

ORDINANCE NO. 2016 - _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, PROVIDING FOR, AUTHORIZING, AND APPROVING THE EXECUTION BY THE CITY MANAGER, OR HIS DESIGNEE, OF AN ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT FOR THE CONSTRUCTION OF AN ELECTRIC POWER GENERATION FACILITY BETWEEN THE CITY OF DENTON AND BURNS AND MCDONNELL ENGINEERING COMPANY, INC. A MISSOURI CORPORATION; APPROVING THE EXECUTION OF SUCH OTHER AND FURTHER RELATED DOCUMENTS DEEMED NECESSARY TO EFFECTUATE THIS TRANSACTION BY THE CITY MANAGER OR HIS DESIGNEE, WHICH ARE INCIDENT OR RELATED THERETO; CONFIRMING AND RATIFYING THAT THE CITY OF DENTON, ITS CITY MANAGER, AND ITS CITY ATTORNEY SHALL BE AUTHORIZED AND EMPOWERED TO PERFORM SUCH ACTS AND OBLIGATIONS AS ARE REASONABLY REQUIRED TO CONSUMMATE THIS TRANSACTION; RATIFYING ALL PRIOR ACTIONS TAKEN BY THE CITY COUNCIL, CITY MANAGER, AND CITY ATTORNEY, OR THEIR DESIGNEES, IN FURTHERANCE OF THE FOREGOING TRANSACTION; AND DETERMINING THAT SPECIFIC INFORMATION CONTAINED IN SAID DOCUMENTS INVOLVED IN THIS TRANSACTION PERTAIN TO A "COMPETITIVE ELECTRIC MATTER" AS SET FORTH UNDER THE PROVISIONS OF §§551.086 AND 552.133 OF THE TEXAS GOVERNMENT CODE, AS AMENDED; ADOPTING SIGNIFICANT RECITATIONS, FINDINGS AND CONCLUSIONS, AS ARE SET FORTH IN THE PREAMBLE OF THIS ORDINANCE; THAT THE CONSTRUCTION OF THE ELECTRIC POWER GENERATION PLANT BY THE CITY UNDER THE TERMS OF THIS ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT ARE IN THE PUBLIC WELFARE; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFORE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton, Texas ("Denton") is a Home-Rule City and a Texas municipal corporation governed by the constitution and laws of the State of Texas; and

WHEREAS, in accordance with the provisions of §551.086 of the Texas Government Code, after due notice of the public meeting was provided as required by law, this "Engineering, Procurement and Construction Agreement" between the City of Denton, Texas and Burns and McDonnell Engineering Company, Inc., a Missouri corporation, (hereafter the "Transaction") was submitted for final consideration to the Denton Public Utilities Board on August 8, 2016; a majority of the Public Utilities Board ("PUB"), a "Public Power Governing Body" as defined by State law, convened a Closed Meeting as permitted by law, and discussed, considered, and deliberated the Transaction; and thereafter in its Closed Meeting proceeded to take final action and recommend to the City Council that the Transaction by and between Denton and Burns and McDonnell Engineering Company, Inc. be recommended for approval by a vote of six (6) in favor to zero (0) opposed being a majority vote of all PUB members present, in substantially the form of the Equipment Supply and Services Contract presented to it; and

WHEREAS, in accordance with the provisions of §551.086 of the Texas Government Code, after due public notice being given, the City Council, a "Public Power Utility Governing Body" under Senate Bill 7, the Council has discussed, deliberated, and considered the Transaction, the subject of this ordinance, in a Closed Meeting of the City Council on September 13, 2016, after receiving a legal opinion of counsel that the Transaction is a proper item for consideration in its Closed Meeting, which item involves competitive electric matters, including

business and commercial information, which if disclosed, would give advantage to its competitors or prospective competitors; and

WHEREAS, the City Council has further determined and finds that specific information contained in the "Engineering, Procurement and Construction Agreement" to be entered into by and between Denton and Burns and McDonnell Engineering Company, Inc., and similar type information contained in all other documents which are related thereto as from time to time may be executed by the City of Denton, Texas and/or Burns and McDonnell Engineering Company, Inc., in connection therewith should be excepted from public disclosure, as permitted by the provisions of §552.133 of the Texas Government Code, as information that is reasonably related to a competitive electric matter ("Competitive Information"), the disclosure of which would provide an advantage to the competitors or prospective competitors of Denton Municipal Electric ("DME"); and

WHEREAS, the City Council has further determined that it is in the public interest that it should exercise its right under the Texas Government Code to lawfully safeguard and keep the Competitive Information contained in the documents in the preceding paragraph sealed, as it is competitive electric and financial information; and

WHEREAS, the City Council finds that said Transaction involves the construction of an electric power generating facility by Burns and McDonnell Engineering Company, Inc.; and that such Transaction is related to Denton's Renewable Denton Plan approved by the City Council by resolution dated June 21, 2016 (Resolution No. R2016-014) and will provide Denton the ability to generate electricity during peak loading times while maintaining a consistent and reliable supply of electricity thereby benefiting the ratepayers of DME; and

WHEREAS, the Council, having further convened an open public meeting on this item on the September 20, 2016, and having discussed the same, has considered all proposals provided by other firms in response to Denton's Request For Proposals and finds and concludes that Burns and McDonnell Engineering Company, Inc. should be selected by Denton to construct the electric power generation facility; and the Council hereby takes final action and approves this Transaction by a vote of _____ (_____) for and _____ (_____) against.

WHEREAS, Denton desires to enter into such other arrangements in support of the Engineering, Procurement and Construction Agreement (hereafter "Agreement") with Burns and McDonnell Engineering Company, Inc., which are incident and related to the said Agreement, and to take such additional actions as the City Manager, or his designee, shall determine to be necessary and advisable to consummate and effectuate the matters set forth herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations contained in the above Preamble are incorporated herewith and are considered to be a part of this Ordinance.

SECTION 2. The City Council, hereby approves and authorizes the City Manager and City Secretary, or their designees, to execute and attest respectively, the Engineering, Procurement and Construction Agreement, by and between the City of Denton, Texas and Burns and McDonnell Engineering Company, Inc., a Missouri corporation, under the terms and conditions set forth in Exhibit "A," attendant with all Exhibits attached thereto, and made a part hereof, with such ancillary instruments, changes and additions which are in substantial compliance with said Agreement as the City Manager, or his designee, may approve, and to consummate the execution and delivery thereof on behalf of the City of Denton by or at the direction of the City Manager, or his designee.

SECTION 3. The City Council, hereby approves and authorizes the City Manager and City Secretary, and their respective designees, to execute and attest respectively, all other documents which are incident and related to the Engineering, Procurement and Construction Agreement referenced herein, and to take such additional actions as the City Manager, or his designee, shall determine to be necessary and advisable to effectuate the matters set forth above.

SECTION 4. The City Manager, the City Attorney, or their designees, be, and each of them individually hereby is, authorized and empowered to perform all such acts and obligations as required with respect to the Engineering, Procurement and Construction Agreement described herein.

SECTION 5. The City Manager, the City Attorney or their designees be, and each of them individually hereby is, authorized, empowered and directed to negotiate, deliver and perform all such acts and things and to sign all such documents, each together with such amendments, changes and additions thereto as the City Manager, the City Attorney or their respective designees shall determine to be necessary or advisable to effectuate the matters set forth herein, any such determination to be conclusively evidenced by the taking or causing to be taken of such action or the execution and delivery of any such documents by the City Manager, the City Attorney or their designees.

SECTION 6. All prior actions taken by the City Council, the City Manager, the City Attorney, or their designees, in furtherance of the foregoing matters be and hereby are ratified, confirmed, approved and authorized in all respects as of the dates and times such actions were taken.

SECTION 7. Immediately following the execution and delivery of the documents described as the Engineering, Procurement and Construction Agreement the City Secretary is hereby directed to seal and maintain said documents in her custody and control, as documents excepted from public disclosure under the provisions of §552.133 of the Texas Government Code (the "Public Power Exception") unless otherwise lawfully ordered to disclose said documents.

SECTION 8. This ordinance and a copy of the Engineering, Procurement and Construction Agreement, including the related Exhibits and Attachments, as redacted of Competitive

Information shall be open for public inspection. However, the non-redacted Engineering, Procurement and Construction Agreement, including the related Exhibits and Attachments, appended to this Ordinance shall not be produced for public inspection, but shall be sealed, as provided for in Section 7 above.

SECTION 9. The expenditure of funds as provided for in this ordinance is hereby authorized.

SECTION 10. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of September, 2016.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

By: _____

