

ORDINANCE NO. 21-2701

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

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the design and construction of the Hickory Gas Insulated Substation (GIS) for Denton Municipal Electric; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
7670	Beta Engineering, LLC	\$40,469,000.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the

written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. The City Council of the City of Denton, hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

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

The motion to approve this ordinance was made by Gerard Hudspeth and seconded by Paul Meltzer. This ordinance was passed and approved by the following vote [6 - 1]:

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

PASSED AND APPROVED this the 14<sup>th</sup> day of December, 2021.


  
GERARD HUDSPETH, MAYOR

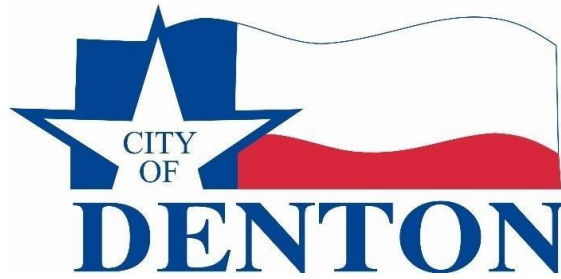
ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: 



APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:   
Digitally signed by Marcella Lunn  
DN: cn=Marcella Lunn, o,  
ou=City of Denton,  
email=marcella.lunn@cityofd  
enton.com, c=US  
Date: 2021.11.30 14:01:38  
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## 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 OwnerSupplied Equipment into the Facility, as set forth in **Exhibit A**. The OwnerSupplied Equipment shall be made available to Contractor at the Delivery Point.

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

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

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



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

or

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#### SECTION 2.21. Owner Obligations

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

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

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

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

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

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

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

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

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

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

#### SECTION 2.22. Commercial Activities

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

### ARTICLE III

#### CONSTRUCTION SCHEDULE AND COST

##### SECTION 3.1. Commencement of the Work and Contract Completion Date

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

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

### SECTION 3.2. Project Milestone Schedule and Facility CPM Schedule

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

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

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

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

### SECTION 3.3. Delays

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

## ARTICLE IV

### COMPENSATION

#### SECTION 4.1. Compensation

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

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

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

#### SECTION 4.3. Monthly Billing

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

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

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

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

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

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

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

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

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

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

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

#### SECTION 4.4. Contents of Progress Invoices

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

#### SECTION 4.5. Final Payment; Liens

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

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

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

#### SECTION 4.6. Effect of Payment

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

#### SECTION 4.7. Security of Performance

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

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

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

#### SECTION 4.8. Wire Transfer Instructions

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

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

## ARTICLE V

### CHANGES IN THE WORK

#### SECTION 5.1. Change Order

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



## SECTION 5.2. Individuals Authorized to Make Changes

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

## SECTION 5.3. Change Orders

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

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

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

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

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

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

#### SECTION 5.4. If No Agreement

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

### ARTICLE VI

#### INSPECTION AND WARRANTY

##### SECTION 6.1. Warranty

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

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

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

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

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

## SECTION 6.2. Engineering and Design Warranty

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

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

### SECTION 6.3. Inspection and Testing

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

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

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

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

#### SECTION 6.4. Correction of Defects

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

#### SECTION 6.5. Limitations

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

#### SECTION 6.6. Title

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

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

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

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

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

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

## ARTICLE VII

### REPRESENTATIVES AND NOTICES

#### SECTION 7.1. Owner's Representative

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

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

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

#### SECTION 7.2. Contractor's Project Manager

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

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

#### SECTION 7.3. Notices

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

With a copy to:

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



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

#### SECTION 7.4. Changes

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

#### SECTION 7.5. Ordinary Course

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

### ARTICLE VIII

#### SITE

##### SECTION 8.1. Site Investigation

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

## SECTION 8.2. Lines and Grades

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

## SECTION 8.3. Specifications and Drawings

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

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

## SECTION 8.4. Use of Premises

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

## SECTION 8.5. Cleaning Up

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

#### SECTION 8.6. Underground Facilities

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

#### SECTION 8.7. Other Contracts

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

### ARTICLE IX

#### COMPLETION OF THE WORK

##### SECTION 9.1. Mechanical Completion

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

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

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

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

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

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

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

## SECTION 9.2. Substantial Completion

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

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

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

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

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

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

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

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

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

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

### SECTION 9.3. Punch List

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

### SECTION 9.4. Remedy of Failure to Achieve Performance Guarantees

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

### SECTION 9.5. Final Completion

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

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

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

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

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

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

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

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

#### SECTION 9.6. Schedule Guarantee and Delay Damages

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

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

**SECTION 9.7. Payment of Delay Damages**

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

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

**SECTION 9.8. Payment of Early Substantial Completion**

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

**ARTICLE X**

**DEFAULT AND TERMINATION**

**SECTION 10.1. Contractor Default**

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

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



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

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

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

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

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

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

## SECTION 10.2. Right to Terminate for Cause

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

### SECTION 10.3. Termination by Owner for Cause

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

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

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

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

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

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

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

#### SECTION 10.4. Termination by Owner for Convenience

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

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

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

#### SECTION 10.5. Stopping Work

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

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

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

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

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

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

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

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

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

#### SECTION 10.6. Suspension of the Work

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

#### SECTION 10.7. Owner Default

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

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

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

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

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

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

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

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

#### **SECTION 10.8. Delivery of Documents**

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

## ARTICLE XI

### DISPUTE RESOLUTION

#### SECTION 11.1. Dispute Resolution

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

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

#### SECTION 11.2. Consideration by Senior Management

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

#### SECTION 11.3. Mediation

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

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

#### SECTION 11.4. Jurisdiction

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

### ARTICLE XII

#### INDEMNITY AND LIMITATIONS OF LIABILITY

##### SECTION 12.1. General Liability

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

##### SECTION 12.2. Liability for Owner Property

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

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

### SECTION 12.3. Trespass

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

### SECTION 12.4. Intellectual Property Rights Infringement Indemnity

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

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



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

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

#### SECTION 12.5. Owner's Use of Drawings and Specifications

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

#### SECTION 12.6. Consequential Damages

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

#### SECTION 12.7. Compliance with Laws

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

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

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

**SECTION 12.8. Limitation of Liability**

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

**ARTICLE XIII**

**DRUG, ALCOHOL, SAFETY AND HAZARDOUS MATERIALS**

**SECTION 13.1. Drug and Alcohol Policy**

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

**SECTION 13.2. Safety Materials**

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

**SECTION 13.3. Safety Precautions**

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

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

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

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

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

#### SECTION 13.4. Hazardous Materials

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

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

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

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

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

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

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

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

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

## **ARTICLE XIV**

### **INSURANCE**

#### **SECTION 14.1. STANDARD PROVISIONS**

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

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

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or as otherwise specified herein:

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

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

#### SECTION 14.2. SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

##### A. General Liability Insurance

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

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

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

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

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

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

#### B. Automobile Liability Insurance

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

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

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

#### C. Workers Compensation Insurance

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



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

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

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

#### E. Professional Liability Insurance

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

#### F. Builder's Risk Insurance

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

#### G. Commercial Crime

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

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

### i. Definitions:

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

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

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

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

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

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

## **ARTICLE XV**

### **OWNERSHIP OF PLANS; REPRESENTATIONS AND WARRANTIES**

#### **SECTION 15.1. Title to Plans and Specifications**

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

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

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

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

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

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

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

#### SECTION 15.2. Confidentiality

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

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

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

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

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

#### SECTION 15.4. Representations and Warranties of Contractor.

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

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

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

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

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

## ARTICLE XVI

### FORCE MAJEURE

#### SECTION 16.1. Force Majeure

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

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



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

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

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

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

#### SECTION 16.2. Applicability of Force Majeure

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

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

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

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

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

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

## **ARTICLE XVII**

### **OTHER PROVISIONS**

#### **SECTION 17.1. Assignment**

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

#### **SECTION 17.2. Independent Contractor**

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

### SECTION 17.3. No Waiver

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

### SECTION 17.4. Gratuities

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

### SECTION 17.5. Severability

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

### SECTION 17.6. Governing Law

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

### SECTION 17.7. Counterparts

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

### SECTION 17.8. Entire Agreement

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

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

#### SECTION 17.9. Agreement Authors

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

#### SECTION 17.10. Survival of Obligations

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

#### SECTION 17.11. No Third Party Beneficiaries

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

#### SECTION 17.12. Further Assurances

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

#### SECTION 17.13. Exclusivity of Remedies

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

#### SECTION 17.14. Right to Audit

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

#### SECTION 17.15. Proportionate Liability

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

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

[Remainder of Page Left Blank Intentionally]

EXHIBIT B  
FORM OF CHANGE ORDER

CHANGE ORDER NO.     Date

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

Description of Change:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_ Increase \_\_\_\_\_ Decrease \_\_\_\_\_ No Effect \_\_\_\_\_ Calendar Days

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

**ACCEPTED BY CONTRACTOR**

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

**Printed Name:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**ACCEPTED BY OWNER**

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

**Printed Name:** \_\_\_\_\_

**Its:** \_\_\_\_\_

EXHIBIT C  
FORM OF PARTIAL LIEN WAIVERS AND RELEASE



EXHIBIT C-1  
FORM OF PARTIAL LIEN WAIVER AND RELEASE

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project \_\_\_\_\_

Job No. \_\_\_\_\_

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

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

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

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

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

Date \_\_\_\_\_

\_\_\_\_\_  
(Company name)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

STATE OF TEXAS                      §  
COUNTY OF \_\_\_\_\_           §

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

\_\_\_\_\_  
Notary Public In and For  
The State of Texas

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

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project \_\_\_\_\_

Job No. \_\_\_\_\_

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

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

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

Date \_\_\_\_\_

\_\_\_\_\_  
(Company name)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

STATE OF TEXAS                   §  
COUNTY OF \_\_\_\_\_ §

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

\_\_\_\_\_  
Notary Public In and For  
The State of Texas

EXHIBIT C-2  
FORM OF FINAL LIEN WAIVER AND RELEASE

## CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project \_\_\_\_\_

Job No. \_\_\_\_\_

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

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

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

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

Date \_\_\_\_\_

\_\_\_\_\_

(Company name)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

STATE OF TEXAS                    §  
COUNTY OF \_\_\_\_\_ §

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

\_\_\_\_\_  
Notary Public In and For  
The State of Texas

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

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

Project \_\_\_\_\_

Job No. \_\_\_\_\_

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

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

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

Date \_\_\_\_\_



\_\_\_\_\_  
(Company name)

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

STATE OF TEXAS                      §  
COUNTY OF \_\_\_\_\_           §

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

\_\_\_\_\_  
Notary Public In and For  
The State of Texas

EXHIBIT D-1  
FORM OF MECHANICAL COMPLETION CERTIFICATE

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

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

[\_\_\_\_\_]

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT D-2  
FORM OF SUBSTANTIAL COMPLETION CERTIFICATE

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

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

[\_\_\_\_\_]

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT D-3

FORM OF FINAL COMPLETION CERTIFICATE

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

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

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

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT E-1 LNTP

January

[Contractor Name]

[Address]

[Address]

Telephone:

Facsimile:

Attention: [\_\_\_\_\_]

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

---

City of Denton (“**Owner**”) hereby notifies Beta Engineering, LLC. (“**Contractor**”, together with Owner, the “**Parties**”) that, subject to the terms of this LNTP 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 LNTP 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 LNTP Agreement is intended to allow the Contractor to proceed with certain preliminary work (“**LNTP 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 LNTP Scope of Work (as hereinafter defined) in accordance with all terms of the “Contract” and the LNTP Pricing Schedule attached as **Exhibit B** and Scope of Work attached as **Exhibit A**. Contractor shall commence performing the LNTP Work immediately upon the execution of this LNTP Agreement.
- 1.2       Contractor shall not incur any costs during the performance of the LNTP Work to be paid by the Owner in excess of \$4,355,263 Dollars without obtaining prior written approval from the Owner.

**2.       EPC CONTRACT**

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

### **3. SCOPE OF WORK**

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

### **4. PAYMENT**

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

### **5. AMENDMENTS AND WAIVERS**

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

### **6. SOLE AGREEMENT**

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

### **7. NOTICES**

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

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

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

### **8. SEVERABILITY**

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

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

**9. COUNTERPARTS**

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

**10. ADVICE OF COUNSEL**

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

**11. GOVERNING LAW**

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

**[OWNER NAME]**

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

Name: \_\_\_\_\_

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

**Acceptance**

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

**[CONTRACTOR NAME]**

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

Name: \_\_\_\_\_

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



## **Exhibit A**

### **Scope of Work**

#### **Contactor Services**

##### **Engineering**

##### **SITE DEVELOPMENT – THROUGH IFC**

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

##### **GIS BUILDING – THROUGH IFC**

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

##### **PRELIMINARY ENGINEERING TO SUPPORT PERMITTING**

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

Procurement

GENERAL

- Performance and Payment Bond
- Builder's Risk Insurance

138kv GIS

- Issue Purchase Order

138/13.2kV Transformer

- Issue Purchase Order

**Exhibit B**

**Payment Schedule**

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

EXHIBIT E-2 LNTF

[Date], 20\_\_

[Contractor Name]

[Address]

[Address]

Telephone:

Facsimile:

Attention: [\_\_\_\_\_]

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

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

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

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

**[OWNER NAME]**

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

Name: \_\_\_\_\_

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

**Acceptance**

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

**[CONTRACTOR NAME]**

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

Name: \_\_\_\_\_

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

**EXHIBIT F**  
**PERMITS**

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

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

12	US Army Corps of Engineers (USACE) Section 404/401 Permit	USACE/ TCEQ	N/A	N/A
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BP4004 - City of Denton - 138/13.2kV GIS Substation

Invoice Projections

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

[illegible]



EXHIBIT H  
FORM OF PERFORMANCE SECURITY

## EXHIBIT H-1

FORM OF PERFORMANCE BOND

1

2

## PERFORMANCE BOND

3

4

**THE STATE OF TEXAS**

§

5

§

**KNOW ALL BY THESE PRESENTS:**

6

**COUNTY OF DENTON**

§

7

8

That we, \_\_\_\_\_, known as

9

“Principal” herein and \_\_\_\_\_, a corporate

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

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

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

13 sum of, \_\_\_\_\_ Dollars

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

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

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

17 presents.

18

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

19 awarded the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which Contract is hereby referred to and

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

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

22 Orders, as provided for in said Contract designated as \_\_\_\_\_.

24

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

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

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

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

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

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

30

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

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

32 Sherman Division.

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

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

PRINCIPAL:

\_\_\_\_\_  
\_\_\_\_\_

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

ATTEST:

\_\_\_\_\_

(Principal) Secretary

\_\_\_\_\_  
Name and Title

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

SURETY:

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
Name and Title

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness as to Surety

Telephone Number: \_\_\_\_\_

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

EXHIBIT H-2  
FORM OF PAYMENT BOND

PAYMENT BOND

THE STATE OF TEXAS

§

KNOW ALL BY THESE PRESENTS:

COUNTY OF DENTON

§

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

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

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

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

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

4

PRINCIPAL:

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_  
Signature\_\_\_\_\_  
(Principal) Secretary\_\_\_\_\_  
Name and Title

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_\_\_\_\_\_  
Witness as to Principal

SURETY:

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_  
Signature\_\_\_\_\_  
(Surety) Secretary\_\_\_\_\_  
Name and Title

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_\_\_\_\_\_  
Witness as to Surety

Telephone Number: \_\_\_\_\_

5

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

9

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

12

**END OF SECTION**

13

EXHIBIT H-3  
FORM OF MAINTENANCE BOND

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.



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

4

5

6

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11

12

13

PRINCIPAL:

\_\_\_\_\_  
\_\_\_\_\_

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

ATTEST:

\_\_\_\_\_

14 (Principal) Secretary

15

16

17

18

19

20 Witness as to Principal

21

22

23

24

25

26

27

28

29 ATTEST:

30

31

32 (Surety) Secretary

33

34

35 Witness as to Surety

36

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

41

Name and Title

Address:

SURETY:

BY:

Signature

Name and Title

Address:

Telephone Number:

EXHIBIT I  
FORM OF BI-WEEKLY PROGRESS REPORT



**City of Denton**

**Hickory GIS Substation**

**BI-WEEKLY PROGRESS REPORT**

**Month / Year**



**BI-WEEKLY PROGRESS REPORT- MONTH / YEAR**

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**APPENDIX A – PHOTOS**

**APPENDIX B – PROJECT SCHEDULE**

## **EXECUTIVE SUMMARY**

This progress report covers the project execution activities for the design, procurement and construction of the Hickory GIS for the weeks of XYZ.

Safety:

Schedule:

Contractual:

### **1.0 SAFETY**

In order to track our performance, we are tracking the following safety statistics; hours worked, first aid cases, property damage incidents and OSHA recordable incidents:

### **2.0 PERMITS**

The permitting matrix was updated as follows:

## **ENGINEERING**

Engineering progress for the month includes the following:

- X,Y,Z

## **PROCUREMENT**

Procurement Packages awarded to date:

- CXYZ - 1

Procurement Packages currently in Bid & Procurement process:

- CXYZ - 2

### **3.0 CONSTRUCTION PROGRESS**

Construction Progress for the week is as follows:

Civil

Structural

Mechanical

Electrical

Building

#### **4.0 COMMISSIONING & TESTING**

Update:

#### **5.0 PROJECT CHANGES**

Contractor Change Notices:

Potential Change Orders:

Executed Change Orders to date:

#### **6.0 PROJECT SCHEDULE**

The project schedule is included in Exhibit M.

#### **7.0 CRITICAL ACTION ITEMS**

The Action Item list is filled out and updated through our bi-weekly coordination meetings, however, below are Action Items that are either past due or need attention soon to avoid contract impacts:

None to report at this time.

\* \* \* \* \*



# BETA<sup>®</sup> Project Organization Chart

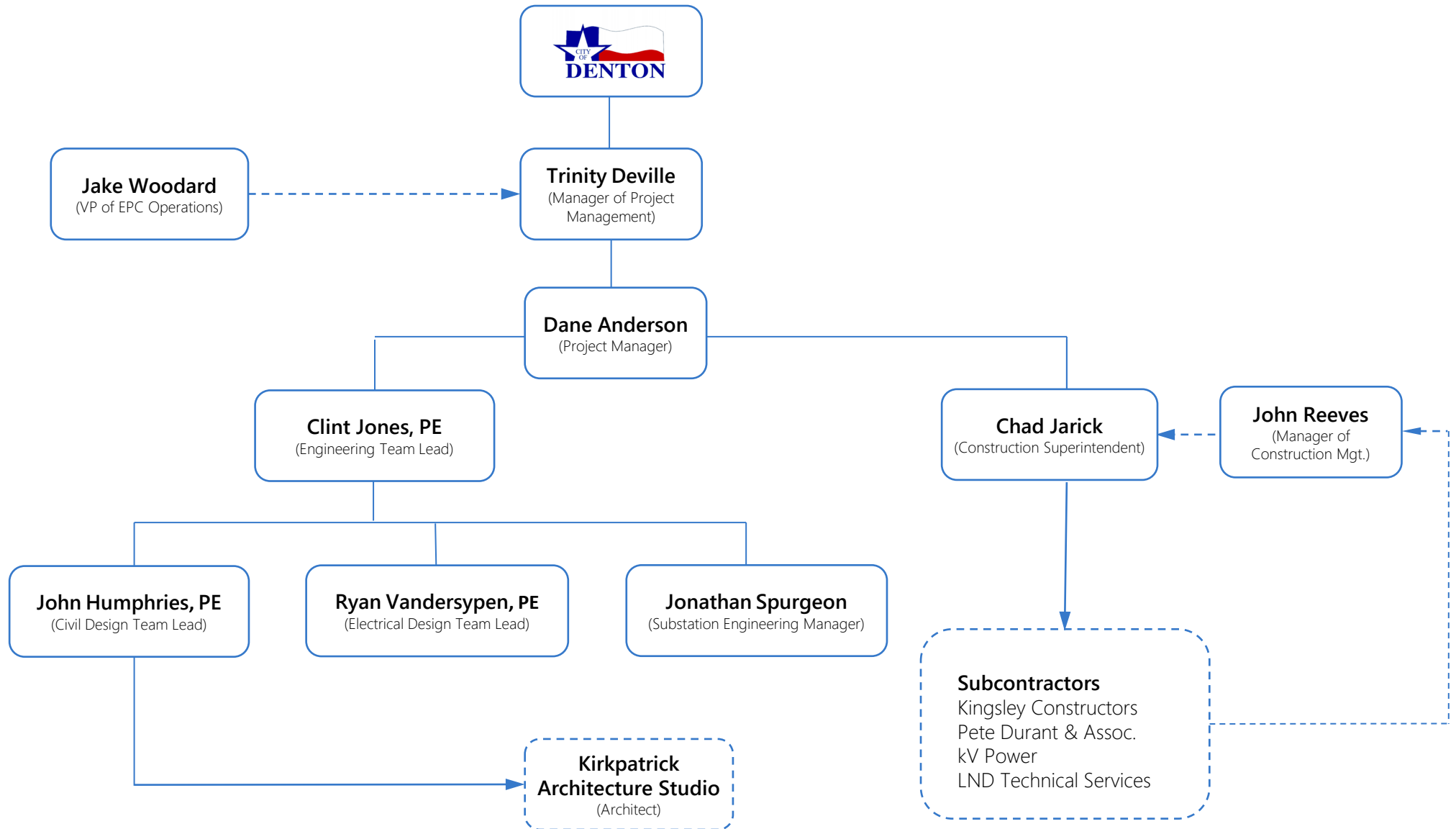


EXHIBIT K  
GUARANTEES AND PERFORMANCE TESTS

Not Used

EXHIBIT L – Not Used

11/18/2021 BETA PROPOSAL BP4004, REVISION 2 PAGE 1 OF 1



## EXHIBIT N

Beta Engineering  
 4725 Highway 28 East  
 Pineville, LA 71360  
 318.487.9599  
[betaengineering.com](http://betaengineering.com)

Classification	Rate Type	Unit of Measure	Rate
President	N/A	Hour	200
Vice President	N/A	Hour	200
Project Executive	N/A	Hour	185
Senior Project Manager	N/A	Hour	175
Project Manager III	N/A	Hour	160
Project Manager II	N/A	Hour	145
Project Manager I	N/A	Hour	130
Scheduling Specialist	N/A	Hour	120
Project Coordinator III	N/A	Hour	130
Project Coordinator II	N/A	Hour	115
Project Coordinator I	N/A	Hour	100
Administrative Assistant	N/A	Hour	65
Construction Manager IV	N/A	Hour	160
Construction Manager III	N/A	Hour	140
Construction Manager II	N/A	Hour	120
Construction Manager I	N/A	Hour	105
Procurement Agent III	N/A	Hour	85
Procurement Agent II	N/A	Hour	80
Procurement Agent I	N/A	Hour	75
Project Engineer	N/A	Hour	155
Engineer V	N/A	Hour	155
Engineer IV	N/A	Hour	145
Engineer III	N/A	Hour	130
Engineer II	N/A	Hour	115
Engineer I	N/A	Hour	105
Technician III	N/A	Hour	120
Technician II	N/A	Hour	110
Technician I	N/A	Hour	100
Designer III	N/A	Hour	85
Designer II	N/A	Hour	75
Drafter I	N/A	Hour	65

Classification	Rate Type	Unit of Measure	Rate
The above rates include all direct and indirect labor costs included but not limited to payroll taxes, benefits, insurance, workers compensation, overhead and profit.			
Overtime rates will be applied to the above hourly rates at 1.5 times for all hours above 10 hours per day or 40 hours per week and for any work on weekends and holidays.			
Level I Software: Structural Design, Foundation Design, AutoCAD, Vortex, Vibrec	N/A	Hour	10.00
Level II Software: Autodesk Revit, Navisworks, PLS-Cad, Autodesk Inventor, AutoCAD Electrical, AutoCAD Civil 3D, MicroStation	N/A	Hour	20.00
Level III Software: CDEGS, SYMCAP	N/A	Hour	30.00
Reproduction – Black & White Large Scale Drawings (D Size)	N/A	Each	1.50
Reproduction- Color Large Scale Drawings (D Size)	N/A	Each	10.00
Documents – Black & White Single-sided Copies 8 x 11, 8 x 14	N/A	Each	0.10
Documents – Black & White Single-sided Copies 11 x 17	N/A	Each	0.25
Documents – Black & White Double-sided Copies 8 x 11, 8 x 14	N/A	Each	0.15
Documents – Black & White Double-sided Copies 11 x 17	N/A	Each	0.38
Documents – Color Single-sided Copies 8 x 11, 8 x 14	N/A	Each	1.00
Documents – Color Single-sided Copies 11 x 17	N/A	Each	2.50
Documents – Color Double-sided Copies 8 x 11	N/A	Each	1.50
Documents – Color Double-sided Copies 11 x 17	N/A	Each	4.00
Other Expenses Associated with Outsourced Labor, Material or Equipment	N/A	Each	Cost + 10%

**BETA ENGINEERING, LLC**

DocuSigned by:  
BY: George Brashear  
E7E9E2A7A944F6  
**AUTHORIZED SIGNATURE**

Printed Name: George Brashear

Title: Executive Vice President

318.730.4303

**PHONE NUMBER**

george.brashear@betaengineering.com

**EMAIL ADDRESS**

2021- 827510

**TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER**

**CITY OF DENTON, TEXAS**

DocuSigned by:  
BY: Sara Hensley  
5236DB296270423  
**SARA HENSLEY  
INTERIM CITY MANAGER**

**ATTEST:  
ROSA RIOS, CITY SECRETARY**

DocuSigned by:  
BY: Rosa Rios  
4C6CA8C6E175403...

**APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY**

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

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

DocuSigned by:  
Antonio Puente Antonio Puente  
E3760944C2BE4B5...  
**SIGNATURE PRINTED NAME**

DME General Manager

**TITLE**

Electric

**DEPARTMENT**

# CONFLICT OF INTEREST QUESTIONNAIRE

## CONFLICT OF INTEREST QUESTIONNAIRE -

## FORM CIQ

**For vendor or other person doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

Beta Engineering, LLC

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

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

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

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

☐

Yes

☐

No

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

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

**5**

*George A. Brashear*

August 19, 2021

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date



**Certificate Of Completion**

Envelope Id: D5F87594CD3A4C2C93CF7637E174F3B0

Status: Completed

Subject: Please DocuSign: City Council Contract 7670 Hickory GIS Substation Design Build

Source Envelope:

Document Pages: 125

Signatures: 5

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelope Stamping: Enabled

Denton, TX 76209

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

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

11/29/2021 12:16:47 PM

Christa.Christian@cityofdenton.com

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

Christa Christian

**Completed**

Sent: 11/29/2021 12:58:57 PM

christa.christian@cityofdenton.com

Viewed: 11/29/2021 12:59:09 PM

Senior Buyer

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City of Denton

Using IP Address: 198.49.140.104

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 11/29/2021 12:59:38 PM

lori.hewell@cityofdenton.com

Viewed: 11/29/2021 2:43:16 PM

Purchasing Manager

Signed: 11/29/2021 2:44:26 PM

City of Denton

Signature Adoption: Pre-selected Style

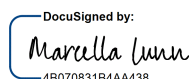
Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 11/29/2021 2:44:29 PM

marcella.lunn@cityofdenton.com

Viewed: 11/29/2021 2:45:54 PM

Catherine Clifton, Interim City Attorney

Signed: 11/29/2021 5:26:10 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 68.185.202.16

Signed using mobile

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

George Brashear



Sent: 11/29/2021 5:26:13 PM

george.brashear@betaengineering.com

Viewed: 11/29/2021 5:30:38 PM

Executive Vice President

Signed: 11/29/2021 8:30:12 PM

Beta Engineering, LLC

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 76.88.4.158

**Electronic Record and Signature Disclosure:**

Accepted: 11/29/2021 5:30:38 PM

ID: f567f1ad-3a93-45f1-99e7-185388c031aa

Signer Events	Signature	Timestamp
<p>Antonio Puente</p> <p>Antonio.Puente@cityofdenton.com</p> <p>DME General Manager</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 11/29/2021 8:42:03 PM ID: e76b626b-ab78-4de6-9726-d7bcd34dd118</p>	<p>DocuSigned by: <i>Antonio Puente</i> E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 174.246.128.156 Signed using mobile</p>	<p>Sent: 11/29/2021 8:30:15 PM Viewed: 11/29/2021 8:42:03 PM Signed: 11/29/2021 8:42:33 PM</p>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Contract Administrator</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>Completed</b></p> <p>Using IP Address: 198.49.140.104</p>	<p>Sent: 11/29/2021 8:42:36 PM Viewed: 12/15/2021 8:15:34 AM Signed: 12/15/2021 8:16:03 AM</p>
<p>Sara Hensley</p> <p>sara.hensley@cityofdenton.com</p> <p>Interim City Manager</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by: <i>Sara Hensley</i> 5236DB296270423...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 12/15/2021 8:16:07 AM Viewed: 12/15/2021 8:18:11 AM Signed: 12/15/2021 8:18:17 AM</p>
<p>Rosa Rios</p> <p>rosa.rios@cityofdenton.com</p> <p>City Secretary</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by: <i>Rosa Rios</i> 1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 12/15/2021 8:18:20 AM Viewed: 12/15/2021 9:14:47 AM Signed: 12/15/2021 9:15:09 AM</p>
<p><b>Electronic Record and Signature Disclosure:</b> Accepted: 12/15/2021 9:14:47 AM ID: d5f7d80b-dfaa-4af9-83ca-1bd9a6b27ef6</p>		

In Person Signer Events	Signature	Timestamp
<b>Editor Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Agent Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Intermediary Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
<p>Cheyenne Defee</p> <p>cheyenne.defee@cityofdenton.com</p> <p>Contract Administrator</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p><b>COPIED</b></p>	<p>Sent: 11/29/2021 12:59:38 PM</p>

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> 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) <b>Electronic Record and Signature Disclosure:</b> 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) <b>Electronic Record and Signature Disclosure:</b> Accepted: 11/23/2021 1:52:42 PM ID: 3bdd0863-bf0a-485f-a75b-0c586de97b56	COPIED	Sent: 12/15/2021 9:15:12 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	11/29/2021 12:58:57 PM
Certified Delivered	Security Checked	12/15/2021 9:14:47 AM
Signing Complete	Security Checked	12/15/2021 9:15:09 AM
Completed	Security Checked	12/15/2021 9:15:13 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

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

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

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

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

**Required hardware and software**

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

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

**Acknowledging your access and consent to receive materials electronically**

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

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