

ORDINANCE NO. 2016-083

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON, TEXAS AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A LETTER OF AGREEMENT FOR CONSULTING SERVICES WITH THE BRATTLE GROUP, INC. THAT IS SUBSTANTIALLY CONSISTENT WITH THE SCOPE OF WORK RECOMMENDED BY THE CITY MANAGER TO THE CITY COUNCIL DURING THE WORK SESSION OF THE CITY COUNCIL ON FEBRUARY 16, 2016, IN ORDER TO PERFORM A STUDY/ANALYSIS OF THE RENEWABLE DENTON PLAN AND OTHER OPTIONS; PROVIDING FOR THE EXPENDITURE OF FUNDS; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Denton, Texas has previously directed the City of Denton's electric department, Denton Municipal Electric ("DME"), to develop a comprehensive plan to increase the amount of renewable energy in DME's energy portfolio, while at the same time, maintaining competitive rates and reliable electric power; and

WHEREAS, DME has diligently examined numerous possible scenarios for increasing the amount of renewable energy in DME's portfolio and has presented projected rate impacts and the risks that are associated with each scenario to the City Council; and

WHEREAS, the City Council, after discussing and considering all of the relevant facts and circumstances, was of the opinion that a consultant should be selected by the City Manager to complete a study/analysis of the "Renewable Denton Plan" and other options; and

WHEREAS, the City Manager has reported to the Council his recommended choice of consultants for this engagement, and the Council hereby confirms the recommendation of the City Manager to enter into a letter of agreement for consulting services with The Brattle Group, Inc.; and

WHEREAS, Section 252.022(a)(4) of the Texas Local Government Code provides that a procurement for personal, professional or planning services is exempt from the requirements of competitive bidding; and Chapter 2254 of the Texas Government Code generally provides that a City may not select a provider of professional services on the basis of competitive bids, but must select the provider of professional services on the basis of demonstrated competence, knowledge, and qualifications; and for a fair and reasonable price; and

WHEREAS, the Council hereby finds and concludes that the firm of The Brattle Group, Inc., Washington, D.C. (the "Firm") is appropriately qualified under the provisions of law to be retained as a consultant by the City; and

WHEREAS, the City Council has provided in the City budget for the appropriation of funds to be used for the procurement of the foregoing services, as set forth in the letter of agreement for consulting services to be entered into by and between the City of Denton, Texas and The Brattle Group, Inc.; NOW THEREFORE.

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

SECTION 1. The recitations in the preamble are true and correct and are incorporated by reference herewith as part of this ordinance.

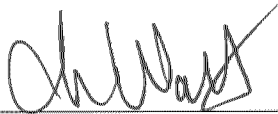
SECTION 2. The City Manager, or his designee, is hereby authorized to execute a letter of agreement for consulting services by and between the City of Denton, Texas and The Brattle Group, Inc. for consulting services relating to the study, review and evaluation of the Denton Renewable Plan in the amount of not-to-exceed \$150,000; a true and correct copy of such letter of agreement is attached as Exhibit "A" and is incorporated herewith by reference.

SECTION 3. The award of this letter of agreement is on the basis of the demonstrated competence and qualifications of The Brattle Group, Inc. and the ability of the Firm to perform the professional consulting services needed by the City for a fair and reasonable price.

SECTION 4. The expenditure of funds as provided in the attached letter of agreement is hereby authorized.

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

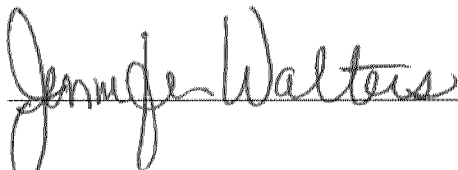
PASSED AND APPROVED this the 22nd of March, 2016.




CHRIS WATTS, MAYOR

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

By: 

March 11, 2016

Via Email

Mr. George C. Campbell
City Manager
215 E. McKinney
Denton, TX 76201

Re: Independent Review of the Renewable Denton Plan

Dear Mr. Campbell:

Thank you for contacting The Brattle Group (“Brattle”) regarding the captioned matter. We understand that the City of Denton has a need for a qualified energy consultant to review Denton Municipal Electric’s (“DME”) proposed Renewable Denton Plan that calls for increasing the renewable generation portfolio (mostly wind and solar) from the current 40% to 70% by 2019. This proposal provides background on Brattle, our work in the electricity sector and relevant experience, suggested team of experts, approach, timeline and budget.

I. THE BRATTLE GROUP AND PROPOSED TEAM

This section provides an overview of Brattle, the proposed core team, and relevant past experience.

A. THE BRATTLE GROUP

The Brattle Group is an international economic consultancy active in finance, litigation, and energy. The firm was founded in 1990 and has since grown to a staff of over 250 people with offices in Cambridge, MA; Washington, DC; San Francisco, CA; New York, NY; Toronto, ON; London, UK; Madrid, ES; Rome, IT; and Sydney, AU. Our professionals have advanced degrees and expertise in finance, economics, accounting, statistics, business administration, public policy and engineering. We bring this cross-disciplinary expertise to our practice of assessing damages, as well as other economic and financial questions that arise in disputes.

Our firm works on an exclusive basis with leading academics in economics and finance. Principals of our firm include Daniel McFadden, a recipient of the Nobel Prize in 2000 for his work in economics, and Stewart Myers, Emeritus Professor of Finance at MIT and author of the world’s leading textbook on corporate finance.

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CAMBRIDGE

NEW YORK

SAN FRANCISCO

WASHINGTON

LONDON

MADRID

ROME

B. THE BRATTLE GROUP UTILITY PRACTICE

Brattle's largest industry practice area is in energy, with a strong presence in electric power. In the electric power work, we assist regional entities such as RTOS/ISOs, electric utilities, power producers, customers, regulators, and policy makers with planning, regulatory, and litigation support. The team offers a range of planning, analytical, operational, and financial tools for simulating, forecasting, and evaluating market structures, asset and contract evaluation, and the implications of proposed policies. We have the capability to model all aspects of the electric power sector including wholesale energy, ancillary service, and capacity markets, retirement and investment decisions, and state-level or regional carbon markets. We have a depth of experience in restructured and traditionally-regulated wholesale power markets across all regions of the U.S. and Canada, as well as a number of other international markets. In addition to our in-depth market expertise, Brattle offers a range of operational and financial tools and models for simulation of system operations, forecasting, and planning. Overall we have substantial experience in the operations and regulation of virtually all North America regional markets and numerous international markets. We have advised RTOs, investors, financial institutions, utilities, natural gas and oil pipelines all along the spectrum of issues that affect them and the markets they participate in.

C. PROPOSED CORE TEAM

Based on our understanding your needs, a core team of two Brattle experts, Ira H. Shavel and T. Bruce Tsuchida, will be leading this potential engagement.

Dr. Ira H. Shavel, a Principal at Brattle's Washington DC office, is an energy economist with over 30 years of experience in the energy industry, specializing in the economics and operations of the U.S. electric power system, generation and transmission investment, and environmental strategy. He has performed work for a wide range of clients, including generation and transmission companies, natural gas pipelines, marketers, developers, industry research groups, as well as federal agencies.

Dr. Shavel has broad experience in the development of models of North American power systems, including the Integrated Planning Model by ICF International. He has also directed significant assignments for major electric utilities, independent transmission companies, independent power producers and private equity on matters such as coal plant retirements, fuel price forecasting, the benefits of new transmission lines and power plant valuation. Dr. Shavel has testified before the Federal Energy Regulatory Commission ("FERC"), state regulatory agencies, and the Ontario Energy Board.

Prior to joining Brattle, Dr. Shavel was a Vice President at Charles River Associates ("CRA"). While at CRA, he led the development of the National Energy and Environment Model ("NEEM") and contributed to its integration with the Multi-Region National Macroeconomic Model. He earned a Ph.D. in Mathematics at the State University of New York at Stony Brook;

an S.M. in Operations Research Massachusetts Institute of Technology; and an M.S. in Mathematics Courant Institute of Mathematical Sciences.

Dr. Shavel will be the Project Director ultimately responsible for the entire engagement.

Mr. T. Bruce Tsuchida, a Principal at Brattle's Cambridge office, has over twenty years of experience in utility operations, power market analysis, and power generation development for both domestic and international markets. He specializes in the analysis of new and advanced technologies, operational studies and ancillary service studies, market reform cost benefit analyses, valuations of transmission and generation assets, deliverability analyses, market power studies, and contract evaluation. He has recently completed a study reviewing the cost difference of utility-scale and residential-scale PV systems, a study reviewing the renewable market potential of Japan after the ongoing retail sector reform, and a study analyzing the optimal mix of renewable resources and assessing the ancillary service needs and associated costs for a mid-size utility. He is currently leading several studies of renewable integration and the associated changes in utility business models for small utilities. Prior to joining Brattle, Mr. Tsuchida was a Principal at Charles River Associates ("CRA") where he led various regional projects involving multiple stakeholders including the Eastern Interconnection Planning Collaborative ("EIPC"), the series of studies evaluating the cost and benefits of the Entergy market reform (transition to an RTO - SPP or MISO), the cost benefit study of EKPC joining PJM, and the cost benefit study of ERCOT's transition to a nodal market. He is one of the original members who pioneered market reform cost benefit studies starting from the RTO West study in 2001. He has also performed numerous renewable integration studies, including the SPP Wind Integration Study.

Mr. Tsuchida will be the project manager and lead the day-to-day operation of the engagement and be the key contact person of the Brattle team.

Other highly qualified Brattle staff with relevant experience will be assigned to tasks based on the needs as they are developed in consultation with the City of Denton staff. Full resumes of individual team members can be provided upon request.

D. PAST EXPERIENCE OF THE PROPOSED CORE TEAM

Brattle has performed similar services for a number of clients. Appendix-A to this letter provides a list of such engagements that show the relevant experience. These experiences are grouped into the following three credential categories:

- ERCOT and nodal market'
- Electric generation technologies including storage and natural gas'
- And integrating large amounts of renewable energy (utility scale) into a portfolio.

II. PROPOSED APPROACH, ESTIMATED TIMELINE AND COSTS

We understand that the main objective for this potential engagement is to review the Renewable Denton Plan and options considered, and provide feedback and identify any additional options that should be considered. The findings will be reported to the Denton City Council. We understand that the City of Denton wishes to complete the study by the end of April. To meet that expectation, we propose to perform the scope of work through the following four Steps with an anticipated four-week work schedule.

A. STEP 1: PROJECT KICK-OFF MEETING (WEEK 1)

We propose to have a project kick-off meeting at the very start of the project. It is anticipated to take two to three hours. This kick-off meeting will be for confirming various administrative steps and discussion on the analysis objectives, general assumptions and methods. Topics for the administrative steps include establishing communication channels and protocols, setting up periodic update calls (we currently envision weekly conference calls), discussing the role of team members and identifying relevant participant groups within the City of Denton staff and identifying lead members for communication purposes, and setting up/agreeing on major milestones including meetings as necessary. It is recommended we determine the availability of the City of Denton Council members for the final presentation at this time and adjust the schedule accordingly. We will also use this opportunity to discuss the City of Denton's current vision, preferred direction and scope, and the goal of pursuing the Renewable Denton Plan. Through the discussion of the City of Denton's objective and current practice, we would like to agree on core evaluation metrics (for both the benefits and associated risks) to fine-tune our analysis. We also intend to identify necessary documents, reports, data sources to review, and sharing timing and arrangements of such materials (including any necessary NDAs) during this meeting. While the kick-off meeting is preferred to be done in-person, it can also be via WebEx.

B. STEP 2: REVIEW THE RENEWABLE DENTON PLAN (WEEKS 1 & 2)

We will review the various existing documents (applicable charts, graphs, narratives, cost estimates, spreadsheets, and other materials), and various ongoing regulatory policy changes (at a high level) surrounding the City of Denton. This policy review helps us understand where the City of Denton is today, and where it can potentially be in the future, given the various constraints associated with the Renewable Denton Plan. We will then discuss the elements and logic of the Renewable Denton Plan the City of Denton staff and/or DME staff, as necessary. Upon completion of the review, we will address the reasonableness of the analysis, its structure, and assumptions used, and identify potential risks associated with the Renewable Denton Plan. For example, we have identified that PPAs could have a risk of large cash outlays in the initial years when the price of natural gas is declining, as was the case in late 2015. In other cases we have identified the most crucial assumption and risks associated with the range of such critical assumption.

Findings from this step will be shared during periodic update calls.

C. STEP 3: REVIEW THE ALTERNATIVE OPTIONS (WEEKS 2 & 3)

Upon completion of Step 2 (Review the Renewable Denton Plan), we will review the alternative options considered by DME. Similar to the Renewable Denton Plan review, we will assess the reasonableness of the analysis, its structure, and assumptions used, and identify potential risks associated with each alternative option. After assessing the risks and benefits associated with each alternative option, we will identify, if any, new alternative options that may be worth further consideration. These new alternatives will depend on the risks and benefits observed through Step 2 (Review the Renewable Denton Plan) and Step 3 (Review the Alternative Options), but also the metrics defined in Step 1 (Project Kick-off Meeting).

Findings of the Step will be presented through the periodic update calls. We will try to develop tabular summaries and graphics to the extent practically possible.

D. STEP 4: SUMMARIZE AND PRESENT FINDINGS TO DENTON CITY COUNCIL (WEEKS 3 & 4)

The last step will be to summarize the findings in a report and prepare an executive summary to present it to the Denton City Council. We will first prepare a draft report and summary and ask the City of Denton staff for initial review. Upon receiving comments we will finalize both the report and executive summary. The executive summary will be presented to the Denton City Council. We anticipate both the report and executive summary to be in PowerPoint presentation format, however, it can be provided as a Word document as well.

III. PRICING

We propose to perform this study on a time and material basis. The standard USD hourly rates for Dr. Shavel and Mr. Tsuchida are \$500 and \$450, respectively. We leverage our work with assistance from Associates and Research Analysts. The hourly rates for Associates range from \$300-\$430, and \$230-\$300 for Research Analysts. We estimate Step 1 (Kick-off meeting) and 2 (Review the Renewable Denton Plan) to cost approximately \$25,000.¹ Given that the remainder of the scope will necessarily change upon reviewing the Renewable Denton Plan, it is difficult to provide an accurate budget estimate. To avoid any budgetary surprises, we will update you of the costs during our weekly update call. The cost will not exceed \$150,000 without your prior authorization.

¹ This estimate assumes 16 hours for Dr. Shavel, 24 hours for Mr. Tsuchida, and 24 hours for a Research Associate with the rate of \$270/hour.

Mr. George Campbell
March 11, 016
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All expenses including any travel cost incurred, and data purchase costs if Brattle is to purchase a license to use data directly from vendors for this work, will be passed through to DME without any mark-ups and will require pre-approved via e-mail by DME.^{2,3}

We would be delighted to discuss the scope, budget, and other terms about this proposal. Thank you for the opportunity for Brattle to present a proposal to assist the City of Denton and Denton Municipal Energy. We look forward to working with you.

Sincerely,



Ira H. Shavel
Direct: +1.202.419.3381



T. Bruce Tsuchida
Direct: +1.617.234.5686

Enclosures

² We currently do not anticipate any licensing fees.

³ We anticipate travel cost to Denton (from the Brattle east coast offices) will be around \$1,200 per person, including airfare, hotel (single night), meals, and other miscellaneous costs, although this may vary by the timing and length of the required trip.

APPENDIX-A

This Appendix lists the proposed Brattle team's core members' previous experience grouped into the following three credential categories.

- A. ERCOT and nodal market.
- B. Electric generation technologies including storage and natural gas.
- C. Integrating large amounts of renewable energy (utility scale) into a portfolio.

A. ERCOT AND NODAL MARKET

The following examples are related to the ERCOT market and projects where clients have implemented our recommendations.

- For the Public Utility Commission of Texas, Brattle experts performed the Cost-Benefit Assessment of the Texas Nodal Market (2004, as Tabors Caramanis and Associates), followed by an update of the study to account for changing market conditions (2008, as CRA). [2004, 2008, Tsuchida]
- For the Texas Clean Energy Coalition and in collaboration with ERCOT, Brattle experts performed an evaluation of potential future generation scenarios in the ERCOT footprint. The study examined future gas and renewable power in Texas through detailed operational simulations of several future grid expansion scenarios containing up to 43% wind and solar penetration levels. To reliably accommodate such high levels of renewables in ERCOT, aside from increasing wind diversity to the extent possible, Brattle proposed and simulated the addition of a new ancillary service requirement, namely slow non-spin reserve requirements, which ensure that sufficient capacity is available for intra-day commitment to cover for day-ahead renewable forecast errors. The study included a detailed evaluation of the potential for demand response, energy efficiency and CHP in ERCOT. [2013, 2014 Shavel] A new study for Texas Clean Energy Coalition that evaluates long-term trends in capacity expansion and attendant carbon dioxide emissions will be coming out in the next few weeks.

B. ELECTRIC GENERATION TECHNOLOGIES INCLUDING STORAGE AND NATURAL GAS

The following examples demonstrate our experience and proven record for implementing plans and strategies and operating in the market space.

- For project developers, owners, potential off-takers and lenders, Brattle experts have performed a number of renewable and storage asset evaluations, with many of the projects being located within ERCOT. Evaluations include portfolios of wind, solar, wind and/or solar combined with storage of various types, or storage alone. These projects involved evaluating the potential value of the savings associated with the portfolio, analysis of ancillary service impacts, correlation of

various wind sites, transmission congestion modeling, potential for curtailments and energy market impacts, and capacity market impacts. Geographical regions of these studies cover the U.S., China, Japan, and the Caribbean. [2005-2015, Shavel, Tsuchida]

- For a large customer we have helped assess the cost and benefits of signing a long term wind PPA to supply part of their electricity demand. Assessment ranged from the quality of power to procure, duration of the PPA term, and potential risks associated with the PPA. [2015, Tsuchida]

C. INTEGRATING LARGE AMOUNTS OF RENEWABLE ENERGY (UTILITY-SCALE)

The following examples demonstrate our deep understanding of the potential costs and benefits of integrating large amounts of renewable resources.

- For a small Asian nation, we have helped assess the maximum economically allowable renewable penetration level where the marginal cost of integrating renewable resources become larger than the marginal benefit brought by the renewable resource. The study for this nation that is predominantly thermal powered and has limited import and export limits investigates the various benefits and costs, including change in ancillary service needs, and further discusses various potential cost allocation methods aimed to avoid future over-builds. [2016, Tsuchida]
- For a renewable developer in Mexico, Brattle experts are assessing the risk of investing in a renewable project given the ongoing changes in the market structure and rules. The potential renewable project can be a combination of wind, solar, and storage, and the assessment includes reviewing various documents provided by the project sponsor, participation in various conference calls between the regulator and the project sponsor, identify potential risk exposure and examine the extent to which they have been mitigated, and conduct independent research of the market conditions based on publicly available information. [2016, Tsuchida]
- For an overseas utility, Brattle experts studied the options for unbundling the vertically integrated utility and the potential impact unbundling may have in developing higher penetration levels of renewable resources, which is driven by the government's long-term policy goal. [2016, Tsuchida]
- For a vertically-integrated utility subject to very high RPS, Brattle experts are designing ancillary service needs and products to accommodate the required high levels of renewable penetration. Technologies incorporated in the study include solar PV (central station and distributed), wind, biofuels, storage and demand response. [2016, Tsuchida]
- For W.E.B. Aruba, the power generation and water provider in the island, Brattle experts have analyzed the ability of the Aruban system to integrate 30% of wind energy and 10% of other renewables including solar and biogas. The study included development of different ancillary service requirements, detailed operational simulations accounting for renewables and load forecast uncertainty and variability, generator maintenance and forced outages, economic cost,


and benefit evaluations of renewables integration. Several technologies were analyzed to improve wind integration, including different types of storage and demand management solutions. Including the approved second wind plant, several solar plants, and other innovative technology options, Aruba is expected to attain nearly 50% energy from renewable resources by 2018. Brattle experts are also part of an international consortium assembled by the Aruban government to prepare a roadmap for Aruba (known as the Aruba Renewable Integration Study) to achieve the ultimate goal of becoming 100% oil-fuel free (for energy and water production). [2013-2015, Tsuchida]

- For First Solar, Brattle experts compared the cost of utility-scale solar systems and residential-scale solar systems. The comparison was done using the Xcel Energy Colorado system, an average size western utility, as a test bed. The study confirmed that on a per MWh basis, utility-scale solar is approximately half the cost of residential-scale systems and can also provide 50% more benefits in reduction of fuel consumption and emissions. [2015, Tsuchida]
- For the Advanced Energy Economy Institute, Brattle experts prepared a white paper exploring how the ERCOT and Xcel Energy Colorado are successfully integrating variable renewable energy (primarily wind power) into their regional grids. ERCOT and Xcel Energy Colorado already manage large volumes of wind power while matching generation with demand in real time—an ironclad physical law of electricity grids. To allow continued growth of renewable power as envisioned under the federal Clean Power Plan and state renewable power mandates, other grid operators will have to contend with the same challenges that these two grid operators are facing successfully. [2015, Tsuchida]
- For Vestas Mediterranean, Brattle experts evaluated wind integration issues in Costa Rica and in Caribbean islands, looking for approaches including storage technologies to increase the operational ability of these systems to integrate wind power. The studies included interviews with a range of utility staff in the region, a detailed production simulation of wind integration in a Caribbean island of up-to 60% wind penetration, and cost- benefit evaluations. [2012, Tsuchida]
- For the Kansas Electric Transmission Authority (“KETA”), Brattle experts evaluated five 345kV EHV transmission projects and their potential benefits from enabling increased wind penetration in Kansas. Study results were presented to KETA members, which included two state senators and two state representatives. [2011, Shavel, Tsuchida]
- On behalf of a merchant transmission company, Brattle experts modeled the impact of extra high-voltage (“EHV”) transmission overlays in the Midwest, primarily to serve the expanding fleet of wind generators in the northern plains on future generation capacity expansion using proprietary optimization models. A model to analyze the relative value and cost of storage and natural gas to balance a system with varied levels of renewable generation capacity, primarily wind, was developed and utilized for select studies. [2010, Shavel]

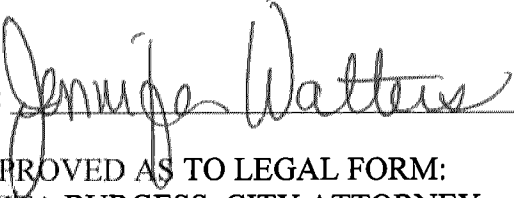
- For the Southwest Power Pool, Brattle experts evaluated the benefits and costs of increasing the wind penetration levels in SPP (2010, as CRA). The study developed the required transmission upgrades needed to accommodate the increased wind and analyzed to detect any thermal, voltage or stability issues. Combined with the transmission requirements was the assessment of ancillary service requirements. The aforementioned analyses results were then implemented into a dynamic production simulation to analyze the operational and market impacts. Wind and load forecast uncertainty, and intra-hour phenomena were included in the evaluations. Policy recommendations were derived from the different study results and many were implemented as part of SPP's Day-2 Market that was launched in March 2014. [2010, Tsuchida]

IN WITNESS HEREOF, the City of Denton, Texas has executed has executed this Letter Agreement by and through its duly authorized undersigned City Manager on this the 22nd day of March, 2016.

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

By: 
GEORGE C. CAMPBELL, CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

By: 

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this "Agreement"), dated as of March 23, 2016, is by and between The Brattle Group, Inc., a Massachusetts corporation ("Brattle") and the City of Denton, a Texas municipal corporation ("City of Denton"). Brattle and City of Denton are collectively referred to herein as the "Parties" and individually as a "Party."

WHEREAS, the Parties have recently had discussions or desire to enter into discussions concerning various studies relating to potential projects and existing projects being developed by the City of Denton (the "Project"), and as a result, it is deemed desirable by each Party to disclose certain information to the other Party; and

WHEREAS, it is a condition to the disclosure of such information that the Parties enter into this Agreement to evidence the Parties' undertakings and agreement with respect to the treatment as confidential, and the control and use of, information that may be furnished to the Parties;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Defined Terms. As used in this Agreement each of the following terms shall have the meaning assigned to such term as set forth below:

1.1. "Affiliate" means any Person that directly or indirectly (through one or more intermediaries) controls or is controlled by or is under common control with the relevant Person specified herein.

1.2. "Confidential Information" means (a) all information, whether of a business, technical, engineering, economic or other nature and regardless of the form in which it is communicated or maintained, relating to a Party (the "Disclosing Party"), its Affiliates and/or the Project that is provided to the other Party (the "Receiving Party") or any of its Representatives by the Disclosing Party or any of its Representatives, (b) all sketches, drawings, reports, analysis, compilations, studies and notes containing or reflecting Confidential Information, regardless of who prepares such materials, (c) the fact that the Confidential Information has been made available to or is being inspected or evaluated by the Receiving Party, and (d) the fact that such discussions and negotiations are taking place concerning the Project or other related transactions between the Parties, except that Confidential Information shall not include:

- (i) information which was already in the Receiving Party's or its Affiliates' possession on a non-confidential basis prior to disclosure hereunder;
- (ii) information which prior to disclosure was already in the public domain, or which after disclosure entered the public domain other than by a breach of this Agreement by the Receiving Party or any of its Representatives; and

- (iii) information which was received from a third party which the Receiving Party reasonably believes was not and is not violating an obligation of confidentiality to the Disclosing Party or its Affiliates; provided that use or disclosure by the Receiving Party of information which the Receiving Party obtains in the manner described by this Section 1.2(iii) does not violate any of the terms under which it was disclosed by said third party.

1.3. "Person" means any natural person, corporation, company, partnership, limited liability company, joint venture, trust, organization, association, sole proprietorship or other entity.

1.4. "Representatives" shall mean, with respect to either Party hereto, such Party's affiliates, officers, directors, partners, members, employees, agents, trustees, potential and existing lenders, potential and existing investors, potential and existing equity providers, security holders, others providing financing or refinancing and the consultants and advisors (including, without limitation, financial advisors, counsel and accountants, and each of their respective advisors) of such Party.

2. Restrictions on Disclosure and Use of Confidential Information.

2.1. The Receiving Party agrees to, and to cause its Representatives to, treat all Confidential Information as confidential and secret and comply with the terms and conditions contained herein. The Receiving Party shall not, and shall not permit its Representatives to, disclose Confidential Information to any Person (except as set forth in this Section 2), without the prior written consent of the Disclosing Party.

2.2. Without the prior written consent of the Disclosing Party, the Receiving Party shall not, and shall not permit its Representatives to, make any use whatsoever of the Confidential Information other than as may be necessary for the purpose referenced above in connection with the Project.

2.3. Except as set forth in Section 2.4, the Receiving Party shall only disclose Confidential Information to those of its Representatives, or other Persons that are concerned with the Project and whose knowledge of such Confidential Information is necessary or advisable for such purpose. Each such Person receiving Confidential Information from the Receiving Party shall have the same obligations with respect to such Confidential Information as the Receiving Party hereunder, and the Receiving Party shall so instruct each such Person receiving Confidential Information and shall use all reasonable efforts to prevent and prosecute unauthorized use or disclosure of Confidential Information by such Persons. The Receiving Party shall be liable to the Disclosing Party for any breach of such obligations by any such Persons.

2.4. If the Receiving Party or any of its Representatives is requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas or similar process) in connection with any proceeding to disclose or otherwise becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice and reasonable assistance (subject to reimbursement by

the Disclosing Party of all reasonable and out of pocket expenses incurred by the Receiving Party in providing such assistance) so as to enable the Disclosing Party to seek a protective order or other appropriate remedy or waive compliance with this Agreement. If such a protective order or other remedy is not obtained, or if the Disclosing Party waives compliance with this Agreement, the Receiving Party (or such other Persons to whom such request is directed) may disclose Confidential Information, but only such Confidential Information as it is legally required to disclose to avoid contempt or other penalty in the reasonable opinion of counsel to the Receiving Party, and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information disclosed.

2.5 In connection with the restrictions imposed by this Agreement, City of Denton hereby acknowledges the application of the federal and state securities laws under certain circumstances to purchases and sales of securities by persons who possess material non-public information.

3. Safekeeping and Return of Confidential Information.

3.1. The Receiving Party shall take all reasonable steps to prevent the unauthorized use, distribution or reproduction of all copies of written materials relating to or containing any part of Confidential Information, including all sketches, drawings, reports, analysis, compilations, studies and notes, and all copies, reproductions, reprints and translations thereof. The Receiving Party shall not, and shall not permit its Representatives to, directly or indirectly, duplicate or otherwise reproduce, in whole or in part, such Confidential Information in any manner inconsistent with the terms hereof.

3.2. The Receiving Party shall return to the Disclosing Party, within ten (10) days after receipt of such a request by the Disclosing Party, all materials containing or reflecting Confidential Information that are in the possession of the Receiving Party and its Representatives, without retaining copies. Notwithstanding the foregoing, Receiving Party may retain such materials to the extent required by applicable law in the reasonable opinion of counsel to the Receiving Party and may also retain reports, analysis, compilations, studies, notes or other documents or records prepared by the Receiving Party which contain or otherwise reflect or are generated from Confidential Information, provided, however, Receiving Party shall keep all such copies confidential in accordance with this Agreement and such obligation shall survive the termination of this Agreement. Notwithstanding the return of such materials, the Receiving Party and its Representatives shall continue to be bound by the obligations of confidentiality and other obligations hereunder.

4. Notice. All notices, requests, consents, waivers and other communications required, permitted or desired to be given hereunder or by law to be served upon or given to a Party by any other Party shall be deemed duly served and given when received after being delivered by hand, courier or facsimile or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Brattle:
44 Brattle Street
Cambridge, MA 02138

If to City of Denton:
215 E. McKinney
Denton, TX 76201

Attention: Barbara Levine
Telephone: (617) 864-7900
Facsimile: (617) 864-1576

Attention: George C. Campbell
Telephone: (940) 349-8307
Facsimile: (940) 349-8596

Each Party may change its address for the purpose of this section by giving written notice of such change to the other Party in the manner provided in this section.

5. Term. This Agreement and the obligations of confidentiality undertaken hereby shall remain in full force and effect for a period from the date of this Agreement until the end of two (2) years after the date of this Agreement.

6. No Waiver; Amendments. No failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. Any modification of and amendment to this Agreement and any waiver of any provision of this Agreement must be in writing signed by the Parties.

7. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas without reference to the conflict of laws or principles thereof.

8. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

9. Remedies. It is agreed that each Party shall be entitled to relief both at law and in equity, including, but not limited to injunctive relief and specific performance, in the event of any breach or anticipated breach of this Agreement, without proof of any actual or special damages. The Receiving Party agrees to pay the costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Disclosing Party and its Affiliates in successfully enforcing any of the terms of this Agreement or proving that the Receiving Party or any of its Representatives breached any of the terms of this Agreement.

10. Successors and Assigns. Neither Party may assign this Agreement or any of its rights hereunder except with the prior written consent of the other Party and except that either Party may, without the consent of the other Party, assign this Agreement and the rights hereunder to any of its Affiliates that own an interest in the Project. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

11. No Obligation or Joint Venture. The Parties agree that unless and until a definitive agreement has been executed and delivered, no contract or agreement providing for a business relationship between the Parties shall be deemed to exist between the Parties, and neither Party will be under any legal obligation of any kind whatsoever with respect to such relationship by virtue of this Agreement or any written or oral expression thereof, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this Agreement, the term "definitive agreement" does not include an executed letter of intent or any other preliminary written agreement or offer, unless specifically so designated in writing and executed by both Parties. This Agreement does not obligate either Party to deal exclusively with the other Party.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any executed counterpart transmitted by facsimile or similar transmission by any Party shall be deemed an original and shall be binding upon such Party.

13. No Warranty. The Parties hereby acknowledge that neither Party, nor any of its representatives, agents, affiliates or assigns makes any representations or warranties whatsoever concerning the accuracy, completeness or correctness of the Confidential Information supplied hereunder, nor must such representation or warranty be implied.

14. Entire Agreement. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supercedes all prior agreements, whether oral or written.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

THE BRATTLE GROUP, INC.

CITY OF DENTON

By:

Name: Barbara Levine

Title: General Counsel

By:

Name: George C. Campbell

Title: Denton City Manager