

**AGREEMENT BY AND BETWEEN
CITY OF DENTON AND BLACK & VEATCH CORPORATION
(FILE 6230)**

**STATE OF TEXAS §
COUNTY OF DENTON §**

THIS AGREEMENT is made and entered into as of the 21st day of March, 2017, by and between the City of Denton, a Texas home-rule municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "OWNER" and BLACK & VEATCH CORPORATION a Delaware corporation, whose address is 11401 Lamar Avenue, Overland Park, Kansas 66211, hereinafter called "CONSULTANT," acting herein, by and through their duly authorized representatives.

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

**ARTICLE I
EMPLOYMENT OF CONSULTANT**

The OWNER hereby contracts with the CONSULTANT, as an independent contractor, and the CONSULTANT hereby agrees to perform the services herein in connection with the Project as stated in the sections to follow, with diligence and in accordance with the professional standards customarily obtained for such services in the State of Texas.

**ARTICLE II
SCOPE OF SERVICES**

The CONSULTANT shall perform the following services ("Basic Services") in a professional manner:

- A. The CONSULTANT shall perform all those services as necessary and as described in the OWNER's response to RFQ 6230, "Scope of Work, Supply of Professional Services for the Denton Energy Center Owner's Engineer and Testing Services" and CONSULTANT'S letters dated October 4, 2016 and December 15, 2016 collectively referred to as "the Project" (also known as the "Denton Energy Center"). These documents are attached hereto and made a part hereof as Exhibit A, as if written word for word herein.
- B. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement, the terms and conditions of this Agreement will control over the terms and conditions of the attached exhibits.

ARTICLE III

ADDITIONAL SERVICES

Additional services to be performed by the CONSULTANT, if authorized by the OWNER and mutually agreed upon, which are not included in the above-described Basic Services (“Additional Services”), are described as follows:

- A. During the course of the Project, as requested by OWNER, the CONSULTANT will be available to accompany OWNER’s personnel when meeting with the Texas Commission on Environmental Quality, Texas Natural Resource Conservation Commission, U.S. Environmental Protection Agency, or other regulatory agencies. The CONSULTANT will assist OWNER’s personnel on an as-needed basis in preparing compliance schedules, progress reports, and providing general technical support for the OWNER’s compliance efforts.
- B. Assisting OWNER or contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by CONSULTANT on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- C. Sampling, testing, or analysis beyond that specifically included in Basic Services.
- D. Preparing copies of computer aided drafting (CAD) electronic data bases, drawings, or files for the OWNER’s use in a future CAD system.
- E. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- F. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the OWNER.
- G. Providing geotechnical investigations for the site, including soil borings, related analyses, and recommendations.

ARTICLE IV

PERIOD OF SERVICE

This Agreement shall become effective upon execution of this Agreement by the OWNER and the CONSULTANT and upon issue of a notice to proceed by the OWNER, and shall remain in force for the period which may reasonably be required for the completion of the Project, but not to exceed four (4) years from the date of execution, including Additional Services, if any, and any required extensions approved by the OWNER. This Agreement may be sooner terminated in accordance with the provisions hereof. Time is of the essence for the schedule with regard to the inspection, testing and verification services provided during the construction phase of the Project. The CONSULTANT shall make all reasonable efforts to complete the services set forth herein as

expeditiously as possible and to meet the schedule established by the OWNER, acting through its Executive Manager – Power, Legislative & Regulatory Affairs.

ARTICLE V **COMPENSATION**

A. COMPENSATION TERMS:

1. “Subcontract Expense” is defined as expenses incurred by the CONSULTANT in employment of others in outside firms for services in the nature of those services required by OWNER as delineated in Exhibits A and B.
2. “Direct Non-Labor Expense” is defined as that expense for any assignment incurred by the CONSULTANT for supplies, transportation and equipment, travel, communications, subsistence, and lodging away from home, and similar incidental expenses in connection with that assignment.

B. BILLING AND PAYMENT: For and in consideration of the professional services to be performed by the CONSULTANT herein, the OWNER agrees to pay, the costs shown in Exhibit B which is attached hereto and made a part of this Agreement as if written word for word herein, a total fee, including reimbursement for direct non-labor expenses not to exceed \$963,930.00.

Partial payments to the CONSULTANT will be made on the basis of detailed monthly statements rendered to and approved by the OWNER through the Denton Municipal Electric Executive Manager – Power, Legislative & Regulatory Affairs or his designee; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered.

Nothing contained in this Article shall require the OWNER to pay for any work which is unsatisfactory, as reasonably determined by the Executive Manager – Power, Legislative & Regulatory Affairs or his designee, or which is not submitted in compliance with the terms of this Agreement. The OWNER shall not be required to make any payments to the CONSULTANT when the CONSULTANT is in default under this Agreement.

It is specifically understood and agreed that the CONSULTANT shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the OWNER for any charge, expense, or reimbursement above the maximum not to exceed fee as stated, without first having obtained written authorization from the OWNER. The CONSULTANT shall not proceed to perform the services listed in Article III “Additional Services,” without obtaining prior written authorization from the OWNER.

C. ADDITIONAL SERVICES: For additional services authorized in writing by the OWNER in Article III, the CONSULTANT shall be paid based on the Schedule of Charges at an hourly rate shown in Exhibit B. Payments for additional services shall be due and payable upon submission by the CONSULTANT, and shall be in accordance with subsection B hereof. Statements shall not be submitted more frequently than monthly.

- D. **PAYMENT:** If the OWNER fails to make payments due to the CONSULTANT for services and expenses within thirty (30) days after receipt of the CONSULTANT's undisputed statement thereof, prompt payment act interest as set forth in Chapter 2251 of the Texas Government Code shall be paid on the amounts due the CONSULTANT. In addition, the CONSULTANT may, after giving ten (10) days' written notice to the OWNER, suspend services under this Agreement until the CONSULTANT has been paid in full all amounts due for services, expenses, and charges, provided, however, nothing herein shall require the OWNER to pay prompt payment act interest if the OWNER has a bona fide dispute with the CONSULTANT concerning the payment or if the OWNER reasonably determines that the work is unsatisfactory, in accordance with this Article V, "Compensation."

ARTICLE VI **CHANGES**

OWNER, may order and/or require changes to the scope of work required by the Agreement by altering, adding to and/or deducting from the scope of work to be performed. In addition, the scope of work or time of performance may be changed by a change in the law; changed or unexpected site condition; an act or omission of OWNER or OWNER's suppliers or contractors; an error or change in OWNER-provided information; or an event of force majeure. If any changes occur under this clause that requires an increase in the CONSULTANT's scope of work that increases cost, time of performance or both, OWNER will require CONSULTANT to provide a change order proposal with a not to exceed amount for the additional work being requested. Should the Parties be unable to negotiate a change order for additional work, CONSULTANT agrees that it will perform the additional work in accordance with the rates in Exhibit B and the Parties shall attempt to resolve the matter at a later time. OWNER will then have the opportunity to review the change order proposal and negotiate a final change order price for the additional work. OWNER may at any time reduce the CONSULTANT's work through a deductive change order without cost to the OWNER.

ARTICLE VII **OBSERVATION AND REVIEW OF THE WORK**

The CONSULTANT will exercise reasonable care and due diligence in discovering and promptly reporting to the OWNER any defects or deficiencies in the work performed by the engine supplier and EPC Contractor for the Project as set forth in Exhibit A.

ARTICLE VIII **OWNERSHIP OF DOCUMENTS**

All documents prepared or furnished by the CONSULTANT (and CONSULTANT's subcontractors or subconsultants) pursuant to this Agreement are instruments of service, and shall become the property of the OWNER when CONSULTANT has been compensated for services rendered. The CONSULTANT is entitled to retain copies of all such documents. The documents prepared and furnished by the CONSULTANT are intended only to be applicable to this Project, and OWNER's use of these 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 this Agreement in another project or for other purposes than specified herein, CONSULTANT is released from any and all liability relating to their use in that project.

Rights to intellectual property developed, utilized, or modified in the performance of the services shall remain the property of CONSULTANT. CONSULTANT hereby grants to OWNER an irrevocable (except in the event of a breach of this license), nonexclusive, royalty-free license to utilize CONSULTANT's proprietary property provided to OWNER as part of the services to the extent necessary for the construction, operation, maintenance, repair, or alteration of the facilities; provided that OWNER shall not use, or distribute to others, any CONSULTANT statement or opinion for the purposes of a prospectus, other investment memorandum or financing decision, except with CONSULTANT's prior written consent, which shall not be unreasonably withheld. OWNER shall not acquire any rights to any of CONSULTANT's, its subcontractors' or vendors' proprietary computer software that may be used in connection with the services except as may be separately agreed.

ARTICLE IX

INDEPENDENT CONTRACTOR

CONSULTANT shall provide services to OWNER as an independent contractor, not as an employee of the OWNER. CONSULTANT shall not have or claim any right arising from employee status. OWNER will respect CONSULTANT's autonomy and will not attempt to control, direct, or supervise individual CONSULTANT, employees (or its agents) activities in any manner except regarding the exigent matters of safety. OWNER will direct CONSULTANT activities through communication with CONSULTANT's management. Without OWNER's prior written consent, CONSULTANT shall have no authority to bind OWNER in any manner whatsoever. CONSULTANT, its employees, CONSULTANT's agents, and their employees shall not be considered employees of OWNER in any way, or for any purpose.

ARTICLE X

INDEMNITY AGREEMENT

THE CONSULTANT 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, REASONABLE ATTORNEY FEES INCURRED BY THE OWNER, AND DAMAGES FOR BODILY AND PERSONAL INJURY, DEATH AND THIRD PARTY PROPERTY DAMAGE, TO THE EXTENT RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE CONSULTANT OR ITS OFFICERS, SHAREHOLDERS, AGENTS, OR EMPLOYEES IN THE EXECUTION, OPERATION, OR PERFORMANCE OF THIS AGREEMENT.

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this 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 this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

ARTICLE XI
CONSTRUCTION RELATED SERVICES

A. "Pre-existing Contamination" is any hazardous or toxic substance, material, or condition present at the job site that was not brought onto such site by CONSULTANT. Notwithstanding anything in this Agreement to the contrary, title to, ownership of, and legal responsibility and liability for Pre-existing Contamination shall at all times remain with OWNER.

B. CONSULTANT shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures of construction; or for the safety or environmental precautions and programs in connection with the work performed by OWNER's contractors, vendors or suppliers.

ARTICLE XII
INSURANCE

During the performance of the services under this Agreement, CONSULTANT shall maintain the following insurance with an insurance company licensed 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:

- A. Comprehensive General Liability Insurance with bodily injury limits of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate, and with property damage limits of \$100,000 for each occurrence and \$100,000 in the aggregate.
- B. Automobile Liability Insurance with bodily injury limits of \$500,000 for each person and \$500,000 for each accident, and with property damage limits of \$100,000 for each accident.
- C. Worker's Compensation Insurance in accordance with statutory requirements, and Employers' Liability Insurance with limits of not less than \$100,000 for each accident.
- D. Professional Liability Insurance with limits of \$1,000,000 annual aggregate.
- E. The CONSULTANT shall furnish insurance certificates at the OWNER's request to evidence such coverages. The General Liability and Auto Liability insurance policies shall name the OWNER as an additional insured. CONSULTANT shall endeavor to provide OWNER with any cancellation or modification to its insurance policies.

The builders-all risk or other property insurance shall respond to damage to the Project or Owner's property, and CONSULTANT shall be included as an additional insured on such policy.

ARTICLE XIII **DISPUTES**

The parties may agree to settle any disputes under this Agreement by submitting the dispute to mediation utilizing the American Arbitration Association Rules of Mediation for the Construction Industry. No mediation arising out of or relating to this Agreement may proceed without the agreement of both parties to submit the dispute to mediation. The location for the mediation shall be the City of Denton, Denton County, Texas. Should the Parties be unable to resolve the matter through mediation, the Parties agree that any litigation shall be commenced in the state or federal court having jurisdiction in or near Denton County, Texas as set forth in ARTICLE XXIV.

ARTICLE XIV **TERMINATION OF AGREEMENT**

- A. Notwithstanding any other provision of this Agreement, either party may terminate by giving thirty (30) days' advance written notice to the other party.
- B. This Agreement may be terminated in whole or in part in the event of either party substantially failing to fulfill its obligations under this Agreement. No such termination will be affected unless the other party is given (1) written notice (delivered by certified mail, return receipt requested) of intent to terminate and setting forth the reasons specifying the non-performance, and not less than thirty (30) calendar days to cure the failure; and (2) an opportunity for consultation with the terminating party prior to termination.
- C. If the Agreement is terminated prior to completion of the services to be provided hereunder, CONSULTANT shall immediately cease all services and shall render a final bill for services to the OWNER within thirty (30) days after the date of termination. The OWNER shall pay CONSULTANT for all services properly rendered and satisfactorily performed and for reimbursable expenses to termination incurred prior to the date of termination, in accordance with Article V, "Compensation." Should the OWNER subsequently contract with a new consultant for the continuation of services on the Project, CONSULTANT shall cooperate in providing information. The CONSULTANT shall turn over all documents prepared or furnished by CONSULTANT pursuant to this Agreement to the OWNER on or before the date of termination, but may maintain copies of such documents for its use.

ARTICLE XV **RESPONSIBILITY FOR CLAIMS AND LIABILITIES**

Approval by the OWNER shall not constitute, nor be deemed a release of the responsibility and liability of the CONSULTANT, 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 CONSULTANT, its employees, subcontractors, agents, and consultants. CONSULTANT warrants that it will perform the services in accordance with the standards of care and diligence normally practiced by recognized engineering firms in performing services of a similar nature in existence at the time of performance of the services. If,

during the one year period following completion of the services ("Warranty Period"), it is shown there is an error in the services caused solely by CONSULTANT's failure to meet such standards and OWNER has notified CONSULTANT in writing of any such error within that period, CONSULTANT shall re-perform, at no additional cost to OWNER, such services within the original scope of services as may be necessary to remedy such error.

CONSULTANT shall have no liability for defects in the services attributable to CONSULTANT's reasonable reliance on reports, data, design criteria, drawings, specifications, or other information that was either (i) obtained by the OWNER prior to the date of this Agreement, or (ii) in existence prior to the date of this Agreement.

Since CONSULTANT has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet construction schedules, CONSULTANT's opinion of probable costs and of construction schedules shall be made on the basis of experience and qualifications as a professional engineer. CONSULTANT does not guarantee that proposals, bids, or actual construction costs will not vary from CONSULTANT's cost estimates or that actual schedules will not vary from CONSULTANT's projected schedules.

The obligations and representations contained in this Article XV are CONSULTANT's sole warranty and guarantee obligations and OWNER's exclusive remedy in respect of quality of the services. ***EXCEPT AS PROVIDED IN THIS ARTICLE, CONSULTANT MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.***

ARTICLE XVI **NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein.

Mailed notices shall be deemed communicated as of three (3) days' mailing:

To CONSULTANT:

Black & Veatch Corporation
Attn: Legal Department
11401 Lamar Avenue
Overland Park, Kansas 66211

To OWNER:

City of Denton
Michael S. Grim, Executive Manager - DME
1659 Spencer Road
Denton, Texas 76205

To OWNER, cont'd:

AND

City of Denton
Attention: Larry Collister, Deputy City Attorney
215 East McKinney Street
Denton, Texas 76201

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

ARTICLE XVII
ENTIRE AGREEMENT

This Agreement, consisting of fifteen (15) pages and two (2) exhibits, constitutes the complete and final expression of the agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

ARTICLE XVIII
SEVERABILITY

If any provision of this 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 this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this 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.

ARTICLE XIX
COMPLIANCE WITH LAWS

The CONSULTANT 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.

ARTICLE XX
DISCRIMINATION PROHIBITED

In performing the services required hereunder, the CONSULTANT shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

ARTICLE XXI
PERSONNEL/SUBCONSULTANTS

- A. The CONSULTANT represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the OWNER. CONSULTANT shall inform the OWNER of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.
- B. All services required hereunder will be performed by the CONSULTANT or under its supervision. All personnel engaged in work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.
- C. In those instances deemed necessary by the OWNER, the CONSULTANT, its employees and/or its subconsultants shall be required to submit to background checks.
- D. CONSULTANT may engage any subconsultant or subconsultants necessary to complete its work under this Agreement. CONSULTANT shall provide the names of those subconsultants to OWNER and OWNER will have a right to accept or reject the subconsultant. Nothing contained in this Agreement shall create any contractual relationship between a subconsultant and OWNER.
- E. Should OWNER become dissatisfied for any reason with any of CONSULTANT's personnel or any of its subconsultants on any project on which CONSULTANT is providing work under this Agreement, CONSULTANT agrees that it will remove the personnel or subconsultant at the written request of the OWNER.
- F. CONSULTANT shall utilize, to the extent possible, local labor resources.

ARTICLE XXII
ASSIGNABILITY

The CONSULTANT shall not assign any of its scope of work under in this Agreement, and shall not transfer any of its scope of work under this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the OWNER. Should the CONSULTANT assign any part of the monies due under this Agreement, CONSULTANT is required to provide written notice of the same to OWNER. Any assignment of monies due under this Agreement shall not change any of the terms or conditions of this Agreement to include but not limited to the terms and conditions for payment under this Agreement.

The Parties agree that each are hereby bound and the officers, directors, members, partners, successors, assigns, employees, representatives, executors, and administrators of the Parties are hereby bound to the other party to this Agreement and to the officers, directors, members, partners, successors, assigns, employees, representatives, executors, and administrators of such other party, in respect to all covenants, terms, conditions and obligations of this Agreement.

ARTICLE XXIII **MODIFICATION**

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

ARTICLE XXIV **MISCELLANEOUS**

A. The following exhibits are attached to and made a part of this Agreement:

Exhibit A: CONSULTANT's response to RFQ 6230, "Scope of Work, Supply of Professional Services for the Denton Energy Center Owner's Engineer and Testing Services" and Letters dated October 4, 2016 and December 15, 2016 from BLACK & VEATCH CORPORATION to Ms. Rebecca Hunter, Senior Buyer for the City of Denton.

Exhibit B: CONSULTANT's fee schedule.

B. The OWNER shall have the right to audit and make copies of the books, records and computations pertaining to this agreement. The CONSULTANT shall retain such books, records, documents and other evidence pertaining to this agreement during the contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within 10 business days of written request. Further, the CONSULTANT shall also require all subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to this agreement, and to allow the OWNER similar access to those documents. All books and records will be made available at CONSULTANT's offices in Kansas City upon written request. The purpose of any audit shall be only for verification of such direct costs and CONSULTANT shall not be required to keep records of or provide access to those of its costs expressed as fixed rates, a lump sum, or of costs which are expressed in terms of percentages of other costs. The cost of the audit will be borne by the OWNER unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the CONSULTANT which must be payable within five (5) business days of receipt of an invoice. Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in the OWNER'S sole discretion, grounds for termination thereof.

- C. Venue of any suit or cause of action under this Agreement shall lie exclusively in a state or federal court with jurisdiction in or near Denton County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.
- D. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be those persons described in Exhibit A. However, nothing herein shall limit CONSULTANT from using other qualified and competent members of its firm to perform the services required herein provided, however, they meet the requirements of RFQ 6230.
- E. CONSULTANT shall commence, carry on, and complete any and all projects with all applicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions hereof. In accomplishing the projects, CONSULTANT shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by the OWNER.
- F. The OWNER shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for the CONSULTANT to enter in or upon public and private property as required for the CONSULTANT to perform services under this Agreement.
- G. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.
- H. **The parties shall, consistent with applicable law, treat this Agreement and any information related to this Agreement and the Project, in a Confidential Manner. The term "Confidential Manner" means the exercise of reasonable care that is at least the same degree of care that a Party regularly employs to safeguard its own confidential information from an unauthorized use or disclosure; but the defense of the confidentiality of any information subject to this section in any judicial or administrative process shall be solely the responsibility of the Party claiming harm from the disclosure of the information.**

ARTICLE XXV LIMITATIONS

A. Neither party shall be liable to the other party for loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; cost of replacement power; governmental and regulatory sanctions; and claims of customers for such damages; or, any special, consequential, incidental, indirect or exemplary damages. Property damage and bodily injury are not considered to be special, consequential, incidental, indirect or exemplary damages.

B. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of CONSULTANT and CONSULTANT's

officers, directors, members, partners, agents, employees, and consultants, to OWNER and anyone claiming by, through, or under OWNER for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of CONSULTANT or CONSULTANT's officers, directors, members, partners, agents, employees, or consultants, shall not exceed the total compensation received by CONSULTANT under this Agreement, or \$5,000,000, whichever sum is greater.

ARTICLE XXVI FORCE MAJEURE

"Force Majeure" shall mean any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to (but only to the extent that the following examples satisfy all of the foregoing elements of this definition):

- A. Acts of God, such as droughts, floods, earthquakes;
- B. War (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, and embargoes; and
- C. Industry-wide, regional or general (i.e., not directed specifically at or by the Party claim Force Majeure) strikes, lockouts or other labor disputes.

Notwithstanding the foregoing, Force Majeure shall not include (A) weather conditions reasonably to be expected for the climate in the geographic area of the Facility and any other location where the Work is to be, (B) any delay, default or failure (direct or indirect) in the performance of the Work by any Subcontractor or any other delay, default or failure (financial or otherwise) attributable to a Subcontractor unless such delay, default or failure results from any act, event or condition which would, with respect to such Subcontractor, constitute an event of Force Majeure, (C) failure to timely apply for Permits, (D) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure), or (E) a Party's financial inability to perform under this Agreement.

Notwithstanding any terms herein to the contrary, neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an event of default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure; provided, that:

- A. The non-performing Party gives the other Party notice within the four (4) days after the date on which the non-performing Party becomes aware of the impact of an event of Force Majeure on the affected Party and documentary evidence with respect to such event of

Force Majeure promptly but in no event later than twenty-eight (28) days after such initial notice;

- B. The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- C. The non-performing Party proceeds with reasonable diligence to use all reasonable efforts to mitigate the effects of the Force Majeure and to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure;
- D. When the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect; and
- E. The affected Party shall continue to perform its other obligations hereunder not affected by such Force Majeure.

IN WITNESS HEREOF, the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager, and CONSULTANT has executed this Agreement through its duly authorized undersigned officer on this the 21st day of March, 2017.

CONSULTANT:

BLACK & VEATCH CORPORATION, a Delaware corporation

BY:

 SMH

Signature

Diane Fischer

Printed Name

Regional Area Director

Title

Signed on the 16 day of March, 2017.

OWNER:

CITY OF DENTON, TEXAS, a Texas home-rule municipal corporation

BY: _____
TODD HILEMAN, CITY MANAGER,
under the authority of Ordinance NO. 2017 -
_____ .

ATTEST:

BY: _____
JENNIFER WALTERS,
CITY SECRETARY

APPROVED AS TO LEGAL FORM:

BY: _____
AARON LEAL,
INTERIM CITY ATTORNEY

EXHIBIT A
TO THE
AGREEMENT BY AND BETWEEN
CITY OF DENTON AND BLACK & VEATCH CORPORATION
(FILE 6230)

----- 19 pages follow this cover sheet ----

RFQ 6230
Scope of Work
Supply of Professional Services for the
Denton Energy Center Owner's Engineer and Testing Services

During the construction and startup and testing phases of the Project, the Owner's Engineer will provide technical support to Denton Municipal Electric (DME) for both the engine supplier and EPC Contractor as stated herein.

PROJECT DESCRIPTION:

The Denton Energy Center consists of twelve (12) natural gas-fired Wärtsilä 18V50SG engines, capable of producing a combined 18.8 MWe of electricity, each. Each engine's brake horsepower is 25,761 hp.

Task 1: Design and Construction Support

TASK 1.1 – EPC VENDOR MANAGEMENT

Black & Veatch will provide project management services to support DME with the administration of the EPC Contract. Our project management processes and procedures employed on this project are based on processes and procedures developed to manage our EPC projects where our success is determined by our ability to effectively manage the quality, schedule, and cost of each project. Our general approach to project management and a discussion of the tools and processes employed is listed below.

Project Meetings

The Black & Veatch project team will participate in a kick-off meeting at either the site or at DME's offices. The meeting will be attended by the project manager and key project team members from Black & Veatch, with other team members available via teleconference call. Prior to the meeting, Black & Veatch will develop a data request and meeting agenda in consultation with DME. The following main items will be addressed during the kick-off meeting.

- Introduction of team members.
- Review of communication procedures and contacts.
- Review of objectives, scope of work, and project deliverables.
- Discussion of current design and progress.
- Review of schedule.

In the kick-off meeting, the scope of services, deliverables, and schedule will be discussed with DME to confirm or modify as appropriate.

Kick-off meeting minutes will be prepared and submitted by Black & Veatch within one week of completion of the kick-off meeting.

In addition to the project kick-off meeting, Black & Veatch will participate in hour-long weekly phone calls with the engine supplier and EPC Contractor to status construction progress, and attend one-day monthly project design review meetings with DME. Black & Veatch expects the project manager and one discipline engineer to attend both the weekly phone calls and monthly project design review meetings for a project duration of 16 months.

Project Instruction Manual

Black & Veatch will prepare a Project Instruction Manual (PIM) to clearly define the roles and responsibilities for Black & Veatch and DME; establish project procedures; and communicate DME-specific requirements and procedures to all project participants. Topics to be included in this manual are as follows:

- Organization (project participants and overview of roles and responsibilities).
- Communications (lines of communications and procedures relative to correspondence distribution, including email, etc.).
- Document control/information management (procedures for engineering document receipt, management, review, and delivery to DME). Black & Veatch will use the EPC Contractor document management system.
- Quality Assurance/Quality Control program.
- Information management.
- Owner's Engineer scope of work.

Project Information Management

In order to avoid unnecessary duplication of work, Black & Veatch will be provided access to the EPC contractor's document management system and will use that system as a central repository for all reviews, comments and recommendations associated with the project. For internal processes, Black & Veatch may download files to its proprietary document management system.

Black & Veatch will review the EPC contractor's monthly project reports and provide comments as necessary.

Black and Veatch shall also:

- Attend weekly phone calls held with the EPC Contractor and other engineering meetings, as necessary.
- Determine whether the EPC Contractor is providing appropriate project control documentation.
- Inform DME in a timely manner of project status, trends, and observed potential problems; and suggest necessary actions.

TASK 1.2 – ENGINEERING AND DESIGN REVIEW

Black & Veatch will review engineering documents prepared by the EPC Contractor and vendor drawings for compliance with EPC specifications, applicable codes and standards, and prudent engineering practice. The review of documents provided by the EPC Contractor does not relieve the EPC Contractor of its responsibilities under its agreement with DME, but rather provides a method to review compliance with required specifications and to allow DME to correct issues of non-compliance and quality during the execution process. At this time, our review will encompass the following drawings:

- Fire protection plan (includes review of general arrangements).
- Hazardous area classification drawings.
- Piping and instrument diagrams (P&IDs).
- One-line electrical diagrams.
- Protective relaying and lockout relaying diagrams.
- Generator excitation including metering, synchronizing, and relaying diagrams.
- Control logic diagrams for critical systems.

Black & Veatch will provide a set of comments to each document within a mutually agreed upon schedule with DME and in compliance with the EPC project schedule. Each document would typically be reviewed a maximum of two times. It is our experience that an extended series of reviews could potentially delay the progress of engineering work for the EPC Contractor.

This scope assumes a maximum of 240 drawings for review, with the selection of drawings established from a mutual agreement between Black & Veatch and DME.

No site visits are anticipated for this task of work.

TASK 1.3 – CONSTRUCTION MONITORING

During the construction phase of the project, Black & Veatch will provide home office engineering support for monitoring the progress and quality of construction. The following items are included in Black & Veatch's scope of work.

- Review overall construction activities and schedules, and report any observed problem, deviation, nonconformance, or delay in construction progress and actions to be taken.
- Review the project's actual progress, and report to DME any observed delay that Black & Veatch believes will lead to the delay of project completion.
- Carry out site inspections to review the construction work to determine general compliance with the technical specifications and issue noncompliance reports for any observed deficiencies. These site inspections will be performed in addition to the monthly progress review meetings.
- Review and comment on testing, flushing, and cleaning procedures for compliance with specifications and prevailing safety rules and policies.
- Review Contractor's claims for completion of each construction stage. This includes claims of Mechanical Completion of systems as submitted by the EPC Contractor prior to turning over for pre-commissioning or commissioning activities.
- Confirm the attainment of project milestones and deliverables to facilitate approval of progress payments.
- Prepare and submit to DME a project closeout report after services have been successfully fulfilled.

Performance of activities by Black & Veatch to monitor construction is not intended to relieve the Contractor of its responsibilities under its contract with DME. Black & Veatch shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures of construction; for the acts or omissions of DME's Contractors, vendors, or suppliers; or for the safety or environmental precautions and programs in connection with the construction work performed by DME's Contractors. Black & Veatch shall not be responsible for the adequacy or completeness of any Contractor's safety or environmental programs, procedures, or precautions, and Black & Veatch shall not have the authority to stop work.

Black & Veatch has included 242 hours for activities related to construction monitoring, including one additional monthly site visit for a single professional in addition to attendance at the monthly progress review meetings.

TASK 1.4 – COMMISSIONING AND STARTUP REVIEW

The main objective of the support for commissioning, startup, and testing is to help DME confirm that the power plant is capable of safe operation in accordance with the applicable permits and specified operational requirements.

Black & Veatch will also undertake related tasks including the following:

- Review completed System Turnover Packages and advise DME of acceptance.
- Review all performance tests, reliability runs, etc., and recommend approval to DME.

Black & Veatch has included two (2) site visits for two (2) professionals to support the commissioning and startup activities.

CLARIFICATIONS

Black & Veatch has included the following clarifications to the services described herein in order to better delineate the responsibilities of Black & Veatch serving as the Owner's Engineer for this project:

- DME will assist Black & Veatch with obtaining information necessary to perform the Owner Engineer scope of services including but not limited to the following:
 - Information on the project site such as maps, topographical, surveys (if available), potential transmission line interconnection points, potential natural gas interconnection points, water and waste water connection points
 - Interface with the transmission and natural gas providers
 - Geotechnical report for selected site
 - Performance requirements for the Project
- Permit support is not required. However, Black & Veatch has assumed 12 hours related to permit questions and technical concerns related to emissions compliance.
- Procurement support is not required. If required, this can be added to the scope at DME's request.
- All Contracts Administration is the responsibility of DME.
- As the EPC Contractor project schedule has already been developed, schedule development support has not been included.
- The proposal cost is based on a 16 months schedule from time of OE contract award through Final Acceptance. If the project schedule exceeds this duration, the not to exceed (NTE) cost may need to be revised.
- EPC Contractor will obtain any local permits required for the project. The engineering cost associated with obtaining these permits is not included.
- The EPC Contractor will be responsible for the preparation of the start-up and check-out procedures. Black & Veatch will perform a review of the documents.
- The EPC Contractor will be responsible for the system check-out and turn-over package development. Black & Veatch will review the documentation and advise DME of acceptance.
- Onsite witness of the thermal performance test has not been included in the scope of this proposal. However, Black & Veatch will review the test procedures and final reports and advise DME of acceptance, and has included allocation for two site visits for one Black & Veatch professional.

- Support during the warranty period is not required. If required, this can be added to the scope at DME's request.
- Black & Veatch has not included the cost for any shop surveillance. If required, this can be added to the scope at DME's request.
- The travel expenses included in the proposal are limited to the following trips and included in the overall NTE cost as shown in the Commercial Terms Section. It is assumed that the majority of the meetings required will be conducted via conference call. No international travel has been included in the proposal cost.
 - Kick-off meeting at DME office and project site. Includes five (5) team members for one (1) day.
 - Monthly site meetings. Includes sixteen (16) visits with two (2) team members for one (1) day.
 - Construction on-site technical support includes sixteen (16) visits for one (1) team member for one (1) day. These site visits are in addition to the monthly site meetings.
 - Commissioning and start-up on-site walk down support has been limited to an allocation of two (2) site visits for two (2) day duration to support technical concerns during commissioning and start-up.

Task 2: Air Emissions Testing

AIR EMISSIONS TESTING EXECUTION:

As part of the overall Owner Engineer role, Black & Veatch will provide DME with air emissions testing services. Cooperation and coordination with Wärtsilä and their subcontractors will be required and facilitated by DME and Black & Veatch. Emission testing will be used to confirm the engines meet their emission guarantees, create baseline data for emission reporting and also to determine compliance with the air permit and air permit regulations. Black & Veatch will work with Wärtsilä and the EPC Contractor to complete tuning prior to test initiation. If further tuning is required after the completion of testing, performance of additional testing will add additional costs. Two separate testing protocols will be developed: one air permit regulation and permit requirements submitted to the Texas Commission on Environmental Quality (TCEQ), and one to determine compliance with emissions guarantees and for record keeping and reporting requirements.

For the purposes of this testing, the test ranges for each engine shall be defined as follows:

- Startup Range: Period from initial start of engine until the selective catalytic reducers (SCR) and oxidation catalyst achieves its design temperature range; period will not to exceed 30 minutes. No stack testing will occur during startups.
- 20% Range: 5,152 to 9,016 hp
- 50% Range: 9,017 to 16,101 hp
- 75% Range: 16,102 to 22,541 hp
- Maximum Range: 22,540 to 25,561 hp

Black & Veatch will perform the following in support of the emissions testing:

- Develop Emissions Testing Specifications
- Bid review and contract conformance
- Review emissions contractor test protocol
- Attend TCEQ meeting prior to testing (2 days total)
- Test coordination/contract supervision
 - Provide third party emissions testing
- Review emission test reports

TASK 2.1 – DEVELOP EMISSIONS TESTING SPECIFICATIONS

The Black & Veatch project team will develop emissions testing specifications based on the requirements of the Air Permit and EPC contract specifications. This includes reviews with DME necessary to develop a complete package which meets the obligations of the TCEQ and EPC specifications. Black & Veatch will coordinate with DME to develop a bid list of testing consultants. Once the bid list is finalized, Black & Veatch will solicit bids from the selected parties.

TASK 2.2 – BID REVIEW AND CONTRACT CONFORMANCE

Black & Veatch will review the bids from the selected parties for conformance with the specifications and scope. Scope modifications will be discussed and a technical log will be developed. Once the scope and specifications are agreed, Black & Veatch will contract with the emissions testing contractor.

TASK 2.3 – REVIEW EMISSIONS CONTRACTOR TEST PROTOCOL

Black & Veatch will coordinate with the emissions testing contractor to develop test protocols for both requirements of the TCEQ/Air Permit and EPC contract specifications.

- For the requirements of the TCEQ/Air Permit, a testing protocol shall be developed for submittal to the TCEQ at least 30 days prior to the actual testing date. A draft of the protocol shall be sent to DME for their review and comment prior to submittal to the TCEQ. This scope allows for the incorporation of a single review cycle using one (1) set of consolidated comments from DME before issuing final deliverables. It is expected that DME will submit the final testing protocol to the TCEQ.
- For the requirements of the EPC contract specifications, a testing protocol shall be developed for DME review at least 30 days prior to the actual testing date. A draft of the protocol shall be sent to DME for their review and comment. This scope allows for the incorporation of a single review cycle using one (1) set of consolidated comments from DME before issuing final deliverables.

TASK 2.4 – ATTEND TCEQ MEETING PRIOR TO TESTING

In preparation for emissions testing to meet the requirements of the Air Permit and the TCEQ, the TCEQ typically requires a meeting at the project site to understand the test protocol, anticipated testing dates, and to gather additional necessary information prior to test commencement.

Black & Veatch expects the meeting with TCEQ to be held over a period of two days, and will be attended by one Black & Veatch professional, as well as professionals from the emissions testing contractor.

TASK 2.5 – TEST COORDINATION/CONTRACT SUPERVISION

As Black & Veatch will contract for third party testing services, an on-site presence from Black & Veatch will be needed to direct the testing contractor and to field questions from DME.

Provide Third Party Emissions Testing

Tests will be performed on each of the twelve (12) engines, with each test conforming to the Air Quality Permit and New Source Performance Standards, Subpart JJJJ. Any methods employed shall be in accordance with USEPA-approved test methods and TCEQ requirements.

- All NO_x, CO, and VOC testing shall be in accordance with 40 CFR Part 60, Subpart JJJJ and the air construction permit for the site.
- NO_x testing shall use EPA Method 7E.
- CO testing shall use EPA Method 10.
- VOC testing shall use EPA Method 18 and 25A, and report non-methane, non-ethane hydrocarbons.
- All particulate matter (PM) testing shall be per Method 201A, or Method 5, and 202 (filterable and condensable).
- NH₃ testing will be conducted using Method CTM-027.

Documentation will be provided to show that the proposed methods meet these requirements.

The testing scope shall include:

- Testing shall be conducted at a uniform load for each test.
- Testing shall not be performed during startup.
- All emission test data shall be dated and time stamped and synchronized to the collection of system data.
- All emission data for each test shall be averaged per engine.
- Provide information as required by the Air Quality Permit and the proposed methods that are not specifically listed below.

TCEQ Testing

Testing will be performed with 36 separate test runs.

- 36 test runs – testing at 100% load range for NO_x, CO, and VOC emissions will be provided as follows on each of the twelve (12) engines:
 - Three (3) 100% load range tests: Individual testing of twelve engines within the 100% load range.

EPC Contract Testing

Testing will be performed with 144 separate test runs.

- 36 test runs – testing at 100% load range for NO_x, CO, VOC, PM₁₀, and NH₃ emissions will be provided as follows on each of the twelve (12) engines:
 - Three (3) 100% load range tests: Individual testing of twelve engines within the 100% Load Range.
- 108 test runs – testing at 75%, 50% and 20% load range for NO_x, CO, VOC, and PM₁₀ emissions will be provided as follows on each of the twelve (12) engines:
 - Three (3) 75% load range tests: Individual testing of twelve engines within the 75% load range.
 - Three (3) 50% load range tests: Individual testing of twelve engines within the 50% load range.
 - Three (3) 20% load range tests: Individual testing of twelve engines within the 20% load range.

Information and data collected during the specific engine test period for each engine report will include the following:

- Fuel sampling
- Fuel Flow data (one minute data)
- Engine horsepower values throughout the duration of the tests (one minute data)
- Air-fuel ratio
- Engine speed (one minute data)
- Reagent flow rate
- Oxidation catalyst inlet temperature
- Catalyst bed pressure drop
- Emissions reports in g/hp-hr as well as lb/hr

TASK 2.6 – REVIEW EMISSION TEST REPORTS

At the conclusion of testing, two separate reports will be prepared: one for air permit compliance and one for EPC contract specification verification. Each of the test reports will be reviewed and recommendations provided to DME regarding acceptance, comments, or changes to the draft report. Black & Veatch will incorporate up to one (1) set of consolidated comments from DME before issuing final deliverables. The final test reports will be presented as three signed hard copies and one electronic copy and are considered confidential information pursuant to Section 552 of the Texas Government Code.

CLARIFICATIONS

Black & Veatch has included the following clarifications to the emissions testing services described herein in order to better delineate the responsibilities of Black & Veatch:

- Expected duration of the separate TCEQ testing is 6 days.
- Expected duration of the combined TCEQ/EPC Contract testing is 24 days.
- Fuel sampling in accordance with ASTM D1945 and 6667 will be performed once each day during the expected duration of testing.
- This scope includes up to three mobilizations for the combined TCEQ/EPC contract specification testing during the expected duration of testing, and one mobilization for the separate TCEQ testing.
- Man lifts will be provided to access the test ports. Man lift access is not expected beyond 5 weeks.
- Testing duration will be 12 hours per day. Black & Veatch oversight will be 10 hours per day, and Black & Veatch requests the assistance of DME in monitoring testing hours through the help of the guard gate or operations.
- Rescheduling or cancellation (either with less than/equal to 10 days' notice prior to the scheduled mobilization date) by DME will result in additional fees per occurrence.

COMMERCIAL TERMS

Contract Terms and Conditions

Black & Veatch proposes to perform these scope of services on a time and material (T&M) basis under the terms and conditions of the Contract between the City of Denton, TX and Black & Veatch dated March 21, 2017 and attached for reference.

Pricing

Black & Veatch has prepared NTE pricing for each of the two tasks based on our estimate of the level of effort to support DME for the duration of the project. This estimate is based on the scope definition provided by DME on January 5, 2017, and further revised and clarified during subsequent discussions and correspondence, as well as our experience on similar previous assignments. Pricing is based on the 2017 Billing Rate and Expense Schedule included immediately following this page. The following table presents our estimate of the level of effort required for this project.

TASK	DESCRIPTION	HOURS	LABOR & OFFICE EXPENSES	TRAVEL & SUBCONTRACTS EXPENSES	TOTAL PRICE
1.1	EPC Vendor Management	1,354	\$260,215	\$26,800	\$287,015
1.2	Engineering and Design Review	432	\$77,412	\$0	\$77,412
1.3	Construction Monitoring	242	\$44,853	\$11,600	\$56,453
1.4	Commissioning and Startup Review	154	\$26,991	\$2,600	\$29,591
Subtotal		2,182	\$409,472	\$41,000	\$450,472
2.1 – 2.6	Air Emissions Testing (TCEQ and Owner Testing Combined, or Owner Testing Separately)	472	\$76,060	\$293,260	\$369,320
	Delay Contingency (30 percent)			\$85,338	\$85,338
Subtotal		472	\$76,060	\$378,598	\$454,658
2.1 – 2.6	Air Emissions Testing (TCEQ Testing Separately)	70	\$11,126	\$37,180	\$48,306

	Delay Contingency (30 percent)		\$10,494	\$10,494
Subtotal	70	\$11,126	\$47,674	\$58,800
Total	2,724	\$496,658	\$467,272	\$963,930
Notes:				

The cost of Owner Engineer services could be reduced if DME elects to directly contract the Air Emissions Testing. In addition to the subcontractor markup, we have included 250 hours in our estimate to cover the cost of test coordination for the combined TCEQ/Owner Testing, and 70 hours for the separate TCEQ testing.



BLACK & VEATCH
Building a world of difference.

BLACK & VEATCH CORPORATION
5151 SAN FELIPE, SUITE 2015
HOUSTON, TEXAS 77056 USA

October 4, 2016

Rebecca Hunter
City of Denton Texas
901B Texas Street
Denton, TX 76209

B&V Proposal No. 282402
Denton RFQ No. 6230

Subject: Black & Veatch Qualifications for Professional Engineering Services for Oversight of Design Build Construction of 220 MW RICE Power Plant, with Testing and Inspection

Dear Ms. Hunter and DME Project Team,

Black & Veatch is pleased to submit our qualifications in response to the Denton Municipal Electric (DME) request for Owner's Engineering Services for the 220 MW Reciprocating Internal Combustion Engine Power Plant (Denton Energy Center). We have carefully reviewed the RFQ and have provided a fully responsive proposal with all requested information.

Black & Veatch's proposed Project Manager, Gary Kettner has worked in the electric utility industry for more than 43 years on a wide range of Owners Engineering and leadership roles. Gary will lead a project team of experienced discipline engineers and subject matter experts that have just completed EPC services on the Port Westward Unit 2 Project consisting of twelve (12) Wärtsilä natural gas reciprocating engines.

Through our experience as an EPC Contractor and Owner's Engineer, we understand that project success is achieved through Black & Veatch's close collaboration not only with DME but also through positive collaboration and full integration with the EPC Contractor and Wärtsilä. Black & Veatch's goal is to ensure we are meeting your needs and expectations and that all the experience, expertise and best ideas from Black & Veatch, DME, the EPC Contractor, and Wärtsilä are part of the solutions.

We appreciate the opportunity to demonstrate our capabilities and we are excited about this opportunity to continue to serve DME. If you have any questions or require any additional information, please contact Gary Kettner (Tel: +303-256-4028, email: KettnerGD@bv.com) or me (Tel: +1 713-590-2274 email: HugginsR@bv.com).

Very truly yours,

BLACK & VEATCH CORPORATION

Roosevelt R. Huggins
Associate VP & Regional General Manager South Central United States – Energy
Enclosures



BLACK & VEATCH
Building a world of difference.®

BLACK & VEATCH CORPORATION
4400 POST OAK PARKWAY, SUITE 1200
HOUSTON, TEXAS 77027 USA

December 15, 2016

Rebecca Hunter
City of Denton Texas
901B Texas Street
Denton, TX 76209

B&V Proposal No. 282402
Denton RFQ No. 6230

Subject: Black & Veatch Qualifications for Professional Engineering Services for Oversight of Design Build Construction of 220 MW RICE Power Plant, with Testing and Inspection

Dear Ms. Hunter and DME Project Team,

Black & Veatch submitted our qualifications in response to the Denton Municipal Electric (DME) request for Owner's Engineering Services for the 220 MW Reciprocating Internal Combustion Engine Power Plant (Denton Energy Center) on October 4th. We are notifying you to convey a necessary change in our project team.

Black & Veatch's previously proposed Project Manager, Gary Kettner, has made the recent decision to retire during the expected timeframe of this project. Through our excitement for this opportunity, our goal is to ensure we keep you up to date with the best available project team.

We have selected a replacement Project Manager, Michael Fisher. We propose Michael as a chosen fit for this project based on his Owner Engineer experience and overall engineering, procurement, and construction (EPC) oversight knowledge. Michael's additional experience in contract oversight, construction, start-up and commissioning in a variety of simple cycle technologies provides the knowledge necessary in support of DME, the EPC Contractor and Wärtsilä's success.

The project team has brought Michael up to speed for this transition. Michael's contact:

Michael A. Fisher
4600 S. Syracuse Street, Suite 800, Denver, CO 80237
720-834-4225 P; 303-562-4319 M; FisherMA@BV.com

If you have any questions or require any additional information, please contact Michael Fisher, Steven Baker (Tel: 713-275-2843, email: BakerSA@bv.com) or me (Tel: 713-590-2274 email: HugginsR@bv.com).

Very truly yours,

BLACK & VEATCH CORPORATION

Roosevelt R. Huggins
Associate VP & Regional General Manager South Central United States – Energy

Enclosure: Michael A. Fisher Resume

PROPRIETARY AND CONFIDENTIAL

Michael Fisher, P.E.

Michael Fisher is a Project Manager responsible for managing projects in the Power Services business line of Black & Veatch. With over 20 years of technical and commercial experience, Mr. Fisher's major responsibilities have included plant operation and maintenance, initial and detailed design engineering, preparation of technical specifications, proposal submittals, bid evaluation and review, technical due diligence, construction and start-up/commissioning, construction monitoring, acceptance testing, contract review, project management, supervision and client relations. Mr. Fisher has significant experience with a variety of power plant technologies and industrial facilities, including both supercritical and drum-style steam units firing coal and natural gas, simple-cycle combustion turbines, combined-cycle combustion turbines, reciprocating engines, wind turbines, solar photovoltaic, and solar thermal.

PROJECT EXPERIENCE

Platte River Power Authority; Soldier Canyon Pipeline Reroute; Wellington, Colorado, United States; 2016-In-Progress

Project Manager - Black & Veatch. Provided construction cost estimate and detailed design to reroute the Soldier Canyon raw water pipeline due to the realignment of the intersection of Larimer County Road 19 and 70. Scope includes a material change from ductile iron to carbon steel and a directional bore underneath Larimer County Road 19.

Platte River Power Authority; Raw Water Tank Addition; Wellington, Colorado, United States; 2015-2016

Project Manager - Black & Veatch. Provided detailed design for the addition of a 500,000 gallon raw water tank to serve the 280 MW coal-fired Rawhide Generating Station.

Colorado Springs Utilities; Fire Protection Risk Assessment and Risk-Benefit Cost Analysis; Colorado Springs, Colorado, United States; 2015-2015

Project Manager - Black & Veatch. Assess and identify areas and equipment where upgrading of existing fire protection systems are recommended based on current codes, industry standards, and client input at the Martin Drake, Ray Nixon and Front Range power stations.

Avista; New Generation Planning Study; Rathdrum, Idaho, United States; 2014-2015

Project Manager - Black & Veatch. Provided performance estimates, emissions estimates, capital cost estimates, site arrangement drawings, and project schedule and cash flows in support of potential new natural gas fueled base load capacity using General Electric 7FA.05 combustion turbine technology in a 1x1 configuration.

PROJECT MANAGER

Expertise:

Combustion Turbine; Cooling Tower; Merger and Acquisition; Project Finance; Steam Turbine; Thermal Performance

Education

Bachelor of Science, Mechanical Engineering, The University of Tulsa, 1991, United States

Professional Registration

License, Registered Professional Engineer, General, 40703, Colorado, United States, 2007

Total Years of Experience

25.5

Black & Veatch Years of Experience

2.5

Professional Associations

National Society of Professional Engineers - Member
American Society of Mechanical Engineers - Member

Language Capabilities

English

Office Location

Denver, Colorado, USA: United States

Proyevaz S. A. de C. V.; Confidential; Mexico, Mexico; 2014-2014

Project Engineering Manager - CH2M Hill. Responsible for providing capital costs, fixed and variable O&M costs, as well as thermal performance estimates of several 30MW natural-gas fired power plant configurations for a site in Mexico. Technologies included GE LM2500+PR DLE, Siemens SCC-600, GE LM2000PJ DLE, GE LM6000PF, Siemens SGT-500, Siemens SGT-750, Rolls Royce RB211-GT61 DLE, Jenbacher J624H, Bergen B35:40V20AG2 and Wärtsilä 20V34SG.

Confidential; Confidential; Confidential; 2013-2014

Project Engineering Manager - CH2M HILL. Owner Engineer for a two unit, 330 MW circulating fluidized bed (CFB) power plant in Central America. Project included build out of double circuit 230 kV transmission lines, 230 kV substations, a port facility including barge loading and unloading facilities, road and bridges, and the 2 x 165 MW CFB power plant. Located in a remote and rugged jungle with no substantial pre-existing roads.

Minera Panama, S.A.; PACO Generating Station; Colon and Cocolé Provinces, Colon, Panama; 2010-2013

Project Engineering Manager - CH2M HILL. Coordinated development of work scope, as part of bid package, to solicit EPC contract for US\$4.5 billion copper and gold mining project in Panama. Project included a proposed ore feed rate of 225,000 tonnes per day, three open pits, 120 km of double circuit 230kV transmission line, three 230kV substations, three construction labor camps with peak capacity of 3,500, 900 and 1,200 workers, a port facility including barge loading and unloading facilities, 30 km of pipeline corridors, 43km of roads and bridges, and a 2 x 150MW PC-fired power plant. Located in a remote and rugged jungle with no substantial pre-existing roads, development challenges included saprolite soils and annual average rainfall of 5,000 mm. Continued support in the role of project mechanical engineer during the Owner's Engineer phase for the PC-fired power plant.

Turlock Irrigation District; Water Treatment Facility Replacement - Almond Power Plant; Ceres, California, United States; 2012-2012

Project Engineering Manager - CH2M HILL. Developed construction bid package, including general arrangement, piping, and electrical/control drawings for a replacement reverse osmosis (RO) system interconnect using Siemens Water Technology equipment. Evaluated construction bids and provided record drawings for the interconnect piping.

Dominion; Chesterfield Power Station; Chester, Virginia, United States; 2009-2009

Technical Consultant - CH2M HILL. Managed deficiency requests for critical engineering submittal requirements related to the installation of a single wet FGD scrubber installed on the 110 MW Unit 3, 181 MW Unit 4 and 344 MW Unit 5 coal-fired boilers.

AMP-Ohio; AMP Generating Station; Letart Falls, Ohio, United States; 2007-2007

Project Mechanical Engineer - R. W. Beck. Scope included Owner Engineer for a proposed two unit, 960MW advanced supercritical pulverized coal (PC) power plant in Meigs County, Ohio. Responsible for development of specifications related to the cooling tower, circulating water pumps, steam condenser, and condensate pumps. Project cancelled prior to construction.

Dominion; State Line Power Station; Hammond, Indiana, United States; 2006-2006

Technical Consultant - R. W. Beck. Reviewed and assessed operating data, capital expense budgets and O&M budgets in support of a due diligence report for the State Line 197 MW Unit 3 and 318 MW Unit 4 coal-fired power plant. Due diligence report was developed to support a potential M&A portfolio.

Intergen; Magnolia Generating Station; Ashland, Mississippi, United States; 2002-2006

Mechanical Engineer - R. W. Beck. Verified EPC Contractor performance guarantees on the 920 MW 3x3 GE 7FA facility, and viewed construction progress and expenditures against budget. Performed annual reviews of O&M practices and budget in the context of debt service coverage.

Intergen; Cottonwood Generating Station; Deweyville, Texas, United States; 2001-2006

Mechanical Engineer - R. W. Beck. Verified EPC Contractor performance guarantees on the 1,229 MW 4x4 GE 7FA facility. Also viewed construction progress and expenditures against budget, and was successful in getting the EPC Contractor to rerun thermal performance tests due to duct burner fuel fluctuation.

Missouri River Energy Services; Exira Power Station; Brayton, Iowa, United States; 2003-2004

Assistant Construction and Start-Up Manager - R. W. Beck. Responsible for construction oversight, start-up and commissioning of a two unit simple cycle power plant featuring General Electric LM6000PC SPRINT dual-fuel combustion turbines with inlet chilling.

Intergen; Redbud Generating Station; Luther, Oklahoma, United States; 2001-2004

Mechanical Engineer - R. W. Beck. Verified EPC Contractor performance guarantees on the 1,220 MW 4x4 GE 7FA facility, and viewed construction progress and expenditures against budget. Performed annual reviews of O&M practices and budget in the context of debt service coverage.

Missouri River Energy Services; New Generation Project; Sioux Falls, South Dakota, United States; 2002-2002

Mechanical Engineer - R. W. Beck. Provided heat balances for various proposed sites using General Electric LM600PC SPRINT technology in both simple and combined cycle mode. Upon preliminary site selection, responsibilities included analysis of necessary acreage to support construction, laydown and substation.

NEPC Consortium Power Ltd.; Haripur Power Facility; Dhaka, Dhaka, Bangladesh; 2000-2000

Technical Consultant - R. W. Beck. Verified EPC Contractor performance guarantees on the 110MW barge-mounted 8 x Wärtsilä 18V46GD power facility.

Independent Power Tanzania Limited; IPTL Tanzania; Dar es Salaam, Dar es Salaam, Tanzania; 1999-1999

Technical Consultant - R. W. Beck. Verified EPC Contract pricing on 100MW Wärtsilä power facility in support of Owner legal claims under the jurisdiction of the laws of the United Kingdom.

PRESENTATIONS & PUBLICATIONS

Fisher, Michael. "Damage to Turbine Generator Due to Loss of Auxiliary Power - LaPalma Power Station Unit #5, 20MW GE." 95th Meeting of Plant Design and Operating Committee, Tulsa, Oklahoma. October 1997

Velarde, Fred and Michael Fisher. "On-Line Chemical Cleaning of J.L. Bates Power Station Unit 2 Surface Condenser." 95th Meeting of Plant Design and Operating Committee, Tulsa, Oklahoma. October 1997

Fisher, Michael and Jaime Garcia. "Cooling Tower Deck Covers." 93rd Meeting of Plant Design and Operating Committee, Austin, Texas. October 1996

Fisher, Michael. "Installation of New Graver Makeup Demineralizer for Four Units at Northeastern Station." 84th Meeting of Plant Design and Operating Committee, Shreveport, Louisiana. April 1992

EXHIBIT B
TO THE
AGREEMENT BY AND BETWEEN
CITY OF DENTON AND BLACK & VEATCH CORPORATION
(FILE 6230)

----- 3 pages follow this cover sheet ----

<div> <div>CONFIDENTIAL <small>Note 2</small></div> <div> <div>Black & Veatch</div> <div>Billing Rates and Expense Schedule</div> <div>for</div> <div>Home Office Consulting Engineering Services</div> <div>Calendar Year 2017</div> </div> </div>		
<div> <div>HOURLY BILLING RATES (see Client Billings and Notes)</div> <div>Salary Plan/Description/Grade/Hourly Billing Rate (\$USD)</div> </div>		
ADM -- Administrative/Business		01
Administrative business functions for the firm, including personnel, public relations, publications, purchasing, and other functions.		02
		03
		04
		05
		06
		07
		08
		09
ADS -- Administrative Support		01
Office support including clerical and secretarial.		02
		03
		04
		05
ARC -- Architecture		01
Architectural design, analysis, and management of the architectural function.		02
		03
		04
		05
		06
		07
CNS -- Construction Services		01
Construction service functions, including construction management, construction support, resident engineering, and project review.		02
		03
		04
		05
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		12
ENG -- Engineering		127
Engineering design, analysis, and management. Includes departmental and project assignments including engineering department management.		128
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		132
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		134
		135
		136
ENS -- Engineering Specialist		127
Professionals who provide expertise and project support for engineering and other types of projects.		128
		129
		130
		131
		132
		133
		134

<div> <div>CONFIDENTIAL <small>Note 2</small></div> <div> <div>Black & Veatch</div> <div>Billing Rates and Expense Schedule for Home Office Consulting Engineering Services Calendar Year 2017</div> </div> </div>		
HOURLY BILLING RATES (see Client Billings and Notes)		
Salary Plan/Description/Grade/Hourly Billing Rate (\$USD)		
ENT -- Engineering Technician Technical designers and drafters.		125
		126
		127
		128
		129
		130
		131
		132
		133
		134
EST -- Estimating Professionals who assess the cost related to projects to assist with the preparation of proposals.		01
		02
		03
		04
		05
		06
		07
		08
		09
FIN -- Finance Project accounting, financial reporting, planning & analysis, accounting operations, and tax.		01
		02
		03
		04
		05
		06
		07
		08
ITS -- Information Science Information science functions including systems and software analysis, and network/communications consulting.		01
		02
		03
		04
		05
		06
		07
		08
OFF -- Office Services Word processing, document control, clerical accounting services, and related group supervisors.		01
		02
		03
		04
		05
		06
		07
		08
PCR -- Procurement Professionals who secure and administer the purchase of goods, commodities, and services.		01
		02
		03
		04
		05
		06
		07
		08
		09

Note 2

Billing Rates and Expense Schedule for

Calendar Year 2017

Salary Plan/Description/Grade/Hourly Billing Rate (\$USD)

PJC -- Project Controls	Professionals who track the cost associated with a project and perform planning and scheduling functions related to projects.
PMT -- Project Management	Project managers and project directors.
SPC -- Specialized Staff	Legal, scientific, economic, and related services for project assignments. Includes scientists, lawyers, economists, etc.
CST - Consulting	Professionals who provide strategic consulting services with respect to planning, management, market assessment, and other specialty consulting services.

Client Billings: Client shall pay to Engineer for the performance of the Services the sum of the following amounts unless the compensation is otherwise stated in the specific task assignment.

Notes: