

ORDINANCE 24-

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF DENTON AND THE UNIVERSITY OF NORTH TEXAS, A HIGHER EDUCATION AGENCY OF THE STATE OF TEXAS (UNT), FOR THE IMPROVEMENTS AND MODIFICATIONS TO UNION CIRCLE AS PART OF THE 2019 BOND: NEIGHBORHOODS 2 & 6 RECONSTRUCTION CAPITAL IMPROVEMENT PROJECT.

WHEREAS, The City of Denton (“CITY”) and University of North Texas (“UNT”) mutually desire to enter into an interlocal agreement as provided for in Chapter 791.032 of the Texas Government Code; and

WHEREAS, UNT, seeking to be best prepared for future traffic operations and safety identified the current one-way/clockwise traffic pattern of Union Circle between Chestnut Street and W. Prairie Street as related to users including buses, delivery vehicles, pedestrians, and bicyclists to and from the campus buildings and nearby parking garage impacts safety and mobility; and

WHEREAS, CITY is managing the design and construction of Union Circle, one of the 118 street segments associated with the 2019 Street Reconstruction Bond Program in the University of North Texas area and surrounding residential neighborhoods; and

WHEREAS, reconstruction of Union Circle is essential to the 2019 Bond: Neighborhoods 2 & 6 Capital Improvement Project remaining on schedule; and

WHEREAS, CITY has no objection to the proposed changes in signalization for the purpose to reverse the traffic flow on Union Circle between Chestnut Street and W. Prairie Street; and

WHEREAS, UNT has agreed to fund the design costs for the Project in the amount of \$22,000.00 and estimated construction costs of approximately \$200,000.00 for traffic signal modifications at the intersection of Union Circle and S. Welch Street/W. Prairie Street; and

WHEREAS, the City Council having considered the importance of the project to the citizens of Denton and finding that it is in the public's health and safety interest, is of the opinion that it should approve the Agreement;

NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

SECTION 2. The City Manager, or their designee is hereby authorized to execute on behalf of the City the Interlocal Cooperation Agreement, attached hereto as Exhibit A, for the improvements and modifications to Union Circle as part of the 2019 Bond: Neighborhoods 2 & 6 Reconstruction Capital Improvement Project.

SECTION 3. The City Manager, or their designee, is further authorized to carry out all obligations and duties of the City as set forth in the Agreement, including but not limited to the expenditure of funds.

SECTION 4. The City Manager, or designee, is the City’s designated, authorized official, with the power to authorize, accept, reject, alter or terminate the Agreement(s) on behalf of the City and act on behalf of the City of Denton in all matters related to the Agreement(s) and any subsequent agreements that may result.

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

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
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 _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

By: _____

Benjamin N. Samples, eScl
Digitally signed by Benjamin Samples
 DN: cn=Benjamin Samples, o=City of Denton, ou=Department Urban and
 Growth, ou=General Government, ou=Legal, cn=Benjamin Samples,
 email=Benjamin.Samples@cityofdenton.com
 Date: 2024.02.23 15:00:53 -0500

EXHIBIT A
(Interlocal Cooperation Agreement)

DENTON COUNTY :
 :
STATE OF TEXAS :

**INTERLOCAL COOPERATION AGREEMENT INTERLOCAL COOPERATION
AGREEMENT BY AND
BETWEEN THE CITY OF DENTON, TEXAS AND
UNIVERSITY OF NORTH TEXAS SYSTEM
FOR
TRAFFIC SIGNAL IMPROVEMENTS**

THIS AGREEMENT is made and entered into by and between the **CITY OF DENTON**, a Texas home rule municipal corporation (hereinafter "City") and **THE UNIVERSITY OF NORTH TEXAS**, a higher education agency of the State of Texas (hereinafter "UNT"), Texas, each acting by, through, and under the authority of their respective governing bodies and officials; and

WHEREAS, CITY and UNT have the authority to perform the services set forth in this Agreement individually and who mutually desire to enter into an interlocal agreement, as provided for in Chapter 791.032 of the Texas Government Code; and

WHEREAS, Neighborhoods 2 & 6 (hereinafter "Project") contain 118 street segments associated with the 2019 Street Reconstruction Bond Program in the UNT area and surrounding residential neighborhoods. The scope of the project includes approximately 56,600 linear feet of roadway reconstruction, 30,700 linear feet of water main replacement, 28,400 linear feet of wastewater main replacement, sidewalk enhancements, and various lighting improvements; and

WHEREAS, UNT has issues with the current one-way/clockwise traffic pattern of Union Circle between Chestnut Street and W. Prairie Street as related to users including buses, delivery vehicles, pedestrians, and bicyclists to and from the campus buildings and nearby parking garage that impacts safety and mobility; and

WHEREAS, UNT has requested the traffic flow direction of traffic at Union Circle be changed from clockwise to counterclockwise to ensure the new traffic flow will run from north to south; and

WHEREAS, the intersection of Union Circle and S. Welch Street/W. Prairie Street does not meet the needs for the contraflow traffic patterns and will require signal improvements; and

WHEREAS, the City has no objections to the proposed changes in signalization for the purpose to reverse the traffic flow on Union Circle between Chestnut Street and W. Prairie Street; and

WHEREAS, UNT has agreed to fund the design costs for the Project in the amount of \$22,000.00 and estimated construction costs of approximately \$200,000.00 for traffic signal modifications at the intersection of Union Circle and S. Welch Street/W. Prairie Street; and

WHEREAS, CITY and UNT desire to pool their resources, avoid unnecessary or duplicative expense, and take advantage of maximizing economies of scale, resulting in cost savings; and

NOW THEREFORE, CITY and UNT, for and in consideration of the mutual covenants set forth in this Interlocal Agreement do hereby AGREE as follows:

**ARTICLE I
ADOPTION OF PREAMBLE**

All of the matters stated in the preamble of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as though fully set forth in their entirety herein.

**ARTICLE II
SCOPE OF AGREEMENT**

- A. City has retained, and shall continue to retain, the services of Kimley Horn and Associates, Inc. for professional engineering services for Neighborhood 2 & 6, including the traffic signal modifications at the intersection of Union Circle and S. Welch Street/W. Prairie Street as shown on Exhibit A attached hereto and made a part hereof. UNT shall be solely obligated to pay the sum of \$22,000.00 for such additional engineering services.
- B. Upon the CITY finalizing the Neighborhood 2&6 design and obtaining a construction cost estimate to modify the traffic signalization from the Construction Manager at Risk Project Cost Model the CITY shall inform UNT of the estimated cost to the CITY for construction-related expenses, as specified in Exhibit B, attached hereto and incorporated by reference. Within ten (10) days of approval by both parties, UNT shall deposit the agreed upon amount (“Agreed Upon Costs”) with the CITY. To ensure total costs are ultimately collected, CITY and UNT desire to implement a “true-up” process. In compliance with Section E below, to the extent that the overall costs of the Project are greater than the Agreed Upon Costs, CITY will recalculate the total cost overruns, and, to the extent the total costs actually paid by the CITY exceed the Agreed Upon Costs, UNT will refund the difference to the CITY. If the CITY’s total costs are less than the Agreed Upon Costs, CITY will refund the difference to UNT.
- C. The Funds provided by UNT shall be available to the CITY to pay for the related design and construction costs of the Project, and the CITY, in its sole discretion, is entitled to use, at any time, all or a portion of the Funds in connection with the construction of the Project. The CITY shall be entitled to any and all interest, if any, that may accrue on the Funds and such interest shall be considered as funds provided by UNT.
- D. UNT’s construction representative shall be notified, invited to, and included in any and all meetings of the CITY and Contractor and Engineer concerning the Project. Furthermore, CITY, and CITY’s Contractor and Engineer shall include and share all communications with UNT.
- E. UNT shall have the explicit right to review and provide comments on the Project submitted by Kimley Horn and Associates, Inc.

- F. UNT and CITY agree and acknowledge that on occasion the construction projects referenced herein may have construction cost overruns. For purpose of this Agreement, the term “construction cost overruns” shall mean those costs which may be incurred by the CITY in the construction of the Project and which are over and above the amount of the Funds UNT has deposited with the CITY. In such event, the CITY shall give UNT prompt written notice of such construction cost overruns and the basis for such, and seek the approval of UNT in writing for the payment of such construction cost overruns. In the event of any disagreement between the CITY and UNT about such construction cost overruns, the CITY and UNT shall jointly review such cost overruns and endeavor to mutually resolve such disagreement promptly.
- G. CITY shall, and UNT may, inspect the construction of the Project. In case of a disagreement between CITY and UNT concerning acceptability of contractor’s work, the parties agree to work together amicably to find a mutually acceptable solution.
- H. After UNT funds the modifications in support of construction and completion of the project; CITY shall accept all future ownership costs related to the maintenance of the traffic signals.

ARTICLE III LIABILITY

To the extent provided by law, and without waiving any immunity or limitation to liability, CITY agrees to and shall release, defend, and hold harmless UNT, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, which arise out of CITY’s construction of the intersection of Welch Street and Union Circle/Prairie Street.

To the extent provided by law, and without waiving any immunity or limitation to liability, UNT agrees to and shall release, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, which arise out of CITY’s construction of the intersection of Welch Street and Union Circle/Prairie Street.

It is understood and agreed between the parties that each party hereto shall be responsible for its own acts of negligence. Where injury or property damage results from the joint or concurrent negligence of both parties, liability, if any, shall be shared by each party on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses available to them, including governmental immunity. Neither party shall be responsible to the other for any negligent act or omission. These provisions are solely for the benefit of the parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defense available by law.

**ARTICLE VIII
ALTERNATE DISPUTE RESOLUTION**

The parties may agree to settle any disputes under this Agreement by submitting their dispute to non-binding mediation. No alternate dispute resolution arising out of or relating to this Agreement involving one party's disagreement may include the other party to the disagreement without the other's approval.

**ARTICLE IX
ADDRESSES AND NOTICE**

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be by personal delivery, sent by registered mail or certified mail, return receipt requested, postage prepaid, or by facsimile transmission actually received, to:

CITY: City of Denton
 Attn: Trevor Crain, Director
 Capital Improvement Projects
 401 N. Elm Street
 Denton, Texas 76201

Copy To:
 City of Denton
 Attn: Sara Hensley
 City Manager's Office
 215 East McKinney Street
 Denton, Texas 76205

UNT: University of North Texas
 Clayton Gibson, CPA
 Vice President for Finance & Administration and Chief Financial Officer
 1155 Union circle, #310500
 Denton, Texas 7603-5017

Notices shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipt.

**ARTICLE XI
MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed. The parties further agree that the provisions of this section will not be waived unless as herein set forth.

**ARTICLE XII
SEVERABILITY**

The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America or in contravention of any such laws or constitutions, such invalidity, unconstitutionality or contravention shall not affect any other sections, subsections, provisions, clauses or words of this Agreement or the application of such sections, subsections, provisions, clauses or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause or word has not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

**ARTICLE XIII
GOVERNING AND VENUE**

This Agreement shall be construed under and governed by, and in accordance with the laws of the State of Texas, and all obligations of the parties hereto, created by this Agreement are performable in Denton County, Texas. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas.

**ARTICLE XIV
ENTIRE AGREEMENT**

This Agreement and the exhibits attached thereto constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification, cancellation, or alteration of the terms of this Agreement shall be binding on any party hereto unless the same is in writing, dated subsequent to the date hereof, and is duly executed by the parties hereto.

**ARTICLE XV
WAIVER OF TERMS AND CONDITIONS**

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

**ARTICLE XVI
BINDING AUTHORITY**

This Agreement is entered into by the duly authorized officials of each respective governmental entity.

**ARTICLE XVII
CAPTIONS**

The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

[Signatures to appear on following page.]

EXECUTED in triplicate originals this, the _____ day of _____, 2024.

CITY OF DENTON

By: _____
CITY MANAGER, SARA HENSLEY

ATTEST:
JESUS SALAZAR, CITY SECRETARY

By: _____

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



SIGNATURE

Trevor Crain

PRINTED NAME

Director

TITLE

Capital Projects

DEPARTMENT

2/8/24

DATE

DATE

APPROVED AS TO LEGAL FORM:

MACK REINWAND, CITY ATTORNEY

By: _____

EXECUTED in triplicate originals this, the 6th day of February, 2024.

UNIVERSITY OF NORTH TEXAS

By:  _____

SIGNATURE

Clayton Gibson

PRINTED NAME

Vice President for Finance & Administration, CFO

TITLE

Division of Finance & Administration

DEPARTMENT

2/6/2024

DATE

ATTEST:

 _____

EXHIBIT A
LOCATION AND SITE MAP

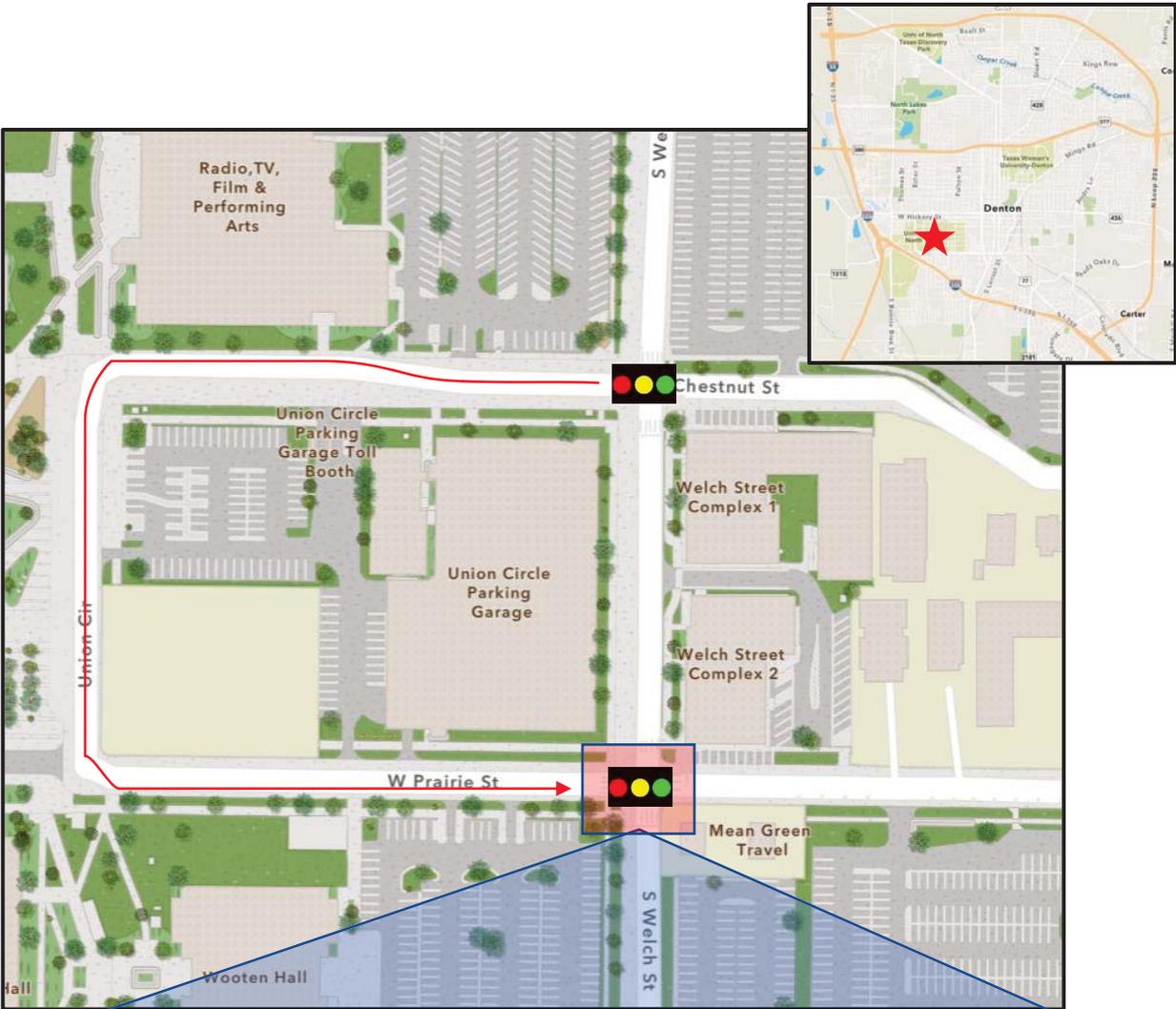


EXHIBIT B

Kimley-Horn and Associates, Inc.

Opinion of Probable Construction Cost

Client: City of Denton	Date: 8/22/2023
Project: CIMAR 2&6	Prepared By: AA
KHA No.: 61024071	Checked By: CJH

Title: CIMAR 2&6 - Union Circle and Welch Signal Modifications

Item No.	TxDOT Spec	Item Description	North Intersection Quantity	South Intersection Quantity	Total Quantity	Unit	Unit Price	Item Cost
1	2605.054	3" CONDT PVC SCH 40 (T)	150	150	300	LF	\$ 60.00	\$ 18,000.00
2	2605.068	Ground Box Type D, w/Apron	1	1	2	EA	\$ 2,000.00	\$ 4,000.00
3	3441.001	3-Sect Signal Head Assembly	8	7	15	EA	\$ 2,800.00	\$ 42,000.00
4	3441.003	5-Sect Signal Head Assembly	-	1	1	EA	\$ 3,500.00	\$ 3,500.00
5	3441.057	Furnish and Install Signal Pole - Vertical Mast Arm Pole w/ Lum Vertical Pole (48' Arm)	1	-	1	EA	\$ 30,000.00	\$ 30,000.00
6	3441.147	Drilled Shaft Foundation (36 Inch)	13	-	13	LF	\$ 600.00	\$ 7,800.00
7	3441.164	Dispose of Pole and Mast Arm Assembly	1	-	1	EA	\$ 7,500.00	\$ 7,500.00
8	3441.187	Remove Sign Panel	2	-	2	EA	\$ 1,000.00	\$ 2,000.00
9	999 9999	REMOVE GROUND BOX	1	-	1	EA	\$ 500.00	\$ 500.00
10	999 9999	SIGNAL WIRING AND CONDUIT ALLOWANCE	-	-	1	LS	\$ 25,000.00	\$ 25,000.00

Basis for Cost Projection:

- No Design Completed
- Preliminary Design
- Final Design

Subtotal:		\$ 140,300.00
Conting. (% +/-)	25%	\$ 35,100.00
Engineering Design		\$ 22,000.00
Total:		\$ 197,400.00

This total does not reflect engineering or technical services.

The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.