

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., TO PROVIDE PERMITTING ASSISTANCE FOR TWO (2) NEW WASTEWATER RECLAMATION FACILITIES FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7574-028 – PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES AWARDED TO KIMLEY-HORN AND ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$240,000.00).

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 Kimley-Horn and Associates, Inc., to provide permitting assistance for two (2) new Wastewater Reclamation Facilities 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 [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
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:  Digitally signed by Marcella Lunn  
DN: cn=Marcella Lunn, o=City of Denton,  
email=marcella.lunn@cityofdenton.com, c=US  
Date: 2023.05.10 17:13:02 -05'00'



Docusign City Council Transmittal Coversheet

PSA	7574-028
File Name	CLEAR CREEK AND HICKORY CREEK WW DISCHARGE PERMIT
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: Clear Creek and Hickory Creek WW Discharge Permit Project (the "PROJECT").

#### **SECTION 1** **Scope of Services**

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

#### **SECTION 2** **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$240,000 in the manner and in accordance with the fee schedule as set forth in Exhibit A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Exhibit A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Exhibit A.

#### **SECTION 3** **Terms of Payment**

Payments to the ENGINEER will be made as follows:

## **A. Invoice and Payment**

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

## **SECTION 4 Obligations of the Engineer**

### **A. General**

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

### **B. Standard of Care**

The ENGINEER shall perform its services:

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

### **C. Subsurface Investigations**

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

### **D. Preparation of Engineering Drawings**

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

### **E. Engineer's Personnel at Construction Site**

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

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

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

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

- (1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Exhibit 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 Exhibit A to this AGREEMENT.

## **P. Equal Opportunity**

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

- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and

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

## **SECTION 5**

### **Obligations of the City**

#### **A. City-Furnished Data**

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

#### **B. Access to Facilities and Property**

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

#### **C. Advertisements, Permits, and Access**

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

#### **D. Timely Review**

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

#### **E. Prompt Notice**

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

#### **F. Asbestos or Hazardous Substances Release.**

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

#### **G. Contractor Indemnification and Claims**

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

#### **H. Contractor Claims and Third-Party Beneficiaries**

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

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

#### **I. CITY's Insurance**

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

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

#### **J. Litigation Assistance**

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

#### **K. Changes**

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

### **SECTION 6** **General Legal Provisions**

#### **A. Authorization to Proceed**

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

#### **B. Reuse of Project Documents**

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

#### **C. Force Majeure**

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

#### **D. Termination**

(1) This AGREEMENT may be terminated:

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

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

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

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

#### **E. Suspension, Delay, or Interruption to Work**

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

#### **F. Indemnification**

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



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

### **G. Assignment**

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

### **H. Jurisdiction**

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

### **I. Severability and Survival**

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

### **J. Observe and Comply**

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

### **K. Immigration Nationality Act**

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

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

#### **L. Prohibition On Contracts With Companies Boycotting Israel**

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

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

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

#### **N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

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

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

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

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

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

## **Q. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City’s Ethic Ordinance 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:

Exhibit A – Clear Creek Scope and Fee and Hickory Creek Scope and Fee

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

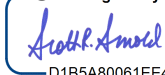
\_\_\_\_\_.

BY:  
CITY OF DENTON, TEXAS

\_\_\_\_\_  
Sara Hensley, City Manager

BY:  
ENGINEER  
KIMLEY-HORN AND ASSOCIATES,  
INC.

DocuSigned by:

  
D1B5A80061FF4E9

\_\_\_\_\_  
Scott Arnold  
Vice President

Date: 5/8/2023  
\_\_\_\_\_

2023-1017514

\_\_\_\_\_  
TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

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

  
9EBFF5658E56492...

Signature

Director,

Title

Water Utilities


Department

Date Signed: 5/8/2023

ATTEST:  
JESUS SALAZAR, INTERIM CITY  
SECRETARY

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

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

  
DocuSigned by:  
4B070831B4AA438

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

**EXHIBIT A**

ATTACHMENT A  
ENGINEERING SERVICES FOR  
**CLEAR CREEK WATER RECLAMATION FACILITY WASTEWATER DISCHARGE PERMIT AMENDMENT**

---

**ATTACHMENT “A”**

Scope for Engineering Related Services for:

**CLEAR CREEK WATER RECLAMATION FACILITY  
WASTEWATER DISCHARGE PERMIT AMENDMENT**

The ENGINEER will perform its services pursuant to the requirements delineated below. Services under this attachment include engineering services for the CLEAR CREEK WATER RECLAMATION FACILITY WASTEWATER DISCHARGE PERMIT AMENDMENT project.

**Project Understanding**

The CITY owns property along Hartlee Field Road within the Clear Creek Sewer Basin and holds an existing 0.95 MGD average daily flow Wastewater Discharge Permit (WWDP) for the future Clear Creek Water Reclamation Facility (WQ0014416001) with a discharge point located on Clear Creek. The CITY has requested ENGINEER to prepare an application to the Texas Commission on Environmental Quality (TCEQ) to amend the existing Clear Creek Water Reclamation Facility WWDP from 0.95 MGD to the maximum average daily flow TCEQ will allow on Clear Creek.

This WWDP amendment is consistent with the Wastewater Master Plan which identified the need for a Wastewater Reclamation Facility (WRF) to serve expected growth. The WWDP Amendment is the first step in moving forward with design, bidding, and construction of the WRF that is necessary to serve the planned growth with future wastewater treatment capacity.

ENGINEER will provide professional services for the following tasks:

- Task 1 – Wastewater Discharge Permit Major Amendment Application
- Task 2 – TCEQ Permit Review Process Coordination
- Task 3 – Public Involvement

## **Task 1 – WASTEWATER DISCHARGE PERMIT MAJOR AMENDMENT APPLICATION**

### **A. Determine Effluent Discharge Location(s) and Flow**

1. Evaluate topography and proposed infrastructure for the WRF.
2. Coordinate with the CITY to establish a wastewater treatment plant location and confirm discharge point(s) is identified in the existing WWDP.
3. Size each treatment unit based off projected wastewater flows from ongoing wastewater masterplan project.

### **B. Local Coordination**

1. Attend up to three (3) meetings with CITY and adjacent landowners and other potential stakeholders near the proposed discharge location.

### **C. Preliminary Treatment Plant Analysis**

1. Based on input from equipment vendors, various stakeholders, input from the CITY, and the TCEQ, Prepare a preliminary wastewater analysis for the proposed development. ENGINEER will perform the following tasks:
  - a. Coordinate with the CITY to establish general preferences on the following aspects of the proposed WRF:
    - i. WRF general site layout.
    - ii. Paving and parking.
    - iii. Odor control.
    - iv. Facilities (buildings, laboratories, etc.).
    - v. Solids management
    - vi. Operations
2. Evaluate up to two (2) treatment process options for treating the wastewater. Coordinate with treatment equipment vendors to obtain equipment cost on treatment processes.
3. Prepare preliminary calculations for the sizing of the WRF components for each treatment option.

### **D. Phasing Plan**

1. Preliminarily size units and evaluate up to three (3) conceptual layouts for expansion of the WRF to buildout flows determined by the ongoing wastewater masterplan project.
2. Identify a phased approach to the WRF expansions.

### **E. Technical Memorandum**

1. Prepare a memorandum to the CITY summarizing the analyses performed and provide recommendations for the proposed WRF. The letter shall consist of a technical summary, preliminary site exhibit, buildout site exhibit, and phasing exhibit.

### **F. Preparation of Permit Application**

1. Following approval by the CITY of the Technical Memorandum, the ENGINEER shall prepare and submit a WWDP Major Amendment Application with the TCEQ. For the purposes of this scope, it is assumed that the application shall be prepared as a Texas Pollution Discharge Elimination System (TPDES) application for the discharge of the treated effluent into Clear Creek. The consultation shall prepare the following tasks in support of a WWDP Major Amendment Application:
  - a. Prepare a TCEQ WWDP Major Amendment Application for the Project. For the purposes of this scope, it is assumed that the following application components will be required:
    - i. Domestic Administrative Report 1.0.
    - ii. Domestic Administrative Report 1.1.
    - iii. Supplemental Permit Information Form (SPIF).
    - iv. Domestic Technical Report 1.0.
    - v. Domestic Technical Report 1.1.
    - vi. Receiving Waters Worksheet 2.0.
    - vii. Stream Physical Characteristics Worksheet 2.1.
    - viii. Pollutant Analyses Requirements Worksheet 4.0.
    - ix. Toxicity Testing Requirements Worksheet 5.0.
    - x. Industrial Waste Contribution Worksheet 6.0.
  - b. Prepare supporting documents required for the WWDP Major Amendment Application, including the following:
    - i. Schematic site plan with buffer zone and floodplain requirements incorporated.
    - ii. Affected Landowner Map.
    - iii. Landowner Disc or Labels.
    - iv. Original USGS Map.
    - v. Treatment Process Flow Diagram.
    - vi. Treatment Unit Dimensions Summary.
    - vii. Design Calculations.
    - viii. Solids Management Plan.
    - ix. Original Photographs.
    - x. Public Involvement Plan

For the purposes of this scope, it is assumed that the floodplain determination will be made by existing Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps.

2. A Sewage Sludge Technical Report will be developed to document the quantities of sludge anticipated in the treatment process and the ultimate disposal of the sludge. If final treatment is to be by contract offsite, formal commitment and treatment capability will be obtained by the CITY from the received treatment provider and document to the TCEQ.
3. Visit the proposed WRF site to gather site data, such as photographs of the proposed WRF site and discharge route, as required for the proposed WWDP Application.
4. Following review of the Draft Permit Application packet by the CITY, incorporate any CITY comments and submit the Application packet to the TCEQ.

### **Meetings:**



- a. Prepare for and attend (1) project kickoff meeting.
- b. Prepare for and attend (1) Technical Memorandum review meeting.
- c. Prepare for and attend (1) Draft Permit Major Amendment Application review meeting.

**Deliverables:**

- a. Technical Memorandum in electronic form.
- b. Draft Permit Major Amendment Application in electronic form.
- c. WWDP Major Amendment Application in electronic form.

**Services/Deliverables provided by the CITY:**

- a. Participate in project kickoff meeting, Technical Memorandum, and Draft Permit Major Amendment Application review meetings.
- b. Background data required for the preparation of the WWDP Major Amendment Application, including but not limited to CITY contact information, CITY tax information, TCEQ enforcement information, and plant operator information.
- c. Attend proposed Clear Creek WRF site visit.

## **Task 2 – TCEQ PERMIT REVIEW PROCESS COORDINATION**

- A. Respond to comments from the TCEQ to assist in a TCEQ determination that the Application is administratively complete. When notified by the TCEQ, publish a Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) in minimum one (1) local newspaper and submit documentation to the TCEQ clerk. Distribute copies of the WWDP Major Amendment Application in a public location determined by the CITY.
- B. Respond to technical questions raised by the TCEQ in review of the WWDP Major Amendment Application. For the purposes of this scope, it is assumed that there will be no more than two (2) rounds of technical comments from the TCEQ.
- C. Review TCEQ issued Draft Discharge Permit and offer corrections or suggestions for Permit conditions. Coordinate review and comment input from the CITY and system operators.
- D. ENGINEER will prepare and submit publication for public notice requirements for the TCEQ Permit. ENGINEER will complete the Public Notice Verification Form required by the TCEQ and submit the Public Notice Verification Form, proof of publication, and publisher's affidavit to the TCEQ. ENGINEER will coordinate the posting of the permit application and preliminary decision in a public place determined by the CITY for viewing.
- E. Once authorized by the TCEQ, ENGINEER will publish Notice of Application and Preliminary Decision in minimum one (1) local newspaper and monitor request for public hearings or inquiries from interested parties and respond to questions. For this scope, it is assumed that responses will be required from the ENGINEER for up to five (5) inquiries.

**Services/Deliverables provided by the CITY:**

- a. Participate in review of TCEQ issued Draft Discharge Permit.
- b. Provide public location for required documentation to be posted.

**Task 3 – PUBLIC INVOLVEMENT**

This task will be performed on an as-needed basis only. The ENGINEER will not provide these services without prior written authorization from the CITY.

**A. Public Meetings**

The ENGINEER will prepare materials, attend, and document as needed for up to one (1) public meeting. The CITY will be responsible for selecting and scheduling meeting location and distributing notifications to the public either through mailers, social media, or email.

**B. Project Informational Materials**

The ENGINEER will assist the CITY with updated project information and materials to be used in council meetings and for a project website, if requested.

**Deliverables:**

- a. Public meeting materials and meeting notes
- b. Project informational materials

**Services/Deliverables provided by the CITY:**

- a. Participate in Public Meeting
- b. Provide location, date, and time for Public Meeting

## **ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF 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 because 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:

- Attending meeting with or on behalf of the CITY not identified in the scope.
- Services associated with the permit application being challenged by a third party.
- Evaluation of any temporary sanitary sewer options for service prior to a constructed WRF.
- Design of the onsite sanitary sewer collection system.
- Evaluation of any additional potential WRF locations.
- Services associated with the procurement of a treatment plant operator.
- Permitting related to industrial wastewater generated by the CITY.
- Preparation for or attendance of a public meeting for the WWDP.
- Preparation for or attendance of mediation between the CITY and other parties.
- Evaluation of treatment process that would require preparation of additional WWDP Applications.
- Application worksheets or supporting documents not identified in the Scope of Services.
- Topographic surveys.
- Franchise utility coordination.
- Flood study / Downstream assessment.
- Construction administration.
- Tree survey.
- TXDOT Permit or ROW Research.
- Any services not listed in the Scope of Services

**ATTACHMENT "B"**

Compensation for Engineering Related Services for:

**CLEAR CREEK WASTEWATER RECLAMATION PLANT  
TREATMENT FACILITY WASTEWATER DISCHARGE PERMIT  
AMENDMENT**

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$110,000** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

For Tasks 1-3 the total compensation shall be on a lump sum basis and not to exceed **\$110,000**.

Progress payments for 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:

• Task 1 – Wastewater Discharge Permit Major Amendment Application	\$ 60,000
• Task 2 – TCEQ Permit Review Process Coordination	\$ 40,000
• Task 3 – Public Involvement	\$ 10,000
<b>Grand Total</b>	<b>\$ 110,000</b>

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 “A”

Scope for Engineering Related Services for:

### **HICKORY CREEK WATER RECLAMATION FACILITY WASTEWATER DISCHARGE PERMIT**

The ENGINEER will perform its services pursuant to the requirements delineated below. Services under this attachment include engineering services for the HICKORY CREEK WATER RECLAMATION FACILITY WASTEWATER DISCHARGE PERMIT project.

#### **Project Understanding**

The CITY is purchasing property within the Hickory Creek Sewer Basin. The CITY has requested ENGINEER to prepare an application to the Texas Commission on Environmental Quality (TCEQ) for the maximum average daily flow Wastewater Discharge Permit (WWDP) that TCEQ will allow on Hickory Creek. The identified location of the Water Reclamation Facility (WRF) is located approximately 1.20 miles southwest of the intersection of U.S. 377 and Country Club Road in Denton, Texas.

This WWDP is consistent with the Wastewater Master Plan which identified the need for a Water Reclamation Facility (WRF) to serve expected growth. The WWDP is the first step in moving forward with design, bidding, and construction of the WRF that is necessary to serve the planned growth with future wastewater treatment capacity.

ENGINEER will provide professional services for the following tasks:

- Task 1 – Wastewater Discharge Permit Application
- Task 2 – TCEQ Permit Review Process Coordination
- Task 3 – Public Involvement

## **Task 1 – WASTEWATER DISCHARGE PERMIT APPLICATION**

### **A. Determine Effluent Discharge Location(s) and Flow**

1. Evaluate topography and proposed infrastructure for the WRF.
2. Coordinate with the CITY to establish a wastewater treatment plant location and discharge point(s) that will be identified in the permit application.
3. Size each treatment unit based off projected wastewater flows from ongoing wastewater masterplan project.

### **B. Local Coordination**

1. Attend up to three (3) meetings with CITY and adjacent landowners and other potential stakeholders near the proposed discharge location.

### **C. Preliminary Treatment Plant Analysis**

1. Based on input from equipment vendors, various stakeholders, input from the CITY, and the TCEQ, Prepare a preliminary wastewater analysis for the proposed development. ENGINEER will perform the following tasks:
  - a. Coordinate with the CITY to establish general preferences on the following aspects of the proposed WRF:
    - i. WRF general site layout.
    - ii. Paving and parking.
    - iii. Odor control.
    - iv. Facilities (buildings, laboratories, etc.).
    - v. Solids management
    - vi. Operations
2. Evaluate up to two (2) treatment process options for treating the wastewater. Coordinate with treatment equipment vendors to obtain equipment cost on treatment processes.
3. Prepare preliminary calculations for the sizing of the WRF components for each treatment option.

### **D. Phasing Plan**

1. Preliminarily size units and evaluate up to three (3) conceptual layouts for expansion of the WRF to buildout flows determined by the ongoing wastewater masterplan project.
2. Identify a phased approach to the WRF expansions.

### **E. Technical Memorandum**

1. Prepare a memorandum to the CITY summarizing the analyses performed and provide recommendations for the proposed WRF. The letter shall consist of a technical summary, preliminary site exhibit, buildout site exhibit, and phasing exhibit.

### **F. Preparation of Permit Application**

1. Following approval by the CITY of the Technical Memorandum, the ENGINEER shall prepare and submit a WWDP Application with the TCEQ. For the purposes of this scope, it is assumed that the application shall be prepared as a Texas Pollution

Discharge Elimination System (TPDES) application for the discharge of the treated effluent into Hickory Creek. The consultation shall prepare the following tasks in support of a WWDP Application:

- a. Prepare a TCEQ WWDP Application for the Project. For the purposes of this scope, it is assumed that the following application components will be required:
  - i. Domestic Administrative Report 1.0.
  - ii. Domestic Administrative Report 1.1.
  - iii. Supplemental Permit Information Form (SPIF).
  - iv. Domestic Technical Report 1.0.
  - v. Domestic Technical Report 1.1.
  - vi. Receiving Waters Worksheet 2.0.
  - vii. Stream Physical Characteristics Worksheet 2.1.
  - viii. Pollutant Analyses Requirements Worksheet 4.0.
  - ix. Toxicity Testing Requirements Worksheet 5.0.
  - x. Industrial Waste Contribution Worksheet 6.0.
- b. Prepare supporting documents required for the WWDP Application, including the following:
  - i. Schematic site plan with buffer zone and floodplain requirements incorporated.
  - ii. Affected Landowner Map.
  - iii. Landowner Disc or Labels.
  - iv. Original USGS Map.
  - v. Treatment Process Flow Diagram.
  - vi. Treatment Unit Dimensions Summary.
  - vii. Design Calculations.
  - viii. Solids Management Plan.
  - ix. Original Photographs.
  - x. Public Involvement Plan

For the purposes of this scope, it is assumed that the floodplain determination will be made by existing Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps.

2. A Sewage Sludge Technical Report will be developed to document the quantities of sludge anticipated in the treatment process and the ultimate disposal of the sludge. If final treatment is to be by contract offsite, formal commitment and treatment capability will be obtained by the CITY from the received treatment provider and document to the TCEQ.
3. Visit the proposed WRF site to gather site data, such as photographs of the proposed WRF site and discharge route, as required for the proposed WWDP Application.
4. Following review of the Draft Permit Application packet by the CITY, incorporate any CITY comments and submit the Application packet to the TCEQ.

#### **Meetings:**

- a. Prepare for and attend (1) project kickoff meeting.
- b. Prepare for and attend (1) Technical Memorandum review meeting.
- c. Prepare for and attend (1) Draft Permit Application review meeting.

**Deliverables:**

- a. Technical Memorandum in electronic form.
- b. Draft Permit Application in electronic form.
- c. WWDP Application in electronic form.

**Services/Deliverables provided by the CITY:**

- a. Participate in project kickoff meeting, Technical Memorandum, and Draft Permit Application review meetings.
- b. Background data required for the preparation of the WWDP Application, including but not limited to CITY contact information, CITY tax information, TCEQ enforcement information, and plant operator information.
- c. Attend proposed Hickory Creek WRF site visit.

**Task 2 – TCEQ PERMIT REVIEW PROCESS COORDINATION**

- A. Respond to comments from the TCEQ to assist in a TCEQ determination that the application is administratively complete. When notified by the TCEQ, publish a Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) in minimum one (1) local newspaper and submit documentation to the TCEQ clerk. Distribute copies of the WWDP Application in a public location determined by the CITY.
- B. Respond to technical questions raised by the TCEQ in review of the WWDP Application. For the purposes of this scope, it is assumed that there will be no more than two (2) rounds of technical comments from the TCEQ.
- C. Review TCEQ issued Draft Discharge Permit and offer corrections or suggestions for Permit conditions. Coordinate review and comment input from the CITY and system operators.
- D. ENGINEER will prepare and submit publication for public notice requirements for the TCEQ Permit. ENGINEER will complete the Public Notice Verification Form required by the TCEQ and submit the Public Notice Verification Form, proof of publication, and publisher's affidavit to the TCEQ. ENGINEER will coordinate the posting of the permit application and preliminary decision in a public place determined by the CITY for viewing.
- E. Once authorized by the TCEQ, ENGINEER will publish Notice of Application and Preliminary Decision in minimum one (1) local newspaper and monitor request for public hearings or inquiries from interested parties and respond to questions. For this scope, it is assumed that responses will be required from the ENGINEER for up to five (5) inquiries.

**Services/Deliverables provided by the CITY:**

- a. Participate in review of TCEQ issued Draft Discharge Permit.
- b. Provide public location for required documentation to be posted.



### **Task 3 – PUBLIC INVOLVEMENT**

This task will be performed on an as-needed basis only. The ENGINEER will not provide these services without prior written authorization from the CITY.

#### **A. Public Meetings**

The ENGINEER will prepare materials, attend, and document as needed for up to one (1) public meeting. The CITY will be responsible for selecting and scheduling meeting location and distributing notifications to the public either through mailers, social media, or email.

#### **B. Project Informational Materials**

The ENGINEER will assist the CITY with updated project information and materials to be used in council meetings and for a project website, if requested.

#### **Deliverables:**

- a. Public meeting materials and meeting notes
- b. Project informational materials

#### **Services/Deliverables provided by the CITY:**

- a. Participate in Public Meeting
- b. Provide location, date, and time for Public Meeting

## **ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF 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 because 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:

- Attending meeting with or on behalf of the CITY not identified in the scope.
- Services associated with the permit application being challenged by a third party.
- Evaluation of any temporary sanitary sewer options for service prior to a constructed WRF.
- Design of the onsite sanitary sewer collection system.
- Evaluation of any additional potential WRF locations.
- Services associated with the procurement of a treatment plant operator.
- Permitting related to industrial wastewater generated by the CITY.
- Preparation for or attendance of a public meeting for the WWDP.
- Preparation for or attendance of mediation between the CITY and other parties.
- Evaluation of treatment process that would require preparation of additional WWDP Applications.
- Application worksheets or supporting documents not identified in the Scope of Services.
- Topographic surveys.
- Franchise utility coordination.
- Flood study / Downstream assessment.
- Construction administration.
- Tree survey.
- TXDOT Permit or ROW Research.
- Any services not listed in the Scope of Services

## ATTACHMENT "B"

Compensation for Engineering Related Services for:

### HICKORY CREEK WASTEWATER RECLAMATION FACILITY WASTEWATER DISCHARGE PERMIT

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$130,000** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

For Tasks 1-3 the total compensation shall be on a lump sum basis and not to exceed **\$130,000**.

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:

• Task 1 – Wastewater Discharge Permit Application	\$ 80,000
• Task 2 – TCEQ Permit Review Process Coordination	\$ 40,000
• Task 3 – Public Involvement	\$ 10,000
<b>Grand Total</b>	<b>\$ 130,000</b>

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.

**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 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.**

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:

5/8/2023

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

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

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

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

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

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

(A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

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

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

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

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> 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: 39419AA84F7B4B32AAFAA44AA481F732

Status: Sent

Subject: Please DocuSign: City Council Contract 7574-028 Clear Creek and Hickory Creek WW Discharge Permit

Source Envelope:

Document Pages: 35

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Crystal Westbrook

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

crystal.westbrook@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Crystal Westbrook

Location: DocuSign

4/28/2023 3:59:14 PM

crystal.westbrook@cityofdenton.com

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

Crystal Westbrook

**Completed**

Sent: 4/28/2023 4:03:32 PM

crystal.westbrook@cityofdenton.com

Viewed: 4/28/2023 4:03:43 PM

Senior Buyer

Signed: 4/28/2023 4:04:37 PM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 4/28/2023 4:04:40 PM

lori.hewell@cityofdenton.com

Viewed: 5/1/2023 8:46:57 AM

Purchasing Manager

Signed: 5/1/2023 8:47:23 AM

City of Denton

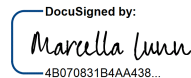
Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Marcella Lunn



Sent: 5/1/2023 8:47:26 AM

marcella.lunn@cityofdenton.com

Viewed: 5/5/2023 5:45:37 PM

Mack Reinwand City Attorney

Signed: 5/5/2023 5:47:35 PM

City of Denton

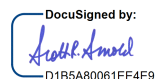
Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Scott Arnold



Sent: 5/5/2023 5:47:38 PM

scott.arnold@kimley-horn.com

Viewed: 5/8/2023 7:27:33 AM

Vice President

Signed: 5/8/2023 2:05:10 PM

Kimley-Horn and Associates, Inc.

Signature Adoption: Uploaded Signature Image

Security Level: Email, Account Authentication  
(None)

Using IP Address: 130.41.212.55

**Electronic Record and Signature Disclosure:**

Accepted: 3/27/2020 10:55:11 AM

ID: a1f38400-e5cc-4b57-8548-4dd7e031355d

Signer Events	Signature	Timestamp
Stephen D. Gay stephen.gay@cityofdenton.com Director, Security Level: Email, Account Authentication (None)	<div>DocuSigned by:  9EBFF5658E56492...</div> Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 5/8/2023 2:05:13 PM Viewed: 5/8/2023 2:33:02 PM Signed: 5/8/2023 2:33:40 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 5/8/2023 2:33:02 PM  
ID: 07fb0148-9172-4060-b6de-b0012322f40b

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

Sent: 5/8/2023 2:33:43 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

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

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Jesus Salazar  
jesus.salazar@cityofdenton.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Accepted: 5/5/2023 6:59:14 PM  
ID: 05778190-ddf5-4769-9e02-141f24d5bb62

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)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**COPIED**

Sent: 4/28/2023 4:04:40 PM

Carbon Copy Events	Status	Timestamp
<div>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</div> <div>City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</div> <div>David Brown david.brown@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 4/10/2019 2:54:36 PM ID: 20238ddf-ccd6-4d52-988f-8c9f3436055e</div> <div>Jewel Lanning jewel.lanning@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</div>	<div>COPIED</div>	<div>Sent: 5/8/2023 2:33:43 PM Viewed: 5/8/2023 2:58:21 PM</div>
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/28/2023 4:03:32 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		



## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

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

### **Getting paper copies**

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

### **Withdrawing your consent**

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

### **Consequences of changing your mind**

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

### **All notices and disclosures will be sent to you electronically**

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

**How to contact City of Denton:**

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

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

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

**To request paper copies from City of Denton**

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

**To withdraw your consent with City of Denton**

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

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](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.

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

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