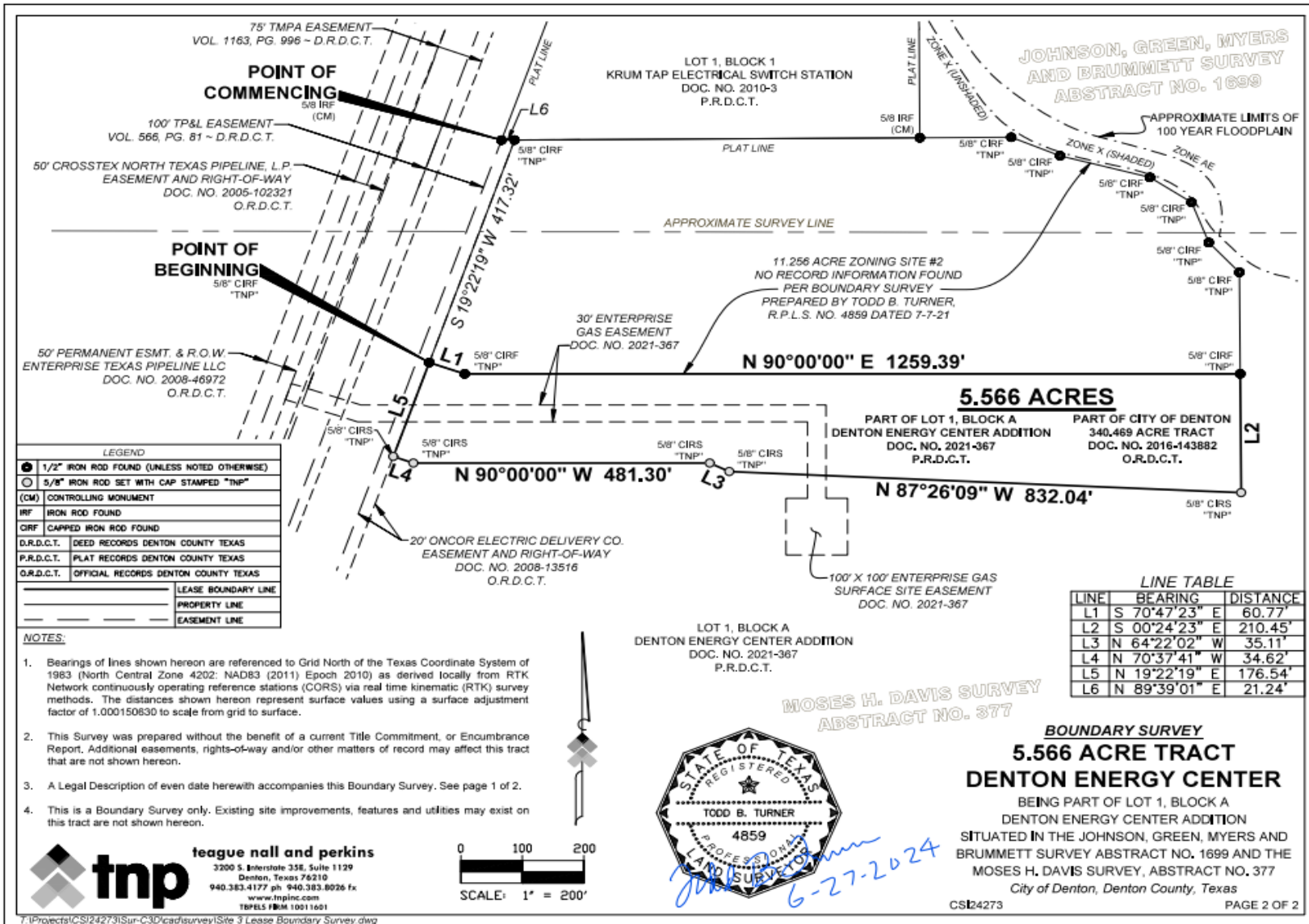
THENCE North 87°26'09" West for a distance of 832.04 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE North 64°22'02" West for a distance of 35.11 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE North 90°00'00" West for a distance of 481.30 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE North 70°37'41" West for a distance of 34.62 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

THENCE North 19°22'19" East for a distance of 176.54 feet to the **POINT OF BEGINNING**, and containing 5.566 acres of land, more or less.



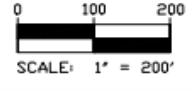
LEGEND

- 1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
- 5/8" IRON ROD SET WITH CAP STAMPED "TNP"
- (CM) CONTROLLING MONUMENT
- IRF IRON ROD FOUND
- CIRF CAPPED IRON ROD FOUND
- D.R.D.C.T. DEED RECORDS DENTON COUNTY TEXAS
- P.R.D.C.T. PLAT RECORDS DENTON COUNTY TEXAS
- O.R.D.C.T. OFFICIAL RECORDS DENTON COUNTY TEXAS

---	LEASE BOUNDARY LINE
---	PROPERTY LINE
---	EASEMENT LINE

- NOTES:**
- Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83 (2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150830 to scale from grid to surface.
 - This Survey was prepared without the benefit of a current Title Commitment, or Encumbrance Report. Additional easements, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
 - A Legal Description of even date herewith accompanies this Boundary Survey. See page 1 of 2.
 - This is a Boundary Survey only. Existing site improvements, features and utilities may exist on this tract are not shown hereon.

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LOT 1, BLOCK A
 DENTON ENERGY CENTER ADDITION
 DOC. NO. 2021-367
 P.R.D.C.T.



MOSES H. DAVIS SURVEY
 ABSTRACT NO. 377

BOUNDARY SURVEY
5.566 ACRE TRACT
DENTON ENERGY CENTER
 BEING PART OF LOT 1, BLOCK A
 DENTON ENERGY CENTER ADDITION
 SITUATED IN THE JOHNSON, GREEN, MYERS AND
 BRUMMETT SURVEY ABSTRACT NO. 1699 AND THE
 MOSES H. DAVIS SURVEY, ABSTRACT NO. 377
 City of Denton, Denton County, Texas
 CS124273 PAGE 2 OF 2

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 70°47'23" E	60.77'
L2	S 00°24'23" E	210.45'
L3	N 64°22'02" W	35.11'
L4	N 70°37'41" W	34.62'
L5	N 19°22'19" E	176.54'
L6	N 89°39'01" E	21.24'

_____ CITY

_____ LESSEE

Site 4

LEGAL DESCRIPTION

BEING a 14.211 acre tract of land situated in the Gibson Myers Survey, Abstract No. 843, the Moses H. Davis Survey, Abstract No. 377 and the Johnson, Green, Myers and Brummett Survey, Abstract No. 1699, City of Denton, Denton County, Texas, and being a part of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-367 of the Plat Records of Denton County, Texas, and also being a part of that certain 340.469 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with cap stamped "TNP" found for the Northwest corner of the above cited Lot 1 and lying in the dedicated South line of Jim Christal Road, a variable width right-of-way, said point also being in the East line of that certain 5.700 acre tract of land described in a Deed to Everett Newland, as recorded in Document No. 2012-19340 of the Official Records of Denton County, Texas;

THENCE North 89°21'52" East along the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 227.47 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

THENCE South 00°36'20" East departing the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 635.09 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

THENCE North 89°21'52" East for a distance of 393.96 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

THENCE South 19°12'37" West for a distance of 968.79 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;


THENCE South 45°43'49" West for a distance of 164.09 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

THENCE South 89°57'50" West for a distance of 212.45 feet to a 1/2 inch iron rod capped "RPLS 4857" found for an interior ell corner of said Lot 1 and the Southeast corner of said 5.700 acre tract;

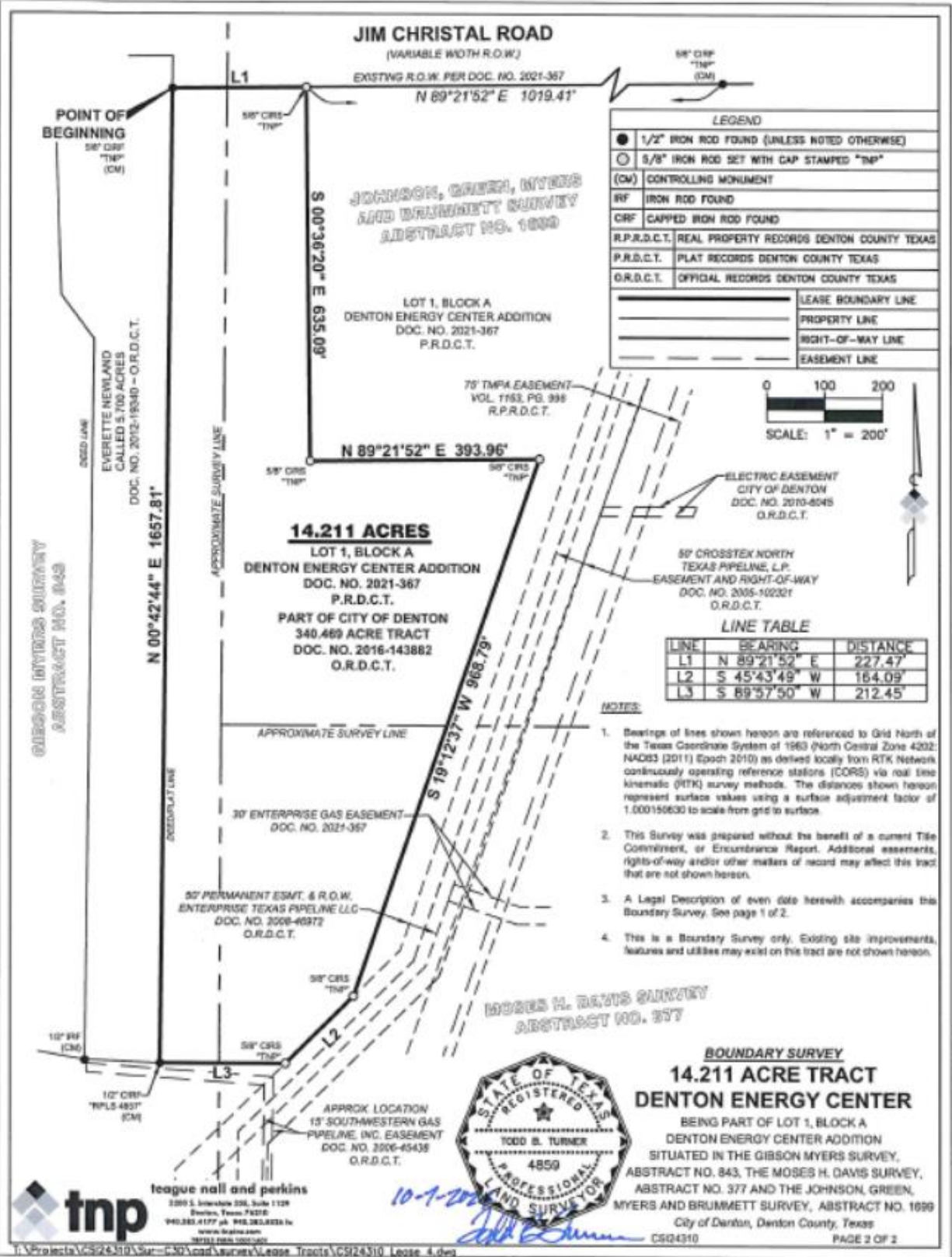
THENCE North 00°42'44" East along the West line of said Lot 1 and the East line of said 5.700 acre tract, for a distance of 1657.81 feet to the POINT OF BEGINNING, and containing 14.211 acres of land, more or less.

SURVEY NOTES:

1. Bearings are referenced to grid north of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83(2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. A Boundary Survey of even date herewith accompanies this Legal Description. See Page 2 of 2.


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TBPELS Firm No. 10011601
Date: October 7, 2024





JIM CHRISTAL ROAD

(VARIABLE WIDTH R.O.W.)
EXISTING R.O.W. PER DOC. NO. 2021-367
N 89°21'52" E 1019.41'

POINT OF BEGINNING
5/8" CRS
"TNP"
(CM)

JOHNSON, GREEN, MYERS
AND BRUMMETT SURVEY
ABSTRACT NO. 1699

LOT 1, BLOCK A
DENTON ENERGY CENTER ADDITION
DOC. NO. 2021-367
P.R.D.C.T.

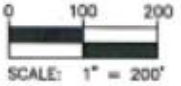
75' TMPA EASEMENT
VOL. 1163, PG. 998
R.P.R.D.C.T.

N 89°21'52" E 393.96'

14.211 ACRES
LOT 1, BLOCK A
DENTON ENERGY CENTER ADDITION
DOC. NO. 2021-367
P.R.D.C.T.
PART OF CITY OF DENTON
340.489 ACRE TRACT
DOC. NO. 2016-143882
O.R.D.C.T.

LEGEND

●	1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
○	5/8" IRON ROD SET WITH CAP STAMPED "TNP"
(CM)	CONTROLLING MONUMENT
RF	IRON ROD FOUND
CRF	CAPPED IRON ROD FOUND
R.P.R.D.C.T.	REAL PROPERTY RECORDS DENTON COUNTY TEXAS
P.R.D.C.T.	PLAT RECORDS DENTON COUNTY TEXAS
O.R.D.C.T.	OFFICIAL RECORDS DENTON COUNTY TEXAS
---	LEASE BOUNDARY LINE
---	PROPERTY LINE
---	RIGHT-OF-WAY LINE
---	EASEMENT LINE



ELECTRIC EASEMENT
CITY OF DENTON
DOC. NO. 2010-6046
O.R.D.C.T.

50' CROSSTEX NORTH
TEXAS PIPELINE, L.P.
EASEMENT AND RIGHT-OF-WAY
DOC. NO. 2005-102321
O.R.D.C.T.

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 89°21'52" E	227.47'
L2	S 45°43'49" W	164.09'
L3	S 89°57'50" W	212.45'

NOTES:

1. Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83 (2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. This Survey was prepared without the benefit of a current Title Commitment, or Encumbrance Report. Additional easements, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
3. A Legal Description of even date herewith accompanies this Boundary Survey. See page 1 of 2.
4. This is a Boundary Survey only. Existing site improvements, features and utilities may exist on this tract are not shown hereon.

MOSES H. DAVIS SURVEY
ABSTRACT NO. 377



BOUNDARY SURVEY
14.211 ACRE TRACT
DENTON ENERGY CENTER
BEING PART OF LOT 1, BLOCK A
DENTON ENERGY CENTER ADDITION
SITUATED IN THE GIBSON MYERS SURVEY,
ABSTRACT NO. 843, THE MOSES H. DAVIS SURVEY,
ABSTRACT NO. 377 AND THE JOHNSON, GREEN,
MYERS AND BRUMMETT SURVEY, ABSTRACT NO. 1699
City of Denton, Denton County, Texas
CS04310 PAGE 2 OF 2

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18712 0826 1001-001

Site 5

LEGAL DESCRIPTION

BEING a 21.797 acre tract of land situated in the Moses H. Davis Survey, Abstract No. 377 and the Johnson, Green, Myers and Brummett Survey, Abstract No. 1899, City of Denton, Denton County, Texas, and being a part of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-367 of the Plat Records of Denton County, Texas, and also being a part of that certain 340.469 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found for the Northeast corner of Lot 1, Block 1 per the Final Plat of Krum Tap Electrical Switch Station, as recorded in Document No. 2010-3 of the Plat Records of Denton County, Texas, from which a 5/8 inch iron rod found for the Northwest corner of said Lot 1, Block 1 bears South 89°39'51" West a distance of 500.21 feet;

THENCE South 41°43'32" East departing the Northeast corner of said Lot 1, Block 1, for a distance of 1186.10 feet to a 5/8 inch iron rod with cap stamped "TNP" found for an angle point in the East line of said Lot 1, Block A of Denton Energy Center Addition;

THENCE along the East line of said Lot 1, Block A of Denton Energy Center Addition as follows:

South 09°26'49" West for a distance of 100.00 feet to a 5/8 inch iron rod with cap stamped "TNP" found;

South 01°38'17" East for a distance of 170.21 feet to a 5/8 inch iron rod with cap stamped "TNP" found;

South 00°24'25" West for a distance of 188.01 feet to a 5/8 inch iron rod with cap stamped "TNP" found;

South 03°05'06" West for a distance of 187.63 feet to a 5/8 inch iron rod with cap stamped "TNP" found;

South 06°09'44" West for a distance of 221.83 feet to a 5/8 inch iron rod with cap stamped "TNP" found;

South 09°00'45" West for a distance of 613.29 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the beginning of a curve to the left;

Southwesterly along said curve to the left having a central angle of 00°35'33", a radius of 14310.00 feet, a chord bearing of South 08°42'58" West, a chord distance of 147.99 feet and an arc length of 147.99 feet to 5/8 inch iron rod with cap stamped "TNP" found at the end of said curve;

South 09°56'56" West for a distance of 96.31 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Southeast corner of said Lot 1, Block A, and being in the South line of the above cited 340.469 acre tract and the North line of that certain 116.154 acre tract of land described in a Deed to Mark Hicks Investments, L.L.C., as recorded in Document No. 2021-8595 of the Official Records of Denton County, Texas, from which a 1/2 inch iron rod capped "Vannoy 563-7101" found for an interior ell corner of said 340.469 acre tract and the most Northerly Northeast corner of said 116.154 acre tract bears South 89°50'49" East a distance of 322.05 feet;

THENCE North 89°50'49" West along the South line of said Lot 1, Block A and the North line of said 116.154 acre tract, for a distance of 98.02 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Southeast corner of a 19.064 acre tract of land described as Site One Lease Tract per City of Denton Ordinance No. 21-1486;

THENCE in a Northerly direction, departing the South line of said Lot 1, Block A and the North line of said 116.154 acre tract, along the East line of said 19.064 acre tract, and along a non-tangent curve to the right having a central angle of 07°27'36", a radius of 4210.63 feet, a chord bearing of North 03°47'11" East, a chord distance of 547.84 feet and an arc length of 548.22 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Northeast corner of said 19.064 acre tract;

THENCE North 90°00'00" West with the North line of said 19.064 acre tract, for a distance of 430.13 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

THENCE North 00°00'00" West departing the North line of said 19.064 acre tract, for a distance of 754.80 feet to an "X" cut in top of fence column;

THENCE North 89°59'45" West for a distance of 224.06 feet to an "X" cut in top of fence column;

THENCE North 00°17'48" West for a distance of 161.72 feet to an "X" cut in top of fence column;

THENCE South 89°55'30" West for a distance of 181.29 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

THENCE North 00°00'00" West for a distance of 41.86 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner in the South line of a 5.566 acre tract of land previously surveyed by Todd B. Turner, R.P.L.S. No. 4859, per Boundary Survey dated June 27, 2024, from which a 5/8 inch iron rod with cap stamped "TNP" found for an angle point in the South line of said 5.566 acre tract bears North 87°26'09" West a distance of 15.78 feet;

THENCE South 87°26'09" East along the South line of said 5.566 acre tract, for a distance of 816.26 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Southeast corner of same;

THENCE North 00°24'23" West along the East line of said 5.566 acre tract, passing the Northeast corner of same and the Southeast corner of an 11.256 acre tract described as Site Two Lease Tract per City of Denton Ordinance No. 21-1486 at a distance of 210.45 feet, and continuing along the East line of said 11.256 acre tract for a total distance of 390.05 feet to a 5/8 inch iron rod with cap stamped "TNP" found for corner;

THENCE North 43°26'26" West continuing along the East line of said 11.256 acre tract, for a distance of 72.63 feet to a 5/8 inch iron rod with cap stamped "TNP" found for corner;

THENCE North 21°23'05" West continuing along the East line of said 11.256 acre tract, for a distance of 76.31 feet to a 5/8 inch iron rod with cap stamped "TNP" found for corner;

THENCE North 56°48'38" West continuing along the East line of said 11.256 acre tract, for a distance of 80.84 feet to a 5/8 inch iron rod with cap stamped "TNP" found for corner;

THENCE North 75°20'51" West continuing along the East line of said 11.256 acre tract, for a distance of 150.68 feet to a 5/8 inch iron rod with cap stamped "TNP" found for corner;


THENCE North 67°31'07" West continuing along the East line of said 11.256 acre tract, for a distance of 85.93 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Northeast corner of same;

THENCE South 89°39'01" West along the North line of said 11.256 acre tract, for a distance of 148.38 feet to a 5/8 inch iron rod found for the Southeast corner of said Lot 1, Block 1 of Krum Tap Electrical Switch Station;

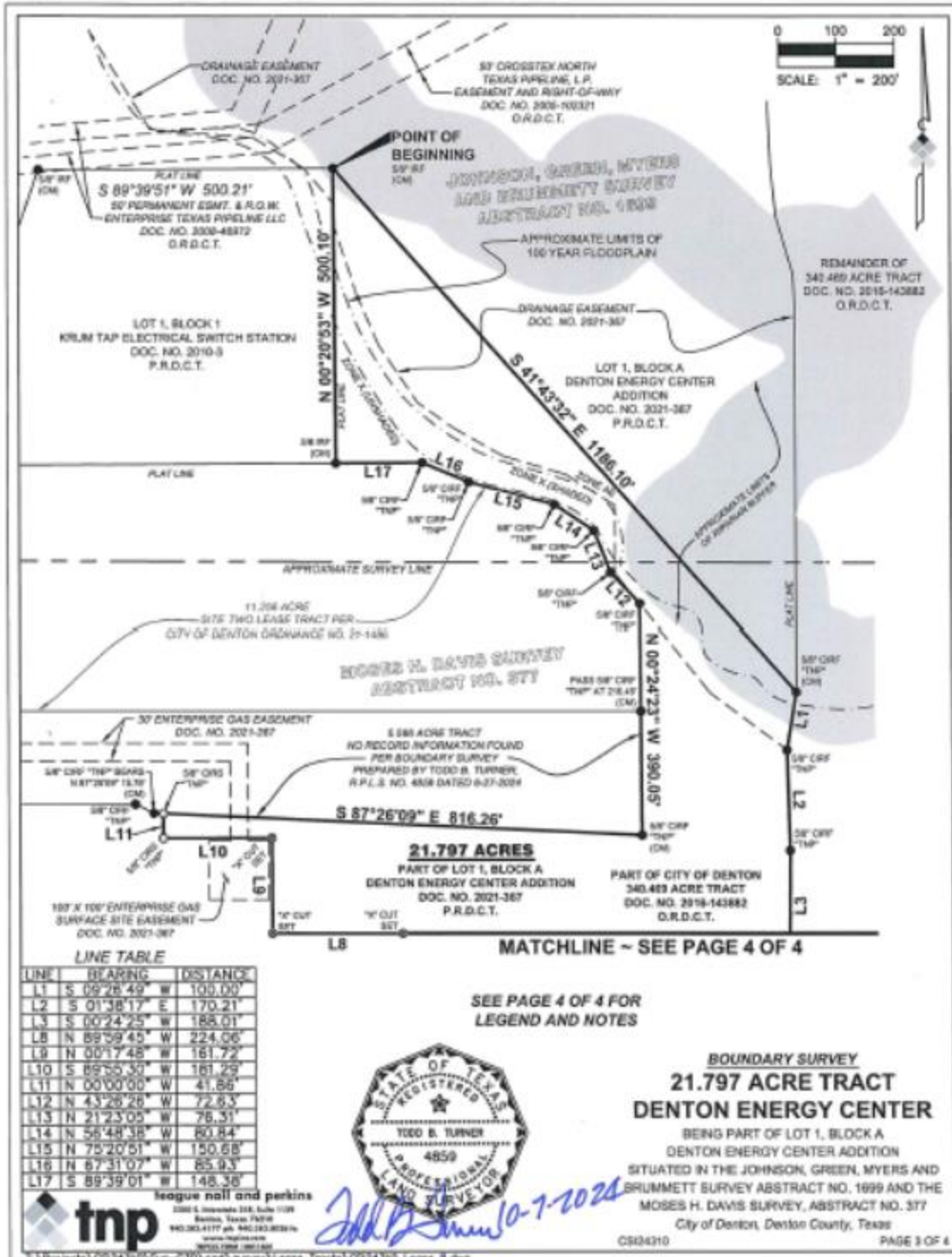
THENCE North 00°20'53" West along the East line of said Lot 1, Block 1, for a distance of 500.10 feet to the POINT OF BEGINNING, and containing 21.797 acres of land, more or less

SURVEY NOTES:

1. Bearings are referenced to grid north of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83(2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. A Boundary Survey of even date herewith accompanies this Legal Description. See Page 2 of 2.


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TBPELS Firm No. 10011601
Date: October 7, 2024





LINE TABLE

LINE	BEARING	DISTANCE
L1	S 09°28'49" W	100.00'
L2	S 01°38'17" E	170.21'
L3	S 00°24'25" W	188.01'
L8	N 89°59'45" W	224.06'
L9	N 00°17'48" W	161.72'
L10	S 89°55'30" W	181.29'
L11	N 00°00'00" W	41.86'
L12	N 43°28'28" W	72.83'
L13	N 21°23'09" W	76.31'
L14	N 58°48'38" W	80.84'
L15	N 75°20'51" W	150.68'
L16	N 87°31'07" W	85.93'
L17	S 89°39'01" W	148.36'

SEE PAGE 4 OF 4 FOR
LEGEND AND NOTES



Todd B. Turner 10-7-2024

BOUNDARY SURVEY
21.797 ACRE TRACT
DENTON ENERGY CENTER

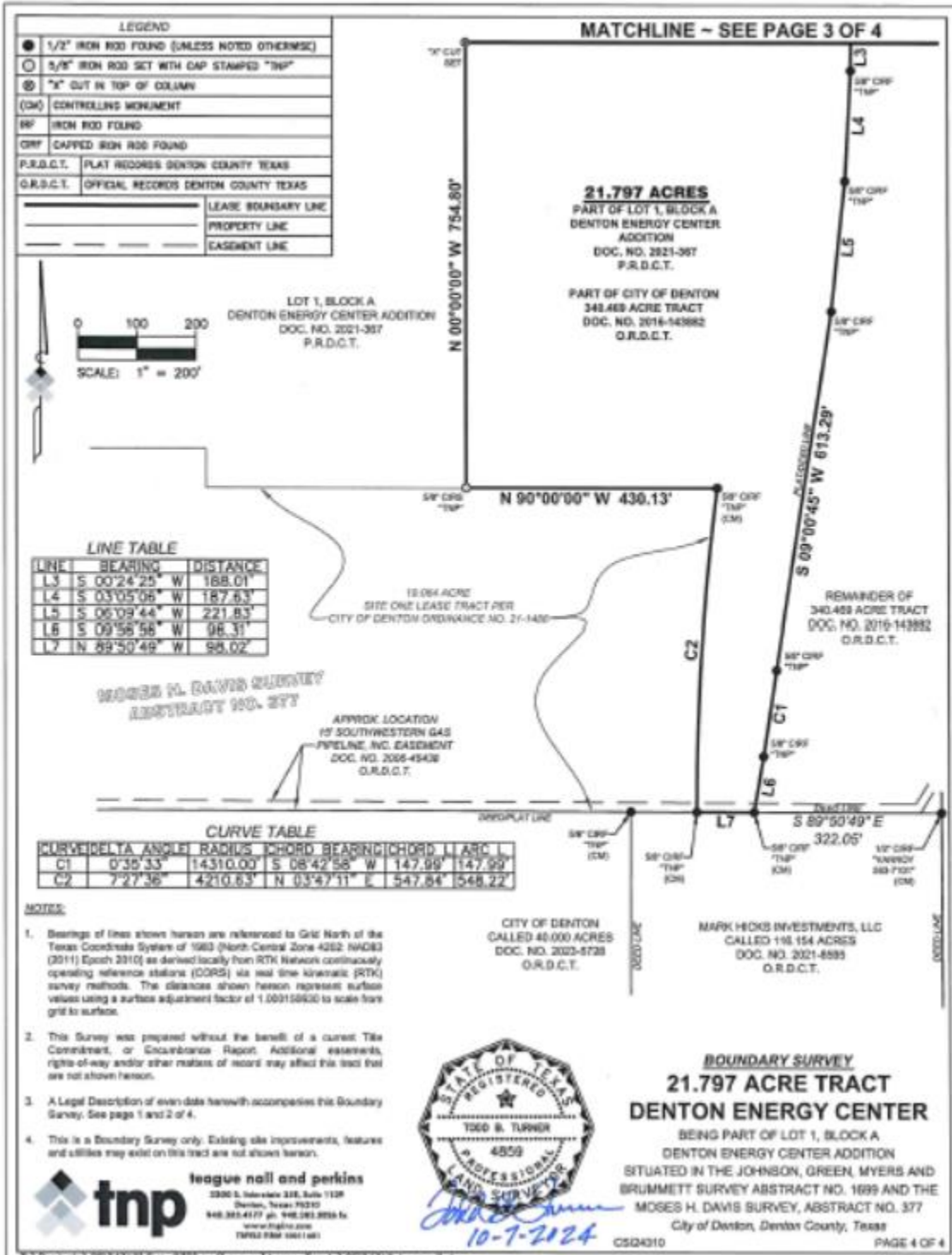
BEING PART OF LOT 1, BLOCK A
DENTON ENERGY CENTER ADDITION
SITUATED IN THE JOHNSON, GREEN, MYERS AND
BRUMMETT SURVEY ABSTRACT NO. 1699 AND THE
MOSES H. DAVIS SURVEY, ABSTRACT NO. 377
City of Denton, Denton County, Texas

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PAGE 3 OF 4

\\Projects\0924\02\Sur-C30\Sur\Surveys\Surveys_Tracts\0924\02 Lease_8.dwg



LEGEND

- 1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
- 5/8" IRON ROD SET WITH CAP STAMPED "TNP"
- ⊗ "x" CUT IN TOP OF COLLARY
- (CM) CONTROLLING MONUMENT
- RF IRON ROD FOUND
- CRF CAPPED IRON ROD FOUND
- P.R.D.C.T. PLAT RECORDS DENTON COUNTY TEXAS
- O.R.D.C.T. OFFICIAL RECORDS DENTON COUNTY TEXAS

--- LEASE BOUNDARY LINE
 --- PROPERTY LINE
 --- EASEMENT LINE



LINE TABLE

LINE	BEARING	DISTANCE
L3	S 00°24'25" W	188.01'
L4	S 03°05'06" W	187.63'
L5	S 06°09'44" W	221.83'
L6	S 09°58'56" W	96.31'
L7	N 89°50'49" W	98.02'

CURVE TABLE

CURVE	DELTA ANGLE	RADIUS	CHORD BEARING	CHORD	ARC
C1	0°30'33"	14310.00'	S 08°42'58" W	147.99'	147.99'
C2	7°27'36"	4210.83'	N 03°47'11" E	547.84'	548.22'

- NOTES:**
- Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4252 NAD83 (2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.00015862 to scale from grid to surface.
 - This Survey was prepared without the benefit of a current Title Commitment, or Encumbrance Report. Additional easements, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
 - A Legal Description of even date herewith accompanies this Boundary Survey. See page 1 and 2 of 4.
 - This is a Boundary Survey only. Existing site improvements, features and utilities may exist on this tract are not shown hereon.

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 940.393.4177 ph 940.393.9956 fx
 www.tnp.com
 19952 53rd Street 1st fl



BOUNDARY SURVEY
21.797 ACRE TRACT
DENTON ENERGY CENTER
 BEING PART OF LOT 1, BLOCK A
 DENTON ENERGY CENTER ADDITION
 SITUATED IN THE JOHNSON, GREEN, MYERS AND
 BRUMMETT SURVEY ABSTRACT NO. 1699 AND THE
 MOSES H. DAVIS SURVEY, ABSTRACT NO. 377
 City of Denton, Denton County, Texas

Site 8

LEGAL DESCRIPTION

LEGAL DESCRIPTION

BEING a 6.785 acre tract of land situated in the Moses H. Davis Survey, Abstract No. 377, City of Denton, Denton County, Texas, and being a part of that certain 40.000 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2023-5728 of the Official Records of Denton County, Texas and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod found for the Northwest corner of the above cited 40.000 acre tract and the most Southerly Southwest corner of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-367 of the Plat Records of Denton County, Texas, said point also being in the East line of a called 293.30 acre tract of land described in a Deed to Edward Curtis Tally, II, as recorded in Document No. 2022-175210 of the Official Records of Denton County, Texas, from which a 1/2 inch iron rod found for an interior ell corner of said 40.000 acre tract and an interior Southeast corner of said 293.30 acre tract bears South 00°12'48" East, a distance of 521.76 feet;

THENCE South 89°50'49" East along the North line of said 40.000 acre tract and the South line of said Lot 1, for a distance of 506.72 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Southwest corner of a 19.064 acre tract of land described as Site One Lease Tract per City of Denton Ordinance No. 21-1486, and being the POINT OF BEGINNING for the herein described tract:

THENCE South 89°50'49" East continuing along the North line of said 40.000 acre tract, the South line of said Lot 1 and the South line of said 19.064 acre tract, for a distance of 1318.28 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Northeast corner of said 40.000 acre tract, from which the Southeast corner of said 19.064 acre tract bears South 89°50'49" East a distance of 113.24 feet;


THENCE South 00°09'11" West departing the North line of said 40.000 acre tract, the South line of said Lot 1 and the South line of said 19.064 acre tract, for a distance of 225.00 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner, from which a 5/8 inch iron rod with cap stamped "TNP" found for the Southeast corner of said 40.000 acre tract bears South 00°09'11" West a distance of 610.98 feet;

THENCE North 89°50'49" West departing the East line of said 40.000 acre tract, for a distance of 1309.04 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

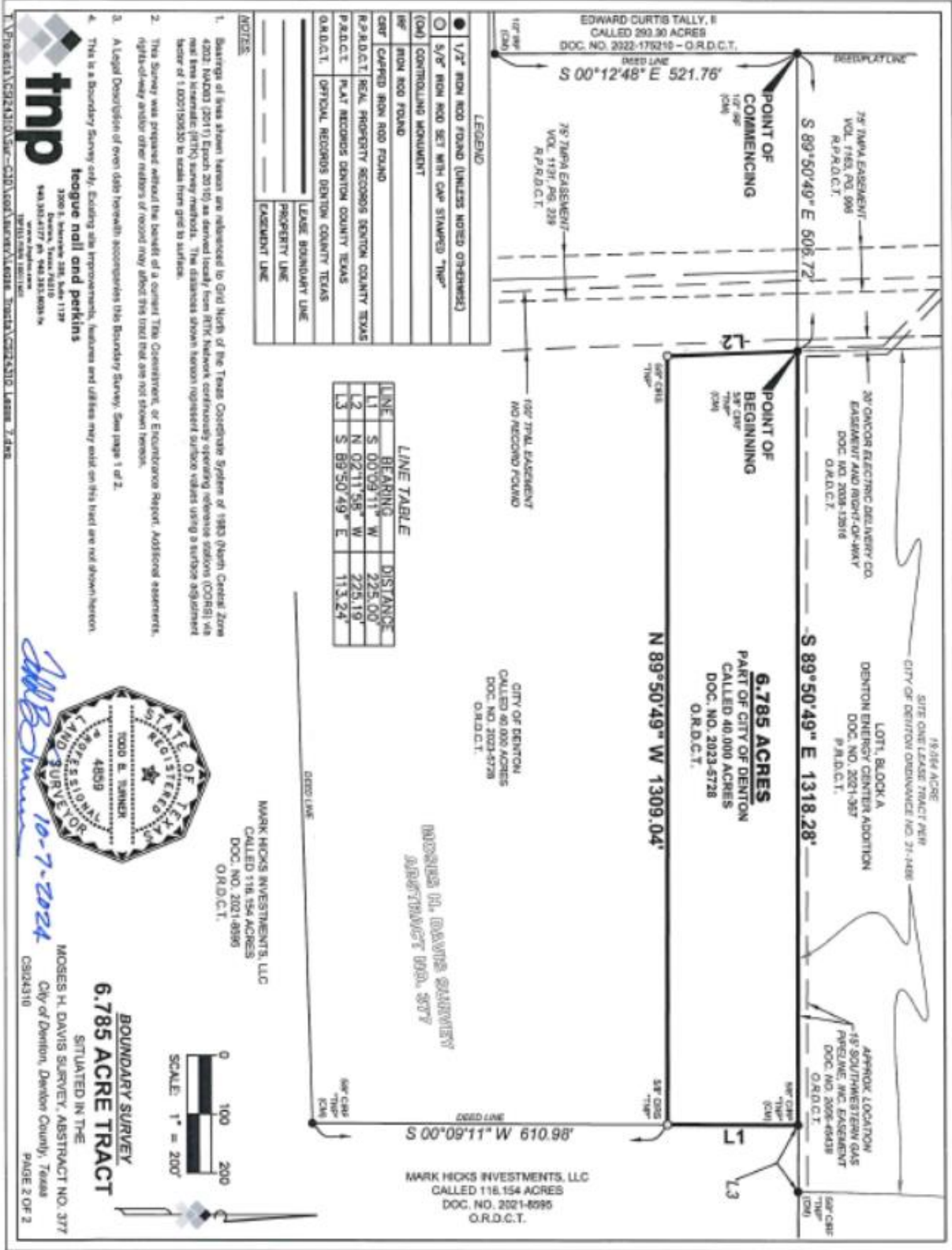
THENCE North 02°11'58" West for a distance of 225.19 feet to the POINT OF BEGINNING, and containing 6.785 acres of land, more or less

SURVEY NOTES:

1. Bearings are referenced to grid north of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83(2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. A Boundary Survey of even date herewith accompanies this Legal Description. See Page 2 of 2.


Todd B. Turner, R.P.L.S.
Teague Nall and Perkins
3200 S. I-35E, Suite 1129
Denton, Texas 76210
940-383-4177
TBPELS Firm No. 10011601
Date: October 7, 2024





LEGEND

- 1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
- 3/4" IRON ROD SET WITH CAP STAMPED "Tnp"
- (CM) CONTROLLING MONUMENT
- 100' IRON ROD FOUND
- CAPRED IRON ROD FOUND
- R.P.A.D.C.T. REAL PROPERTY RECORDS DENTON COUNTY TEXAS
- P.A.D.C.T. PLAT RECORDS DENTON COUNTY TEXAS
- O.A.D.C.T. (OPTIONAL) RECORDS DENTON COUNTY TEXAS
- LEASE BOUNDARY LINE
- PROPERTY LINE
- EASEMENT LINE

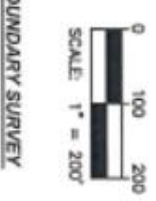
LINE TABLE

LINE	BEARING	DISTANCE
L1	S 00°09'11" W	225.00'
L2	N 02°11'58" W	225.19'
L3	S 89°50'49" E	113.24'

- NOTES:**
1. Bearings of lines shown hereon are referenced to GDA North of the Texas Coordinate System of 1983 (North Central Zone 4202 NAD83 (2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CONRS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
 2. This Survey was prepared without the benefit of a current TBM, Certificate, or Encumbrance Report. Additional statements, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
 3. A Legal Description of even date herewith accompanies this Boundary Survey. See page 1 of 2.
 4. This is a Boundary Survey only. Existing site improvements, fixtures and utilities may exist on this land are not shown hereon.



BOUNDARY SURVEY
6.785 ACRE TRACT
 SITUATED IN THE
 MOSES H. DAVIS SURVEY, ABSTRACT NO. 377
 City of Denton, Denton County, Texas
 CS24316
 PAGE 2 OF 2



Fiber Paths

LEGAL DESCRIPTION

BEING a 0.069 acre tract of land situated in the Moses H. Davis Survey, Abstract No. 377, City of Denton, Denton County, Texas, and being a part of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-387 of the Plat Records of Denton County, Texas, and also being a part of that certain 340.469 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod with cap stamped "TNP" found for the Northwest corner of the above cited Lot 1 and lying in the dedicated South line of Jim Christal Road, a variable width right-of-way, said point also being in the East line of that certain 5.700 acre tract of land described in a Deed to Everett Newland, as recorded in Document No. 2012-19340 of the Official Records of Denton County, Texas;

THENCE North 89°21'52" East along the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 227.47 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Northeast corner of a 14.211 acre tract of land previously surveyed by Todd B. Turner, R.P.L.S. No. 4859, per Boundary Survey dated October 7, 2024;

THENCE South 00°38'20" East departing the North line of said Lot 1 and the South line of said Jim Christal Road, and along the East line of said 14.211 acre tract, for a distance of 635.09 feet to a 5/8 inch iron rod with cap stamped "TNP" found for an interior ell corner of said 14.211 acre tract;

THENCE North 89°21'52" East along the most Easterly North line of said 14.211 acre tract, for a distance of 393.96 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the most Easterly Northeast corner of same;

THENCE South 19°12'37" West along the East line of said 14.211 acre tract, for a distance of 613.22 feet to the **POINT OF BEGINNING** for the herein described tract;

THENCE South 70°47'23" East departing the East line of said 14.211 acre tract, for a distance of 273.21 feet to an angle point;

THENCE South 90°00'00" East for a distance of 27.62 feet to a point in the West line of an 11.256 acre tract described as Site Two Lease Tract per City of Denton Ordinance No. 21-1486, from which a 5/8 inch iron rod with cap stamped "TNP" found for the Northwest corner of said 11.256 acre tract bears North 19°22'19" East a distance of 398.22 feet;

THENCE South 19°22'19" West along the West line of said 11.256 acre tract, for a distance of 10.60 feet to a point, from which the Southwest corner of same bears South 19°22'19" West a distance of 8.49 feet;

THENCE North 90°00'00" West departing the West line of said 11.256 acre tract, for a distance of 25.80 feet to an angle point;

THENCE North 70°47'23" West for a distance of 274.90 feet to a point in the West line of said 14.211 acre tract, from which a 5/8 inch iron rod with cap stamped "TNP" found for an angle point in the East line of same bears South 19°12'37" West a distance of 345.56 feet;

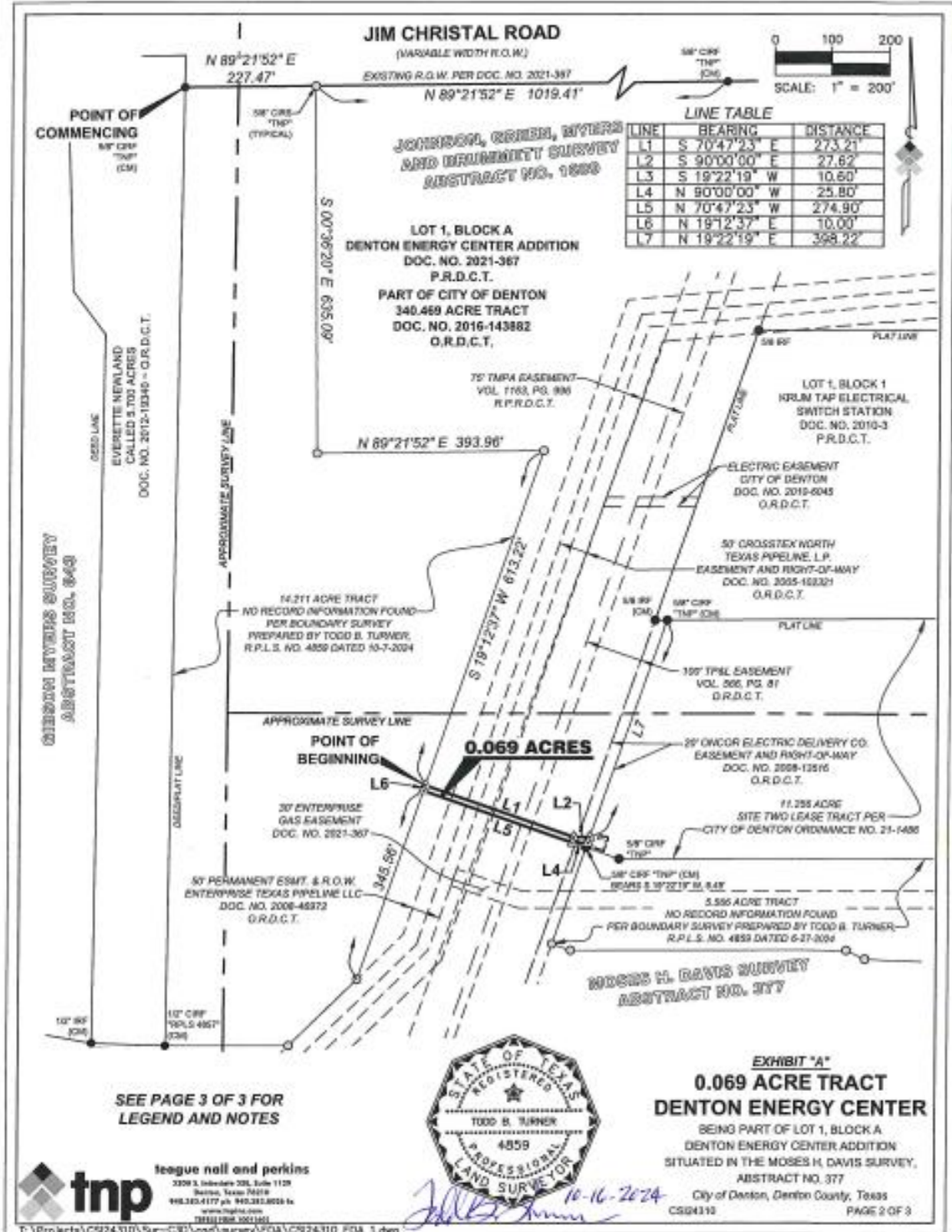
THENCE North 19°12'37" East along the East line of said 14.211 acre tract, for a distance of 10.00 feet to the **POINT OF BEGINNING**, and containing 0.069 acres of land, more or less.

SURVEY NOTES:

1. Bearings are referenced to grid north of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83(2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. An Exhibit of even date herewith accompanies this Legal Description. See Pages 2 and 3 of 3.

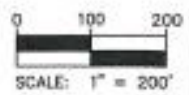

Todd B. Turner, R.P.L.S.
Teague Hall and Perkins - TBPELS Firm No. 10011601
3200 S. I-35E, Suite 1129, Denton, Texas 76210
940-383-4177
Date: October 16, 2024





JIM CHRISTAL ROAD
(VARIABLE WIDTH E.O.W.)

EXISTING R.O.W. PER DOC. NO. 2021-367
N 89°21'52" E 1019.41'



LINE TABLE

LINE	BEARING	DISTANCE
L1	S 70°47'23" E	273.21'
L2	S 90°00'00" E	27.82'
L3	S 19°22'19" W	10.60'
L4	N 90°00'00" W	25.80'
L5	N 70°47'23" W	274.90'
L6	N 19°12'37" E	10.00'
L7	N 19°22'19" E	358.22'

**JOHNSON, COHEN, MYERS
AND INDEPENDENT SURVEY
ABSTRACT NO. 1888**

**LOT 1, BLOCK A
DENTON ENERGY CENTER ADDITION
DOC. NO. 2021-367
P.R.D.C.T.
PART OF CITY OF DENTON
340.469 ACRE TRACT
DOC. NO. 2016-143882
O.R.D.C.T.**

**LOT 1, BLOCK 1
KRM TAP ELECTRICAL
SWITCH STATION
DOC. NO. 2010-3
P.R.D.C.T.**

75' TRPA EASEMENT
VOL. 1763, PG. 906
P.R.D.C.T.

ELECTRIC EASEMENT
CITY OF DENTON
DOC. NO. 2010-6045
O.R.D.C.T.

50' CROSS TEX WORTH
TEXAS PIPELINE, L.P.
EASEMENT AND RIGHT-OF-WAY
DOC. NO. 2005-163321
O.R.D.C.T.

100' TRPA EASEMENT
VOL. 366, PG. 87
O.R.D.C.T.

25' ONCOR ELECTRIC DELIVERY CO.
EASEMENT AND RIGHT-OF-WAY
DOC. NO. 2008-12616
O.R.D.C.T.

11.255 ACRE
SITE TWO LEASE TRACT PER
CITY OF DENTON ORDINANCE NO. 21-1486

5.555 ACRE TRACT
NO RECORD INFORMATION FOUND
PER BOUNDARY SURVEY PREPARED BY TODD B. TURNER,
R.P.L.S. NO. 4859 DATED 6-27-2024

**MOSES H. DAVIS SURVEY
ABSTRACT NO. 377**

14.211 ACRE TRACT
NO RECORD INFORMATION FOUND
PER BOUNDARY SURVEY
PREPARED BY TODD B. TURNER,
R.P.L.S. NO. 4859 DATED 10-7-2024

APPROXIMATE SURVEY LINE

POINT OF BEGINNING

0.069 ACRES

30' ENTERPRISE
GAS EASEMENT
DOC. NO. 2821-367

50' PERMANENT ESMT. & R.O.W.
ENTERPRISE TEXAS PIPELINE LLC
DOC. NO. 2008-48372
O.R.D.C.T.

SEE PAGE 3 OF 3 FOR
LEGEND AND NOTES



EXHIBIT "A"
0.069 ACRE TRACT
DENTON ENERGY CENTER

BEING PART OF LOT 1, BLOCK A
DENTON ENERGY CENTER ADDITION
SITUATED IN THE MOSES H. DAVIS SURVEY,
ABSTRACT NO. 377
City of Denton, Denton County, Texas

tnp teague noll and perkins
3309 S. Inglewood 301, Suite 1129
Burton, Texas 75019
409.383.4177 or 409.383.8008 tx
www.tnpsurvey.com
7811112001 20211461

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LEGEND	
●	1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
⊙	5/8" IRON ROD SET WITH CAP STAMPED "TNP"
(CM)	CONTROLLING MONUMENT
IRF	IRON ROD FOUND
CRF	CAPPED IRON ROD FOUND
R.P.R.D.C.T.	REAL PROPERTY RECORDS DENTON COUNTY TEXAS
P.R.D.C.T.	PLAT RECORDS DENTON COUNTY TEXAS
O.R.D.C.T.	OFFICIAL RECORDS DENTON COUNTY TEXAS
	FIBER OPTIC AREA LINE
	PROPERTY LINE
	RIGHT-OF-WAY LINE
	EASEMENT LINE



Todd G. Turner
10-16-2024

NOTES:

1. Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202: NAD83 (2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. This Survey was prepared without the benefit of a current Title Commitment, or Encumbrance Report. Additional easements, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
3. A Legal Description of even date herewith accompanies this Exhibit "A". See page 1 of 3.
4. Existing site improvements, features and utilities may exist on this tract are not shown hereon.

EXHIBIT "A"
0.069 ACRE TRACT
DENTON ENERGY CENTER
 BEING PART OF LOT 1, BLOCK A
 DENTON ENERGY CENTER ADDITION
 SITUATED IN THE MOSES H. DAVIS SURVEY,
 ABSTRACT NO. 377
 City of Denton, Denton County, Texas
 CSG4370 PAGE 3 OF 3



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 2320 S. Independence 206, Suite 1120
 Denton, Texas 76219
 940.382.4177 or 940.381.8828 tx
 www.tnp.com
 28293 (2008) 30011401

LEGAL DESCRIPTION

BEING a 0.102 acre tract of land situated in the Johnson, Green, Myers and Brummett Survey, Abstract No. 1699, City of Denton, Denton County, Texas, and being a part of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-367 of the Plat Records of Denton County, Texas, and also being a part of that certain 340.469 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod with cap stamped "TNP" found for the Northwest corner of the above cited Lot 1 and lying in the dedicated South line of Jim Christal Road, a variable width right-of-way, said point also being in the East line of that certain 5.700 acre tract of land described in a Deed to Everette Newland, as recorded in Document No. 2012-19340 of the Official Records of Denton County, Texas;

THENCE North 89°21'52" East along the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 1246.88 feet to a 5/8 inch iron rod with cap stamped "TNP" found for an angle point;

THENCE North 89°31'54" East continuing along the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 254.68 feet to the **POINT OF BEGINNING** for the herein described tract;

THENCE North 89°31'54" East continuing along the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 10.00 feet to a point, from which a 5/8 inch iron rod with cap stamped "TNP" found bears North 89°31'54" East a distance of 428.72 feet;

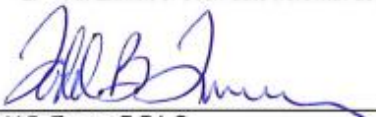
THENCE South 00°20'53" East departing the North line of said Lot 1 and the South line of said Jim Christal Road, for a distance of 450.29 feet to a point in the North line of a 21.797 acre tract of land previously surveyed by Todd B. Turner, R.P.L.S. No. 4859, per Boundary Survey dated October 7, 2024;

THENCE North 41°43'32" West along the North line of said 21.797 acre tract, for a distance of 15.13 feet to a point, from which a 5/8 inch iron rod found for the Northeast corner of Lot 1, Block 1 per the Final Plat of Krum Tap Electrical Switch Station, as recorded in Document No. 2010-3 of the Plat Records of Denton County, Texas, bears North 41°43'32" West a distance of 7.57 feet;

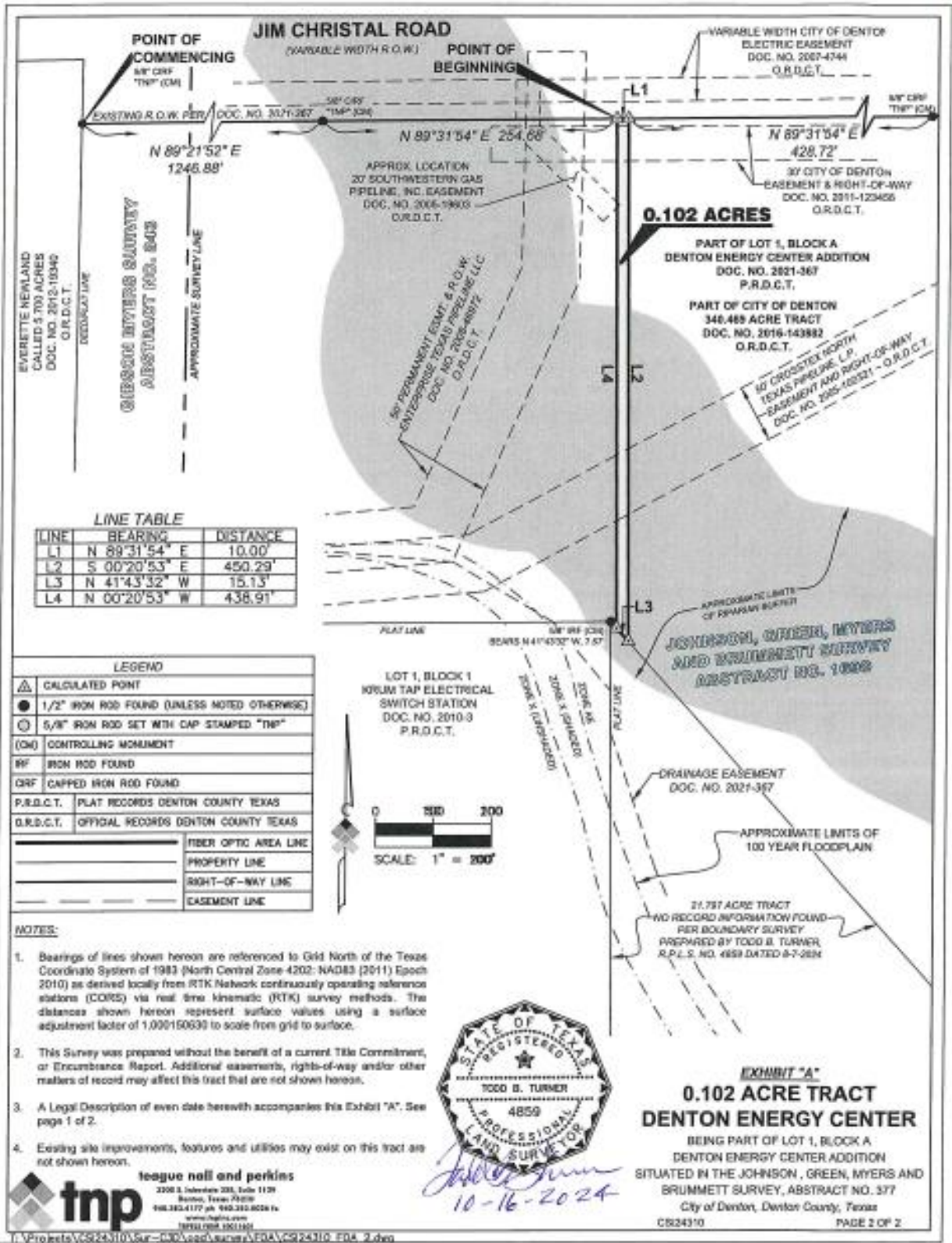
THENCE North 00°20'53" West departing the North line of said 21.797 acre tract, for a distance of 438.91 feet to the **POINT OF BEGINNING**, and containing 0.102 acres of land, more or less.

SURVEY NOTES:

1. Bearings are referenced to grid north of the Texas Coordinate System of 1983 (North Central Zone 4202; NAD83(2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
2. An Exhibit of even date herewith accompanies this Legal Description. See Page 2 of 2.


Todd B. Turner, R.P.L.S.
Teague Nall and Perkins - TBPELS Firm No. 10011601
3200 S. I-35E, Suite 1129
Denton, Texas 76210
940-383-4177
Date: October 16, 2024

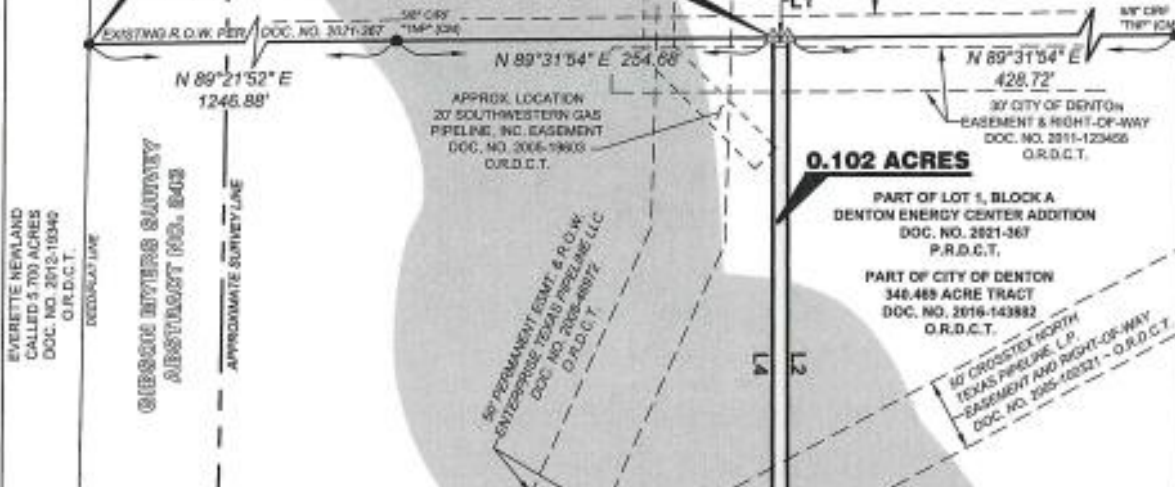




JIM CHRISTAL ROAD
(VARIABLE WIDTH R.O.W.)

POINT OF COMMENCING
5/8" CRF
"TMP" (CM)

POINT OF BEGINNING



0.102 ACRES

PART OF LOT 1, BLOCK A
DENTON ENERGY CENTER ADDITION
DOC. NO. 2021-367
P.R.D.C.T.

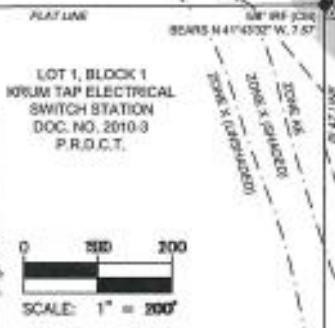
PART OF CITY OF DENTON
346.485 ACRE TRACT
DOC. NO. 2016-143882
O.R.D.C.T.

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 89°31'54" E	10.00'
L2	S 00°20'53" E	450.29'
L3	N 41°43'32" W	15.13'
L4	N 00°20'53" W	438.91'

LEGEND

▲	CALCULATED POINT
●	1/2" IRON ROD FOUND (UNLESS NOTED OTHERWISE)
○	5/8" IRON ROD SET WITH CAP STAMPED "TMP"
(CM)	CONTROLLING MONUMENT
RF	IRON ROD FOUND
CRF	CAFFED IRON ROD FOUND
P.R.D.C.T.	PLAT RECORDS DENTON COUNTY TEXAS
O.R.D.C.T.	OFFICIAL RECORDS DENTON COUNTY TEXAS
---	FIBER OPTIC AREA LINE
---	PROPERTY LINE
---	RIGHT-OF-WAY LINE
---	EASEMENT LINE



- NOTES:**
- Bearings of lines shown hereon are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202: NAD83 (2011) Epoch 2010) as derived locally from RTK Network continuously operating reference stations (CORS) via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values using a surface adjustment factor of 1.000150630 to scale from grid to surface.
 - This Survey was prepared without the benefit of a current Title Commitment, or Encumbrance Report. Additional easements, rights-of-way and/or other matters of record may affect this tract that are not shown hereon.
 - A Legal Description of even date herewith accompanies this Exhibit "A". See page 1 of 2.
 - Existing site improvements, features and utilities may exist on this tract are not shown hereon.



EXHIBIT "A"

0.102 ACRE TRACT

DENTON ENERGY CENTER

BEING PART OF LOT 1, BLOCK A
DENTON ENERGY CENTER ADDITION
SITUATED IN THE JOHNSON, GREEN, MYERS AND
BRUMMETT SURVEY, ABSTRACT NO. 377
City of Denton, Denton County, Texas
CB24310 PAGE 2 OF 2

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TNP0000010011000

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Core Scientific PPA and Lease Amendments



Energizing tomorrow's community today!

PUB 24-244

PUB 24-245

PUB 24-246

PUB 24-247

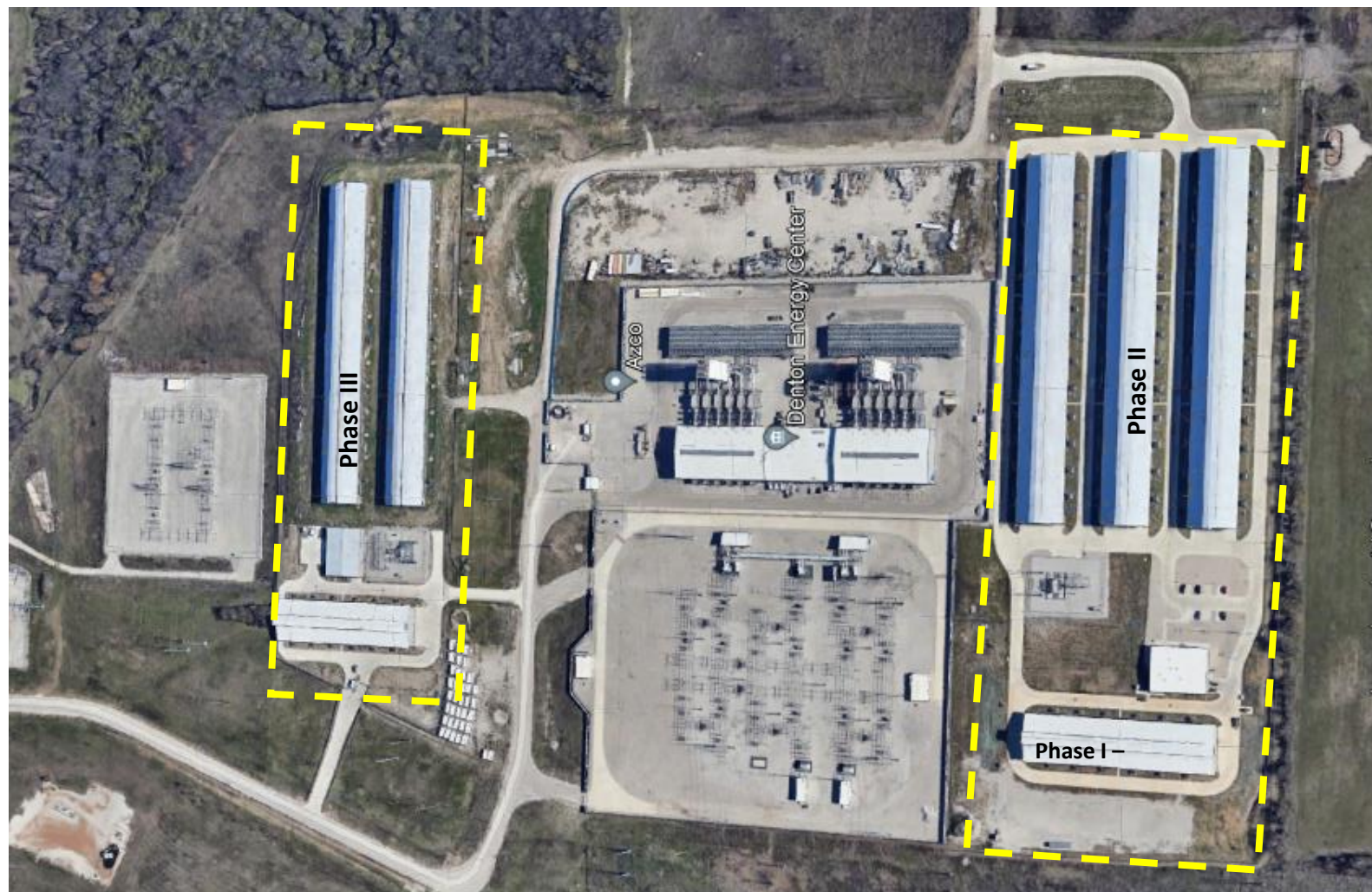


Current Project Status

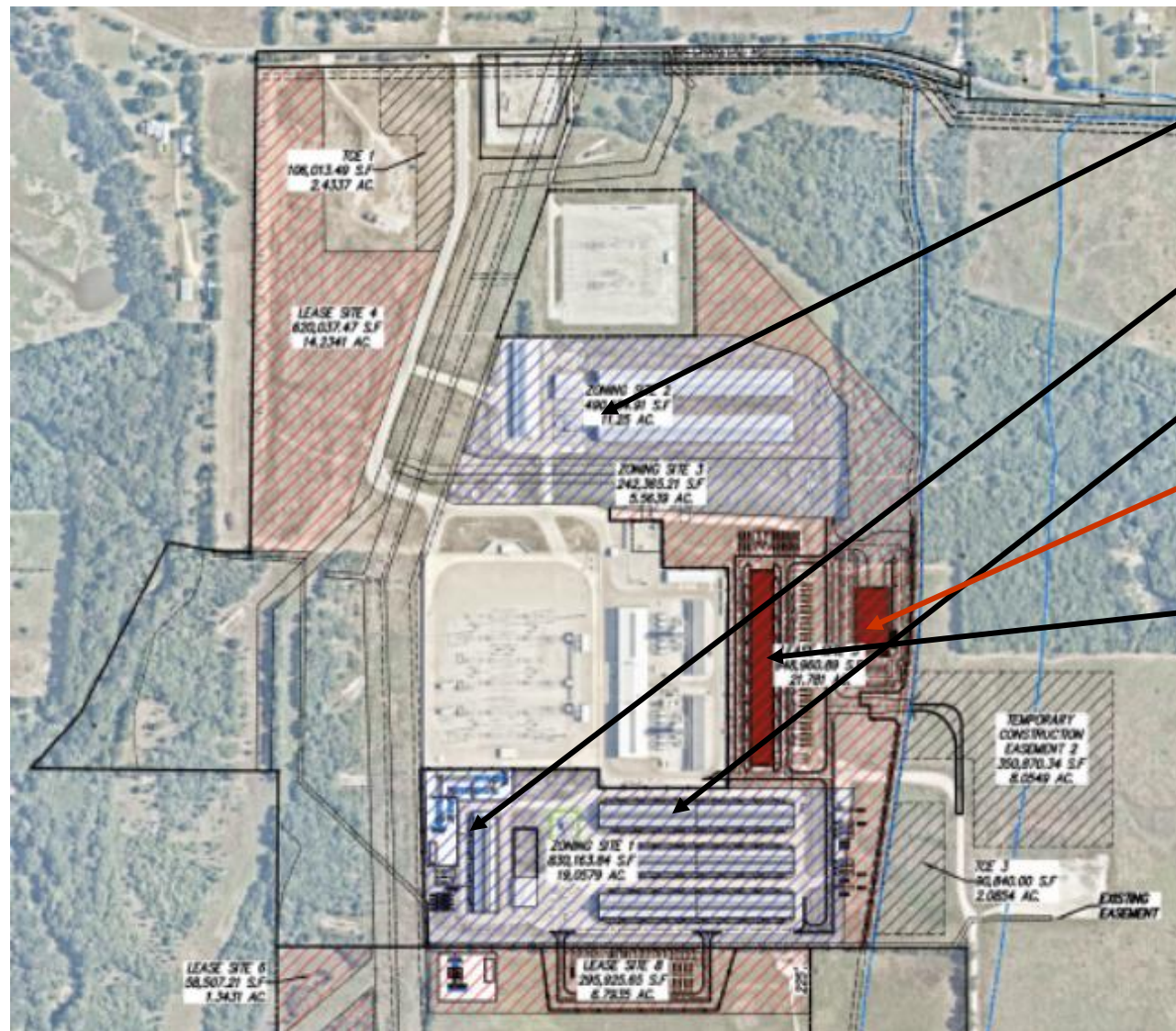
Phase I - cryptocurrency

Phase II ~ cryptocurrency

Phase III – HPC (June 2025)



Future State of Core Project



- Phase III - Converted to HPC by 11/25 (phased beginning in June 2025)
- Phase I – Converted to HPC by 12/2025
- Phase II – Converted to HPC by 7/2026
- Office Complex - ~300 full time professionals
- Phase IV Constructed and online after completion of required transmission system upgrades

Denton Data Center will become 100% dedicated to High Performance Computing (HPC) to support Artificial Intelligence applications.

Phase IV PPA Provisions

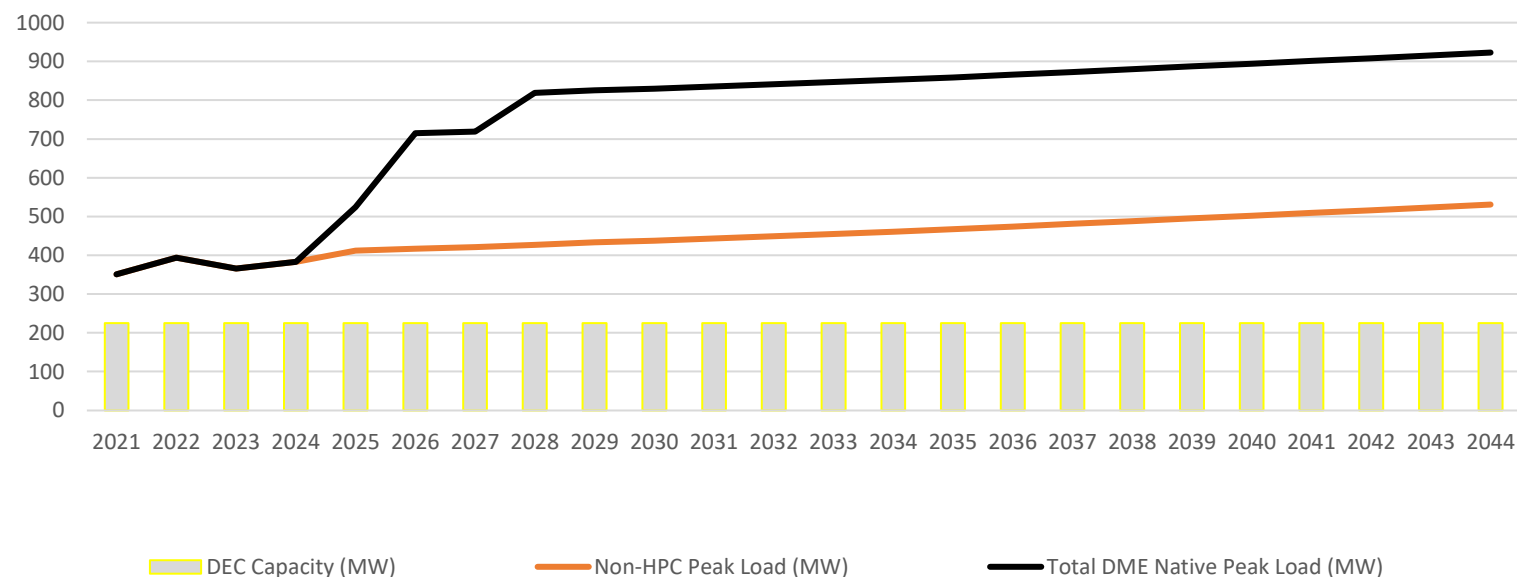
- All energy sold to Core for HPC operation to be based upon Cost of Service consistent with PPA Amendment 3 approved by City Council 8/20/24
 - Pass through of energy costs via Energy Cost Adjustment
 - Pass through of transmission costs via Transmission Cost Recovery Factor
 - DME fixed costs recovered via cost of service based demand charge (base rate)
- Core responsible for costs associated with interconnection infrastructure
 - Two new on-site substations required
 - Significant rerouting of transmission lines on-site
- Phase IV can only be powered up if:
 - Modeled transmission system overloads are remedied
 - DME completing analysis of DME transmission and connected transmission system impacts
 - DME has identified several options to remedy transmission system limitations
 - Both the Regional Transmission Group and ERCOT must approve the chosen solution
 - All physical transmission system improvements -- planned completion (2027-2029)

DME Implications

1. Modify Power Purchase Agreement to convert HPC to a firm tariff price
 - 24/7 load profile with contribution to DME's 4 coincident peak
 - Firm load subject only to ERCOT mandated load shed or DME outages
 - Tariff price must recover a portion of DME's fixed operating costs (excluding Distribution System)
2. Renewable Energy supply by DME will require immediate delivery
 - Not sufficient time to procure additional long-term renewable PPAs with immediate delivery
 - Purchase of energy futures contracts with Renewable Energy Credit (REC) will be short term supply strategy
3. Long-term Supply strategy dependent on Denton Renewable Resource direction from City Council

Forecasted DME Peak Demand (MW)

DME Native Load Peak Demand Forecast (MW)



Peak Demand Growth to Continue

- Forecasted known peak demand to increase by over 73% by 2044
 - Additional large loads are very likely
- Annual native load energy served increasing to > 4.8 million MWh from 1.8 million MWh (167% increase)

Load Shed Implications

- Load shed events are very infrequent and will vary in amount and duration
- Core is converting from wholesale price responsive load to firm load
 - No longer curtailing operations when wholesale prices are high
- At 100% build out, Core operations will increase DME's percentage of ERCOT load shed requirement by ~90%
 - Moving from 0.5% to ~1% of total ERCOT demand
- Core will be treated the same as all other DME firm load customers and integrated into confidential Load Shed Plan

DME will always prioritize the public health and safety of our customers

Lease Changes



- Blue areas are Initial Lease & Amendment No. 2
 - 36.5 Acres
- Red cross hatch areas are proposed Amendment No. 3 Lease areas
 - 42.9 additional acres including 6.7 acres of land purchased for future solid waste transfer station (Lease Site 8)

Lease Provisions

- Total Monthly Lease Payment = \$53,939.81/mo.
 - Non-intervention in future Solid Waste transfer station permitting

Letter Agreement for Value Loss Consideration

- One time payment of \$5,056,480 from Core to City (General Fund)
 - Estimated loss of value associated with change in transaction due removal of land swap.
- One time \$60,000 fee to cover cost of redesign of Solid Waste transfer station due to smaller footprint.

Temporary Construction Easements

- DME granting Temporary Construction Easements (TCE) to enable construction of HPC Project
 - 48-month term initiated concurrent with approval of lease and PPA amendments
 - TCE lease rate of \$5,280/month for 12.577 Acres
 - Standard TCE terms and conditions

Community Impacts

- Hosted tenant to have ~130 - 300 full time on-site personnel
 - Average annual salary of \$70 - \$75,000 plus benefits
 - Plan to hire most from local labor force and to work with UNT and TWU on apprenticeship/cooperative programs
 - 222 estimated spin off jobs @ average wage of \$37,670/yr.
- \$4 billion in real property investment
 - \$194 million in property tax over the first 10 years
- No tax abatements requested from the City of Denton
 - State of Texas incentives and abatements applied for

Requested Action

Recommend approval of:

- Amendment No. 4 to the Power Purchase Agreement: PUB 24-245
- Amendment No. 3 to the Lease Agreement: PUB 24-246
- Value of Loss Consideration Agreement: PUB 24-247
- Temporary Construction Easement: PUB 24-244

Questions and Discussion





City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-246, **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 Amendment number four (4) to the Power Purchase Agreement between the City and Core Scientific Inc., a Delaware Corporation; providing for an effective date.



AGENDA INFORMATION SHEET

DEPARTMENT: Denton Municipal Electric

DME General Manager: Antonio Puente, Jr.

DATE: November 18, 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 Amendment number four (4) to the Power Purchase Agreement between the City and Core Scientific Inc., a Delaware Corporation; providing for an effective date.

Background

The City entered into a Power Purchase Agreement (PPA) with Core Scientific (Core) on September 3, 2021 under which Denton Municipal Electric (DME) provides full requirements electrical power supply to Core, and provides Qualified Scheduling Entity (QSE) services, as required by ERCOT protocols. The PPA also includes provisions regarding the responsibility for the construction of the electrical interconnection systems, metering, electrical switching and ongoing operations and maintenance support among other things. The PPA contains confidential and market sensitive information that has not been publicly disclosed pursuant to the Public Power Exemption in Texas statutes. On August 20, 2024, the Denton City Council approve Amendment No. 3 to the PPA which permitted Core Scientific to convert Phase 3 of the project from cryptocurrency mining to High Performance Computing (HPC), a traditional Tier III data center, to host artificial intelligence computing.

Core Scientific now intends to convert the balance of the project from cryptocurrency operation to HPC to host artificial intelligence applications. Amendment No. 4 to the PPA will enable that conversion and will add additional energy demand to be supplied by DME. Once complete, the project will be one of the largest stand-alone HPC data centers in North America. Energy supply to the HPC operation will be a firm supply by DME, only subject to load curtailments ordered by ERCOT or due to a DME transmission or distribution system disruption and will not be curtailed by the customer due to the wholesale price of energy. Consequently, DME's electric rates require firm energy pricing on a cost of service basis which is significantly different from the original pricing provisions of the PPA. Amendment No. 4 to the PPA will make the pricing and other terms approved by the Denton City Council by Ordinance 24-1293 (August 20, 2024) applicable to the remainder of the Core Scientific project once converted to HPC operation.

RECOMMENDATION

Approve the ordinance enabling the City Manager to enter into the fourth amendment to the PPA.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

Exhibit 3: Presentation

Respectfully submitted:
Terry Naulty
Assistant General Manager
940-349-7565

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NUMBER FOUR (4) TO THE POWER PURCHASE AGREEMENT BETWEEN THE CITY AND CORE SCIENTIFIC INC., A DELAWARE CORPORATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Denton (“City”) owns and operates an electric utility which provides electric energy and related services to all customers within Denton Municipal Electric’s (“DME”) Public Utilities Commission of Texas (PUCT) certificated jurisdiction; and

WHEREAS, the City and Core Scientific, Inc entered into a Power Purchase Agreement (“PPA”) dated September 3, 2021 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

WHEREAS, the City and Core Scientific, Inc. entered into the third amendment to the (PPA) (“Amendment No. 2”) on August 20, 2024 to permit the conversion from cryptocurrency mining to High Performance Computing (HPC) for Phase III of the project, which is incorporated herein; and

WHEREAS, Core Scientific intends to convert the remainder of the project to HPC and to add additional electrical demand capacity to the project; and

WHEREAS, the City and Core Scientific have agreed to terms and conditions for Amendment Number 4 to the PPA (“Amendment No. 4”) as Exhibit “A” and incorporated herein for all purposes; and

WHEREAS, the City Council further finds that Amendment No. 3 to the Lease is in the best interest of the customers of Denton Municipal Electric, and

WHEREAS, the City and Core Scientific, Inc. have agreed to terms and conditions to the first amendment to the PPA (Amendment No. 1) as Exhibit “A” and incorporated herein for all purposes; and

WHEREAS, the City Council finds that Amendment No. 4 to 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 Amendment No. 4 to 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 Amendment No. 4 to the PPA, redacted of Competitive Information, be made available to the public; and

WHEREAS, the City Council further finds that Amendment No. 4 to 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 their designee, and City Secretary, or their designee, to execute, attest and deliver, respectively, Amendment No.4 to the PPA, attached as Exhibit “A”, with Core Scientific, Inc.

SECTION 3. The City Council approves and authorizes the City Manager, or their designee, to take such additional actions as the City Manager, or the designee, determines to be necessary and advisable to continue to effectuate the purpose, terms, and conditions of Amendment No. 4 to the PPA.

SECTION 4. Immediately following the execution, attestation, and delivery of Amendment No. 4 to the PPA, the City Secretary is directed to seal and maintain the PPA in their 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 5. A copy of Amendment No. 4 to the PPA, redacted of Competitive Information, attached Exhibit “B”, shall be available to the public for inspection and copying. Absent lawful order, the Amendment No. 4 to the PPA and the original PPA shall not be available for public inspection or copying and will be sealed as provided for in the preceding section.

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 THOEDEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Marcella Lunn*

Amendment No. 4 to Power Purchase Agreement between the City of Denton, dba Denton Municipal Electric and Core Scientific, Inc.

This Amendment No. 4 to Power Purchase Agreement (this “**Amendment**”), is made as of _____, 2024, by and between the City of Denton, Texas, dba 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 Core Scientific Inc., a Delaware corporation with its principal place of business at 2407 S. Congress Ave Ste. E-101, Austin, TX 78704-5505 (“**Buyer**” and, together with Seller, collectively, the “**Parties**” and, each, individually, a “**Party**”).

WITNESSETH:

WHEREAS, Seller and Buyer entered into that certain Power Purchase Agreement, dated September 3, 2021 as amended by those certain amendments dated July 13, 2023 and August 21, 2023 and August 22, 2024 (the “**Agreement**”; capitalized terms used but not defined herein shall have the meaning set forth in the Agreement), pursuant to which Buyer is completing the Project on property leased from Seller pursuant to the Lease Agreement (as defined herein);

WHEREAS, Seller and Buyer are parties to that certain Lease Agreement dated September 3, 2021 (as amended, and as may be further amended from time-to-time, the “**Lease Agreement**”), pursuant to which Seller is leasing certain property to Buyer;

WHEREAS, Buyer intends to convert Phase I, and II of the Project to High Performance Computing (“HPC”) configuration to support non-cryptocurrency applications;

WHEREAS, Buyer intends to add Phase IV to the Project which will consume up to an additional 94 MWs;

WHEREAS, Buyer and Seller have completed the interconnection infrastructure for Phases I, II and III the Project,

WHEREAS, the HPC operation requires significant battery energy storage capacity to ensure power quality is maintained at all times and such battery storage will be used exclusively by Buyer for HPC reliability.

WHEREAS, Seller desires to provide electric service to all phases of HPC operations under the commercial terms agreed to by Seller and Buyer in Amendment No. 3.

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 to amend the Agreement as follows:

I. **AMENDMENTS.** The Agreement is hereby amended as follows:

1. The following new definitions are added to Section 1.1 of Article 1 of the Agreement:

“Phase IV” means a 138kv high voltage electrical interconnection providing incremental Capacity to transmit volumes of Energy to the HPC operation of the Project such that Buyer is able to receive up to an additional [REDACTED], unless the Parties mutually agree otherwise.

“High Performance Computing” or “HPC” means the non-cryptocurrency data center operations of the Project.

“HPC Scheduled Outage” means a planned outage of any HPC equipment for routine maintenance or for scheduled maintenance.

2. Article 3, Section 3.1, Retail Products is replaced in its entirety with the following:

The **“Retail Products”** to be delivered and sold by Seller and received and purchased by Buyer under this Agreement are Energy and Ancillary Services, 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 as certified by Seller for each of Phase I, Phase II or Phase III or Phase IV following the completion of each such Phase or the conversion of each Phase from cryptocurrency operation to HPC operation.

3. Article 3, Section 3.4, Contract Price is replaced in its entirety with the following:

Buyer shall pay Seller the ERCOT Settlement Amounts and the Non-ERCOT Amounts, in each case, as set forth in Exhibit A for any Retail Product used for cryptocurrency mining operations or the Price of Retail Products for HPC as set forth in Exhibit O, Section 4 for any Retail Product used for HPC operations.

4. A new Section 3.9(d) is added as follows:

(d) For all HPC operations, Buyer shall notify Seller of incidences impacting the ability of the HPC operations to consume Retail Products.

- (i) as soon as practical with respect to any forced outages or greater than 10 MW that are estimated to last for more than two (2) hours. Such notice shall be provided to Sellers QSE desk via telephone consistent with procedures developed between Buyer and Seller and documents in the Operating Procedures (Exhibit J).

- (ii) For HPC Scheduled Outages, Buyer shall notify Seller in writing as soon as practicable but no later than two weeks prior to the beginning of the HPC Scheduled Outage. The notice of such HPC Scheduled Outages shall include the date and time of the beginning and end of the HPC Scheduled Outage, the reduction in the consumption of the Retail Products for each hour of the HPC Scheduled Outage expressed in MWs per hour, the Phase impacted by the HPC Scheduled Outage and the breaker circuit(s) impacted. Changes to the HPC Scheduled Outage after initial notification to Seller shall be made as soon as possible and via telephone to Seller's QSE desk.

5. Article 3, Section 3.11 is amended by adding the phrase "for all cryptocurrency operations" to the end of the first sentence.

6. Article 3, Section 3.15 (a) (iv) is replaced in its entirety with the following:

- (iv) Secure all Governmental Approvals and other approvals necessary for the construction and initial operation and maintenance of the Project and Phases II, III, and IV of the Seller's Interconnection Facilities.

7. Article 3, Section 3.16 (a) is replaced in its entirety with the following:

- (a) In designing and constructing Phases II, III, and IV of the Seller's Interconnection Facilities, Buyer shall comply with (i) the Technical Specifications for Substation Construction Services set forth in Exhibit H and (ii) any other design specifications provided by Seller.

8. A new Section 3.20 is added as follows:

3.20 Phase IV Transmission Interconnection and Commercial Operation.

- a) Buyer is responsible for all design, costs and construction associated with the interconnection of Phase IV to the Sellers transmission system. Buyer understands that the addition of Phase IV without improvements to the ERCOT transmission system (including the Seller's transmission system) will cause overloads of certain transmission elements and will thus require transmission system upgrades to abate such overloads. The provision of Retail Products to Buyer for Phase IV are conditioned upon the following.

- i. Approval by the Regional Planning Group (the “RPG”) of options to abate modeled overloads.
 - ii. Approval by ERCOT of the recommended ERCOT transmission system improvements by the RPG.
 - iii. Construction of the ERCOT approved ERCOT transmission system improvements by the responsible transmission owners.
- b) Seller makes no representation of the ability of transmission system owners to complete required ERCOT system transmission upgrades necessary to enable delivery of the Retail Products to Phase IV.
- c) Seller will take Commercially Reasonable actions to cooperate with transmission system owners that are required to undertake transmission system improvements necessary for Seller to deliver the Retail Products for Phase IV.
- d) Seller’s obligation to make ERCOT system transmission system improvements is conditioned upon ERCOT approval and consent by the impacted transmission system owners to make the required transmission system improvements on their transmission systems necessary to enable reliable delivery of the Retail Products to Phase IV.
- e) Seller is under no obligation to provide the Retail Products until all ERCOT transmission system improvements have been to enable reliable delivery of the Retail Products to Phase IV.

9. Article 3, Section 3.19 (c) is replaced in its entirety with the following:

- (c) take Commercially Reasonable step to ensure such upgrade are approve through the ERCOT RPG process with a targeted commercial operation date prior to [REDACTED].

10. Article 4, Section 4.1 (b) shall be replaced in its entirety with the following:

- (b) Seller will design, procure, install and test all metering equipment required for Phase I. For Phases II, III, and IV, Seller will provide metering and wiring (other than the full-sized CT which will be procured by Buyer as set forth below) and will install such equipment in the Seller’s control building(s) in the Jim Christal Substation. Metering PT/CT for Phases II, III, and IV will be supplied by Seller. For Phase IV, full sized CT/PC will be procured and installed by Buyer, or Buyer’s contractor in the Seller’s switchyard of the Jim Christal Substation or in Buyer’s substations as determined cooperatively between Buyer and Seller. 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.

11. A new subsection to Article 7, Section 7.1 shall be added as follows:

(d) For all HPC operations, the billing payment provision of Exhibit O shall apply.

12. Exhibit K is hereby deleted and replaced in its entirety by Exhibit K attached hereto.

13. Exhibit O is hereby deleted and replaced in its entirety by Exhibit O attached hereto.

- II. **EFFECTIVENESS OF THIS FOURTH AMENDMENT.** The Parties hereby acknowledge that, as of the date of execution of this amendment, it shall become effective.
- III. **CONFLICTS.** In the event of a conflict or ambiguity between the Initial Lease and this Amendment, the terms of this Amendment shall control.
- IV. **NO FURTHER AMENDMENTS.** Except as amended hereby, the Initial Lease remains unchanged and all provisions shall remain fully effective between the Parties.
- V. **BINDING EFFECT; NO PARTNERSHIP.** The provisions of this Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Nothing herein contained shall be deemed to create a partnership or joint venture between any of the Parties.
- VI. **GOVERNING LAW.** This Amendment shall be governed by the laws of the State of Texas, without giving effect to its conflicts of law rules which would result in the application of laws of another jurisdiction.
- VII. **HEADINGS.** The headings contained in this Amendment are intended solely for convenience and shall not affect the rights of the Parties to this Amendment.
- VIII. **COUNTERPARTS.** This Amendment may be (i) executed in any number of separate counterparts, each of which when executed and delivered shall be deemed an original and all of which together shall constitute one instrument; and (ii) delivered by executed counterpart of a signature page in original, portable document format (PDF), facsimile, email, or other electronic means and any Party delivering in such a manner shall be legally bound.
- IX. **SEVERABILITY.** The provisions of this Amendment are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Amendment.
- X. **NO THIRD PARTY BENEFICIARY.** Nothing contained herein is intended to be for, or to inure to, the benefit of any person other than the undersigned and their respective successors and permitted assigns, except as otherwise expressly provided in this Amendment.

[Signatures follow]

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

THIS AMENDMENT HAS BEEN BOTH
REVIEWED AND APPROVED
As all terms, including all financial and operational obligations and business terms.

By: _____

Name: Sara Hensley
Title: City Manager

Signature

ATTEST: LAUREN THODEN
CITY SECRETARY

Antonio Puente
General Manager
Denton Municipal Electric

Date Signed: _____

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND
CITY ATTORNEY

By: _____

“BUYER”

Core Scientific Inc.

By: _____

Name: _____
Title: _____

APPROVED AS TO LEGAL FORM:

By: Marcella Lunn

Name: Marcella Lunn
MACK REINWAND, CITY
ATTORNEY

Exhibit K

**INTERCONNECTION AGREEMENT
BETWEEN
DENTON MUNICIPAL ELECTRIC
AND
CORE SCIENTIFIC, INC.**

**INTERCONNECTION AGREEMENT
BETWEEN
DENTON MUNICIPAL ELECTRIC
AND
Core Scientific, Inc.**

This Agreement is made and entered into this _____, by and between Denton Municipal Electric (“Utility” or “DME”) and Core Scientific, Inc. (“Company”) each sometimes hereinafter referred to individually as “Party” or both referred to collectively as "Parties".

WITNESSETH

WHEREAS, the Parties desire to interconnect their respective electric systems in the respects and under the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions herein set forth, the Parties agree as follows:

ARTICLE I – EFFECTIVE DATE AND TERM

This Agreement shall become effective on the date Commercial Operations Date as defined in the Power Purchase Agreement (PPA) of Denton City Council approval and shall continue in effect thereafter until all Facility Schedules in this Agreement have been terminated, or this Agreement in its entirety has been terminated, each in accordance with the terms of this Agreement. This Agreement shall also terminate when the PPA terminates.

ARTICLE II – OBJECTIVE AND SCOPE

2.1 It is the intent of the Parties, by this Agreement, to state the terms and conditions under which the Parties’ electric systems will be interconnected and to identify the facilities and equipment provided by each Party at the Points of Interconnection.

2.2 This Agreement shall apply to the ownership, design, construction, control, operation, and maintenance of those facilities that are specifically identified and described in the Facility Schedules.

ARTICLE III – DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

3.1 Agreement shall mean this Agreement with all schedules and attachments hereto, and any schedules and attachments hereafter added by amendment to this Agreement.

3.2 ANSI Standards shall mean the American National Standards Institute Standards in effect at the time a new Point of Interconnection is constructed.

3.3 ERCOT shall mean the Electric Reliability Council of Texas, Inc., or its successor in function.

3.4 ERCOT Requirements shall mean the ERCOT Operating Guides, ERCOT Protocols, as well as any other binding documents adopted by ERCOT relating to the interconnection and operation of electric systems in ERCOT, including any amendments of those Guides, Protocols, and binding documents that are adopted by ERCOT from time to time, and any successors thereto.

3.5 Facility Schedule(s) shall mean the addendum(s) attached to and made a part of this Agreement that describe the responsibilities of the Parties at, or in association with, the Point(s) of Interconnection, including, but not limited to, with respect to ownership, design, construction, control, operation, and maintenance.

3.6 Good Utility Practice shall have the meaning ascribed thereto in PUCT Rule 25.5(56) or its successor.

3.7 IEEE Standards shall mean the Institute of Electrical and Electronic Engineers Standards in effect at the time a new Point of Interconnection is constructed.

3.8 NERC shall mean the North American Electric Reliability Corporation or its successor in function.

3.9 NERC Reliability Standards shall mean the electric reliability standards enforced by NERC and applicable to the Parties to this Agreement.

3.10 NEC shall mean the National Electrical Safety Code in effect at the time a new Point of Interconnection is constructed.

3.11 Person shall mean any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity.

3.12 Point(s) of Interconnection shall mean the points of interconnection specified in Annex A and described in the Facility Schedule(s) where the electrical systems of the Parties are connected or may, by the closure of normally open switches, be connected, such that electric power may flow in either direction.

3.13 PPA shall mean the Power Purchase Agreement between The City of Denton d/b/a Denton Municipal Electric and Core Scientific, Inc. dated September 3, 2021 and all amendments thereto.

3.14 PUCT shall mean the Public Utility Commission of Texas or its successor in function.

ARTICLE IV – ESTABLISHMENT, MODIFICATION, AND TERMINATION OF POINTS OF INTERCONNECTION

4.1 The Parties agree to interconnect their facilities at each Point of Interconnection in accordance with the terms and conditions of this Agreement.

4.2 The Parties agree to cause their facilities being newly constructed after the effective date of this Agreement, in conjunction with the establishment of a new Point of Interconnection, to be designed and constructed in accordance with (a) Good Utility Practice, (b) applicable laws and regulations, (c) the applicable provisions of the NERC Reliability Standards and ERCOT Requirements, and (d) the applicable provisions of the following standards in effect at the time of construction of this Point of Interconnection: NESC, ANSI Standards, and IEEE Standards.

4.3 With respect to Points of Interconnection newly constructed after the Effective Date of this Agreement, each Party will design its system protection facilities to isolate any fault occurring on its system that would negatively affect the other Party's system at such Point of Interconnection in accordance with applicable ERCOT Requirements and NERC Reliability Standards. The protection schemes used by the Parties at that Point of Interconnection will be determined by both Parties in a cooperative effort to achieve system coordination. Prior to commissioning that Point of Interconnection, both Parties will perform a complete calibration test and functional trip test of their respective system protection equipment including communication circuits between facilities.

4.5 A Point of Interconnection may be added to or deleted from this Agreement or have its normal status changed (closed or open) as mutually agreed by the Parties, in accordance with applicable laws and regulations, or as ordered by a regulatory authority having jurisdiction thereof. Prior to such addition, deletion, or status change of a Point of Interconnection, the Parties shall engage in coordinated joint planning studies to evaluate the impact of such addition, deletion, or status change and identify any mitigation measures (including but not limited to new or upgraded facilities) that might be needed in conjunction therewith. Such Point of Interconnection will not be connected, disconnected, or the normal status changed until the evaluation process described in the preceding sentence has been completed, all required mitigating measures have been implemented, any required regulatory approval has been obtained, and the appropriate Facility Schedule has been added, terminated, or amended, as the case may be. In the event a Point of Interconnection is deleted from this Agreement in accordance with this paragraph, each Party shall disconnect its facilities at such Point of Interconnection. Further, each Party will discontinue use of the facilities of the other Party associated with such Point of Interconnection, except to the extent mutually agreed by the Parties.

ARTICLE V - SYSTEM OPERATION AND MAINTENANCE

5.1 The Parties agree to cause their facilities at each Point of Interconnection, and their other facilities having, or which may reasonably be expected to have, an impact upon the facilities of the other Party to be operated and maintained in accordance with Good Utility Practice, applicable laws and regulations, and the applicable provisions of the ERCOT Requirements and NERC Reliability Standards.

5.2 If either Party proposes to make equipment changes or additions to (a) its equipment at a Point of Interconnection (including its system protection equipment) or (b) its system protection equipment at any other location that may affect the operation or performance of the other Party's facilities at a Point of Interconnection ("Changes"), such Party agrees to notify the other Party, in writing, in advance of making such proposed Changes, and the Parties will coordinate and cooperate on the assessment of the impact of such Changes on the electric systems of the Parties and the identification of any required mitigation measures (including but not limited to new or upgraded facilities). Those Changes will not be made until the required aforementioned mitigation

measures have been implemented. The Parties will communicate with each other with respect to other equipment changes or additions in accordance with the ERCOT Requirements and NERC Reliability Standards.

5.3 A Party may interrupt service at a Point of Interconnection in accordance with applicable laws, regulations, and ERCOT Requirements.

5.5 Neither Party will take any action that would cause the other Party that is not a “public utility” under the Federal Power Act to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.

ARTICLE VI – INDEMNIFICATION

6.1 Subject to the laws of the State of Texas and without waiving any applicable immunity, each Party (the “Indemnifying Party”) shall assume all liability for, and shall indemnify the other Party (the “Indemnified Party”) for, any losses resulting from negligence or other fault in the design, construction, or operation of their respective facilities. Losses shall include costs and expenses of defending an action or claim made by a third Person, payments for damages related to the death or injury of any individual, damage to the property of the Indemnified Party, and payments by the Indemnified Party for damages to the property of a third Person, and damages payable by the Indemnified Party for the disruption of the business of a third Person. This Section 6.1 does not create a liability on the part of either Party to a retail customer or other third Person, but requires indemnification where such liability exists. The indemnification required under this Section 6.1 does not include responsibility for either Party’s costs and expenses of prosecuting or defending an action or claim against the other Party or damages for the disruption of such Party’s business. The limitations on liability set forth in this Section 6.1 do not apply in cases of gross negligence or intentional wrongdoing.

ARTICLE VII –NOTICES

7.1 Any notices, claims, requests, demands or other communications between the Parties hereunder, including but not limited to a notice of termination, notice of default, request for amendment, change to a Point of Interconnection, or request for a new Point of Interconnection, shall be (a) forwarded to the designees listed below for each Party, (b) deemed properly given if delivered in writing, and (c) deemed duly delivered when (i) delivered if delivered personally or by nationally recognized overnight courier service (costs prepaid), (ii) sent by facsimile or electronic mail with confirmation of transmission by the transmitting equipment (or, the first business day following such transmission if the date of transmission is not a business day), or (iii) received or rejected by the addressee, if sent by U.S. certified or registered mail, return receipt requested; in each case to the following addresses, facsimile numbers or electronic mail addresses and marked to the attention of the individual (by name or title) designated below:

If to Denton Municipal Electric:
Denton Municipal Electric
ATTN: General Manager
1659 Spencer Rd.
Denton, Texas 76205
Telephone: 940-349-7565

If to Buyer :

CORE SCIENTIFIC, INC.
Attention: General Counsel
2407 S. Congress Ave
Ste. E-101,
Austin, TX **78704-5505**

7.2 The above listed names, titles, and contact information of either Party may be changed upon written notification to the other Party.

ARTICLE VIII - SUCCESSORS AND ASSIGNS

8.1 Subject to the provisions of Section 8.2 below, this Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the respective Parties.

8.2 Neither Party shall assign, directly or indirectly by operation of law or otherwise, any of its rights or obligations under this Agreement in whole or in part without the prior written consent of the other Party. Such consent shall not be unreasonably withheld, conditioned, or delayed, provided that neither Party will be required to consent to any assignment that would (a) subject it to additional federal or state regulation; (b) result in the imposition of additional costs of administration that the Party requesting consent to assignment does not agree to reimburse; or (c) in any way diminish the reliability of its system, enlarge its obligations, or otherwise create or maintain an unacceptable condition. Notwithstanding the foregoing, a Party may assign, without the consent of the other Party, its interest in this Agreement, in whole or in part, (a) to a successor to all or a substantial portion of the Party's transmission business; (b) to any transmission service provider (including an affiliate of the assigning Party) with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; or (c) for collateral security purposes in connection with any financing or financial arrangements. The respective obligations of the Parties under this Agreement may not be changed, modified, amended, or enlarged, in whole or in part, by reason of any direct or indirect assignment, including pursuant to the sale, merger, or other business combination of either Party with any other Person. Any attempted assignment that violates this Section 8.2 shall be void and ineffective *ab initio*. Any assignment of this Agreement shall not relieve a Party of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed.

8.3 This Agreement is not intended to and shall not create rights of any character whatsoever in favor of any Persons other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties.

ARTICLE IX – GOVERNING LAW AND REGULATION

9.1 This Agreement was executed in the State of Texas and must in all respects be governed by, interpreted, construed, and enforced in accordance with the laws thereof except as to matters exclusively controlled by the Constitution and statutes of the United States of America. This Agreement is subject to all valid applicable federal, state, and local laws, ordinances, rules, regulations, orders, and tariffs of, or approved by, duly constituted regulatory or other governmental authorities having jurisdiction.

9.2 This Agreement and all obligations hereunder, are expressly conditioned upon obtaining all required approvals, authorizations, or acceptances for filing by any regulatory authority whose approval, authorization or acceptance for filing is required by law. Both Parties hereby agree to support the approval

of this Agreement before such regulatory authority and to provide such documents, information, and opinions as may be reasonably required or requested by either Party in the course of approval proceedings.

ARTICLE X – DEFAULT AND FORCE MAJEURE

10.1 The term “Force Majeure” as used herein shall mean any cause beyond the reasonable control of the Party claiming Force Majeure, and without the fault or negligence of such Party, which materially prevents or impairs the performance of such Party’s obligations hereunder, including but not limited to, storm, flood, lightning, earthquake, fire, explosion, failure or imminent threat of failure of facilities, civil disturbance, strike or other labor disturbance, sabotage, war, national emergency, or restraint by any federal, state, local or municipal body having jurisdiction over a Party.

10.2 Neither Party shall be considered to be in Default (as hereinafter defined) with respect to any obligation hereunder, other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Section shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE XI - TERMINATION ON DEFAULT

11.1 The term “Default” shall mean the failure of either Party to perform any obligation in the time or manner provided in this Agreement. No Default shall exist where such failure to discharge an obligation is excused pursuant to Section 10.2 or is the result of an act or omission of the other Party or any of its agents. Upon discovery of a Default, the non-defaulting Party may give notice of such Default to the defaulting Party. Except as provided in Section 11.2, the defaulting Party shall have thirty (30) days from receipt of the Default notice within which to cure such Default; provided, however, if such Default is not capable of cure within thirty (30) days, the defaulting Party shall commence such cure within twenty (20) days after receipt of the Default notice and continuously and diligently exercise its efforts to complete such cure within ninety (90) days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

11.2 If a Default is not cured as provided in Section 11.1, or if a Default is not capable of being cured within the period provided for therein, the non-defaulting Party shall have the right, subject to receipt of any regulatory approvals required by applicable law, (a) to terminate, in its sole discretion, by written notice at any time until cure occurs either (i) this Agreement or (ii) any Facility Schedules as to which the Default relates and disconnect the associated Points of Interconnection, (b) to be relieved of any further obligation (i) hereunder (other than obligations associated with its own Defaults, if any, occurring prior to termination) if that Party shall have elected to terminate this Agreement or (ii) with respect to the terminated Facility Schedules and disconnected Points of Interconnection if it shall have elected to terminate any Facility Schedules as to which the Default relates and (c), whether or not that Party terminates this Agreement or any Facility Schedule, to recover from the defaulting Party all amounts due and receive all

other remedies to which it is entitled hereunder. The provisions of this Section 11.2 will survive termination of this Agreement.

11.3 The failure of a Party to insist, on any occasion, upon strict performance of this Agreement will not be considered to waive the obligations, rights, or duties imposed upon the Parties by this Agreement.

11.4 Any event of default under the PPA (or any of the other agreements referenced therein or executed in connection therewith) by either Utility or Company shall be Default hereunder.

ARTICLE XII- MISCELLANEOUS PROVISIONS

12.1 Any undertaking by a Party to the other Party under this Agreement shall not constitute the dedication of the electrical system or any portion thereof of that Party to the public or to the other Party, and it is understood and agreed that any such undertaking shall cease upon the termination of this Agreement.

12.2 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT OR REVENUE, LOSS OF THE USE OF EQUIPMENT, COST OF CAPITAL, COST OF TEMPORARY EQUIPMENT OR SERVICES, WHETHER BASED IN WHOLE OR IN PART IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY; PROVIDED, HOWEVER, THAT DAMAGES FOR WHICH A PARTY MAY BE LIABLE TO THE OTHER PARTY UNDER ANOTHER AGREEMENT (OR TO ANY THIRD PARTY) WILL NOT BE CONSIDERED TO BE SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES HEREUNDER.

12.3 This Agreement is applicable only to the interconnection of the facilities of the Parties at the Points of Interconnection and does not obligate either Party to provide, or entitle either Party to receive, any service not expressly provided for herein. Each Party is responsible for making the arrangements necessary to receive any other service that either Party may desire from the other Party or any third party.

12.4 This Agreement, including all Facility Schedules, constitutes the entire agreement and understanding between the Parties with regard to the interconnection of the facilities of the Parties at the Points of Interconnection expressly provided for in this Agreement. The Parties are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof if not set forth or provided for herein. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein; such agreements are unaffected by this Agreement.

12.5 This Agreement shall not affect the obligations or rights of either Party with respect to other agreements (other than those specifically superseded by Section 12.4). Each Party represents to the other that there is no agreement or other obligation binding upon it, which, as such Party is presently aware, would limit the effectiveness or frustrate the purpose of this Agreement.

12.6 This Agreement may be amended only upon mutual agreement of the Parties, which amendment will not be effective until reduced in writing and executed by the Parties.

12.7 If any provision in this Agreement is finally determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this Agreement.

12.8 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and are to be afforded no significance in the interpretation or construction of this Agreement.

12.9 This Agreement will be executed in two or more counterparts, each of which is deemed an original, but all constitute one and the same instrument.

12.10 Each party to the interconnection agreement shall perform routine inspection and testing of its facilities and equipment in accordance with good utility practice and regulatory requirements to ensure the continued interconnection of the facilities with DME's transmission system. Each party shall, at its own expense, have the right to observe the testing of any of the other party's facilities and equipment whose performance may reasonably be expected to affect the reliability of the observing parties' facilities and equipment. Each party shall notify the other party in advance of facility and equipment testing, and the other party may have a representative attend and be present during such testing. If a party observes any deficiencies or defects on (or becomes aware of a lack of scheduled maintenance and testing with respect to) the other party's facilities and equipment that might reasonably be expected to adversely affect the observing party's facilities and equipment, the observing party shall provide notice to the other party that is prompt under the circumstance, and the other party shall make any corrections required in accordance with good utility practices and as required by regulatory agencies.

12.11 Party shall notify DME, verbally within 24 hours upon discovery of any Release of any Regulated Substance caused by the Party's operations or equipment that impacts the property or facilities of the other Party, or which may migrate to, or adversely impact the property, facilities or operations of the other Party and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events. Such verbal notification shall be followed by written notification within five (5) days. The Party responsible for the Release of any Regulated Substance on the property or facilities of the other Party, or which may migrate to, or adversely impact the property, facilities or operations of the other Party shall be responsible for: (1) the cost and completion of reasonable remediation or abatement activity for that Release, and; (2) required notifications to governmental agencies and submitting of all reports or filings required by environmental laws for that Release. Advance written notification (except in Emergency situations, in which verbal, followed by written notification, shall be provided as soon as practicable) shall be provided to the other Party by the Party responsible for any remediation or abatement activity on the property or facilities of the other Party, or which may adversely impact the property, facilities, or operations of the other Party. Except in Emergency situations such remediation or abatement activity shall be performed only with the consent of the Party owning the affected property or facilities.

12.12 The Parties agree to coordinate, to the extent necessary, the preparation of site plans, reports, environmental permits, clearances and notifications required by federal and state law or regulation, including but not limited to Spill Prevention, Control and Countermeasures (SPCC), Storm Water Pollution Prevention Plans (SWPP), Act 451 Part 31 Part 5 Rules, CERCLA, EPCRA, TSCA, soil erosion and sedimentation control plans (SESC) or activities, wetland or other

water-related permits, threatened or endangered species reviews or management and archeological clearances or notifications required by any regulatory agency or competent jurisdiction. Notification of permits applied for and/or received will occur in a timeframe manner suitable to the interests of both Parties.

ARTICLE XIII- SYSTEM DESIGN REQUIREMENTS

13.1 The specification and requirements in Exhibit H to the Power Purchase Agreement will apply to the Project at all times.

ARTICLE XIV- SYSTEM PERFORMANCE REQUIREMENTS

Harmonic Levels

End-user facilities shall not have harmonic current distortion levels exceeding the levels recommended in the most recent revision of IEEE-519 , *Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems*. End-user facilities must meet the stated current limits specified in the Current Distortion Limits tables for the applicable voltage levels. Due to copyright requirements, this table cannot be provided in this document.

Voltage Requirements

Transmission facilities and end-user facilities are required to limit voltage fluctuations to the limits specified in the most recent revision of IEEE-1423.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the undersigned authorized representatives.

DENTON MUNICIPAL ELECTRIC

CORE SCIENTIFIC, INC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Annex A

LIST OF FACILITY SCHEDULES AND POINTS OF INTERCONNECTION

FACILITY SCHEDULE NO.	NAME OF POINT OF INTERCONNECTION	INTERCONNECTION VOLTAGE (KV)
1		138

FACILITY SCHEDULE NO. 1

1. Name: [REDACTED]
2. Point of Interconnection location: (1) At the 138kV transformer located outside inside Company's South Substation, and at a point where DME's jumpers contact the high side (138kV) of the transformer as shown in the Facility Schedule No. 1 one-line diagram attached hereto. This is also referred as Phase II in the PPA.

(2) At the 138kV transformer located inside the Company's North Substation, and at a point where DME's jumpers contact the high side (138kV) of the transformer as shown in the Facility Schedule No. 1 one-line diagram attached hereto. This is also referred to as Phase III in the PPA.

(3) At the 13.2kV metering cabinet located outside the south wall of the substation, where the customer's cables connect to the metering cabinet as shown in the Facility Schedule No. 1 one-line diagram attached hereto. This is also referred to as Phase I in the PPA.

(4) At the 138kV transformer located inside Company's New South Substation, and at a point where DME's jumpers contact the high side (138kV) of the transformer as shown in Facility Schedule No. 1 one-line diagram. This is also referred as "Phase IV in the PPA."
3. Delivery voltage: 13.2kV and 138 kV
4. Metering (voltage, location, losses adjustment due to metering location, and other): Metering shall be at the 13.2kV and 138kV levels. Instrument transformers, cabling, and meters for the 138kV interconnections shall be located inside of DME's Jim Christal Substation. Losses from the metering location to the point of interconnection will be calculated and agree upon by both parties. Instrument transformers, cabling, and meters for the 13.2kV interconnection shall be located on the metering cabinet.
5. Normally closed (check one): Yes / No
6. One line diagram attached (check one): Yes / No
7. Equipment Ownership:
DME shall own all equipment inside [REDACTED], attached hereto, and the transmission line up to the 138kV transformer for Points of Interconnection 1, 2 and 3 described above. DME shall own all equipment inside [REDACTED] and the distribution facilities up to the 13.2kV metering cabinet for Point of Interconnection 3 described above 1.
9. Cost Responsibility:
Each Party shall be responsible for all costs it incurs associated with facilities it owns at, connected to, or associated with, the Points of Interconnection, including, but not limited to, costs associated with the ownership, engineering, procurement, construction, operation, maintenance, replacement, repair and testing of such facilities; provided, however, that this Paragraph 9 is subject to Article VI, Section 6.1 of this Agreement (Indemnification). This Paragraph 9 shall not relieve either Party of its respective obligation under that section.
10. Switching and Clearance:

Each Party has adopted formal switching procedures that govern safety related issues concerning the operation of its switches connected to this Point of Interconnection and will provide a copy of those procedures to the other Party upon request. Each Party agrees to comply with the aforementioned switching procedures of the other Party with respect to holds requested on switching devices owned by such Party.

11. Standards:

The Parties agree to cause their facilities being newly constructed, as described in this Facility Schedule, to be designed and constructed in accordance with (a) Good Utility Practice, (b) applicable laws and regulations, (c) the applicable provisions of the NERC Reliability Standards and ERCOT Requirements, and (d) the applicable provisions of the following standards in effect at the time of construction of this Point of Interconnection: NESC, ANSI Standards, and IEEE Standards.

12. Supplemental terms and conditions attached (check one): _____ Yes / No

ONE LINE DIAGRAM
PHASE I, II, III, and IV - FACILITY SCHEDULE No. 1



Schedule No. 2 – Site Layout (New DME Substation Location)

CONFIDENTIAL

EXHIBIT O
Phase High Performance Computing (HPC) Retail Products Supply

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. In the event of a contradiction between this Exhibit O and the PPA, this Exhibit O shall control.

2. ERCOT Registration

Buyer shall amend the Project’s ERCOT registration to remove Phases I, II and III from the current Controllable Load Resources to load only prior to Seller providing HPC service to Phases I, II and III under this Exhibit O. Seller is not obligated to provide the Retail Products to Buyer for Phases I, II and III until ERCOT confirms Buyer’s amended resource registration.

3. Interruption and Curtailment.

- 3.1. Buyer shall at all times during the Term comply with the directives of the Seller given pursuant to the Switching Agreement (Exhibit E).
- 3.2. If Buyer fails to comply with the curtailment directives and instructions set forth in any Seller Curtailment or System Curtailment Order, Seller will have the right to suspend performance during the duration of the Seller Curtailment or System Curtailment Order.
 - 3.2.1. Seller will have the right to set under frequency protective relays on Buyer’s electrical equipment as required by Seller in its role as Transmission Distribution Service Provider for Buyer’s load.
- 3.3. Seller will provide notice to Buyer as soon as practical of any Seller Curtailment and System Curtailment Orders.

4. Price of Retail Products for HPC

- 4.1. Prior to the passage of any Seller tariff applicable to the firm load data centers by the Denton City Council, Buyer shall pay to Seller the following amounts:
 - 4.1.1. Facility Charge equal to [REDACTED] for each Phase of the HPC operation.
 - 4.1.2. Demand Charge equal to [REDACTED] (“Demand Charge”)(Buyer to maintain a power factor of 90% or greater). The Demand Charge for the billing period shall be the greater of: (1) the kVA actual demand supplied during the fifteen (15) minute period of maximum use each month as recorded by Seller’s demand meters; or (2) one hundred (100) percent of the actual maximum peak demand similarly

determined during the billing months of June through September in the twelve (12) months immediately preceding the current month (the "Demand Ratchet"). The Demand Charge will be applied to each billing period.

4.1.3. The then current Seller Energy Cost Adjustment (ECA) = [REDACTED] (subject to quarterly adjustment as approved by the Denton City Council) which includes the cost of Renewable Energy Credits and the Return on Investment and Franchise Fees.

4.1.4. The then current Transmission Cost Recovery Factor = [REDACTED] including the Return on Investment and Franchise Fees, which shall be subject to the Demand Ratchet.

4.2. After adoption and approval of a rate tariff applicable to the HPC operation of the Project by the Denton City Council and each subsequent tariff change or modification, those adopted rates will become applicable to Buyer's HPC operations.

4.3. The Parties agree to explore potential options to reduce the ECA charges with the recognition that any changes to ECA rate must fully capture Seller's actual costs of Retail Products supply to meet the HPC demand for the Retail Products, as determined by Seller in its sole discretion. Seller's commitment to undertake such analysis shall be limited to a period of not longer than six (6) months from the date of execution of this Amendment No. 4.

5. Invoicing and Payment

Invoicing and payment provisions for Retail Service to HPC will be based upon meter readings provided consistent with the provision set forth in the PPA. No netting of payments with Phases I and II of the Project will be permitted. Seller will invoice Buyer for Retail products provided during the prior two-week period.

5.1. On or about the 7th day following the prior two-week delivery period beginning with the two-week period following the Commercial Operation Date of each HPC Phase and every two week period thereafter, and continuing through and including the two week period following the end of the Delivery Term, Seller shall provide to Buyer an invoice setting forth the applicable total charges for the Retail Products, as specified in Exhibit O.

5.2. Buyer shall pay the full amount of the bi-weekly invoices amounts on or before five (5) Business Days after date of the invoice.

5.3. For any services provided pursuant to Exhibit M of the PPA in the preceding month, Buyer shall be invoiced by Seller and payments will be due to Seller in accordance with the applicable provisions of the PPA associated with Non ERCOT Amounts.

5.4. With respect to all invoices or statements, 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.

5.5. Article 7.2 of the PPA shall dictate the treatment of any disputes or adjustments of invoices for Phase III HPC.

6. Buyer's Performance Assurance

The Delivery Term Security provisions of the PPA relative to the the Project will apply to all Phases regardless of whether in HPC or cryptocurrency operation. The 4CP Performance Security requirements of Section 8.1(b) of the PPA will not apply to any HPC operations. All other provisions of Section 8 of the PPA shall apply.

7. ERCOT Transmission Upgrades.

With respect to Phase IV, Seller is not obligated to provide the Retail Products to Buyer and Buyer may not power any equipment, structures or any other electrical equipment until all transmission system improvements required by ERCOT are completed by the responsible transmission owner.

8. Notice to Return to Cryptocurrency Operations

In the event Buyer determines that all, or a Phase of the Project will be converted from HPC back to cryptocurrency mining, Buyer shall provide one year notice of its intent to do so and shall identify with Project Phase(s) will be converted. Unless Buyer meets Seller's metering requirements, Buyer is only permitted to convert individual Phases of the project and not partial Phases.

Core Scientific PPA and Lease Amendments



Energizing tomorrow's community today!

PUB 24-244

PUB 24-245

PUB 24-246

PUB 24-247



Current Project Status

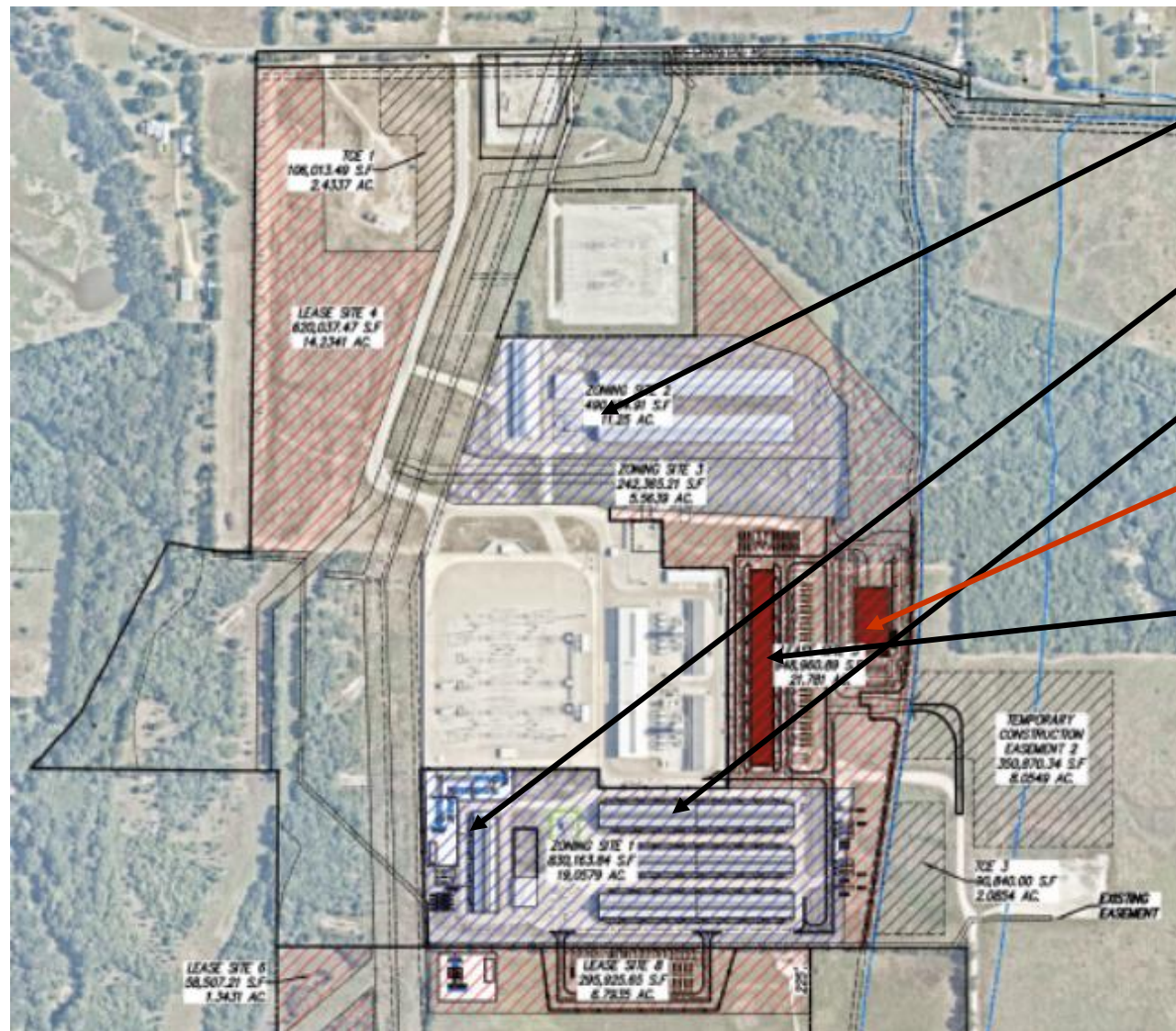
Phase I - cryptocurrency

Phase II ~ cryptocurrency

Phase III – HPC (June 2025)



Future State of Core Project



- Phase III - Converted to HPC by 11/25 (phased beginning in June 2025)
- Phase I – Converted to HPC by 12/2025
- Phase II – Converted to HPC by 7/2026
- Office Complex - ~300 full time professionals
- Phase IV Constructed and online after completion of required transmission system upgrades

Denton Data Center will become 100% dedicated to High Performance Computing (HPC) to support Artificial Intelligence applications.

Phase IV PPA Provisions

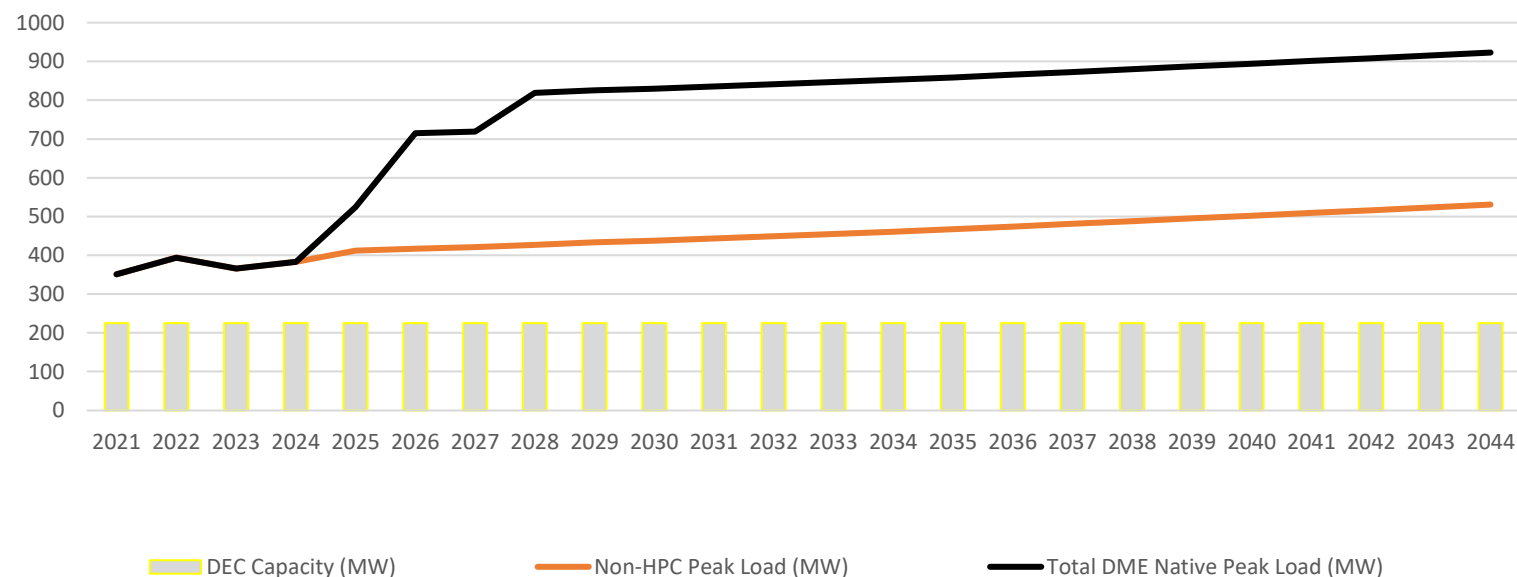
- All energy sold to Core for HPC operation to be based upon Cost of Service consistent with PPA Amendment 3 approved by City Council 8/20/24
 - Pass through of energy costs via Energy Cost Adjustment
 - Pass through of transmission costs via Transmission Cost Recovery Factor
 - DME fixed costs recovered via cost of service based demand charge (base rate)
- Core responsible for costs associated with interconnection infrastructure
 - Two new on-site substations required
 - Significant rerouting of transmission lines on-site
- Phase IV can only be powered up if:
 - Modeled transmission system overloads are remedied
 - DME completing analysis of DME transmission and connected transmission system impacts
 - DME has identified several options to remedy transmission system limitations
 - Both the Regional Transmission Group and ERCOT must approve the chosen solution
 - All physical transmission system improvements -- planned completion (2027-2029)

DME Implications

1. Modify Power Purchase Agreement to convert HPC to a firm tariff price
 - 24/7 load profile with contribution to DME's 4 coincident peak
 - Firm load subject only to ERCOT mandated load shed or DME outages
 - Tariff price must recover a portion of DME's fixed operating costs (excluding Distribution System)
2. Renewable Energy supply by DME will require immediate delivery
 - Not sufficient time to procure additional long-term renewable PPAs with immediate delivery
 - Purchase of energy futures contracts with Renewable Energy Credit (REC) will be short term supply strategy
3. Long-term Supply strategy dependent on Denton Renewable Resource direction from City Council

Forecasted DME Peak Demand (MW)

DME Native Load Peak Demand Forecast (MW)



Peak Demand Growth to Continue

- Forecasted known peak demand to increase by over 73% by 2044
 - Additional large loads are very likely
- Annual native load energy served increasing to > 4.8 million MWh from 1.8 million MWh (167% increase)

Load Shed Implications

- Load shed events are very infrequent and will vary in amount and duration
- Core is converting from wholesale price responsive load to firm load
 - No longer curtailing operations when wholesale prices are high
- At 100% build out, Core operations will increase DME's percentage of ERCOT load shed requirement by ~90%
 - Moving from 0.5% to ~1% of total ERCOT demand
- Core will be treated the same as all other DME firm load customers and integrated into confidential Load Shed Plan

DME will always prioritize the public health and safety of our customers

Lease Changes



- Blue areas are Initial Lease & Amendment No. 2
 - 36.5 Acres
- Red cross hatch areas are proposed Amendment No. 3 Lease areas
 - 42.9 additional acres including 6.7 acres of land purchased for future solid waste transfer station (Lease Site 8)

Lease Provisions

- Total Monthly Lease Payment = \$53,939.81/mo.
 - Non-intervention in future Solid Waste transfer station permitting

Letter Agreement for Value Loss Consideration

- One time payment of \$5,056,480 from Core to City (General Fund)
 - Estimated loss of value associated with change in transaction due removal of land swap.
- One time \$60,000 fee to cover cost of redesign of Solid Waste transfer station due to smaller footprint.

Temporary Construction Easements

- DME granting Temporary Construction Easements (TCE) to enable construction of HPC Project
 - 48-month term initiated concurrent with approval of lease and PPA amendments
 - TCE lease rate of \$5,280/month for 12.577 Acres
 - Standard TCE terms and conditions

Community Impacts

- Hosted tenant to have ~130 - 300 full time on-site personnel
 - Average annual salary of \$70 - \$75,000 plus benefits
 - Plan to hire most from local labor force and to work with UNT and TWU on apprenticeship/cooperative programs
 - 222 estimated spin off jobs @ average wage of \$37,670/yr.
- \$4 billion in real property investment
 - \$194 million in property tax over the first 10 years
- No tax abatements requested from the City of Denton
 - State of Texas incentives and abatements applied for

Requested Action

Recommend approval of:

- Amendment No. 4 to the Power Purchase Agreement: PUB 24-245
- Amendment No. 3 to the Lease Agreement: PUB 24-246
- Value of Loss Consideration Agreement: PUB 24-247
- Temporary Construction Easement: PUB 24-244

Questions and Discussion





City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-247, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, Texas, a home-rule municipal corporation, authorizing the City Manager to execute an Agreement for Value Loss Consideration with Core Scientific, Inc., a Delaware Corporation; 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: Sara Hensley

DATE: November 18, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, Texas, a home-rule municipal corporation, authorizing the City Manager to execute an Agreement for Value Loss Consideration with Core Scientific, Inc., a Delaware Corporation; and providing an effective date.

INFORMATION/BACKGROUND

In consideration of negotiations between the City and Core Scientific on a potential land swap, the attached Agreement of Value Loss is intended to memorialize a change in deal structure and subsequent lost transaction value to the City.

As part of the amendment negotiation process, Core promised to deliver additional land for the City's solid waste department in exchange for the existing solid waste transfer station property. The City relied on this representation as part of the value of the transaction and the contemplated land swap was significant inducement for the City to negotiate the lease of additional property.

Core informed the City that negotiations with the third-party landowner were unsuccessful and as a result, Core was unable to perform the contemplated land swap.

In recognition of the lower value to the City of the transaction without the Contemplated Land Swap, Core stipulates that the City is entitled to \$5,056,480 to reflect the value differential to the City. Core also agrees that it will pay the City an additional \$60,000 to reimburse the City for costs it incurred for engineering services related to the transfer station property.

Core will make this payment within ten (10) days of execution of this letter agreement upon confirming payment instruction with the City. Funds related to this letter agreement are unrestricted.

RECOMMENDATION

Staff recommend adoption of this ordinance and acceptance of said amounts.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

Respectfully submitted:
Antonio Puente, Jr.
DME General Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, A HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR VALUE LOSS CONSIDERATION WITH CORE SCIENTIFIC, INC., A DELAWARE CORPORATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton, Texas, a home-rule municipal corporation, and Core Scientific, Inc., a Delaware Corporation, desire to memorialize a change in deal structure and subsequent lost transaction value to the City; and

WHEREAS, Core Scientific, Inc., agrees to pay the City of Denton a sum of \$5,056,480 to reflect the value differential that would have been realized if said land swap would have been consummated and transferred to the City, and such payment is unrestricted and may be used for any general government purpose; and

WHEREAS, Core Scientific, Inc., also agrees to pay the City of Denton an additional sum of \$60,000 to reimburse the City for costs it incurred for engineering services related to the Solid Waste Transfer Station, and said payment is unrestricted and may be used for any solid waste purpose; and

WHEREAS, the City Council of Denton, after due consideration, agrees to accept a sum total of \$5,116,480 in consideration of said value loss and reimbursement of engineering costs; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations contained in the preamble of this ordinance are incorporated by reference as findings of the City Council.

SECTION 2. Core Scientific, Inc., will remit said amounts within ten (10) days of execution of this letter agreement upon confirming payment instruction with the City.

SECTION 3. Payments related to this agreement are unrestricted.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

SECTION 5. The City Manager, or their designee, is hereby authorized to enter into an agreement with Core Scientific, Inc., a copy of which is attached hereto and incorporated by reference herein.

SECTION 6. 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.

The motion to adopt 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 ADOPTED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Marcella Lunn*



Carol Haines
SVP – Power and Sustainability
Core Scientific, Inc.
2407 S. Congress Ave Ste. E-101
Austin, TX 78704-5505

RE: Letter Agreement for Value Loss Consideration

Carol,

This letter agreement memorializes the consideration Core Scientific, Inc. (“Core”) will provide to the City of Denton (“City”) as a result of a change in deal structure and subsequent lost transaction value to the City.

As part of the amendment negotiation process, Core promised to deliver additional land for the City’s solid waste department in exchange for the existing solid waste transfer station property (the “Contemplated Land Swap”). The City relied on this representation as part of the value of the transaction and the Contemplated Land Swap was significant inducement for the City to negotiate the lease of additional property.

Core has informed the City that negotiations with the third party landowner were unsuccessful and as a result, Core will not be able to perform the Contemplated Land Swap.

In recognition of the lower value to the City of the transaction without the Contemplated Land Swap, Core stipulates that the City is entitled to \$5,056,480 to reflect the value differential to the City. Core also agrees that it will pay the City an additional \$60,000 to reimburse the City for costs it incurred for engineering services related to the transfer station property.

Core will make this payment within ten (10) days of execution of this letter agreement upon confirming payment instruction with the City. Funds related to this letter agreement are unrestricted.

Agreed to by:

City of Denton

Core Scientific, Inc.

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

OUR CORE VALUES

Integrity • Fiscal Responsibility • Transparency • Outstanding Customer Service



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-241, Version: 1

AGENDA CAPTION

Management Reports

1. PUB Roster
2. Ray Roberts Water Treatment Plant Expansion Filtration Methods
3. Future Agenda Items
4. New Business Action Items

Public Utilities Board

Board Roster

Lee Riback

1st Term Sep 01, 2020 - Aug 31, 2024

Position and Role 3

Appointed/Reappointed Date Jan 26, 2021

Nominating Council Member Davis-3

City Issued E-mail Address:

Lee.Riback@cityofdenton.com

Robert P Rayner

1st Term Sep 01, 2021 - Aug 31, 2025

Position and Role 6

Appointed/Reappointed Date 09/19/2023

Nominating Council Member Watts-6

City Issued E-mail Address:

Robert.Rayner@cityofdenton.com

Billy Cheek, Jr.

2nd Term Sep 01, 2022 - Aug 31, 2026

Position and Role 4

Appointed/Reappointed Date November 15, 2022

Nominating Council Member Maguire-4

City Issued E-mail Address:

Billy.Cheek@cityofdenton.com

□ **Susan Parker**

3rd Term Sep 01, 2023 - Aug 31, 2027

Position and Role 5

Appointed/Reappointed Date 09/19/2023

Nominating Council Member McGee-5

City Issued E-mail Address:

Susan.Parker@cityofdenton.com

□ **Thomas Plock**

2nd Term Sep 01, 2023 - Aug 31, 2027

Position and Role 1

Appointed/Reappointed Date 8/15/2023

Nominating Council Member Byrd-1

City Issued E-mail Address:

thomas.plock@cityofdenton.com

□ **Devin C Taylor**

1st Term Sep 01, 2023 - Aug 31, 2027

Position and Role 2

Appointed/Reappointed Date 08/15/2023

Nominating Council Member Beck-2

City Issued E-mail Address:

Devin.Taylor@cityofdenton.com

□ **Aaron Newquist**

1st Term Sep 01, 2023 - Aug 31, 2027

Position and Role 7

Appointed/Reappointed Date 05/21/2024

Nominating Council Member Hudspeth-7

City Issued E-mail Address:

Aaron.Newquist@cityofdenton.com



MEMORANDUM

DATE: November 12, 2024
To: Mr. Riback, City of Denton Public Utilities Board
From: David Brown, City of Denton Water Utilities
SUBJECT: Ray Roberts Water Treatment Plant Expansion Filtration Methods

The upcoming Ray Roberts Water Treatment Plant expansion will add 20 MGD of additional treatment capacity. The expansion will utilize three filtration processes to treat the lake's influent raw water.

These include the following in order:

Sedimentation / Flocculant Basins

These basins are simply settling basins that utilize flocculation to combine small suspended particles into larger ones that settle to the bottom of the basin as sediment. Flocculation is promoted by adding Ferric Sulfate, which binds smaller particles together and increases effectiveness by reducing the amount of material suspended in the water.

Ultrafiltration

Ultrafiltration (UF) is a water treatment process using ultrafine membrane media to separate solids and large molecules from liquid. Low pressure forces the water from the conventional sedimentation basin against the semi-permeable membrane material. The remaining solids remain outside the material while water and fine particles pass through the membrane. UF has been proven effective in removing particulate material and valuable for removing bacteria and microorganisms, which can impart color, taste, and odor to the water. This process is new to Denton and the facility. The project includes a UF performance pilot study at the facility, which the Texas Commission on Environmental Quality (TCEQ) requires.

Granulated Activated Carbon Filter (GAC)

GAC is the final filtration process. It traps particles in the carbon by passing water through the filter. The porous carbon granules remove impurities by absorbing them into the filter's large surface area. This process is the last step in polishing the water before customer distribution.

OUR CORE VALUES

Inclusion • Collaboration • Quality Service • Strategic Focus • Fiscal Responsibility

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
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.	10/28/24	Riback	PUB Membership Roster – Terms, Seat appointments	DME	11/18/24
2.	10/28/24	Riback	Water’s Planned use of Different “Media” in it’s Ray Roberts Expansion	Water	11/18/24



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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 seller of power and electric energy services, and Core Scientific 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 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.