

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR THE WASTEWATER LIFT STATION CONDITION ASSESSMENT PROJECT FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7574-024 – PROFESSIONAL SERVICES AGREEMENT FOR ASSESSMENT SERVICES AWARDED TO KIMLEY-HORN AND ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$460,000.00).

WHEREAS, on March 23, 2021, the City Council approved a pre-qualified engineer list for Water and Wastewater (Ordinance 21-546), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with to Kimley-Horn and Associates, Inc., for the Wastewater Lift Station Condition Assessment Project for the Water Utilities Department, a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

The motion to approve this ordinance was made by _____ and

seconded by _____ . This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Jesse Davis, District 3:	_____	_____	_____	_____
VACANT, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2023.

GERARD HUDSPETH, MAYOR

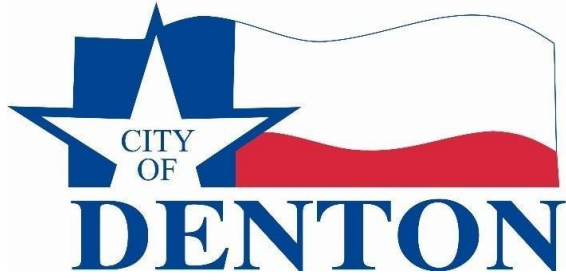
ATTEST:
JESUS SALAZAR, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

Digitally signed by Marcella Lunn
 DN: cn=Marcella Lunn, o,
 ou=City of Denton,
 email=marcella.lunn@cityofdent-
 on.com, c=US
 Date: 2023.04.12 09:41:08 -05'00'



DocuSign City Council Transmittal Coversheet

PSA	7574-024
File Name	WASTEWATER LIFT STATION CONDITION ASSESSMENT
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and **KIMLEY-HORN AND ASSOCIATES, INC.**, with its corporate office at 421 Fayetteville Street, Suite 600, Raleigh, NC 27601 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Wastewater Lift Station Condition Assessment (the "PROJECT").

SECTION 1 **Scope of Services**

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

SECTION 2 **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$460,000 in the manner and in accordance with the fee schedule as set forth in Attachment B. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment D.

SECTION 3 **Terms of Payment**

Payments to the ENGINEER will be made as follows:

A. Invoice and Payment

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

SECTION 4 Obligations of the Engineer

A. General

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

B. Standard of Care

The ENGINEER shall perform its services:

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

C. Subsurface Investigations

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

D. Preparation of Engineering Drawings

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

E. Engineer's Personnel at Construction Site

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

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

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

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

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

G. Construction Progress Payments

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

encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

H. Record Drawings

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

I. Right to Audit

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

J. INSURANCE

(1) ENGINEER'S INSURANCE

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

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

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

(2) GENERAL INSURANCE REQUIREMENTS

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

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

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

K. Independent Consultant

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

L. Disclosure

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

M. Asbestos or Hazardous Substances

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

N. Permitting Authorities - Design Changes

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

O. Schedule

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

P. Equal Opportunity

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

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

SECTION 5 **Obligations of the City**

A. City-Furnished Data

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

B. Access to Facilities and Property

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

C. Advertisements, Permits, and Access

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

D. Timely Review

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

E. Prompt Notice

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

F. Asbestos or Hazardous Substances Release.

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

G. Contractor Indemnification and Claims

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

H. Contractor Claims and Third-Party Beneficiaries

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

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

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

I. CITY's Insurance

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.

- (2) The CITY may secure Builders Risk/Installation insurance at the replacement cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

J. Litigation Assistance

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

K. Changes

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

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

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

B. Reuse of Project Documents

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

C. Force Majeure

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

D. Termination

(1) This AGREEMENT may be terminated:

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

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

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

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

E. Suspension, Delay, or Interruption to Work

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

F. Indemnification

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

REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.

G. Assignment

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

H. Jurisdiction

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

I. Severability and Survival

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

J. Observe and Comply

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

K. Immigration Nationality Act

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

PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES. CITY, upon written notice to ENGINEER, shall have the right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

L. Prohibition On Contracts With Companies Boycotting Israel

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

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

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

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer's signature provides written verification to the City that Engineer: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

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

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

Q. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS

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

R. Agreement Documents

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

- Attachment A - Scope of Services
- Attachment B - Compensation
- Attachment C - Changes and amendments to standard agreement
- Attachment D - Project Schedule

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

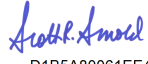
The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

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

BY:
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:
ENGINEER
KIMLEY-HORN AND ASSOCIATES,
INC

DocuSigned by:

D1B5A80064EE4E0...

Scott Arnold
Vice President

Date: 3/13/2023

2023-990056

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

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

DocuSigned by:
Stephen D. Gay

Signature

Director,

Title

water utilities

Department

Date Signed: 3/13/2023

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn

BY: _____

ATTACHMENT "A"

Scope for Engineering Related Professional Services for:

LIFT STATION CONDITION ASSESSMENT

The ENGINEER will perform its services pursuant to the requirements delineated below. Services under this attachment include services for a lift station condition assessment program.

Project Understanding

The City of Denton (CITY) is requesting the development of a lift station condition assessment program. The program will consist of pump performance testing, evaluation of general site parameters, evaluation for compliance with the Texas Commission on Environmental Quality lift station requirements, condition assessment of selective equipment, and consequence of failure and likelihood of failure of site components.

It is understood that the CITY will also procure a third-party Contractor or Consultant for detailed condition assessment of force mains to be selected by the CITY. The results and/or reports from the third-party Contractor or Consultant will be included in the ENGINEER'S report.

The CITY has previously engaged the ENGINEER to develop the Wastewater Master Plan. The following lift stations have already been or will be evaluated as a part of the Wastewater Master Plan and will not be included for Pump Performance Testing as a part of this project but will only be included for Condition Assessment, as required:

1. Beaver Creek
2. Lakeview
3. Cooper Creek
4. Hobson
5. Preserve
6. Southfork
7. Bent Oaks
8. Vacation Village

The following additional lift stations are included for Pump Performance Testing and Condition Assessment as a part of this project:

1. Sundown
2. Wimbleton
3. United Copper
4. Oakmont
5. Lexington Park
6. Robson SW
7. State School Wet Weather
8. Union 76/TA Truckstop
9. Wynstone
10. Good Sam
11. Masch Branch
12. Aldi
13. Barrow
14. Border Cowboy-Barthold
15. Camping World
16. Vintage
17. Grissom
18. Robson East

19. Lakeview Ranch
20. Denton West
21. Granada
22. Hickory Creek
23. Teasley Trails
24. Vista Del Arroyo (Riney RD)

Project Assumptions

The following assumptions have been made by the ENGINEER in preparation of this scope of services:

- Accessibility and Operation - The lift stations and components are assumed to be readily accessible without special equipment or delay. It is also assumed that each site is safe to work in for extended periods of time. Confined space entry is understood to not be required for this project. If sites or equipment are determined by ENGINEER to be inaccessible, inoperable, impractical to test, unsafe or appear to be likely to fail under operation, ENGINEER will notify the CITY and possibly abort the evaluation. Time and expenses incurred related to aborted evaluations will be billed according to ENGINEER's current hourly rates.
- Attendees - Any persons on site during evaluations are confined space trained, CPR certified, electrical, and arc flash trained. Confined space entry is understood to not be required for this project. If confined space entry is required for installation of equipment, it will be performed by CITY staff.
- Inflow - It is assumed that each site has sufficient inflow for the necessary number of pump tests during the test period. If inflow rates are insufficient, as much data as possible will be collected during the test. In general test results will be more consistent and accurate if inflow rates are steady and produce between 2 and 8 pump cycles per hour. Makeup water may be supplied by CITY via tanker truck or hydrant if necessary.
- Voltage - Electrical tests will not be conducted on system voltages greater than 600 Volts (nominal) or where motor leads are inaccessible or unsafe to access. Motor leads are assumed to be accessible and are terminated at the control panel. Operable hand controls are assumed available for each pump.
- Wet Wells - For a complete performance test, the wet well must have a clear opening for a level transducer and minimal grease. Wet wells or clarifiers must have a regular shape that is easily definable through measurements made without entering the wet well or clarifier. The wet well will be cleaned immediately prior to the test by the CITY, if necessary.
- Working Hours - ENGINEER assumes that CITY operations staff will be available to assist with testing at a minimum from the hours of 8:00 am to 5:00 pm.

TASK 1 KICK-OFF, PROJECT MANAGEMENT, AND PREEVALUATION SUMMARY

The ENGINEER will provide the following project management services.

- A. Prepare condition assessment methodology and condition assessment data template for CITY review.
- B. Kick-Off Meeting
 1. Prepare for and lead kick-off meeting with the CITY.
 2. Review condition assessment methodology and condition assessment data template.
 3. Distribute kick-off meeting notes and action items.
- C. Project Management
 1. Develop project communication plan.

- a. Prepare and e-mail progress reports to the project team once a month to be included with invoices.
 - b. Prepare project schedule and provide schedule updates if the schedule changes.
 2. Prepare and email monthly invoices reflective of work completed.
 3. Team Management
 - i. ENGINEER will conduct monthly internal progress meetings with evaluation team.
- D. Pre-Evaluation Summary – ENGINEER will visit each site to determine modifications to the site or preparations to be made prior to testing being performed.
1. ENGINEER will provide a summary of work that the needs to be completed by the CITY before testing is conducted at each location. ENGINEER will provide a summary of tasks and manpower to be provided by CITY and a test outline.
 - a. Modifications or preparations are expected to include, but not limited to, installation of tap assemblies, functional testing of isolation valves, cleaning of wet well, providing SCADA data, providing applicable pump curves and record drawings, and coordination to complete pump testing.
 2. ENGINEER will contact pump manufacturers to request pump curve information for sites where pump model information is available, but Client cannot provide the necessary information. ENGINEER will make a reasonable number of attempts and effort to obtain pump information from vendors.

Meetings:

1. One (1) kickoff meeting with CITY and ENGINEER staff.
2. One (1) site visit per site for pre-evaluation summary with CITY and ENGINEER staff.

Deliverables:

1. Project contact list
2. Monthly progress reports
3. Project schedule
4. Kick-off and monthly meeting notes and action items
5. Pre-Evaluation Summary letter, one (1) per site.

Services/Deliverables provided by the CITY:

1. Installation or modification of equipment as detailed in Pre-Evaluation Summary. Install and confirm operation of flow meters and pressure taps as requested by ENGINEER. Confirm National Pipe Thread (NPT) pressure taps are available for pressure transducer connections.
2. Provide the pump curves for each pump to be tested.
3. Provide record drawings and previous studies of lift station.
4. Coordinate and obtain data from SCADA system.
5. Review and provide site specific safety concerns.
6. Functional testing of all valves, pumps, and taps prior to pump evaluations as detailed in Pre-Evaluation Summary.
7. Confirm station is fully operational and ready for testing.
8. Vacuum all grease and debris from the wet well or clarifier, if identified in Pre-Evaluation Summary.

TASK 2 BOUNDARY SURVEY

- A. Boundary Survey – ENGINEER will prepare a survey for each of the lift stations listed in the Project Understanding, 32 in total. The survey will be substantially conforming with the current TSPS Category 1A, Condition II, Standard Land Survey established and adopted by the Texas Society of Professional Surveyors.
- a. The survey will show the location of easements provided by the Client via their Title Company in a current Title Commitment Report for the site and encroachments or protrusions of visible improvements.
 - b. The survey will graphically plot Special Flood Hazard areas as taken from the Flood Insurance Rate Map (FIRM) published by Federal Emergency Management Agency (FEMA).
 - c. The survey will use the Surveyor’s Certification language provided in the TSPS Manual of Practice for Land Surveying in the State of Texas.
 - d. ENGINEER will provide a signed & sealed survey.

Deliverables:

1. Signed & sealed survey, one (1) per site.

Services/Deliverables provided by the CITY:

1. Coordinate as necessary with private property owners to provide access for survey crew.

TASK 3 FIELD INVESTIGATION

- A. Pump Performance Testing – ENGINEER will conduct pump performance tests of each pump in operation at the time of testing. Pump performance tests will be performed at all lift stations identified in the Project Understanding.
1. Pump performance tests will include flow, discharge head, suction head, NPSH, surge data, and input power measurements where possible. Power measurements will only be possible for 480 volt and below. Perform the following tests for each operational pump:
 - a. Perform one (1) single-point hydraulic test with a single pump in operation at a time.
 - b. Perform one (1) single-point hydraulic test with two pumps in operation at a time.
- B. Condition Assessment –ENGINEER will conduct a condition assessment of the following:
1. Structural – Exterior/interior areas of lift station buildings. Assess dry wells for visual evidence of deterioration and corrosion. Visually inspect the condition of the accessible portions of wet wells using a pole camera. An evaluation by a structural engineer or a detailed structural analysis is not included in the Condition Assessment.
 2. Mechanical
 - a. Motors – Assessed for abnormal noise, abnormal heat, abnormal vibration, and any visual deficiencies. Motors inaccessible or within a confined space will not be assessed. Motors and pumps will not be removed or pulled from inaccessible area for inspection.
 - b. Pumps – Assessed for issues including leaking, cavitation, abnormal noise, abnormal heat, abnormal vibration, and any visual deficiencies. Check pump mountings and bases for loose mounts or cracking. Motors and pumps will not be removed or pulled from inaccessible area for inspection.

- c. Piping Valves – Assess the suction isolation valve, discharge isolation valve, and check valve for each pump, noting malfunctioning or leaking. CITY will assist by operating the valves.
 - d. Odor control and Noise evaluation – Evaluate the exterior condition of existing odor control equipment. Discuss with CITY staff to identify stations where odor or noise problems have been reported. Odor and noise observations will be qualitative and not include any measurements. Hydrogen-sulfide gas monitoring is not included in the Condition Assessment.
3. Electrical
 - a. Visual inspection of condition of electrical components including lighting, power distribution cables, starters, etc.
 4. Instrumentation & Control
 - a. Flow transmitters and level transmitters will be checked for operability and performance issues.
 - b. Evaluate existing wet well levels and provide recommendations for revised operating levels. Any recommended levels should not create a surcharge condition in the gravity lines.
 5. HVAC and Piping
 - a. HVAC – Assess units visually for operability, vibrations, and corrosion.
 6. Safety
 - a. Eyewash, emergency stop, fall protection, lighting, fencing, site access, and lifting equipment.
- C. Condition assessments will include a numerical condition ranking from 1 to 5 including notes regarding significant defects. Photos and details will be provided for components with conditions equal to 4 or 5. Portions of the evaluation requiring confined space entry will not be performed.

Meetings:

1. One (1) site visit per site for field investigation with CITY and ENGINEER staff.

Services/Deliverables provided by the CITY:

1. Provide one operator familiar with the site, electrical system, pumps, controls, operation, equipment, and trained in confined space.
2. Operate breakers, valves, pumps and other equipment and assist with field investigation.
3. Installation and removal of pressure transducer connections within areas requiring confined space entry.

TASK 4 ENGINEERING REPORT

- A. Engineering Report – ENGINEER will provide an engineering report summarizing the data collection process, findings, and recommendations. The Engineering Report will consist of the following:
 1. Executive Summary
 2. Pump Performance Testing and Condition Assessment Methodology
 3. Individual Lift Station Assessments
 - a. General Information – Site information, pump curves/data sheets, location, photos, test information, etc.

- b. Pump Performance Information - Pump output (GPM), total dynamic head, current, voltage, input horsepower, output horsepower, wire-to-water efficiency, and comparisons to key performance indicators.
 - c. Compliance with the Texas Commission on Environmental Quality lift station requirements.
 - d. Condition Assessment – A tabulation of the components, their condition ranking, and descriptions of any defects observed.
 - i. Consequence of failure and likelihood of failure matrix.
 - e. Recommendations – A list of recommendations for improvements at each site.
 - i. Opinion of probable construction cost to make recommended improvements.
 - f. Replacement parts – Assessment of recommended replacement parts for CITY to keep on hand for critical equipment.
 - g. Force main condition and report from third-party Contractor or Consultant, if applicable, included as an Appendix and referenced as necessary.
4. Condition assessment consequence of failure and likelihood of failure matrix for all lift stations.
 5. Summary of findings and recommendations.
 6. Prioritized opinion of probable construction cost for recommended improvements.

The individual lift station assessment reports will be provided to the CITY as they are completed.

Meetings:

1. Four (4) meetings with CITY and ENGINEER staff to review individual lift station assessment reports.
2. One (1) meeting with CITY and ENGINEER staff to review Engineering Report.

Deliverables:

1. Electronic .PDF of individual lift station assessment reports, one (1) per site.
2. Electronic .PDF of Engineering Report.

ADDITIONAL SERVICES

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

- Additional site visits
- Installation of temporary meters
- Perform motor winding resistance testing and insulation testing
- Run time monitoring
- Thermal imaging
- Surge analysis
- Extended flow monitoring
- Multi-point curve pump validation or throttling
- Structural engineer evaluation or a detailed structural analysis
- Hydrogen-sulfide gas monitoring
- Design of infrastructure
- Attendance of additional meetings
- Preparation for and attendance at public meetings
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the City.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
- Any services not listed in the Scope of Services

ATTACHMENT "B"

Compensation for Engineering Design Related Services for:

LIFT STATION CONDITION ASSESSMENT

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$460,000** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER for a total compensation on a lump sum basis. If the CITY elects to not include lift stations for Pump Performance Testing or Condition Assessment then the total not-to-exceed value will be reduced by \$9,600 per lift station for Pump Performance Testing and Condition Assessment and \$3,200 per Lift Station for Condition Assessment.

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

Water Master Plan

- | | |
|---|------------|
| • Task 1 – Kick-Off, Project Management, and Pre-Evaluation Summary | \$ 45,000 |
| • Task 2 – Boundary Survey | \$ 115,000 |
| • Task 3 – Field Investigation | \$ 90,000 |
| • Task 4 – Engineering Report | \$ 210,000 |

Total: \$460,000

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

All permitting, application, and similar project fees will be paid directly by the CITY.

Non-Labor Expenses: Non-labor expenses for reimbursable tasks shall be reimbursed as Direct Expenses at invoice or internal office cost. 4.6% will be added to each invoice to cover certain other internal office cost expenses as to these tasks, such as in-house duplicating, local mileage, telephone calls, facsimiles, postage, and word processing.

Direct Expenses (non-labor) for reimbursable tasks include, but are not limited to, mileage, travel and lodging expenses, mail, supplies, printing and reproduction services, other direct expenses associated with delivery of the work; plus applicable sales, use, value added, business transfer, gross receipts, or other similar taxes. Direct reimbursable expenses such as express delivery services, fees, travel, and other direct expenses will be billed at 1.10 times the cost.

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

ATTACHMENT “C”

CHANGES AND AMENDMENTS TO STANDARD AGREEMENT

Engineering Related Professional Services for

LIFT STATION CONDITION ASSESSMENT

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

ATTACHMENT “D”

PROJECT SCHEDULE

LIFT STATION CONDITION ASSESSMENT

ENGINEER endeavors to complete four (4) lift station condition assessments and reports per month. The total project duration will depend on the final number of lift stations selected for assessment by the CITY.

ENGINEER will provide additional detailed schedule to CITY upon further discussion regarding priority areas for analysis and recommendation upon execution of the contract.

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

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

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

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

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

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

KIMLEY-HORN AND ASSOCIATES, INC.

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

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

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

n/a

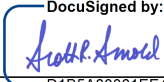
Name of Officer

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

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?
 Yes No
- B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?
 Yes No
- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?
 Yes No
- D. Describe each employment or business and family relationship with the local government officer named in this section.

4 I have no Conflict of Interest to disclose.

5 DocuSigned by:



3/13/2023

Signature of Vendor doing business with the governmental entity

Date

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CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

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

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

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

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

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

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

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: AEDD8119B0D443F58A6F7F920108ACF6	Status: Sent
Subject: Please DocuSign: City Council Contract 7574-024 Wastewater Lift Station Condition Assessment	
Source Envelope:	
Document Pages: 31	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Crystal Westbrook
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	crystal.westbrook@cityofdenton.com
	IP Address: 198.49.140.104


Record Tracking

Status: Original	Holder: Crystal Westbrook	Location: DocuSign
3/6/2023 8:45:52 AM	crystal.westbrook@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 3/6/2023 8:54:50 AM Viewed: 3/6/2023 9:09:42 AM Signed: 3/6/2023 9:10:57 AM

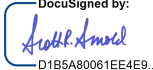
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/6/2023 9:10:59 AM Viewed: 3/6/2023 10:25:08 AM Signed: 3/6/2023 10:25:32 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Mack Reinwand City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/6/2023 10:25:35 AM Viewed: 3/10/2023 12:01:32 PM Signed: 3/10/2023 12:03:53 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Scott Arnold scott.arnold@kimley-horn.com Vice President Kimley-Horn and Associates, Inc. Security Level: Email, Account Authentication (None)	 Signature Adoption: Uploaded Signature Image Using IP Address: 130.41.212.55	Sent: 3/10/2023 12:03:56 PM Viewed: 3/13/2023 7:41:07 AM Signed: 3/13/2023 2:08:39 PM
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Electronic Record and Signature Disclosure:
Accepted: 3/27/2020 10:55:11 AM
ID: a1f38400-e5cc-4b57-8548-4dd7e031355d

Signer Events

Stephen D. Gay
 stephen.gay@cityofdenton.com
 Director,
 Security Level: Email, Account Authentication
 (None)

Signature

DocuSigned by:

 9EBFF5658E56492...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Timestamp

Sent: 3/13/2023 2:08:41 PM
 Viewed: 3/13/2023 2:09:49 PM
 Signed: 3/13/2023 2:49:03 PM

Electronic Record and Signature Disclosure:
 Accepted: 3/13/2023 2:09:49 PM
 ID: 5f5d5750-d903-4643-a584-ec1c4f48e3cd

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

Sent: 3/13/2023 2:49:07 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

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

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

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

Electronic Record and Signature Disclosure:
 Accepted: 3/15/2023 5:39:16 PM
 ID: 80406ce2-8a3e-4520-af69-85a7cb0c40d9

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

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

COPIED

Sent: 3/6/2023 9:10:59 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
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Gretna Jones
gretna.jones@cityofdenton.com
Legal Secretary
City of Denton
Security Level: Email, Account Authentication (None)

COPIED

Sent: 3/13/2023 2:49:06 PM
Viewed: 3/20/2023 9:43:25 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

David Brown
david.brown@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Accepted: 4/10/2019 2:54:36 PM
ID: 20238ddf-ccd6-4d52-988f-8c9f3436055e

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	3/6/2023 8:54:50 AM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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Required hardware and software

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

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