

ORDINANCE NO. 2017-403

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES RELATING TO THE DESIGN, BID PHASE, AND CONSTRUCTION SERVICES FOR THE PEC-4 PHASES 3 AND 4 DRAINAGE IMPROVEMENTS PROJECT WHICH INCLUDES APPROXIMATELY 2,700 LINEAR FEET OF REINFORCED CONCRETE BOX, 2,300 LINEAR FEET OF WATERLINE RELOCATION AND LOWERING, 1,700 LINEAR FEET OF SANITARY SEWER LINE RELOCATION AND ADJUSTMENT, AND PAVEMENT REPAIR FROM WEST PRAIRIE STREET TO THE BEGINNING OF THE OPEN CHANNEL NEAR THE INTERSECTION OF WEST MULBERRY STREET AND BERNARD STREET; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 6625 AWARDED TO FREESE AND NICHOLS, INC. IN THE NOT-TO-EXCEED AMOUNT OF \$1,200,000).

WHEREAS, 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, 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. That the City Manager is hereby authorized to enter into a professional service contract with Freese and Nichols, Inc., to provide professional engineering services for PEC-4 Phase 3 and 4 Drainage Improvements, a copy of which is attached hereto and incorporated by reference herein.

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

SECTION 3. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under the File 6625 to the City Manager of the City of Denton, Texas, or his designee.

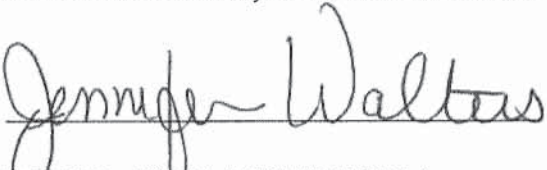
SECTION 4. The findings in the preamble of this ordinance are incorporated herein by reference.

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

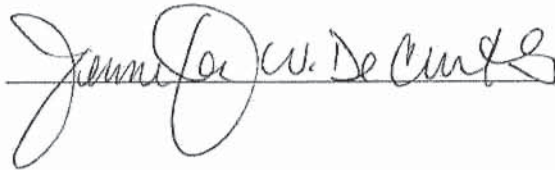
PASSED AND APPROVED this the 12<sup>th</sup> day of December, 2018.

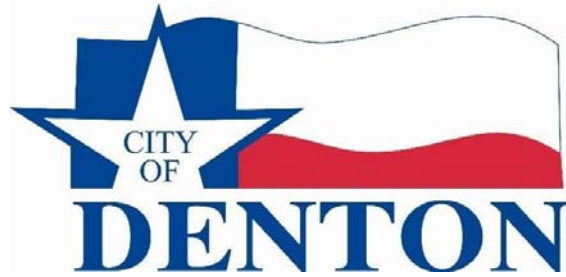
  
\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

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



## DocuSign City Council Transmittal Coversheet

PSA	6625
File Name	PEC 4 Phase 3 & 4 Drainage project
Purchasing Contact	Rebecca Hunter
City Council Target Date	12/12/17
Contract Value	1,200,000.00
Piggy Back Option	yes
Contract Expiration	N/A
Ordinance	2017-403

**PROFESSIONAL ENGINEERING SERVICES  
FOR  
PEC 4 Drainage Improvements Phase 3 & 4  
(CONTRACT 6625)**

THIS AGREEMENT is made and entered into this date December 12, 2017, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "Owner" and Freese and Nichols, Inc., with its corporate office at 4055 International Plaza, Suite 200, Fort Worth, Texas, 76109, hereinafter called "Design Professional," acting herein, by and through their duly authorized representatives.

In consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**SECTION 1  
EMPLOYMENT OF DESIGN PROFESSIONAL**

The Owner hereby contracts with the Design Professional, a licensed Texas engineer, as an independent contractor. The Design Professional hereby agrees to perform the services in conjunction with the PEC 4 Drainage Improvements Phase 3&4 project as described herein and in the Scope of Work (**Exhibit 4**), the General Conditions (**Exhibit 3**), and other attachments to this Agreement that are referenced in Section 4. The Project shall include, but shall not be limited to, the following major components (for a more precise or comprehensive description of the Scope refer to **Exhibit 4**):

Design drainage improvements for CITY for Stream PEC-4 from West Prairie Street to the beginning of the open channel near the intersection of West Mulberry Street and Bernard Street. Stream PEC-4 is currently an aging system of undersized open channels and culverts throughout the project area. The purpose of this project is to alleviate flooding along the channel by designing a closed pipe system for Phases 3 and 4.

The PEC-4 – Phase 3 and 4 Drainage Improvements (PROJECT) includes approximately 2,700 linear feet of reinforced concrete box, 2,300 linear feet of waterline relocation and lowering, 1,700 linear feet of sanitary sewer line relocation and adjustment, and pavement repair by the project. The ENGINEER will prepare construction documents for design of improvements. Figure 1 shows the location and preliminary design extents for the drainage improvements.

**SECTION 2  
COMPENSATION AND SCHEDULE**

Total compensation for the Design Professional contemplated under the terms of this agreement **shall be a total not-to-exceed \$1,200,000** for all services including reimbursable expenses. The Owner shall compensate the Design Professional as follows:

**2.1 BASIC AND SPECIAL SERVICES**

**2.1.1** For Basic Services the total compensation shall be an hourly not to exceed total of \$918,000 and for Special Services the total compensation shall not exceed \$282,000.

**2.1.2** Progress payments for Basic Services shall be paid monthly based on the actual work satisfactorily completed per month in each phase as a percentage of the overall compensation for that phase, with the following amounts of the total compensation for the Basic Services for each phase of the Project:

Task Description	Type	Fee
Task 1 - Design Management	Basic	\$ 80,000
Task 2 - Conceptual Design	Basic	\$ 143,000
Task 3 - Preliminary Design	Basic	\$ 240,000
Task 4 - Final Design	Basic	\$ 300,000
Task 5 - Bid Phase Services	Basic	\$ 15,000
Task 6 - Construction Phase Services	Special	\$ 130,000
Task 7 - FEMA Coordination Services	Special	\$ 45,000
Task 8 - Survey and SUE Services	Basic	\$ 140,000
Task 9 - ROW Services	Special	\$ 60,000
Task 10 - Geotechnical Investigation	Special	\$ 30,000
Task 11 - Public Involvement	Special	\$ 17,000
	Total Basic	\$ 918,000
	Total Special	\$ 282,000
	Total Fee	\$ 1,200,000

## **2.2 ADDITIONAL SERVICES**

**2.2.1** If Scope of Services change so that Additional Services are needed, including but not limited to those services described as Additional Services in Exhibit 6, DESIGN PROFESSIONAL will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges as shown in Exhibit 5.

**2.3 SCHEDULE** The Design Professional will be authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the detailed design services in 12 months and construction in 3 years for a total contract term of 4 years.

## **SECTION 3** **INVOICES**

**Invoices** shall be sent directly to the City of Denton Accounts Payable Department, 215 E. McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall be sent to the contract administrator as identified in the Notice to Proceed. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

**SECTION 4**  
**ENTIRE AGREEMENT**

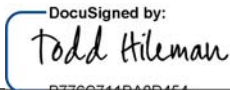
This Agreement includes this executed agreement and the following documents all of which are attached hereto and made a part hereof by reference as if fully set forth herein:

Exhibit 1	Certificate of Interested Parties Electronic Filing
Exhibit 2	City of Denton Insurance Requirements for Consultants/Contractors
Exhibit 3	City of Denton General Conditions to Agreement for Architectural or Engineering Services
Exhibit 4	Scope of Services
Exhibit 5	Compensation
Attachment	House Bill 89 Verification
Attachment	Senate Bill 252 Certification

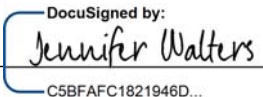
By executing this Agreement below in conformance with Sec. 2270 of the Texas Government Code, the Supplier verifies that the Supplier: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.

This Agreement is signed by the parties hereto effective as of the date first above written.

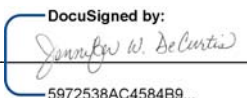
CITY OF DENTON, TEXAS  
A Municipal Corporation

BY:   
B776C711BA0D454...  
TODD HILEMAN  
CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY:   
C5BFAFC1821946D...

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

BY:   
5972538AC4584B9...

Freese & Nichols  
A Corporation

BY:   
9F8753B1C544455...  
AUTHORIZED AGENT

skh@freese.com

EMAIL ADDRESS

2017-290119

TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER





## **Exhibit 1**

### **Certificate of Interested Parties Electronic Filing**

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

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

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on the signature page of this contract.
5. Sign and notarize the Form 1295
6. Email the notarized form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

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

Exhibit 2  
**CITY OF DENTON**  
**INSURANCE REQUIREMENTS FOR**  
**CONSULTANTS/CONTRACTORS**

*The Offeror's/Bidder's attention is directed to the insurance requirements below. It is highly recommended that offerors/bidders confer with their respective insurance carriers or brokers to determine in advance of its proposal or bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an offeror/apparent low bidder fails to comply strictly with the insurance requirements, that offeror/bidder may be disqualified from award of the contract. Upon award, all insurance requirements shall become contractual obligations, which the successful offeror/bidder shall have a duty to maintain throughout the course of this contract.*

**STANDARD PROVISIONS:**

*Without limiting any of the other obligations or liabilities of the Consultant/Contractor, the Consultant/Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.*

*As soon as practicable after notification of award, Consultant/Contractor shall file with the Purchasing Department satisfactory certificates of insurance, containing the proposal/bid number and title of the project. Consultant/Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Consultants/Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. **Consultant/Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.***

*All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:*

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal or bid. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the Consultant/Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:

- Name as additional insured the City of Denton, its Officials, Agents, Employees and volunteers.
- That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***
- Should any of the required insurance be provided under a claims-made form, Consultant/Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Consultant/Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

#### **SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

*All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:*

##### **[X] A. General Liability Insurance:**

General Liability insurance with combined single limits of not less than **\$500,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

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

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.

- Coverage C, medical payments, is not required.

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

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

**[X] Automobile Liability Insurance:**

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

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

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

**[X] Workers' Compensation Insurance**

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

**☐ Owner's and Contractor's Protective Liability Insurance**

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the

prosecution of the work or Contractor's operations under this contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least combined bodily injury and property damage per occurrence with a \_\_ aggregate.

☒ **Professional Liability Insurance**

Professional liability insurance with limits not less than **\$1,000,000.00** per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.

☐ **Environmental Liability Insurance**

Environmental liability insurance for \$1,000,000 to cover all hazards contemplated by this contract.

☐ **Riggers Insurance**

The Contractor shall provide coverage for Rigger's Liability. Said coverage may be provided by a Rigger's Liability endorsement on the existing CGL coverage; through and Installation Floater covering rigging contractors; or through ISO form IH 00 91 12 11, Rigger's Liability Coverage form. Said coverage shall mirror the limits provided by the CGL coverage

☐ **Builders' Risk Insurance**

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

☐ **Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than \_\_\_\_\_ each occurrence are required.

☐ **Additional Insurance**

Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Specific Conditions" of the contract specifications.

**Exhibit 3**  
**CITY OF DENTON**  
**GENERAL CONDITIONS**  
**TO**  
**AGREEMENT FOR ARCHITECTURAL OR ENGINEERING SERVICES**

**ARTICLE 1. ARCHITECT OR ENGINEER'S RESPONSIBILITIES**

**1.1** The Architect or Engineer's services consist of those services for the Project (as defined in the agreement (the "Agreement") and proposal (the "Proposal") to which these General Conditions are attached) performed by the Architect or Engineer (hereinafter called the "Design Professional") or Design Professional's employees and consultants as enumerated in Articles 2 and 3 of these General Conditions as modified by the Agreement and Proposal (the "Services").

**1.2** The Design Professional will perform all Services as an independent contractor to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt timely actions (the "Degree of Care"). The Services shall be performed as expeditiously as is consistent with the Degree of Care necessary for the orderly progress of the Project. Upon request of the Owner, the Design Professional shall submit for the Owner's approval a schedule for the performance of the Services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Professional or Owner, and any adjustments to this schedule shall be mutually acceptable to both parties.

**ARTICLE 2 SCOPE OF BASIC SERVICES**

**2.1 BASIC SERVICES DEFINED** The Design Professional's Basic Services consist of those described in Sections 2.2 through 2.6 of these General Conditions and include without limitation normal structural, civil, mechanical and electrical engineering services and any other engineering services necessary to produce a complete and accurate set of Construction Documents, as described by and required in Section 2.4. The Basic Services may be modified by the Agreement.

**2.2 SCHEMATIC DESIGN PHASE**

**2.2.1** The Design Professional, in consultation with the Owner, shall develop a written program for the Project to ascertain Owner's needs and to establish the requirements for the Project.

**2.2.2** The Design Professional shall provide a preliminary evaluation of the Owner's program, construction schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subsection 5.2.1.

**2.2.3** The Design Professional shall review with the Owner alternative approaches to design and construction of the Project.

**2.2.4** Based on the mutually agreed-upon program, schedule and construction budget requirements, the Design Professional shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. The Schematic Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations.

**2.2.5** The Design Professional shall submit to the Owner a preliminary detailed estimate of Construction Cost based on current area, volume or other unit costs and which indicates the cost of each category of work involved in constructing the Project and establishes an elapsed time factor for the period of time from the commencement to the completion of construction.

**2.3 DESIGN DEVELOPMENT PHASE**

**2.3.1** Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Professional shall prepare for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate, which shall comply with all applicable laws, statutes, ordinances, codes and regulations. Notwithstanding Owner's approval of the documents, Design Professional represents that the Documents and specifications will be sufficient and adequate to fulfill the purposes of the Project.

**2.3.2** The Design Professional shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost in a further Detailed Statement as described in Section 2.2.5.

**2.4 CONSTRUCTION DOCUMENTS PHASE**

**2.4.1** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Design Professional shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail requirements for the construction of the Project, which shall comply with all applicable laws, statutes, ordinances, codes and regulations.

**2.4.2** The Design Professional shall assist the Owner in the preparation of the necessary bidding or procurement information, bidding or procurement forms, the Conditions of the contract, and the form of Agreement between the Owner and contractor.

**2.4.3** The Design Professional shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

**2.4.4** The Design Professional shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

## **2.5 CONSTRUCTION CONTRACT PROCUREMENT**

**2.5.1** The Design Professional, following the Owner's approval of the Construction Documents and of the latest preliminary detailed estimate of Construction Cost, shall assist the Owner in procuring a construction contract for the Project through any procurement method that is legally applicable to the Project including without limitation, the competitive sealed bidding process. Although the Owner will consider the advice of the Design Professional, the award of the construction contract is in the sole discretion of the Owner.

**2.5.2** If the construction contract amount for the Project exceeds the total construction cost of the Project as set forth in the approved Detailed Statement of Probable Construction Costs of the Project submitted by the Design Professional, then the Design Professional, at its sole cost and expense, will revise the Construction Documents as may be required by the Owner to reduce or modify the quantity or quality of the work so that the total construction cost of the Project will not exceed the total construction cost set forth in the approved Detailed Statement of Probable Construction Costs.

## **2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

**2.6.1** The Design Professional's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment, unless extended under the terms of Subsection 8.3.2.

**2.6.2** The Design Professional shall provide detailed administration of the Contract for Construction as set forth below. For design professionals the administration shall also be in accordance with AIA document A201, General Conditions of the Contract for Construction, current as of the date of the Agreement as may be amended by the City of Denton special conditions, unless otherwise provided in the Agreement. For engineers the administration shall also be in accordance with the Standard Specifications for Public Works Construction by the North Central Texas Council of Governments, current as of the date of the Agreement, unless otherwise provided in the Agreement.

**2.6.3** Construction Phase duties, responsibilities and limitations of authority of the Design Professional shall not be restricted, modified or extended without written agreement of the Owner and Design Professional.

**2.6.4** The Design Professional shall be a representative of and shall advise and consult with the Owner (1) during construction, and (2) at the Owner's direction from time to time during the correction, or warranty period described in the Contract for Construction. The Design Professional shall have authority to act on behalf of the Owner only to the extent provided in the Agreement and these General Conditions, unless otherwise modified by written instrument.

**2.6.5** The Design Professional shall observe the construction site at least one time a week, while construction is in progress, and as reasonably necessary while construction is not in progress, to become familiar with the progress and quality of the work completed and to determine if the work is being performed in a manner indicating that the work when completed will be in accordance with the Contract Documents. Design Professional shall provide Owner a written report subsequent to each on-site visit. On the basis of on-site observations the Design Professional shall keep the Owner informed of the progress and quality of the work, and shall exercise the Degree of Care and diligence in discovering and promptly reporting to the Owner any observable defects or deficiencies in the work of Contractor or any subcontractors. The Design Professional represents that he will follow Degree of Care in performing all Services under the Agreement. The Design Professional shall promptly correct any defective designs or specifications furnished by the Design Professional at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Design Professional's Services hereunder or of the Project itself shall in no way alter the Design Professional's obligations or the Owner's rights hereunder.

**2.6.6** The Design Professional shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Design Professional shall not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents except insofar as such failure may result from Design Professional's negligent acts or omissions. The Design Professional shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the work.

**2.6.7** The Design Professional shall at all times have access to the work wherever it is in preparation or progress.

**2.6.8** Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.

**2.6.9** Based on the Design Professional's observations at the site of the work and evaluations of the Contractor's Applications for Payment, the Design Professional shall review and certify the amounts due the Contractor.

**2.6.10** The Design Professional's certification for payment shall constitute a representation to the Owner, based on the Design Professional's observations at the site as provided in Subsection 2.6.5 and on the data comprising the Contractor's Application for Payment, that the work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Design Professional. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Design Professional has (1) reviewed construction means, methods, techniques, sequences or procedures, or (2) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**2.6.11** The Design Professional shall have the responsibility and authority to reject work which does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Professional will have authority to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not exercise such

authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

**2.6.12** The Design Professional shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of (1) determining compliance with applicable laws, statutes, ordinances and codes; and (2) determining whether or not the work, when completed, will be in compliance with the requirements of the Contract Documents. The Design Professional shall act with such reasonable promptness to cause no delay in the work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of construction means, methods, techniques, sequences or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Design Professional shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

**2.6.13** The Design Professional shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Design Professional as provided in Subsections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

**2.6.14** On behalf of the Owner, the Design Professional shall conduct inspections to determine the dates of Substantial Completion and Final Completion, and if requested by the Owner shall issue Certificates of Substantial and Final Completion. The Design Professional will receive and review written guarantees and related documents required by the Contract for Construction to be assembled by the Contractor and shall issue a final certificate for Payment upon compliance with the requirements of the Contract Documents.

**2.6.15** The Design Professional shall interpret and provide recommendations on matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Design Professional's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

**2.6.16** Interpretations and decisions of the Design Professional shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Design Professional shall endeavor to secure faithful performance by both Owner and Contractor, and shall not be liable for results or interpretations or decisions so rendered in good faith in accordance with all the provisions of this Agreement and in the absence of negligence.

**2.6.17** The Design Professional shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the work as provided in the Contract Documents.

**2.6.18** The Design Professional (1) shall render services under the Agreement in accordance with the Degree of Care; (2) will reimburse the Owner for all damages caused by the defective designs the Design Professional prepares; and (3) by acknowledging payment by the Owner of any fees due, shall not be released from any rights the Owner may have under the Agreement or diminish any of the Design Professional's obligations thereunder.

**2.6.19** The Design Professional shall provide the Owner with four sets of reproducible prints showing all significant changes to the Construction Documents during the Construction Phase.

## **ARTICLE 3 ADDITIONAL SERVICES**

### **3.1 GENERAL**

**3.1.1** The services described in this Article 3 are not included in Basic Services unless so identified in the Agreement or Proposal, and they shall be paid for by the Owner as provided in the Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Design Professional's control, the Design Professional shall notify the Owner in writing and shall not commence such additional services until it receives written approval from the Owner to proceed. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Design Professional shall have no obligation to provide those services. Owner will be responsible for compensating the Design Professional for Contingent Additional Services only if they are not required due to the negligence or fault of Design Professional.

### **3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES**

**3.2.1** If more extensive representation at the site than is described in Subsection 2.6.5 is required, the Design Professional shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

**3.2.2** Project Representatives shall be selected, employed and directed by the Design Professional, and the Design Professional shall be compensated therefor as agreed by the Owner and Design Professional.

### **3.3 CONTINGENT ADDITIONAL SERVICES**

**3.3.1** Making material revisions in Drawings, Specifications or other documents when such revisions are:

1. inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;



2. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or
3. due to changes required as a result of the Owner's failure to render decision in a timely manner.

**3.3.2** Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, or the Owner's schedule, except for services required under Subsection 2.5.2.

**3.3.3** Preparing Drawings, Specifications and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives.

**3.3.4** Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work.

**3.3.5** Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

**3.3.6** Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the work.

**3.3.7** Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Design Professional is party thereto.

**3.3.8** Providing services in addition to those required by Article 2 for preparing documents for alternate, separate or sequential bids or providing services in connection with bidding or construction prior to the completion of the Construction Documents Phase.

**3.3.9** Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the Design Professional shall be performed by the Design Professional as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the Design Professional for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the Design Professional's obligations under this Subsection 3.3.9.

#### **3.4 OPTIONAL ADDITIONAL SERVICES**

**3.4.1** Providing financial feasibility or other special studies.

**3.4.2** Providing planning surveys, site evaluations or comparative studies of prospective sites.

**3.4.3** Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

**3.4.4** Providing services relative to future facilities, systems and equipment.

**3.4.5** Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

**3.4.6** Providing services to verify the accuracy of drawings or other information furnished by the Owner.

**3.4.7** Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

**3.4.8** Providing detailed quantity surveys or inventories of material, equipment and labor.

**3.4.9** Providing analyses of operating and maintenance costs.

**3.4.10** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

**3.4.12** Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.

**3.4.13** Providing interior design and similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

**3.4.14** Providing services other than as provided in Section 2.6.4, after issuance to the Owner of the final Certificate for Payment and expiration of the Warranty period of the Contract for Construction.

**3.4.15** Providing services of consultants for other than architectural, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

**3.4.16** Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

**3.4.17** Preparing a set of reproducible record drawings in addition to those required by Subsection 2.6.19, showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Design Professional.

**3.4.18** Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the Design Professional shall be performed by the Design Professional as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the Design Professional for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the Design Professional's obligations under this Subsection 3.4.18.

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

**4.1** The Owner shall consult with the Design Professional regarding requirements for the Project, including (1) the Owner's objectives, (2) schedule and design constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, systems and site requirements, as more specifically described in Subsection 2.2.1.

**4.2** The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

**4.3** If requested by the Design Professional, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

**4.4** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design Professional in order to avoid unreasonable delay in the orderly and sequential progress of the Design Professional's services.

**4.5** Where applicable, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

**4.6** Where applicable, the Owner shall furnish the services of geotechnical engineers when such services are requested by the Design Professional. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.

**4.6.1** The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Design Professional and are not retained by the Design Professional as part of its Basic Services or Additional Services.

**4.7** When not a part of the Additional Services, the Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests of hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

**4.8** The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

**4.9** The services, information, surveys and reports required by Owner under Sections 4.5 through 4.8 shall be furnished at the Owner's expense, and the Design Professional shall be entitled to rely upon the accuracy and completeness thereof in the absence of any negligence on the part of the Design Professional.

**4.10** The Owner shall give prompt written notice to the Design Professional if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

**4.11** Design Professional shall propose language for certificates or certifications to be requested of the Design Professional or Design Professional's consultants and shall submit such to the Owner for review and approval at least fourteen (14) days prior to execution. The Owner agrees not to request certifications that would require knowledge or services beyond the scope of the Agreement.

## **ARTICLE 5 CONSTRUCTION COST**

### **5.1 CONSTRUCTION COST DEFINED**

**5.1.1** The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Professional.

**5.1.2** The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Professional, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the work during construction.

**5.1.3** Construction Cost does not include the compensation of the Design Professional and Design Professional's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

## **5.2 RESPONSIBILITY FOR CONSTRUCTION COST**

**5.2.1** Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Design Professional represent the Design Professional's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Design Professional nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Design Professional cannot and does not warrant or represent that bids or cost proposals will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Design Professional.

**5.2.2** No fixed limit of Construction Cost shall be established as a condition of the Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties thereto. If such a fixed limit has been established, the Design Professional shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

**5.2.3** If the Procurement Phase has not commenced within 90 days after the Design Professional submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

## **ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS**

**6.1** The Drawings, Specifications and other documents prepared by the Design Professional for this Project are instruments of the Design Professional's service and shall become the property of the Owner upon termination or completion of the Agreement. The Design Professional is entitled to retain copies of all such documents. Such documents are intended only be applicable to this Project, and Owner's use of such documents in other projects shall be at Owner's sole risk and expense. In the event the Owner uses any of the information or materials developed pursuant to the Agreement in another project or for other purposes than are specified in the Agreement, the Design Professional is released from any and all liability relating to their use in that project

**6.2** Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Design Professional's reserved rights.

## **ARTICLE 7 TERMINATION, SUSPENSION OR ABANDONMENT**

**7.1** The Design Professional may terminate the Agreement upon not less than thirty days written notice should the Owner fail substantially to perform in accordance with the terms of the Agreement through no fault of the Design Professional. Owner may terminate the Agreement or any phase thereof with or without cause upon thirty (30) days prior written notice to the Design Professional. All work and labor being performed under the Agreement shall cease immediately upon Design Professional's receipt of such notice. Before the end of the thirty (30) day period, Design Professional shall invoice the Owner for all work it satisfactorily performed prior to the receipt of such notice. No amount shall be due for lost or anticipated profits. All plans, field surveys, and other data related to the Project shall become property of the Owner upon termination of the Agreement and shall be promptly delivered to the Owner in a reasonably organized form. Should Owner subsequently contract with a new Design Professional for continuation of services on the Project, Design Professional shall cooperate in providing information.

**7.2** If the Project is suspended by the Owner for more than 30 consecutive days, the Design Professional shall be compensated for services satisfactorily performed prior to notice of such suspension. When the Project is resumed, the Design Professional's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Design Professional's services.

**7.3** The Agreement may be terminated by the Owner upon not less than seven days written notice to the Design Professional in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Design Professional or the Owner may terminate the Agreement by giving written notice.

**7.4** Failure of the Owner to make payments to the Design Professional for work satisfactorily completed in accordance with the Agreement shall be considered substantial nonperformance and cause for termination.

**7.5** If the Owner fails to make payment to Design Professional within thirty (30) days of receipt of a statement for services properly and satisfactorily performed, the Design Professional may, upon seven days written notice to the Owner, suspend performance of services under the Agreement.

**7.6** In the event of termination not the fault of the Design Professional, the Design Professional shall be compensated for services properly and satisfactorily performed prior to termination.

## **ARTICLE 8 PAYMENTS TO THE DESIGN PROFESSIONAL**

### **8.1 DIRECT PERSONNEL EXPENSE**

**8.1.1** Direct Personnel Expense is defined as the direct salaries of the Design Professional's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

### **8.2 REIMBURSABLE EXPENSES**

**8.2.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Design Professional and Design Professional's employees and consultants in the interest of the Project, as identified in the following Clauses.

**8.2.1.1** Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

**8.2.1.2** Expense of reproductions (except the reproduction of the sets of documents referenced in Subsection 2.6.19), postage and handling of Drawings, Specifications and other documents.

**8.2.1.3** If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

**8.2.1.4** Expense of renderings, models and mock-ups requested by the Owner.

**8.2.1.5** Expense of computer-aided design and drafting equipment time when used in connection with the Project.

**8.2.1.6** Other expenses that are approved in advance in writing by the Owner.

### **8.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

**8.3.1** Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 2 of the Agreement and the schedule of work.

**8.3.2** If and to the extent that the time initially established in the Agreement is exceeded or extended through no fault of the Design Professional, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 2 of the Agreement.

**8.3.3** When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 2 of the Agreement based on (1) the lowest bona fide bid or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

### **8.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES**

**8.4.1** Payments on account of the Design Professional's Additional Services and for Reimbursable Expenses shall be made monthly within 30 days after the presentation to the Owner of the Design Professional's statement of services rendered or expenses incurred.

**8.5 PAYMENTS WITHHELD** No deductions shall be made from the Design Professional's compensation on account of penalty, damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which the Design Professional is responsible.

**8.6 DESIGN PROFESSIONAL'S ACCOUNTING RECORDS** Design Professional shall make available to Owner or Owner's authorized representative records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense for inspection and copying during regular business hours for three years after the date of the final Certificate of Payment, or until any litigation related to the Project is final, whichever date is later.

## **ARTICLE 9 INDEMNITY**

**9.1** The Design Professional shall indemnify and save and hold harmless the Owner and its officers, agents, and employees from and against any and all liability, claims, demands, damages, losses, and expenses, including, but not limited to court costs and reasonable attorney fees incurred by the Owner, and including, without limitation, damages for bodily and personal injury, death and property damage, resulting from the negligent acts or omissions of the Design Professional or its officers, shareholders, agents, or employees in the performance of the Agreement.

**9.2** Nothing herein shall be construed to create a liability to any person who is not a party to the Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to the Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

**ARTICLE 10 INSURANCE** During the performance of the Services under the Agreement, Design Professional shall maintain the following insurance with an insurance company licensed or authorized to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A- or above:

**10.1** Comprehensive General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$250,000 in the aggregate.

**10.2** Automobile Liability Insurance with bodily injury limits of not less than \$500,000 for each person and not less than \$500,000 for each accident, and with property damage limits of not less than \$100,000 for each accident.

**10.3** Worker's Compensation Insurance in accordance with statutory requirements, and Employers' Liability Insurance with limits of not less than \$100,000 for each accident including occupational disease.

**10.4** Professional Liability Insurance with limits of not less than \$1,000,000 annual aggregate.

**10.5** The Design Professional shall furnish insurance certificates or insurance policies to the Owner evidencing insurance in compliance with this Article 10 at the time of the execution of the Agreement. The General Liability and Automobile Liability insurance policies shall name the Owner as an additional insured, the Workers' Compensation policy shall contain a waiver of subrogation in favor of the Owner, and each policy shall contain a

provision that such insurance shall not be canceled or modified without thirty (30) days' prior written notice to Owner and Design Professional. In such event, the Design Professional shall, prior to the effective date of the change or cancellation, furnish Owner with substitute certificates of insurance meeting the requirements of this Article 10.

#### **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1** The Agreement shall be governed by the laws of the State of Texas. Venue of any suit or cause of action under the Agreement shall lie exclusively in Denton County, Texas.

**11.2** The Owner and Design Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Design Professional shall not assign its interests in the Agreement without the written consent of the Owner.

**11.3** The term Agreement as used herein includes the executed Agreement, the Proposal, these General Conditions and other attachments referenced in Section 3 of the Agreement which together represent the entire and integrated agreement between the Owner and Design Professional and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both Owner and Design Professional. When interpreting the Agreement the executed Agreement, Proposal, these General Conditions and the other attachments referenced in Section 3 of the Agreement shall to the extent that is reasonably possible be read so as to harmonize the provisions. However, should the provisions of these documents be in conflict so that they can not be reasonably harmonized, such documents shall be given priority in the following order:

1. The executed Agreement
2. Attachments referenced in Section 3 of the Agreement other than the Proposal
3. These General Provisions
4. The Proposal

**11.4** Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Design Professional.

**11.5** Upon receipt of prior written approval of Owner, the Design Professional shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Design Professional's promotional and professional materials. The Design Professional's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Design Professional in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Design Professional on the construction sign and in the promotional materials for the Project.

**11.6** Approval by the Owner shall not constitute, nor be deemed a release of the responsibility and liability of the Design Professional, its employees, associates, agents, subcontractors, and subconsultants for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect in the design or other work prepared by the Design Professional, its employees, subcontractors, agents, and consultants.

**11.7** All notices, communications, and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below signature block on the Agreement, certified mail, return receipt requested, unless otherwise specified herein. All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days after mailing.

**11.8** If any provision of the Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of the Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform the Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

**11.9** The Design Professional shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as they may now read or hereinafter be amended during the term of this Agreement.

**11.10** In performing the Services required hereunder, the Design Professional shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

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

## **EXHIBIT 4**

### **SCOPE OF SERVICES**

#### PEC-4 - Phase 3 and 4 Drainage Improvements

The scope set forth herein defines the work to be performed by the ENGINEER in completing the project. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the Project. Under this scope, “ENGINEER” is expanded to include any sub-consultant, including surveyor, employed or contracted by the ENGINEER.

#### **GENERAL OVERVIEW**

Freese and Nichols, Inc., (ENGINEER) has been contracted by the City of Denton (CITY) to design drainage improvements for CITY for Stream PEC-4 from West Prairie Street to the beginning of the open channel near the intersection of West Mulberry Street and Bernard Street.

Stream PEC-4 is currently an aging system of undersized open channels and culverts throughout the project area. The purpose of this project is to alleviate flooding along the channel by designing a closed pipe system for Phases 3 and 4.

The PEC-4 – Phase 3 and 4 Drainage Improvements (PROJECT) includes approximately 2,700 linear feet of reinforced concrete box, 2,300 linear feet of waterline relocation and lowering, 1,700 linear feet of sanitary sewer line relocation and adjustment, and pavement repair by the project. The ENGINEER will prepare construction documents for design of improvements. Figure 1 shows the location and preliminary design extents for the drainage improvements.

#### **WORK TO BE PERFORMED**

- Task 1. Design Management
- Task 2. Conceptual Design
- Task 3. Preliminary Design
- Task 4. Final Design
- Task 5. Bid Phase Services
- Task 6. Construction Phase Services (Special Service)
- Task 7. FEMA Coordination Services (Special Service)
- Task 8. Survey Services
- Task 9. ROW Services (Special Service)
- Task 10. Geotechnical Investigation (Special Service)
- Task 11. Public Involvement (Special Service)

#### **TASK 1. DESIGN MANAGEMENT.**

ENGINEER will manage the work outlined in this scope to ensure efficient and effective use of ENGINEER’s and CITY’s time and resources. ENGINEER will manage change, communicate effectively, coordinate internally and externally as needed, and proactively address issues with the CITY’s Project Manager and others as necessary to make progress on the work.

### 1.1. Managing the Team

- Lead, manage and direct design team activities
- Ensure quality control is practiced in performance of the work
- Communicate internally among team members
- Task and allocate team resources

### 1.2. Communications and Reporting

- Attend a pre-design project kickoff/chartering meeting with CITY staff to confirm and clarify scope, understand CITY objectives, and ensure economical and functional designs that meet CITY requirements.
- Conduct up to three (3) review meetings with the CITY, one at the end of each design phase.
- Conduct one (1) meeting during the Bid Phase with the CITY.
- Prepare and submit monthly progress reports.
- Prepare and submit baseline Project Schedule initially, and Project Schedule updates monthly.
- Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure, and provide and obtain information needed to prepare the design.

### **ASSUMPTIONS**

- A total of ten (10) meetings are assumed, including one (1) project kickoff meeting, three (3) meetings at the end of 30%, 60%, and 90% design phases, one (1) meeting during the bid phase, and up to five (5) additional meetings to coordinate various project elements.

### **DELIVERABLES**

- A. Meeting summaries with action items
- B. Monthly progress reports
- C. Baseline design schedule

## **TASK 2. CONCEPTUAL DESIGN (30 PERCENT).**

The Conceptual Design shall be submitted to CITY per the approved Project Schedule.

The purpose of the conceptual design is for the ENGINEER to identify, develop, communicate through the defined deliverables, and recommend the design concept that successfully addresses the design problem, and to obtain the CITY's endorsement of this concept. ENGINEER will utilize concepts and criteria contained in the current City of Denton Design Criteria Manual (2013).

ENGINEER will develop the conceptual design of the infrastructure as follows.

### 2.1. Data Collection

- In addition to data obtained from the CITY, ENGINEER will research and make efforts to obtain pertinent information to aid in coordination of the proposed improvements with any planned future improvements that may influence the project. ENGINEER will also identify and seek to obtain data for existing conditions that may impact the project including: record drawings, utilities, agencies (such as TxDOT and railroads), CITY Master Plans, CITY drainage complaint files, existing applicable drainage studies, FEMA floodplain and floodway maps, existing models of project area (if any) and property ownership as available from the Tax Assessor's office.
- Engineer will make site visits to become familiar, or verify, the site and observe existing conditions.

## 2.2. Hydrologic and Hydraulic Analysis

ENGINEER will prepare a hydrologic and hydraulic analysis of the proposed drainage improvements as a basis for the design. This analysis will prepare a single combined model for the drainage improvements that can be used to communicate project benefits to interested parties as well as gain FEMA approval for a Letter of Map Revision (LOMR).

### 2.2.1 Hydrology

- Delineate contributing drainage area based on aerial topography, survey data, site exploration and LiDAR provided by the CITY
- Develop design discharges using NRCS Unit Hydrograph method for standard design storms including the 2,5, 10, 25, 50, and 100-year events.

### 2.2.2 Hydraulics

- Develop 2D hydraulic model of study area using XP-SWMM.
- Execute hydraulic model for the following scenarios:
  - i. Pre-project model representing existing conditions.
  - ii. Post-project model representing proposed box system.
- Evaluate impacts of proposed box system on water surface elevation within the study area and document in tabular and graphical format.
- Evaluate capacity of drainage infrastructure for laterals and inlets. Model may identify additional drainage infrastructure necessary to collect runoff for project. Design of additional laterals not shown on project exhibit shall be considered an additional service.
- Document proposed versus existing conditions results in a technical memorandum.

## 2.3. The Conceptual Design Package shall include the following:

- Project Schematic – Overall project plan and profile illustrating project improvements as a single roll plot. Schematic may include standards cross sections or details as needed clarify design.
- Estimates of probable construction cost: ENGINEER will prepare Opinion of Probable Construction Cost based on 30% schematic



- Drainage analysis technical memorandum.

### **ASSUMPTIONS**

- All storm water lateral and inlet design shall conform to the City of Denton Design Manual 2013.
- Main trunk line will be designed using modeling results from XP-STORM.
- Waterline design replacement to include new 8" waterline along Mulberry from Bernard to 400 feet east of Carroll, a 20" waterline lowering on Sycamore at the new storm drain crossing, an 8" waterline lowering on Sycamore at the new storm drain crossing, and an 8" waterline lowering on Stroud at the new storm drain crossing.
- Sewerline design replacement to include new 18" sanitary sewer from Bernard to Carroll along Mulberry, and two sanitary sewer relocations on Sycamore with one being at the new storm drain crossing and the other being approximately 200 feet of sewer line from Sycamore to the North in an easement.
- Conceptual design package will consist of one (1) drainage analysis technical memorandum, four (4) copies of full size project schematic plans, one (1) copy of the 30% estimate of probable construction cost, and PDF copy of the above items.
- ENGINEER shall not proceed with Preliminary Design activities without written approval by the CITY of the Conceptual Design Package.

### **DELIVERABLES**

- A. Conceptual Design Package.

### **TASK 3. PRELIMINARY DESIGN (60 PERCENT).**

Preliminary plans shall be submitted to CITY per the approved Project Schedule.

ENGINEER will develop the preliminary design of the infrastructure as follows.

#### **3.1. Development of Preliminary Design Drawings shall include the following:**

- Cover Sheet
- General Notes
- Horizontal Control
- Overall Project Layout
- Demolition Sheet
- Drainage Area Map
- Drainage Calculations
- Storm Drain Plan and Profiles
- Storm Drain Cross Sections
- Relic Channel Design (as needed)
- Sewer Plan and Profiles
- Water Plan and Profiles
- Pavement Plan and Profiles
- Structural Sections

- General Details (as needed)

### 3.2 Utility Clearance

- The ENGINEER will consult with the CITY, public utilities, private utilities, and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. ENGINEER will design CITY facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs.
- Coordination of utility relocations, if required, will be the responsibility of the ENGINEER.

### 3.3. The Preliminary Design Package shall include the following:

- Preliminary Plans to include drawings identified above.
- ENGINEER will prepare Opinion of Probable Construction Cost based on 60% plans.

## **ASSUMPTIONS**

- Provide roadway plan and profile design for Mulberry Street from approximately 200' east of Bernard Street to approximately 300' east of S. Carrol Blvd. Provide horizontal and vertical layout of proposed roadway. Provide cross section drawings at 50' intervals. Project details to be utilized will be standard from City or TxDOT. Details requiring specific design may be an additional service. Identify applicable client and agency standard specifications for use on the project. Project specific specifications may be an additional service.
- Provide one-way traffic control for Mulberry Street from Bernard St to US HWY 77. It is anticipated that the project will remain outside of TxDOT right-of-way and no permitting will be required. If permitting is required, this may be an additional service. Provide intersection phasing plan at S. Carrol Blvd and Mulberry St. Provide full closure detour plan for Sycamore Street from S. Carrol Blvd to US HWY 77 and Stroud St from Pierce St to US HWY 77.
- Preliminary design package will consist one (1) final drainage analysis technical memorandum, four (4) copies of half size (11"x17"), one (1) copy of full size (22"x34") drawings, one (1) copy of the 60% estimate of probable construction cost, and PDF copy of the above items.
- ENGINEER shall not proceed with Final Design activities without written approval by the CITY of the Preliminary Design plans.

## **DELIVERABLES**

- A. Preliminary Design drawings
- B. Outline of technical specifications
- C. Estimates of probable construction cost

#### **TASK 4. FINAL DESIGN (90 PERCENT) AND FINAL CONSTRUCTION DOCUMENTS (100 PERCENT).**

- 4.1 Upon approval of the Preliminary plans, ENGINEER will prepare construction plans as follows:

Final draft construction plans and specifications shall be submitted to CITY per the approved Project Schedule.

- Cover Sheet
  - General Notes
  - Horizontal Control
  - Project Layout
  - Erosion Control
  - Drainage Area Map
  - Drainage Model Identifier Sheets
  - Drainage Calculations
  - Demolition Sheet
  - Storm Drain Plan and Profiles
  - Storm Drain Cross Sections
  - Lateral Profiles
  - Relic Channel Design
  - Sewer Plan and Profiles
  - Water Plan and Profiles
  - Pavement Plan and Profiles
  - Structural Sections
  - General Details
  - Storm Drain Details
  - Sewer Details
  - Water Details
  - Pavement Details
  - Structural Details
- The ENGINEER shall submit a final design estimate of probable construction cost with the final design plans submitted.
- 4.2 Following a 90% construction plan review meeting with the CITY, the ENGINEER shall submit Final Plans (100%) to the CITY per the approved Project Schedule. Each plan sheet shall be stamped, dated, and signed by the ENGINEER registered in State of Texas.

#### **ASSUMPTIONS**

- Project will be separated into phases within the plan set so the City has the flexibility to bid as a single project or separate projects.
- 90% design package will consist of four (4) copies of half size (11"x17"), one (1) copy of full size (22"x34") drawings, one (1) copy of the 90% estimate of probable construction cost, and PDF copy of the above items.

- Final design package will consist of four (4) copies of half size (11"x17"), two (2) copies of full size (22"x34") drawings, one (1) copy of the 100% estimate of probable construction cost, and PDF copy of the above items.

#### **DELIVERABLES**

- A. 90% construction plans and specifications.
- B. 100% construction plans and specifications.
- C. Detailed estimates of probable construction cost for the authorized construction project, including summaries of bid items and quantities using the CITY's standard format.

#### **TASK 5. BID PHASE SERVICES.**

ENGINEER will support the bid phase of the project as follows.

- The ENGINEER will provide technical assistance with questions and plan revisions as needed.
- Attend the prebid conference in support of the CITY.
- ENGINEER will check contractor references and prepare letter of recommendation of award.

#### **ASSUMPTIONS**

- The project will be bid only once and awarded to one contractor.

#### **DELIVERABLES**

- A. Plan Revisions (if required)
- B. Letter of Recommendation

#### **TASK 6. CONSTRUCTION PHASE SERVICES.**

ENGINEER will support the construction phase of the project as follows.

##### **6.1 Construction Support shall include:**

- The ENGINEER shall attend the preconstruction conference.
- The ENGINEER shall visit the project site twice (2) per month as construction proceeds to observe and report on progress. ENGINEER shall create meeting agenda and record meeting minutes for each meeting.
- The ENGINEER shall review shop drawings, samples and other submittals submitted by the contractor for general conformance with the design concepts and general compliance with the requirements of the contract for construction. Such review shall not relieve the Contractor from its responsibility for performance in accordance with the contract for construction, nor is such review a guarantee that the work covered by the shop drawings, samples and submittals is free of errors, inconsistencies or omissions. The ENGINEER shall log and track all shop drawings, samples and other submittals.

- As requested by the CITY, the ENGINEER shall provide necessary interpretations and clarifications of contract documents, review change orders, and make recommendations as to the acceptability of the work.
- The ENGINEER shall attend the “Final” project walk through and assist with preparation of final punch list.

## 6.2 Record Drawings

- The ENGINEER shall prepare record drawings from information provided by the CITY depicting any changes made to the Final Drawings during construction. The following information shall be provided by the CITY:
  - As-Built Survey
  - Red-Line Markups from the Contractor
  - Red-Line Markups from City Inspector
  - Copies of Approved Change Orders
  - Approved Substitutions
- The ENGINEER shall modify the Final Drawings electronically and shall place a stamp on the plans indicating that they represent Record Drawings of the project as constructed. The stamp shall be signed and dated by the ENGINEER and shall be placed on each plan sheet, whether there are any revisions on the sheet or not. Each sheet shall clearly indicate all changes which apply to that sheet by clouding and numbering, or other suitable means.

## **ASSUMPTIONS**

- 2 site visits per month are assumed.
- Construction schedule is assumed at 30 months.
- 10 submittal reviews are assumed.
- 4 RFI's are assumed.
- 4 Change Orders are assumed.

## **DELIVERABLES**

- A. Response to Contractor's Request for Information
- B. Review of Change Orders
- C. Review of shop drawings
- D. Final Punch List items
- E. Record Drawings

## **TASK 7. FEMA COORDINATION SERVICES.**

ENGINEER will prepare a LOMR application for PEC-4 - Phase 1 and 2 as outlined below. Preparation of a LOMR for Phases 3 and 4 will be considered an additional service to be authorized following the completion of construction.

#### 7.1. Modeling

- The ENGINEER shall utilize the XP-STORM model as developed in Section 2.2.
- The ENGINEER shall develop a truncated hydraulic model representing PEC-4 Phase 1 and 2 improvements only. The ENGINEER will incorporate any changes during construction of Phase 1 and 2 into the model.

#### 7.2 FEMA Submittal

- The ENGINEER shall prepare LOMR submittal to FEMA including MT-2 forms and summary report.
- The ENGINEER shall coordinate with FEMA for approval of the LOMR applications.
- The CITY shall be responsible for all application fees to FEMA.

### **ASSUMPTIONS**

- FEMA LOMR submittal to include summary report including figures and supporting data, FEMA required forms and digital model for application

### **DELIVERABLES**

- A. FEMA LOMR submittal.

## **TASK 8. SURVEY AND SUE.**

ENGINEER will provide survey support as follows.

#### 8.1 Design Survey

- ENGINEER will perform field surveys to collect horizontal and vertical elevations and other information needed by ENGINEER in design and preparation of plans for the project. Information gathered during the survey shall include topographic data, utilities based on CITY records and observable surface features (it is assumed that SUE is not necessary), structures, trees 6" and larger, and other features relevant to the final plan sheets.
- The minimum survey information to be provided on the plans shall include the following:
  - A Project Control Sheet, showing **ALL** Control Points, used or set while gathering data. Generally on a scale of not less than 1:400:
  - The following information about each Control Point;
    - a. Identified (Existing. CITY Monument #8901, PK Nail, 5/8" Iron Rod)
    - b. X, Y and Z Coordinates, in an identified coordinate system, and a referred bearing base. Z coordinate on CITY Datum only.
    - c. Descriptive Location (Ex. Set in the centerline of the inlet in the South

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curb line of North Side Drive at the East end of radius at the Southeast corner of North Side Drive and North Main Street).

## 8.2. Temporary Right of Entry Preparation and Submittal

- Prior to entering the property for the purposes of field survey and data collection, the ENGINEER shall prepare letters for Temporary Right of Entry for property owners and provide them to the surveyor for distribution. The CITY shall gain access permission to properties where access is denied.

## 8.3 Subsurface Utility Engineering

Provide a Subsurface Utility Engineering (SUE) Quality combination of Level B and A as described below. The SUE shall be performed in accordance with CI/ASCE 38-02.

### Quality Level D

- Conduct appropriate investigations (e.g., owner records, County/CITY records, personal interviews, visual inspections, etc.), to help identify utility owners that may have facilities within the project limits or that may be affected by the project.
- Collect applicable records (e.g., utility owner base maps, "as built" or record drawings, permit records, field notes, geographic information system data, oral histories, etc.) on the existence and approximate location of existing involved utilities.
- Review records for: evidence or indication of additional available records; duplicate or conflicting information; need for clarification.
- Develop SUE plan sheets and transfer information on all involved utilities to appropriate design plan sheets, electronic files, and/or other documents as required. Exercise professional judgment to resolve conflicting information. For information depicted, indicate: utility type and ownership; date of depiction; quality level(s); end points of any utility data; line status (e.g., active, abandoned, out of service); line size and condition; number of jointly buried cables; and encasement.

### Quality Level C (includes tasks as described for Quality Level D)

- Identify surface features, from project topographic data and from field observations, that are surface appurtenances of subsurface utilities.
- Include survey and correlation of aerial or ground-mounted utility facilities in Quality Level C tasks.
- Survey surface features of subsurface utility facilities or systems.
- The survey shall also include (in addition to subsurface utility features visible at the ground surface): determination of invert elevations of any manholes and vaults; sketches showing interior dimensions and line connections of such manholes and vaults; any surface markings denoting subsurface utilities, furnished by utility owners for design purposes.
- Exercise professional judgment to correlate data from different sources, and to resolve conflicting information.
- Update (or prepare) plan sheets, electronic files, and/or other documents to reflect the integration of Quality Level D and Quality Level C information.
- Recommend follow-up investigations (e.g., additional surveys, consultation with utility owners, etc.) as may be needed to further resolve discrepancies.

- Provide Quality Level C to identify overhead utilities on the project and provide the overhead utility information on the SUE plan sheets.

Level B (includes tasks as described for Quality Level C)

- Select and apply appropriate surface geophysical method(s) to search for and detect subsurface utilities within the project limits, and/or to trace a particular utility line or system.
- Based on an interpretation of data, mark the indications of utilities on the ground surface for subsequent survey. Utilize paint or other method acceptable for marking of lines.
- Unless otherwise directed, mark centerline of single-conduit lines, and outside edges of multi-conduit systems.
- Resolve differences between designated utilities and utility records and surveyed appurtenances.
- Recommend additional measures to resolve differences if they still exist. Recommendations may include additional or different surface geophysical methods, exploratory excavation, or upgrade to Quality Level A data.
- As an alternative to the physical marking of lines, the ENGINEER may, with CITY's approval, utilize other means of data collection, storage, retrieval, and reduction, that enables the correlation of surface geophysical data to the project's survey control.

Level A

- Expose and locate utilities at specific locations.
- Tie horizontal and vertical location of utility to survey control.
- Provide utility size and configuration.
- Provide paving thickness and type, where applicable.
- Provide general soil type and site conditions and such other pertinent information as is reasonably ascertainable from each test hole site.

## **ASSUMPTIONS**

- A total of eighteen (18) pothole locations are expected for Level A SUE collection
- The CITY will obtain Right of Entry (ROE) from necessary landowners.

## **TASK 9. ROW SERVICES**

ENGINEER will support and perform activities related to ROW and easements as outlined below, per scoping direction and guidance from the CITY's Project Manager

### **9.1. Right-of-Way Research**

- The ENGINEER shall determine rights-of-way and easement needs for construction of the project. Required temporary and permanent easements will be identified based on available information and recommendations will be made for approval by the CITY.

### **9.2 Right-of-Way/Easement Preparation and Submittal.**



- The ENGINEER shall prepare documents to be used to obtain right-of-way and permanent and/or temporary easements required to construct the improvements.
- The ENGINEER shall provide field staking of easements on private property to demonstrate limits of easements and assist in easement negotiations to be conducted by CITY.

### 9.3 Temporary Right of Entry Preparation and Submittal

- Prior to construction, the ENGINEER shall prepare letters for Temporary Right of Entries from landowners. It is assumed that letters will only be required for land owners adjacent to temporary construction easements or who are directly affected by the project and no easement is required to enter their property. ENGINEER shall prepare letters and CITY will mail them and coordinate with property owners.

## ASSUMPTIONS

- A total of fifteen (15) permanent and fifteen (15) temporary easements are included.
- Right-of-Way research includes review of property/right-of-way records based on current internet based Denton Appraisal District (DAD) information available at the start of the project and available on-ground property information (i.e. iron rods, fences, stakes, etc.). It does not include effort for chain of title research, parent track research, additional research for easements not included in the TAD, right-of-way takings, easement vacations and abandonments, right-of-way vacations, and street closures.

## DELIVERABLES

- B. Right-of-Way, easement exhibits and metes and bounds
- C. Temporary Right of Entry Letters

## TASK 10. GEOTECHNICAL INVESTIGATION

### 10.1 Field Exploration

- Select and mark five (5) boring locations and notify Texas 811, appropriate City department(s) and other agencies to request location and marking of existing underground utilities prior to the field exploration.
- Coordinate with City to arrange access to boring locations in areas where access may need to cross private properties.
- Arrange for two (2) full days of traffic control during drilling to maintain a safe working environment for the field crew.
- Advance five (5) geotechnical borings along the Phase 3 and 4 alignment at locations that are accessible to a truck-mounted drill rig and free of subsurface and overhead conflicts. Each boring will be drilled to a maximum depth of 35 feet. Drilling fieldwork is expected to require three (3) full days of effort.

- Where required, existing pavement will be penetrated and then patched at completion. Areas drilled through landscaping grass will include a tarp or plywood to maintain cleanliness at completion.
- During drilling, samples will be collected intermittently using continuous flight augers or hollow stem augers, with either split-spoon or tube samplers. Rock and rock-like materials will be tested insitu using a TxDOT Cone Penetration Test with rock core samples collected, when possible, in a maximum of two borings.
- Groundwater levels will be collected during drilling, at completion, and after a period of 15 minutes. After collecting these readings, the boreholes will be backfilled with auger cuttings.
- Provide an Engineer or Geologist experienced in logging borings to direct the drilling, log the borings, and handle and transport the samples. Visual classification of the subsurface stratigraphy shall be provided per the Unified Soil Classification System (USCS).

#### 10.2 Laboratory Testing

- Testing shall be performed on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials. FNI will select samples for laboratory testing, assign tests, and review the test results. Testing will be performed by a geotechnical testing subcontractor.
- Laboratory tests will be assigned based on the specific subsurface materials encountered during exploration. Test type and quantity may vary, but are expected to include: liquid and plastic limits, percent passing the no. 200 sieve or gradation, moisture content, dry unit weight, and unconfined compressive strength.

#### 10.3 Engineering Analysis and Study Report

- Prepare a summary report (in technical memorandum format) of the geotechnical investigation to include:
  - Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
  - Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.
  - Recommendations for use during design of the junction box foundations, including allowable bearing pressure, settlement potential, and equivalent lateral earth pressures due to backfill.
  - Recommended pavement thicknesses for Mulberry Street using standard City sections, including subgrade modification requirements.
  - General discussion of expected construction related issues.
  - Earthwork related recommendations for use during development of the plans and specifications.
- The geotechnical engineer will collaborate with the design team on the implementation of recommendations, and will review submittals to assist with geotechnical related items.

#### 10.4 Design of Excavation Support for Existing Structures

- Prepare a technical memorandum providing proposed excavation retention systems that are for the protection of existing structures, including type,

parameters for design, minimum geometry for stability, and the results of the analysis.

- Provide a typical section and details for the excavation retention system, and assist lead designer with alignment for plan and profile sheets.

## **DELIVERABLES**

- A. One (1) hard copy and one (1) electronic copy of Geotechnical Report.

## **TASK 11. PUBLIC INVOLVEMENT**

- ENGINEER shall use already prepared project drawings and attend public meeting to help explain the proposed project to residents.
- Engineer shall attend the following meetings
  - After 30% Design Approval
  - After 90% Design Approval
  - Prior to start of construction

## **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 the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

- Negotiation of easements or property acquisition.
- Revisions to easement documents as a result of negotiations or project changes after prior City direction and approval
- Services related to development of the CITY's project financing and/or budget.
- Services related to disputes over pre-qualification, bid protests, bid rejection and re-bidding of the contract for construction.
- Construction management and inspection services
- Performance of materials testing or specialty testing services.
- Services necessary due to the default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement and inspection after final completion.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
- Stormwater Pollution Prevention Plan (SWPPP) permitting
- Section 404 of the Clean Water Act permitting
- Section 10 Permitting with the USACE.
- Preparation of a formal written request for USACE authorization under a letter of permission procedure.

- Preparation of a standard individual Section 404 permit application.
- Preparation of Environmental Information Document, Environmental Assessment, or an Environmental Impact Statement.
- Meetings or consultation with the USACE or other resource agencies, except as specifically noted in the scope of services.
- Presence/absence surveys for federally listed threatened/endangered species.
- Preparation of a mitigation plan to compensate for impacts to waters of the U.S.
- Application to Texas Commission on Environmental Quality for individual 401 Water Quality Certification.
- Application for General Land Office easements.
- Application for Texas Parks & Wildlife Department Sand and Gravel Permit.
- Additional field investigations or analysis required to respond to public or regulatory agency comments.
- Field survey or analysis required for cultural resources investigations.
- Consultation with the U. S. Fish and Wildlife Service under Section 7 of the Endangered Species act.
- Expert representation at legal proceedings or at contested hearings.
- Mitigation monitoring if required by permit conditions.
- Monitoring for compliance with permit conditions.
- Additional modifications to the compensatory mitigation plan.
- Phase I or Phase II Environmental Site Assessment.

## EXHIBIT 5 COMPENSATION

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the Schedule of Charges, but shall not exceed One Million, Two Hundred Thousand Dollars (\$1,200,000). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

### Schedule of Charges

<u>Position</u>	<u>Min</u>	<u>Max</u>
Professional - 1	73	121
Professional - 2	103	155
Professional - 3	124	201
Professional - 4	151	220
Professional - 5	183	263
Professional - 6	192	364
Construction Manager - 1	92	118
Construction Manager - 2	107	165
Construction Manager - 3	157	185
Construction Manager - 4	165	242
CAD Technician/Designer - 1	64	114
CAD Technician/Designer - 2	94	142
CAD Technician/Designer - 3	123	183
Corporate Project Support - 1	40	119
Corporate Project Support - 2	73	142
Corporate Project Support - 3	90	288
Intern/ Coop	39	70

### Rates for In-House Services

#### Technology Charge

\$8.50 per hour

#### Bulk Printing and Reproduction

	<u>B&amp;W</u>	<u>Color</u>
Small Format (per copy)	\$0.10	\$0.25
Large Format (per sq. ft.)		
Bond	\$0.25	\$0.75
Glossy / Mylar	\$0.75	\$1.25
Vinyl / Adhesive	\$1.50	\$2.00
Mounting (per sq. ft.)	\$2.00	
Binding (per binding)	\$0.25	

#### Travel

Standard IRS Rates

### OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and rates will be adjusted annually in February. Last updated February 2017.

## Exhibit 6

# CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

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

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

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

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

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

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

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

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

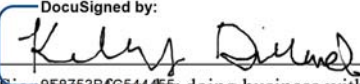
☒

No

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

N/A

4 ☒ I have no Conflict of Interest to disclose.

5 DocuSigned by:  
  
Signature of Vendor doing business with the governmental entity

12/7/2017

\_\_\_\_\_  
Date

## HOUSE BILL 89 VERIFICATION


I, Kelly Dillard, the undersigned representative of Freese and Nichols, Inc.  
(Company Name) (hereafter referred to as company), being an adult over  
the age of eighteen (18) years of age, verify that the company above-named, under the provisions  
of Subtitle F, Title 10, Government Code Chapter 2270:

- 1. Does not boycott Israel currently; and**
- 2. Will not boycott Israel during the term of its contract with City of Denton.**

*Pursuant to Section 2270.001, Texas Government Code:*

1. *“Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *“Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

**COMPANY REPRESENTATIVE:**

DocuSigned by:  
  
 9F8753B1C544455...

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

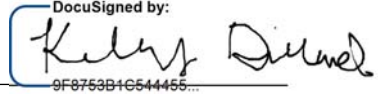
Its: Vice President \_\_\_\_\_

Date: 12/7/2017 /

## SENATE BILL 252 CERTIFICATION

I, kelly Dillard, the undersigned representative of \_\_\_\_\_ (Company Name) being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the above-named company is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153 of the Government Code. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Denton Purchasing Department.

### COMPANY REPRESENTATIVE:

By:   
Its: vice President  
Date: 12/7/2017 /    /



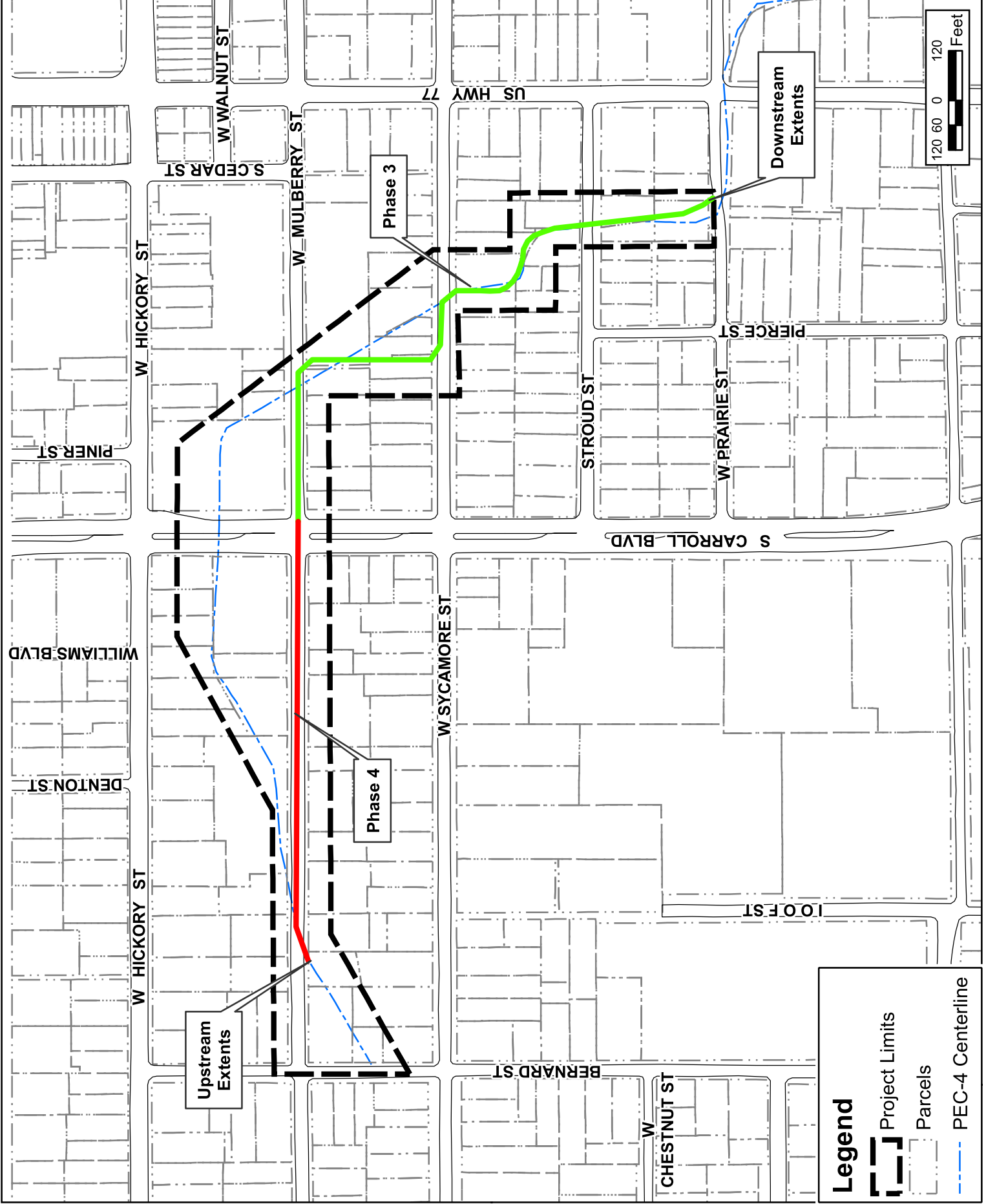


City of Denton, Texas  
PEC-4 Phase 3 & 4 Project Limits



4055 International Plaza  
Suite 200  
Fort Worth, TX 76109

PROJECT: OFF-17041  
FILE: "D:\Projects\PEC-4 Phase 3 & 4\000\Main1 - Project Limits.dwg"  
COORDINATE SYSTEM: NAD83 STATE PLANE TX CENTRAL (FEET)  
DATE: 9/29/2017  
PREPARED BY: 02415



Legend

- Project Limits
- Parcels
- PEC-4 Centerline

## Certificate Of Completion

Envelope Id: 7B04A9A0A3FD498CA407A5E3E605E5AC

Status: Completed

Subject: Please DocuSign: City Council Contract 6625

Source Envelope:

Document Pages: 39

Signatures: 7

Envelope Originator:

Certificate Pages: 6

Initials: 0

Jamie Cogdell

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

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

Jamie.Cogdell@cityofdenton.com

IP Address: 129.120.6.150

## Record Tracking

Status: Original

Holder: Jamie Cogdell

Location: DocuSign

12/7/2017 10:53:26 AM

Jamie.Cogdell@cityofdenton.com

## Signer Events

Jamie Cogdell

## Signature

**Completed**

## Timestamp

Sent: 12/7/2017 11:21:44 AM

jamie.cogdell@cityofdenton.com

Viewed: 12/7/2017 11:21:51 AM

Senior Buyer

Signed: 12/7/2017 11:22:48 AM

City Of Denton

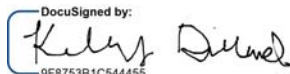
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### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Kelly Dillard

DocuSigned by:  
  
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Sent: 12/7/2017 11:22:50 AM

skh@freese.com

Resent: 12/7/2017 2:10:25 PM

Security Level: Email, Account Authentication (None)

Viewed: 12/7/2017 2:25:17 PM

Signed: 12/7/2017 2:35:37 PM

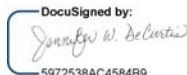
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Jennifer DeCurtis

DocuSigned by:  
  
5972538AC4584B9...

Sent: 12/7/2017 2:35:42 PM

jennifer.decurtis@cityofdenton.com

Viewed: 12/7/2017 3:40:59 PM

Deputy City Attorney

Signed: 12/7/2017 3:41:11 PM

City of Denton

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Security Level: Email, Account Authentication (None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Julia Winkley

**Completed**

Sent: 12/7/2017 3:41:14 PM

julia.winkley@cityofdenton.com

Viewed: 12/13/2017 10:20:22 AM

Contracts Administration Supervisor

Signed: 12/13/2017 10:20:48 AM

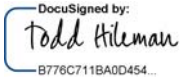
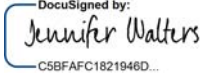
City of Denton

Using IP Address: 129.120.6.150

Security Level: Email, Account Authentication (None)

### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Signer Events	Signature	Timestamp
<p>Todd Hileman  Todd.Hileman@cityofdenton.com  City Manager  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Accepted: 7/25/2017 11:02:14 AM  ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21</p>	<p><small>DocuSigned by:</small>    <small>B776C711BA0D454...</small></p> <p>Using IP Address: 129.120.6.150</p>	<p>Sent: 12/13/2017 10:20:54 AM  Viewed: 12/13/2017 10:53:55 AM  Signed: 12/13/2017 10:54:03 AM</p>
<p>Jennifer Walters  jennifer.walters@cityofdenton.com  City Secretary  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<p><small>DocuSigned by:</small>    <small>C5BF4FC1821946D...</small></p> <p>Using IP Address: 129.120.6.150</p>	<p>Sent: 12/13/2017 10:54:06 AM  Viewed: 12/13/2017 2:43:50 PM  Signed: 12/13/2017 2:44:25 PM</p>
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Thomas Hester  th@freese.com  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 12/7/2017 11:22:50 AM</p>
<p>Sherri Thurman  sherri.thurman@cityofdenton.com  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 12/7/2017 2:35:40 PM</p>
<p>Julia Winkley  julia.winkley@cityofdenton.com  Contracts Administration Supervisor  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b>  Not Offered via DocuSign</p>	<div>COPIED</div>	<p>Sent: 12/7/2017 2:35:41 PM  Viewed: 12/8/2017 9:49:50 AM</p>
<p>Jane Richardson  jane.richardson@cityofdenton.com  Assistant City Secretary  City of Denton  Security Level: Email, Account Authentication (None)</p> <p><b>Electronic Record and Signature Disclosure:</b></p>	<div>COPIED</div>	<p>Sent: 12/13/2017 10:20:51 AM  Viewed: 12/13/2017 11:54:52 AM</p>

Carbon Copy Events	Status	Timestamp
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Robin Fox Robin.fox@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/13/2017 10:20:52 AM
Jennifer Bridges jennifer.bridges@cityofdenton.com Procurement Assistant City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/13/2017 2:44:29 PM
Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/13/2017 2:44:30 PM Viewed: 12/13/2017 2:58:17 PM
Lee Perry lee.perry@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/13/2017 2:44:31 PM Viewed: 12/13/2017 2:57:57 PM
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	12/13/2017 2:44:31 PM
Completed	Security Checked	12/13/2017 2:44:31 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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

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

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

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><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.

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