

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONSULTING SERVICES  
CONTRACT 6479**

STATE OF TEXAS                   §

COUNTY OF DENTON           §

THIS AGREEMENT (the "Agreement") is made and entered into on \_\_\_\_\_, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "OWNER" and Birkhoff, Hendricks & Carter, LLP, with its corporate office at 11910 Greenville Ave., Suite 600, Dallas County, Dallas, Texas 75243, 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  
CONSULTANT AS INDEPENDENT CONTRACTOR**

The OWNER has selected CONSULTANT on the basis of demonstrated competence and qualifications to perform the services herein described for a fair and reasonable price pursuant to Chapter 2254 of the Texas Government Code. The OWNER hereby contracts with the CONSULTANT as an independent contractor and not as an employee, and as such, the OWNER will not assert control over the day-to-day operations of the CONSULTANT. The CONSULTANT is customarily engaged to provide services as described herein independently and on a nonexclusive basis in the course of its business. This Agreement does not in any way constitute a joint venture between OWNER and CONSULTANT. The CONSULTANT hereby agrees to perform the services described herein based on the skills required for the scope of work in connection with the Project as stated in the sections to follow, with diligence and in accordance with the highest professional standards customarily obtained for such services in the State of Texas. The professional services set out herein are in connection with the following described project:

The Project shall include, without limitation, a licensed Texas engineer, as an independent contractor. The Design Professional hereby agrees to perform the services in conjunction with the following projects as described in Exhibit A, which is attached hereto and incorporated herein (the "Project").

- A. State Highway 380 to IH 35 Transmission Line
- B. Scripture Road to IH 35 Transmission Line,

## **ARTICLE II**

### **SCOPE OF BASIC SERVICES**

The CONSULTANT shall perform the following services in a professional manner:

- A. The CONSULTANT shall perform all those services as necessary and as described in the OWNER's Contract 6479 – Engineering Services for Hwy 380 to IH 35 Transmission Line and Scripture Road to IH 35 Transmission Line, which is attached hereto and made a part hereof as Exhibit A and Exhibit B as if written word for word herein.
- B. To perform all those services set forth in CONSULTANT's proposal, which proposal is attached hereto and made a part hereof as Exhibit A and Exhibit B as if written word for word herein.
- C. CONSULTANT shall perform all those services set forth in individual task orders, as described in Exhibit A and Exhibit B, which shall be attached to this Agreement and made a part hereof.
- D. 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 or task orders.

## **ARTICLE III**

### **ADDITIONAL SERVICES**

Additional services to be performed by the CONSULTANT, if authorized by the OWNER, which are not included in the above-described Basic Services, may be negotiated as needed, per rates included in Exhibit B.

- A. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- B. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- C. Assisting OWNER in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- D. Assisting OWNER 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.
- E. Visits to the site in excess of the number of trips included in Exhibit B and Exhibit C.
- F. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

## **ARTICLE IV**

### **TIME OF COMPLETION**

CONSULTANT is authorized to commence work under this contract upon execution of this AGREEMENT. CONSULTANT will provide services from the date of execution and shall automatically expire upon completion of the work or receipt of the materials, and acceptance by the City of Denton.

## **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 related to this agreement.
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, based on the cost estimate detail at an hourly rate shown in Exhibit "C" 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 \$229,492.

Partial payments to the CONSULTANT will be made on the basis of detailed monthly statements rendered to and approved by the OWNER through its City Manager 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 City Manager 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 "C." Payments for additional services shall be due and payable upon submission by the CONSULTANT and approval by the City staff, 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 the CONSULTANT for services and expenses within thirty (30) days after receipt of the CONSULTANT's undisputed statement thereof, the amounts due the CONSULTANT will be paid interest in accordance with the Texas Government Code 2251.025. Additionally, the CONSULTANT may, after giving seven (7) 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. Nothing herein shall require the OWNER to pay the late charge if the OWNER reasonably determines that the work is unsatisfactory, in accordance with this Article V, "Compensation," there is a bona fide dispute concerning the amount due, or the invoice was not mailed to the address or in the form as described in this Agreement. The OWNER will notify CONSULTANT of any disputes within twenty-one (21) days of receipt of the invoice.
- E. **Invoices** shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall be sent to the contract administrator. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice or items; whichever is later, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

## **ARTICLE VI**

### **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 of the CONSULTANT or any subcontractors or subconsultants.

## **ARTICLE VII**

### **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 upon the termination of this Agreement. 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.

**ARTICLE VIII**  
**INDEMNITY AGREEMENT**

**THE CONSULTANT SHALL INDEMNIFY AND SAVE AND HOLD HARMLESS THE OWNER AND ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO COURT COSTS AND REASONABLE ATTORNEY FEES ASSERTED AGAINST OR INCURRED BY THE OWNER, AND INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BODILY AND PERSONAL INJURY, DEATH AND PROPERTY DAMAGE, RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE CONSULTANT OR ITS OFFICERS, SHAREHOLDERS, AGENTS, OR EMPLOYEES INCIDENTAL TO, RELATED TO, AND 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 IX**  
**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 not less than \$1,000,000 for each occurrence and not less than \$1,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.
- B. Automobile Liability Insurance with bodily injury limits of not less than \$500,000 for each person and not less than \$500,000 for each accident, and with property damage limits of not less than \$100,000 for each accident.
- 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 not less than \$1,000,000 annual aggregate.
- E. The CONSULTANT shall furnish insurance certificates or insurance policies 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.

**ARTICLE X**  
**ALTERNATIVE DISPUTE RESOLUTION**

The parties may agree to settle any disputes under this Agreement by submitting the dispute to mediation with each party bearing its own costs of mediation. No mediation arising out of or relating to this Agreement, involving one party's disagreement may include the other party to the disagreement without the other's approval. Mediation will not be a condition precedent to suit.

**ARTICLE XI**  
**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 fifteen (15) 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 XII**  
**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.



### **ARTICLE XIII** **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:

Birkhoff, Hendricks & Carter, LLP  
Gary C. Hendricks, P.E., R.P.L.S.  
11910 Greenville Ave., Suite 600  
Dallas, TX 75243

To OWNER:

City of Denton  
Purchasing Manager – Contract 6479  
901B Texas 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 XIV** **ENTIRE AGREEMENT**

This Agreement and related exhibits constitute the complete and final expression of this 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 XV** **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 XVI** **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 those laws may now read or hereinafter be amended.

### **ARTICLE XVII** **DISCRIMINATION PROHIBITED**

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

**ARTICLE XVIII**  
**PERSONNEL**

- 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.

**ARTICLE XIX**  
**ASSIGNABILITY**

The CONSULTANT acknowledges that this Agreement is based on the demonstrated competence and specific qualifications of the CONSULTANT and is therefore personal as to the CONSULTANT. Therefore, the CONSULTANT shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the OWNER.

**ARTICLE XX**  
**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 XXI**  
**MISCELLANEOUS**

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

Exhibit A – Contract 6479:

A. State Highway 380 to IH 35 Transmission Line

B. Scripture Road to IH 35 Transmission Line,

Exhibit B – Consultant's Scope of Services Offer

Exhibit C – Consultant's Compensation Rate Sheet, Attachment CO

- B. The OWNER shall have the right to audit and make copies of the books, records and computations pertaining to this agreement. The CONTRACTOR 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 CONTRACTOR 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 within a 50 mile radius of the City of Denton. 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 CONTRACTOR which must be payable within five 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. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

- C. This Agreement shall be governed by, construed, and enforced in accordance with, and subject to, the laws of the State of Texas or federal law, where applicable, without regard to the conflict of law principles of any jurisdiction. In the event there shall be any dispute arising out of the terms and conditions of, or in connection with, this Agreement, the party seeking relief shall submit such dispute to the District Courts of Denton County or if federal diversity or subject matter jurisdiction exists, to the United States District Court for the Eastern District of Texas-Sherman Division.
- D. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be Gary C. Hendricks, P.E., R.P.L.S.. However, nothing herein shall limit CONSULTANT from using other equally qualified and competent members of its firm to perform the services required herein.
- 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.

**ARTICLE XXII**  
**CERTIFICATE OF INTERESTED PARTIES ELECTRONIC FILING**

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

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

The contractor shall:

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

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

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 date\_\_\_\_\_.

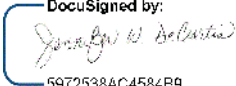
CITY OF DENTON, TEXAS

\_\_\_\_\_  
TODD HILEMAN, CITY MANAGER


JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

BY: \_\_\_\_\_  
  
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BIRKHOFF, HENDRICKS & CARTER, LLP  
A Texas limited Liability Partnership  
Texas Board of Professional Engineers Firm No. 526  
Texas Board of Professional Land Surveyors Firm No. 100318  
“CONSULTANT”

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BY: Gary C. Hendricks, P.E., R.P.L.S.  
ITS: Alternate Managing Partner

\_\_\_\_\_  
2017-21354  
TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

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

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

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

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

**ARTICLE 2 SCOPE OF BASIC SERVICES**

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

**2.2 SCHEMATIC DESIGN PHASE**

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

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

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

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

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

**2.3 DESIGN DEVELOPMENT PHASE**

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

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

**2.4 CONSTRUCTION DOCUMENTS PHASE**

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

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

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

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

## **2.5 CONSTRUCTION CONTRACT PROCUREMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.6.11** The Design Professional shall have the responsibility and authority to reject work which does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Professional will have authority to require

additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

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

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

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

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

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

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

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

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

## **ARTICLE 3 ADDITIONAL SERVICES**

### **3.1 GENERAL**

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

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

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

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

### **3.3 CONTINGENT ADDITIONAL SERVICES**

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



1. inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
2. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or
2. due to changes required as a result of the Owner's failure to render decision in a timely manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE 5 CONSTRUCTION COST**

##### **5.1 CONSTRUCTION COST DEFINED**

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

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

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

##### **5.2 RESPONSIBILITY FOR CONSTRUCTION COST**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **8.1 DIRECT PERSONNEL EXPENSE**

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

### **8.2 REIMBURSABLE EXPENSES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 9 INDEMNITY**

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

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

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

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

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

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

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

**10.5** The Design Professional shall furnish insurance certificates or insurance policies to the Owner evidencing insurance in compliance with this Article 10 at the time of the execution of the Agreement. The General Liability and Automobile Liability insurance policies shall name the Owner as an additional insured, the Workers' Compensation policy shall contain a waiver of subrogation in favor of the Owner, and each policy shall contain a provision that such insurance shall not be canceled or modified without thirty (30) days' prior written notice to Owner and Design Professional. In such event, the Design

Professional shall, prior to the effective date of the change or cancellation, furnish Owner with substitute certificates of insurance meeting the requirements of this Article 10.

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

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

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

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

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

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

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

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

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

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

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

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

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

# CITY OF DENTON

## INSURANCE REQUIREMENTS FOR CONTRACTORS

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

### STANDARD PROVISIONS:

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

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

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- VII or better**.
- Any deductibles or self-insured retentions shall be declared in the bid proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
  - Name as additional insured the City of Denton, its Officials, Agents, Employees and volunteers.
  - That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or



suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled before the expiration date.***
- Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

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

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

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

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

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

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

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

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

**[X] Automobile Liability Insurance:**

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

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

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

**[X] Workers' Compensation Insurance**

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

**[ ] Owner's and Contractor's Protective Liability Insurance**

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations under this contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least combined bodily injury and property damage per occurrence with a \_\_\_\_\_ aggregate.

☒ **Professional Liability Insurance**

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

☐ **Builders' Risk Insurance**

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

☐ **Commercial Crime**

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

☐ **Additional Insurance**

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

**ATTACHMENT 1****[X] Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities****A. Definitions:**

Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - 1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

- 2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- 1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - 2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - 3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - 4) obtain from each other person with whom it contracts, and provide to the contractor:
    - a) certificate of coverage, prior to the other person beginning work on the project; and
    - b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - 5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

- 6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - 7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.



## EXHIBIT A

### BIRKHOFF, HENDRICKS & CARTER, L.L.P. PROFESSIONAL ENGINEERS

11910 Greenville Ave., Suite 600

Dallas, Texas 75243

Fax (214) 461-8390

Phone (214) 361-7900

JOHN W. BIRKHOFF, P.E.  
GARY C. HENDRICKS, P.E.  
JOE R. CARTER, P.E.  
PAUL A. CARLINE, P.E.  
MATT HICKEY, P.E.  
ANDREW MATA, JR., P.E.  
JOSEPH T. GRAJEWSKI, III, P.E.  
DEREK B. CHANEY, P.E.  
CRAIG M. KERKHOFF, P.E.

June 14, 2017

Mr. Lee Perry, P.E.  
Capital Project Coordinator  
City of Denton  
901 A Texas Street  
Denton, Texas 76201

Re: State Highway 380 to IH 35 Transmission Line  
Scripture Road to IH 35 Transmission Line  
Professional Services Agreement

Dear Mr. Perry:

As you requested, we are pleased to submit our professional engineering services agreement for the State Highway 380 to IH 35 Transmission Line and the Scripture Road to IH 35 Transmission Line. The scope of each project is generally described as follows:

#### Project Scope

##### **PROJECT A: State Highway 380 to IH 35 Transmission Line**

- 1) Approximately 900 linear feet of 16-inch water line (with a 400 linear foot bore under Interstate Highway 35 (IH 35)), from the southeast right-of-way corner clip of IH 35 and State Highway 380 (SH 380) to the southwest corner clip of IH 35 and SH 380.
  - 2) Approximately 1,900 linear feet of 20-inch water line (with a 400 linear foot bore under IH 35, from the southeast right of way corner clip of IH 35 and SH 380 to a point near the intersection of the south right-of-way line of SH 380 and the east line of the KCS railroad.
- Other than the crossing of IH 35 right-of-way, it is expected both of these water lines will be installed in a 30-foot wide water line easement dedicated to the City of Denton

##### **PROJECT B: Scripture Road to IH 35 Transmission Line**

Approximately 370 linear feet of 20-inch water line by boring under IH 35, connecting to an existing 20-inch water line on the east side of IH 35 and an 8-inch water line(s) on the west side of IH 35.

#### Scope of Engineering Services

The scope of services included in the professional services agreement are described in **Exhibit B** of the agreement and generally included:

1. Preliminary Engineering Report including evaluation of the project route(s); determination of land rights requirements, evaluation of pipeline materials, cathodic protection evaluation and recommendation and updated opinion of probable construction cost

**EXHIBIT A**

Mr. Lee Perry, P.E.

SH 380 and Scripture Transmission Water Lines - Professional Engineering Services Agreement

June 14, 2017

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2. Detail design and preparation of construction plans and specifications
3. Assistance during the bidding phase
4. Construction contract administration services
5. Field Surveys
6. Geotechnical evaluation and recommendations
7. Level A Subsurface Utility Engineering services
8. Preparation of plat and field notes for land rights as required

**Project Opinion of Probable Project Cost**

Based on information you have provided and our review of the project parameters, our opinion of the probable project costs at this conceptual stage are summarized as follows:

Project A – State Hwy 380 Transmission Mains:	\$1,020,000
Project B – Scripture Road to IH 35 Transmission Main:	\$ 410,000
<b>Project Total:</b>	<b>\$1,430,000</b>

We are enclosing a copy of our itemized opinion of project construction cost as **Exhibit A-1**.

**Summary of Engineering Fees**

Our proposed engineering fees for this project are separated into lump sum fees (Parts I-IV) and hourly fees (Parts V –Tasks A. through G.), with a not to exceed a fixed amount. The proposed engineering fees are summarized below and more specifically described in **Exhibit C**.

Basic Services Lump Sum Fees (Parts I-IV):	\$134,614
Basic Services Hourly Fees (Part V):	\$ 94,878

The maximum overall fee of **\$229,492** established herein shall not be exceeded without written authorization from the City, based on increased scope of services.

**Your Project Team**

The team we have assembled to meet the needs of this project is highly experienced and uniquely qualified. We have partnered with Elk Engineering to assist in the corrosion protection evaluation; Henly-Johnston and Associates for geotechnical evaluations; and Axis Construction Co. to assist with the Level A sub-surface investigations. All other elements of the project will be performed by our in-house staff. We are enclosing a project organizational chart as **Exhibit A-2**.

We trust this proposal for engineering services meets with expectations and approval. We look forward to working with you and your team; and working with the City of Denton once again. We are ready to begin work on this project immediately upon your written direction to proceed.

Sincerely,

Gary C. Hendricks

Gary C. Hendricks, P.E., R.P.L.S.

Digitally signed by Gary C.  
Hendricks  
DN: C=US,  
E=ghendricks@bhcdlp.com,  
O="Blythoff, Hendricks & Carter,  
LLP", CN="Gary C. Hendricks  
Date: 2017.06.14 13:52:44-0500'

Enclosures

- Exhibit A-1: Opinion of Probable Cost
- Exhibit A-2: Team Organization Chart
- Exhibit B: Scope of Work
- Exhibit C: Engineering Fee Schedule

*Texas American Public Works Association 2010 Awardee  
Environmental Project of the Year \$10 - \$100 Million*



**EXHIBIT A**

Mr. Lee Perry, P.E.

SH 380 and Scripture Transmission Water Lines - Professional Engineering Services Agreement

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**EXHIBIT A-1****BIRKHOFF, HENDRICKS & CARTER, L.L.P.**  
**PROFESSIONAL ENGINEERS**Project No. CntDev-DENTONClient: City of DentonDate: 24-May-17Project: Project A: State Hwy 380 to IH 35 Transmission LineConceptual Plan CostBy: GCH**ENGINEER'S OPINION OF CONSTRUCTION COST**

Item No.	Description	Quantity	Unit	Price	Amount
<b>General Project Description:</b>					
1) Approximately 900 linear feet of 16-inch water line (with a 400 linear foot bore under Interstate Highway 35 (IH 35)), from the southeast right-of-way corner clip of IH 35 and State Highway 380 (SH 380) to the southwest corner clip of IH 35 and SH 380.					
2) Approximately 1,900 linear feet of 20-inch water line (with a 400 linear foot bore under IH 35, from the southeast right of way corner clip of IH 35 and SH 380 to a point near the intersection of the south right-of-way line of SH 380 and the east line of the KCS railroad.					
1	Furnish and Install 20-inch Water Line with Embedment by Open Cut	1,450	L F	\$ 150.00	\$ 217,500.00
2	Furnish and Install 20-inch Water Line with Conc. Encasement	50	L F	\$ 175.00	\$ 8,750.00
3	Furnish and Install 20-inch Water Line in 36-inch Steel Encasement Pipe By Boring (IH 35 Crossing)	400		\$ 525.00	\$ 210,000.00
4	Furnish and Install 16-inch Water Line with Embedment by Open Cut	500	L F	\$ 150.00	\$ 75,000.00
5	Furnish and Install 16-inch Water Line in 30-inch Steel Encasement Pipe By Boring (IH 35 Crossing)	400	L F	\$ 450.00	\$ 180,000.00
6	Connect to Existing 20-inch Water Line	2	Ea	\$ 4,500.00	\$ 9,000.00
7	Connect to Existing 16-inch or 12-inch Water Line	2	Ea	\$ 4,500.00	\$ 9,000.00
8	20-inch Butterfly Valve	3	Ea	\$ 18,000.00	\$ 54,000.00
9	16-inch Butterfly Valve	2	Ea	\$ 14,000.00	\$ 28,000.00
10	Remove and Replace Concrete Pavement	112	S Y	\$ 60.00	\$ 6,720.00
11	Cathodic Protection Devices	1	LS	\$ 35,000.00	\$ 35,000.00
12	Re-establish Vegetation	10,833	S Y	\$ 4.50	\$ 48,750.00
13	Trench Safety System Design	1	LS	\$ 5,000.00	\$ 5,000.00
14	Trench Safety System Implementation	2,000	L F	\$ 5.00	\$ 10,000.00
15	Erosion Control Plan and Devices	1	LS	\$ 15,000.00	\$ 15,000.00
16	Traffic Control Measures	6	Mon	\$ 2,500.00	\$ 15,000.00
	<b>Construction Subtotal</b>				<b>\$ 926,720.00</b>
	<b>Contingency</b>	<b>10%</b>			<b>\$ 92,672.00</b>
	<b>Construction Total:</b>				<b>\$ 1,019,392.00</b>
				<b>USE:</b>	<b>\$ 1,020,000.00</b>

**EXHIBIT A-1**

*Texas American Public Works Association 2010 Awardee*  
*Environmental Project of the Year \$10 - \$100 Million*

**EXHIBIT A**

Mr. Lee Perry, P.E.

SH 380 and Scripture Transmission Water Lines - Professional Engineering Services Agreement

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**BIRKHOFF, HENDRICKS & CARTER, L.L.P.**  
**PROFESSIONAL ENGINEERS**Project No. CntDev-DENTONClient: City of Denton  
Project: Project B: Scripture Road to IH 35 Transmission Line  
Conceptual Plan CostDate: 24-May-17  
By: GCH**ENGINEER'S OPINION OF CONSTRUCTION COST**

Item No.	Description	Quantity	Unit	Price	Amount
<b>General Project Description:</b> Approximately 370 linear feet of 20-inch water line by boring under IH 35, connecting to an existing 20-inch water line on the east side of IH 35 and an 8-inch water line(s) on the west side of IH 35.					
1	Furnish and Install 20-inch Water Line with Embedment by Open Cut	100	L.F.	\$ 150.00	\$ 15,000.00
2	Furnish and Install 20-inch Water Line with Conc. Encasement	0	L.F.	\$ 175.00	\$ -
3	Furnish and Install 20-inch Water Line in 36-inch Steel Encasement Pipe By Boring (IH 35 Crossing)	400		\$ 550.00	\$ 220,000.00
4	Connect to Existing 20-inch Water Line	1	Ea	\$ 4,500.00	\$ 4,500.00
5	Connect to Existing 8-inch or 12-inch Water Line	2	Ea	\$ 3,500.00	\$ 7,000.00
6	20-inch Butterfly Valve	2	Ea	\$ 18,000.00	\$ 36,000.00
7	12-inch Gate Valve	2	Ea	\$ 9,500.00	\$ 19,000.00
8	Remove and Replace Concrete Pavement	112	SY	\$ 60.00	\$ 6,720.00
9	Cathodic Protection Devices	1	LS	\$ 35,000.00	\$ 35,000.00
10	Re-establish Vegetation	222	S.Y.	\$ 4.50	\$ 1,000.00
11	Trench Safety System Design	1	LS	\$ 5,000.00	\$ 5,000.00
12	Trench Safety System Implementation	100	L.F.	\$ 5.00	\$ 500.00
13	Erosion Control Plan and Devices	1	LS	\$ 5,000.00	\$ 5,000.00
14	Traffic Control Measures	6	Mon	\$ 2,500.00	\$ 15,000.00
	Construction Subtotal				\$ 369,720.00
	Contingency	10%			\$ 36,972.00
	Construction Total:				\$ 406,692.00
	Project Total:				\$ 406,692.00
				USE:	\$ 410,000.00

**EXHIBIT A-2****Birkhoff, Hendricks & Carter, L.L.P.***Texas American Public Works Association 2010 Awardee*  
*Environmental Project of the Year \$10 - \$100 Million*



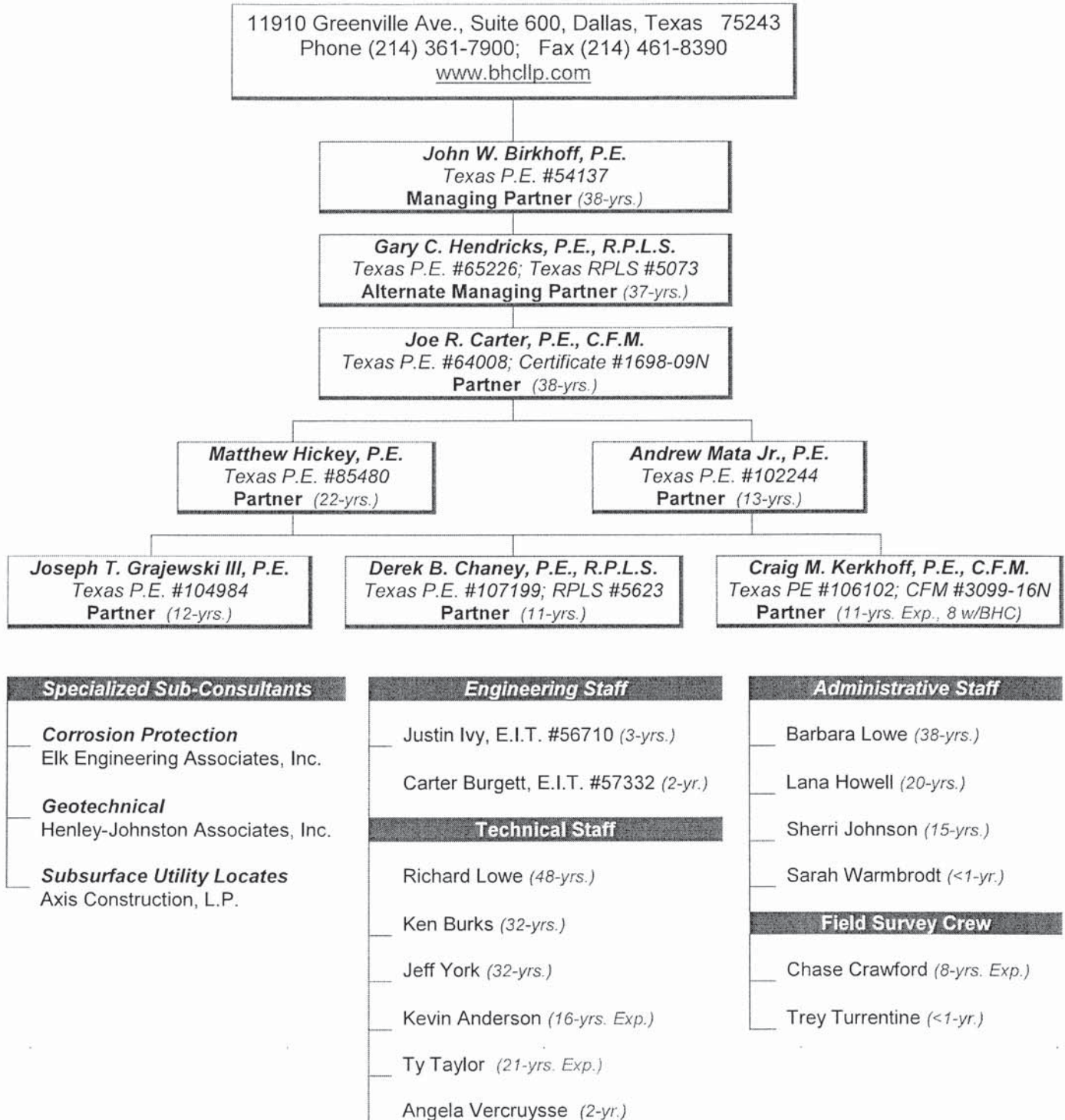
**EXHIBIT A**

Mr. Lee Perry, P.E.

SH 380 and Scripture Transmission Water Lines - Professional Engineering Services Agreement

June 14, 2017

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**Texas American Public Works Association 2010 Awardee**  
**Environmental Project of the Year \$10 - \$100 Million**

## **EXHIBIT “B”**

### **SCOPE OF SERVICES AND DELIVERABLES**

#### **PROJECT A: State Highway 380 to IH 35 Transmission Line**

##### **General Project Description**

This project includes:

1) Approximately 900 linear feet of 16-inch water line (with a 400 linear foot bore under Interstate Highway 35 (IH 35)), from the southeast right-of-way corner clip of IH 35 and State Highway 380 (SH 380) to the southwest corner clip of IH 35 and SH 380.

2) Approximately 1,900 linear feet of 20-inch water line (with a 400 linear foot bore under IH 35, from the southeast right of way corner clip of IH 35 and SH 380 to a point near the intersection of the south right-of-way line of SH 380 and the east line of the KCS railroad.

Other than the crossing of IH 35 right-of-way, it is expected both of these water lines will be installed in a 30-foot wide water line easement dedicated to the City of Denton

#### **PROJECT B: Scripture Road to IH 35 Transmission Line**

##### **General Project Description**

The Scripture Water Line Crossing at IH 35 project includes approximately 370 linear feet of 20-inch water line by boring under IH 35, connecting to an existing 20-inch water line on the east side of IH 35 and an 8-inch water line(s) on the west side of IH 35.

**NOTE: Project A and B will be designed, bid and constructed as a single project. Separate quantities and bid tabulations will be prepared; however, this scope of services is prepared under the premise the two project will be administered as one.**

**A project location map is attached at the end of this Exhibit A, and shows the general location and conceptual route for both projects.**

#### **Part I: Preliminary Engineering Phase**

- A. Attend a project initiation meeting with City staff to introduce active project team members, confirm project requirements, schedules and general information.
- B. Obtain record drawings from the City for water lines in the vicinity of the projects.



- C. Obtain snapshot of the City's water distribution master plan in the vicinity of the projects.
- D. Obtain right-of-way strip maps for SH 380 and IH 35 from the Texas Department of Transportation
- E. Obtain both existing and proposed development plans in the vicinity of and adjoining the project locations.
- F. Make a pre-design project site visit with the City's project representatives to determine special needs of the project and field survey requirements.
- G. Prepare and deliver four (4) sets of a preliminary engineering design report. Report to include:
  - 1. Water main route schematic, including property ownership; highway rights of ways, existing easements and existing utilities.
  - 2. Discussions of special project challenges including traffic control, coordination with construction by others, coordination with TxDOT, KCS Railroad Permit requirements and coordination; and water system connections coordination.
  - 3. Evaluate pipe material options and recommendations
  - 4. Analysis of corrosion control and protection; and requirements of cathodic protection if recommended. This service will be provided by our Corrosion Control sub-consultant.

Elk Engineering Associates, Inc.

TBPE Firm No. 3434

8950 Forum Way

Fort Worth, TX 76140

817.568.8585

An itemized scope of service for the corrosion protection analysis and recommendations is attached hereto as EXHIBIT D:

- 5. Develop a preliminary opinion of probable cost based on the conceptual layout.
- 6. Identify land rights needed based on preliminary route.
- 7. Develop a project schedule including design phase, land rights acquisition (by City), bidding phase and construction phase elements.
- H. Meet with the City to review preliminary engineering report findings and recommendation; project budgets and project schedule. At this meeting, confirm pipe materials, fittings, valves and fire hydrant requirements.

**Part II: Design Phase Services**

- A. Meet with the Texas Department of Transportation to present, discuss and receive input on the conceptual alignment and layout.
- B. Prepare construction plan cover sheet with location map and sheet index.
- C. Prepare City of Denton General Project Notes and Specific Project Notes sheet
- D. Prepare horizontal and vertical coordinate control plan sheet.
- E. Prepare Preliminary Traffic Control Plan and Construction Phasing Plan
- F. Set the horizontal and vertical alignment for proposed water lines.
- G. Preparation of construction plan-profile sheets at a scale of not less than 1" = 20'
- H. Prepare construction details.
- I. Provide preliminary plans to utility companies to confirm utility company facility located from field surveys
- J. Develop erosion control plan.
- K. Prepare preliminary bid schedule, specifications and contract documents using NCTCOG Standard Specifications as the base, including Special Conditions for the project requirements; and Technical Specifications as required.
- L. Submit four (4) sets of 60% preliminary plans (11-inch x 17-inch maximum sheet size) and specifications for City review.
- M. Attend a 60% review meeting with the City to discuss the City's comments.
- N. Revise and finalize 60% plan sheets and technical specifications, incorporating City comments.
- O. Prepare submittal for TxDOT permitting.
- P. Prepare final quantity take-off and formulate opinion of probable construction cost based on final plans.
- Q. Attend an intermediate project progress meeting between the 60% review meeting and the 90% submittal.
- R. Submit four (4) sets of 90% preliminary plans (11-inch x 17-inch maximum sheet size) and specifications for City review. Prepare final bid documents including bid proposal forms, construction contract documents, construction plans and technical specifications.
- S. Attend a 90% review meeting with the City to discuss the City's comments.

- T. Conduct quality assurance and quality control review of the construction plans and specifications prior to the 60%, 90% and Final submittal to the City.
- U. Submit final bid documents including bid proposal forms, construction plans, specifications, and contract documents to the City.

**Part III: Bidding Phase Services**

- A. Assist the City staff in advertising for bids. This will include e-mailing “Notice to Contractors” to contractors experienced in this type of construction.
- B. Provide two (2) sets of hard copy bidding documents to City of Denton and one (1) electronic file format set.
- C. Provide responses to routine questions by bidders; and prepare and publish written addenda as required.
- D. Attend and assist during opening of bids and provide bidding tally sheets.
- E. Complete tabulation of bids received.
- F. Provide bid tabulation, to City in PDF electronic file format.
- G. Obtain the following information from the lowest bidder:
  - 1. Past work history,
  - 2. Physical resources to produce the project.
  - 3. Formulate opinion from information received and provide the City at their request, prepare a written recommendation for award of a construction contract
- H. Facilitate processing and distribution of contract documents for Contractor and City execution.
- I. After award of contract, furnish ten sets of conformed plans and specifications to the City for construction use by the City and Contractor.

#### **Part IV: Construction Phase Services**

- A. Attend the Pre-Construction Conference, including preparing an agenda.
- B. Attend up to two (2) construction site visits with follow-up site visit memorandum outlining the engineers observations and suggested action items , if any.
- C. Review shop drawings and other submittal information which the Contractor submits. This review is for the benefit of the Owner and covers only general conformance with information given by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review by the Engineer does not relieve the Contractor of any responsibilities, safety measures or the necessity to construct a complete and workable facility in accordance with the Contract Documents. Review of shop drawings will be completed by review of electronic PDF files provided by the Contractor.
- D. Accompany the City during their final inspection of the project.
- E. Recommendation to City for final acceptance of work based on the project final walk through and information provided by the City's on-site representative.
- F. Utilizing on-site representative and Contractor construction record information, consultant will prepare one set of 22"x 34"reproducible record drawings on mylar and one set of electronic image files in PDF file format.

#### **Part V: Basic Hourly Services**

- A. Survey for Design, Property and Construction (Performed in house)
  - 1. **Design Surveys** to include topography, utility markings, fences, trees 2-inch and larger diameter; establish control for project, setting temporary benchmarks.  
  
As a part of our normal topographic and field survey activities, Quality Level B Subsurface Utility Designation will be performed using DIG-TESS services to field locations of underground utilities along the project route. The DIG-TESS locates will be field survey to confirm their location in relative to the proposed improvements.

2. **Property Surveys** including locating monuments (iron rods, right-of-way monuments, pipes, fence posts) as necessary to prepare easement exhibits and field notes.
3. **Construction Surveys** including re-establishing project control points prior to construction.

Recipients of professional land surveying services under this agreement may direct complaints regarding such services to the Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC 230, Austin, TX 78753, Phone (512) 239-5263, Fax (512) 239-5253.

B. Geotechnical Investigation and Report (Performed by Sub-Consultant)

Perform a geotechnical analysis of the proposed site utilizing a qualified geotechnical laboratory sub-consultant to determine subsurface conditions and soil design parameters. The geotechnical analysis shall include the following:

- Subsurface exploration, including bores at varied depths, as follows:
  - Four (4) each for Project A – IH35 and SH 380 Water Lines
  - Two (2) each for Project B – IH 35 at Scripture Street Water Line.
- Laboratory tests for classification purposes and strength characteristics.

A geotechnical report will be furnished by the geotechnical engineering sub-consultant to present the results of the field and laboratory data, as well as analyses and recommendations. The data contained in the geotechnical report will be made available to contractors during the bidding process for information purposes.

EXPECTED GEOTECHINCAL SUB-CONSULTANT:

Henley Johnston & Associates, Inc.  
TBPE Firm No. 1238  
235 Morgan Ave.  
Dallas, Texas 75203-1025  
214.941.3808

C. Field Note Descriptions and Exhibits for Easements (Performed in house)

Preparation of Field Note Descriptions and Exhibit for expected permanent water line easements, and temporary construction easements required for the project. Up to five (5) easement descriptions are included for the purpose of establishing a budget for this additional service.

**D. Reproduction**

Printing of preliminary engineering report, preliminary plans and specifications for City review. Printing of final plans and specifications for distribution to prospective bidders and successful contractor for construction use.

**E. Subsurface Utility Exploration(SUE) – Level A (Performed with a Sub-contractor)****Project A – State Highway 380 to IH 35 Transmission Line**

If the project requirements dictate, SUE Quality Level A will be performed to locate the true location and depth of the existing 16-inch and 20-inch water line at each connection point and the limits and depths of one end each of the two (2) existing 36-inch diameter encasement pipes on the Quick Trip property. At total of five (5) Level A field locates are expected under this scope of service.

**Project B – Scripture Road to IH 35 Transmission Line**

If the project requirements dictate, SUE Quality Level A will be performed to locate the true location and depth of the existing 8-inch, 10-inch -inch and 20-inch water line at each connection point;. At total of two (2) Level A field locates are expected under this scope of service.

**EXPECTED CONTRACTING SERVICE FOR FIELD LOCATES:**

Axis Construction, LP  
1331 Maxwell Road  
Haslet, TX 76052

**F. Corrosion Protection Design Details and Specifications (Performed by Elk Engineering Associates Inc.)**

Prepare Corrosion Protection Detail and Technical Specifications, if project requirements dictate. See scope of services attached hereto in Exhibit D.

**G. KCS Railroad Permit**

Prepare, coordinate and submit the KSC Railroad permit, if the project requirements dictate. Railroad permit fees, insurance and licenses cost, if any, shall be the responsibility of the City of Denton.

**Part VI: Terms and Conditions For Electronic File Transfers**

Electronic files are transmitted on the terms and conditions below:

By opening, accessing, copying or otherwise using the transmitted electronic files, these terms and conditions are accepted by the user.



- A. The electronic files are compatible with the following software packages operating on a PC using Windows operating systems:
- AutoCAD 2013 • WaterCAD V8XM • Innovyze H<sub>2</sub>O NET or InfoSewer
  - MS Word 2010, or
  - MS Excel 2010
  - Adobe Acrobat (PDF)
- B. Birkhoff, Hendricks & Carter, L.L.P. does not make any warranty as to the compatibility of these files beyond the specified release of the above stated software.
- C. Because data stored on electronic media can deteriorate undetected or be modified, Birkhoff, Hendricks & Carter, L.L.P. will not be held liable for completeness or correctness of electronic media.
- D. The electronic files are instruments of our service. Where there is a conflict between the hard copy drawings and the electronic files, Birkhoff, Hendricks & Carter, L.L.P.'s hard copy file will govern in all cases.
- E. Electronic files may only be modified in accordance with the Texas Engineering Practice Act for modifying another Engineer's design.

**Part VII: Additional Services**

The intent of this scope of services is to include only the services specifically listed herein and none others. **Additional Services** specifically excluded from this Basic Scope of Services include, but are not necessarily limited to the following:

- A. "Certification" that work is in accordance with plans and specifications.
- B. Consulting services by others not included in Scope of Services.
- C. Contractor's means and methods.
- D. Environmental cleanup.
- E. Environmental impact statements and assessments.
- F. Easement acquisition.
- G. Fees for permits.
- H. Fees for publically advertising the construction project.
- I. Fiduciary responsibility to the Client.
- J. Legal services in connection with easements and easement acquisition.

- K. On-site construction safety precautions, programs and responsibility (Contractor's responsibility).
- L. Phasing of Contractor's work.
- M. Quality control and testing services during construction.
- N. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans).
- O. Services in connection with condemnation hearings.
- P. Recording of easement documents.
- Q. Title searches.
- R. Trench safety designs.

## Project Location Maps

### Highway 380 to IH 35 Transmission Lines

IH 35 380





# EXHIBIT C

## Summary of Engineering Fees and Project Schedule

### BASIC SERVICES – LUMP SUM FEES

Payment for engineering services described under **Parts I, II, III and IV** shall be based on a **Lump Sum** basis in the following amounts:

<b>Parts I through V Basic Lump Sum Services Task Items</b>	<b>Total Fee Amount</b>
Part I - Preliminary Engineering Phase	\$19,983
Part II - Design Phase	\$88,496
Part III - Bidding Phase	\$11,095
Part IV - Construction Phase	\$15,040
<b>Total Amount, Basic Services (Parts I-IV)</b>	<b>\$134,614</b>

### BASIC SERVICES –HOURLY NOT TO EXCEED

Compensation for the Basic Services described in **Part V** shall be as follows:

**Item A - Field Surveys:** Shall be based on \$160.00 per 2-man crew hour, inclusive of all equipment rentals and software licensing; plus mileage charge at the IRS established rate.

**Items B, E and F:** Shall be billed at actual sub-consultant invoice times a multiplier of 1.15.

**Items C and G:** Shall be on the basis of salary cost times a multiplier of 2.45 for time expended on the task.

**Item D and Project Expenses:** Shall be at invoice cost times a multiplier of 1.15.

The overall amount for Part V Basic Services will not exceed **\$94,878.00** in the following amounts per task:

<b>Part V - Basic Hourly Service Task Items</b>	<b>Not to Exceed Amount</b>
A. Design, Property and Construction Surveys	\$13,340
B. Geotechnical Evaluation and Report	\$15,000
C. Plat and Field Note Descriptions for Easements	\$13,778
D. Reproduction	\$1,500
E. Subsurface Utility Exploration (SUE)	\$47,500
F. Corrosion Protection Details and Tech Specs	\$2,600
G. Prepare KSC RR Permit	\$1,160
<b>Total Amount, Basic Hourly Services (Part V)</b>	<b>\$94,878</b>

The maximum overall fee of **\$229,492** established herein shall not be exceeded without written authorization from the City, based on increased scope of services.

# EXHIBIT C

## BIRKHOFF, HENDRICKS & CARTER, LLP

### 2017 FEE SCHEDULE

	2016 Fees
<b><u>Staff:</u></b>	
▪ Partner-in-Charge	\$255/hr
▪ Project Manager (12 – 25-yrs. Experience)	\$215/hr
▪ Design Engineer (4 – 12-yrs. Experience)	\$145/hr
▪ Engineer-in-Training (0 – 4-yrs. Experience)	\$100/hr
▪ AutoCAD III (15 – 38-yrs. Experience)	\$150/hr
▪ AutoCAD II (5 - 15-yrs. Experience)	\$122/hr
▪ AutoCAD I (0 - 4-yrs. Experience)	\$80/hr
▪ Word Processor II (37-yrs. Experience)	\$120/hr
▪ Word Processor I (0 - 10-yrs. Experience)	\$75/hr
▪ Survey Crew	\$160/crew hour
Outside Consultants	Invoice Cost x 1.15
<b><u>Copies:</u></b>	
▪ Copies (B&W)	\$0.20 /sheet
▪ LaserJet (B&W)	\$0.25 /sheet
▪ LaserJet (Color)	\$1.50 /sheet
▪ Laminating	\$2.00 /sheet
▪ Paper Plots	\$5.00 /sheet
▪ Mylar Plots	\$7.00 /sheet
Modeling Software	\$100.00 /week
▪ (Water, Sewer, HEC)	\$300.00 /month
Outside Services	Invoice Cost x 1.15



# EXHIBIT C

## SUB-CONSULTANT FEE SCHEDULE



**ELK ENGINEERING ASSOCIATES, INC.**  
 8950 FORUM WAY  
 FORT WORTH, TX 76140  
 PHONE: 817-568-8585 ♦ FAX: 817-568-8590  
 TOLL FREE: 800-442-5641  
 WEB ADDRESS: [www.elkeng.com](http://www.elkeng.com)

### ENGINEERING FEE SCHEDULE (Effective 1 October 2014)

**Fee Schedule:** For services of qualified personnel in problem evaluation, testing, engineering, design, specification preparation, installation, inspection, supervision and CAD.

**Charges:** Based on normal eight hour day. Weekends and holidays may be billed at 1.5 times normal rates. Personnel time is billed in 0.1 hour increments.

**All Work:** Performed under the supervision of a Professional Engineer or Accredited Corrosion Specialist.

**Field Time:** Time is calculated portal-to-portal from the office where personnel are based.

**Terms:** Net 30 days. Interest of 1-1/2% per month charged on all past due accounts. All payments in USD.

Principal Engineer .....	\$ 189.00
Professional Engineer .....	\$ 177.00
Corrosion Engineer .....	\$ 152.00
NACE International Corrosion/Cathodic Protection Specialist .....	\$ 140.00
Staff Engineer (E.I.T.) .....	\$ 96.00
NACE International Senior Corrosion Technologist .....	\$ 108.00
NACE International Corrosion Technologist .....	\$ 96.00
NACE International Corrosion Technician, Senior Status .....	\$ 82.00
NACE International Corrosion Technician or CP2 Technician .....	\$ 76.00
NACE International CP1 Tester .....	\$ 60.00
Corrosion Technician-in-Training .....	\$ 57.00
Construction Foreman .....	\$ 57.00
Corrosion Helper / Construction Lead .....	\$ 48.00
Word Processing/Clerical .....	\$ 50.00
CAD Operator & System .....	\$69.00 to \$ 107.00

### EXPENSES

Travel Expense .....	Cost + 15%
Equipment .....	Cost + 15%
Sub-Contract Labor .....	Cost + 15%
Construction Materials .....	List Price

### CHARGES PER MILE

4-Wheel Drive Pickup Truck .....	\$0.95
Pickup Truck .....	\$0.80
Automobile .....	\$0.67

### RATES PER HOUR FOR OVERSEAS TRAVEL

Principal Engineer .....	\$280.00
Professional Engineer .....	\$260.00
Corrosion Engineer .....	\$225.00
NACE International Senior Corrosion Technologist .....	\$160.00
Corrosion Technologist .....	\$140.00
Corrosion Technician .....	\$112.00

\\Server\company\Fee Schedules\2014 FEE SCHEDULE\2014 ENGINEERING FEE SCHEDULE.xls

# EXHIBIT C

## SUB-CONSULTANT FEE SCHEDULE

### HENLEY-JOHNSTON & ASSOCIATES SCHEDULE OF FEES FOR BIRKHOFF, HENDRICKS & CARTER MAY 2017

ITEM	UNIT PRICE
<u>PERSONNEL RATES AND REPORT CHARGE</u>	
<u>GEOTECHNICAL</u>	
Principal, hour	\$ 175.00
Senior Geotechnical Engineer/Engineering Geologist, hour	\$ 145.00
Staff Geotechnical Engineer/Engineering Geologist, hour	\$ 125.00
Engineering Geologist, hour	\$ 105.00
Field Logging – Staff Geologist, hour	\$ 65.00
Administrative Support (drafting, report preparation, etc.), hour	\$ 60.00
Trip Charges, ea.	\$ 25.00
<u>SPECIAL CONSULTANTS</u>	
Consultant hourly rate and expenses	Cost + 15%
<u>FIELD AND LABORATORY FEE SCHEDULE</u>	
<u>Identification &amp; Classification</u>	
Moisture Content	\$ 5.00
Hand Penetrometer/Torvane	\$ 5.00
Atterberg Limits, Raw Soil:	
A.) Wet Method	\$ 55.00
B.) Dry Method	\$ 55.00
Atterberg Limits, Soil plus Lime (Dry Method)	\$ 65.00
Volumetric Shrinkage	\$ 40.00
Bar Linear Shrinkage	\$ 40.00
Grain Size Analysis:	
A.) Sieve Analysis & Hydrometer	\$ 155.00
B.) Sieve Analysis 3" through - 200m	\$ 75.00
C.) Percent Passing - 200m	\$ 50.00
D.) Hydrometer, only	\$ 95.00
Specific Gravity	\$ 90.00
Dry Unit Weight & Moisture Content	\$ 15.00
<u>Strength Properties</u>	
<u>ROCK</u>	
Unconfined Compression	
A.) Peak Stress only	\$ 55.00
B.) Modulus of Elasticity	\$ 65.00
C.) Modulus of Elasticity and Poisson's Ratio	\$ 400.00
Triaxial Compression (Unconsolidated -Undrained), per stage	
A.) Peak Stress only	\$ 150.00
B.) Modulus of Elasticity	\$ 200.00
C.) Modulus of Elasticity and Poisson's Ratio	\$ 550.00
Hoek Cell Testing	\$ 150.00
Direct Shear (Shear Stress Less than 200psi)	
A.) Single Stage	\$ 250.00
B.) Same Specimen; Each Additional Stage	\$ 125.00
C.) Ultra - Slow Test; Additional Charge (Single Stage Only)	\$ 700.00
Tension, Brazil	\$ 55.00
Double Ring Shear	\$ 55.00
Point Load	\$ 50.00

# EXHIBIT C

## SUB-CONSULTANT FEE SCHEDULE

### HENLEY-JOHNSTON & ASSOCIATES SCHEDULE OF FEES FOR BIRKHOFF, HENDRICKS & CARTER MAY 2017

ITEM	UNIT PRICE
<u>SOIL</u>	
Unconfined Compression	
A.) Peak Stress only	\$ 55.00
B.) Modulus of Elasticity	\$ 65.00
Triaxial Compression	
A.) Unconsolidated - Undrained (UU), per stage	\$ 150.00
B.) Consolidated - Undrained (R)	
1) Saturation Only	
(a) one day or less	\$ 90.00
(b) Each additional day	\$ 45.00
2) Single Stage	\$ 200.00
3) Each Additional Stage	\$ 125.00
C.) Consolidated - Undrained (R) with Pore Pressure Measurement	
1) Saturation	
(a) one-day or less	\$ 90.00
(b) Each additional day	\$ 45.00
2) Single Stage	\$ 300.00
3) Each Additional Stage	\$ 125.00
D.) Consolidated - Drained (S)	
1) Saturation	
(a) one-day or less	\$ 90.00
(b) Each additional day	\$ 45.00
2) Single Stage	\$ 325.00
3) Each Additional Stage	\$ 125.00
Direct Shear, Consolidated, Drained	
A.) Single stage or Per Stage for Multi-Sample	\$ 300.00
B.) For Single Sample; Each Additional Stage	\$ 125.00
C.) Ultra-Slow Test; Additional Charge (Single Stage Only)	\$ 800.00
Preparation of Remolded or Compacted Specimen	\$ 50.00
<u>Volume Changes</u>	
Absorption - Pressure and Swell	
A.) Free-Swell, Soil	\$ 65.00
B.) Absorption Pressure swell, Soil	\$ 125.00
Consolidation	
A.) Soil	\$ 550.00
B.) Soft Rock	Varies
<u>OTHER TESTING</u>	
Moisture vs. Density Relationship	
A.) Optimum Moisture (TEX - 113E)	Cost +15%
B.) Optimum Moisture (Modified)(ASTM D-1557)	\$ 195.00
C.) Optimum Moisture (Standard Compaction of Raw Soil)(ASTM D-698)	\$ 175.00
D.) Optimum Moisture (Standard Compaction of Soil and Lime)	\$ 195.00
E.) Additional Fee for Processing Flex Base Material	\$ 200.00
F.) Relative Density	\$ 300.00
Permeability, Soil - Flex Wall Membrane, Constant Head, ea.	\$ 300.00
Permeability, Soil - Falling Head, ea.	\$ 200.00

# EXHIBIT C

## SUB-CONSULTANT FEE SCHEDULE

### HENLEY-JOHNSTON & ASSOCIATES SCHEDULE OF FEES FOR BIRKHOFF, HENDRICKS & CARTER MAY 2017

ITEM	UNIT PRICE
<u>OTHER TESTING (cont.)</u>	
C B R (Three Point Test)	
A.) Fine - Grained Soil, ea.	\$ 600.00
B.) Soil and Lime, ea.	\$ 650.00
C.) Coarse Grained Soil, ea.	\$ 700.00
D.) Field, ea.	Varies
Chlorides, ea.	At Cost + 15%
Pinhole Dispersion, ea.	\$ 250.00
Crumb Test, ea.	\$ 25.00
Plate Bearing Test (Field Test = CBR), ea.	Varies
Chemical Tests, ea.	At Cost + 15%
Preparation of Rock Core Specimen for Strength Test (ASTM D 4538), Absorption	
Pressure and Swell Test or Direct Shear Test, ea.	\$ 50.00
Outside Laboratory Tests, ea.	At Cost + 15%
Soluble Sulfates, ea.	\$ 105.00
Soil Resistivity – lab, ea.	\$ 85.00
Field Soil Resistivity, hr.	\$ 125.00
Harvard Miniature, ea.	\$ 95.00

### FIELD EXPLORATION

<u>MOBILIZATION</u>	
Mobilization,	\$ 350.00
Field Supervisor: Layout, clearances, etc., Per hour	\$ 95.00

### SOIL AND CORE BORINGS

Soil, continuous to 10 feet, intermittent sampling below 10 feet (5-ft. intervals with Shelby Tube And /or split spoon - minimum charge = 20feet)	
A.) 0 to 50 feet, linear feet	\$ 12.50
B.) 51 to 100 feet, linear feet	\$ 14.00
C.) 100 feet and greater, linear feet	Job Specific
Soil, continuous sampling, Shelby Tube	
A.) 0 to 10 feet, linear feet	\$ 12.50
B.) 11 to 20 feet, linear feet	\$ 14.00
Temporary Casing, linear feet	\$ 7.00
Rock Core, with carbide bit	
A.) Overburden to 50 feet, linear feet	\$ 25.00
B.) Overburden (50' – 100') If	\$ 27.00
C.) Overburden (Greater than 100') If	\$ 32.00
Rock Core, with diamond bit	
A.) Overburden to 50 feet, linear feet	\$ 27.00
B.) Overburden (50' – 100') If	\$ 32.00
C.) Overburden (Greater than 100') If	\$ 38.00



# EXHIBIT C

## SUB-CONSULTANT FEE SCHEDULE

HENLEY-JOHNSTON & ASSOCIATES  
SCHEDULE OF FEES  
FOR BIRKHOFF, HENDRICKS & CARTER  
MAY 2017

ITEM	UNIT PRICE
<u>OTHER BORING AND TESTS</u>	
Field Tests	
A.) THD Cone Penetrometer, ea.	\$ 25.00
B.) Standard Penetration Test (SPT), ea.	\$ 25.00
Large Volume Samples, hour	\$125.00
Auger Borings - Soil (4-inch helical auger), linear feet	\$ 9.00
Hand Auger Borings, direct push rig, hour	\$225.00
Piezometer Installation (minimum 20 feet), linear feet	\$ 9.00
Piezometer Readings, hour/Technician	\$ 65.00
Concrete Coring	
A.) Concrete Coring, hour	\$ 50.00
B.) Coring Hardened Concrete, linear inch	\$ 5.00
Field Testing (Infiltration, Pressure, etc. plus material & time), hr	\$225.00
Benchmark Installations	Varies
Drill Rig and Crew Standby, hour	\$225.00
Other Materials	At Cost +15%
Inclinometer Installation (minimum 20 feet), LF	\$ 30.00
Inclinometer Readings, Hour/Technician	\$ 65.00

## EXHIBIT C

### SUB-CONSULTANT FEE SCHEDULE

Axis Construction, LP  
P.O. Box 77916  
Fort Worth, Texas 76177  
ACLP #17062

May 20, 2017

### Pothole/Utility Locate Fee Schedule

Mr. Gary Hendricks, PE  
Birkhoff, Hendricks, and Carter, LLC  
11910 Greenville Ave. Ste. 600  
Dallas, Texas 754243

**RE: Fee Schedule for Pothole/Utility Locating**

I have previously provided you a quote for Level A utility locating near Hwy 380 and I-35 in Denton at a cost of \$9,000.00/locate for a minimum of 6 locates. This does not include potholing in material that requires coring or removal of rock.

Below is a compiled a "general" fee schedule to address additional Potholing work if required for the City of Denton along I-35. Please note the following:

**Vacuum Trailer - 500 to 1000 gallon with 2 man crew**

Utilities 2'-4' of cover in grass outside of paving - \$350/utility

Utilities 4'-1" to 7' of cover outside of paving - \$700/utility

Utilities 7'-1" to 10' of cover outside of paving - \$1025/utility

Adder for general traffic control = \$300/locate

Adder for additional traffic barricades, plans or flagmen will be charged at cost plus 15%

Adder for asphalt paving removal and replacement = \$340/locate

Adder for concrete removal and replacement = \$500/locate

Backfill holes with sand = \$50/vertical foot

Install 2" PVC locator pipe on top of utility = \$3/vertical foot

Travel time for Dumping will be charged at \$170/hour unless City has a local site for dumping.

Trailer and crew can be hired for a daily rate of \$1,800 plus adders traffic, dumping and paving

Each project is subject to a minimum fee of \$1,800.

**Vacuum Truck with 2 man crew**

Utilities 2' to 5' of cover in grass outside of paving - \$550/utility

Utilities 5'-1" to 8' of cover outside of paving - \$900/utility

Utilities 8'-1" to 11' of cover outside of paving - \$1225/utility

Utilities 11'-1" to 14' of cover outside of paving - \$1625/utility

Utilities 14'-1" to 17' of cover outside of paving - \$2400/utility

Utilities 17'-1" to 20' of cover outside of paving - \$3,500/utility

Adder for traffic control = \$300/locate

Adder for asphalt paving removal and replacement = \$940/locate

Adder for concrete removal and replacement = \$1700/locate

Travel time for Dumping will be charged at \$330/hour.

Each project is subject to a daily minimum fee of \$3,500.




# EXHIBIT C

## PROJECT COMPLETION SCHEDULE

<b>Task Item</b>	<b>Project Schedule</b>
Notice to Proceed	By City of Denton
Begin Field Surveys	2 weeks after Notice to Proceed
Complete Field Surveys	4 weeks after Notice to Proceed
Submit Preliminary Engineering Report	6 weeks after Notice to Proceed
Begin Easement Preparation	8 weeks after Notice to Proceed
Complete Easement Preparation	3 months after Notice to Proceed
Prelim Plans to City for Review	4 months after Notice to Proceed
Receive Review Comments	By City of Denton
Complete Final Plans	6 months after Notice to Proceed
Advertise Project	Upon Acquisition of Easements and Permit Approvals
Receive Bid	1 month After Acquisition of Esmts.
Award Contract	6 weeks After Acquisition of Esmts.
Notice to Proceed	2 weeks after Const. Contract Award
Complete Construction	6 months after Notice

Exhibit D

	<b>CONFLICT OF INTEREST QUESTIONNAIRE -</b>		<b>FORM CIQ</b>
	<b>For vendor or other person doing business with local governmental entity</b>		
	<b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b>		
	<p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		
<b>1</b>	<b>Name of vendor who has a business relationship with local governmental entity.</b> Gary C. Hendricks, P.E., R.P.L.S.		
<b>2</b>	<input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b>  (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7 <sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
<b>3</b>	<b>Name of local government officer about whom the information in this section is being disclosed.</b>  <div style="text-align: center;"> <u>Lee Perry</u>            Name of Officer         </div> <p>This section, (item 3 including subparts A, B, C &amp; D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input checked="" type="checkbox"/> No         </div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input checked="" type="checkbox"/> No         </div> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?</p> <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Yes           <input checked="" type="checkbox"/> No         </div> <p>D. Describe each employment or business and family relationship with the local government officer named in this section.</p> <p style="margin-left: 40px;">None</p>		
<b>4</b>	<input checked="" type="checkbox"/> <b>I have no Conflict of Interest to disclose.</b>		
<b>5</b>	<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div>           DocuSigned by:              Gary C. Hendricks, P.E., R.P.L.S.  <small>52331AC2B44341B...</small> </div> <div style="text-align: center;">           al entity         </div> <div style="text-align: right;">           6/15/2017            Date         </div> </div>		

## Certificate Of Completion

Envelope Id: DB167E915A69417EA50AAC169A8DB772

Status: Sent

Subject: Please DocuSign: City Council Contract 6479

Source Envelope:

Document Pages: 53

Signatures: 3

Envelope Originator:

Supplemental Document Pages: 0

Initials: 0

Jody Word

Certificate Pages: 6

AutoNav: Enabled

Payments: 0

jody.word@cityofdenton.com

Envelopeld Stamping: Enabled

IP Address: 129.120.6.150

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

## Record Tracking

Status: Original

Holder: Jody Word

Location: DocuSign

6/15/2017 8:58:27 AM

jody.word@cityofdenton.com

## Signer Events

## Signature

## Timestamp

Jody Word

**Completed**

Sent: 6/15/2017 9:03:34 AM

jody.word@cityofdenton.com

Viewed: 6/15/2017 9:03:44 AM

Buyer

Signed: 6/15/2017 9:06:47 AM

City of Denton

Using IP Address: 129.120.6.150

Security Level: Email, Account Authentication (Optional)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Gary C. Hendricks, P.E., R.P.L.S.

DocuSigned by:  
*Gary C. Hendricks, P.E., R.P.L.S.*  
52331AC2B44341B...

Sent: 6/15/2017 9:06:51 AM

ghendricks@bhcllp.com

Viewed: 6/15/2017 9:38:40 AM

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Jennifer DeCurtis

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City of Denton

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Todd Hileman

Todd.Hileman@cityofdenton.com

Security Level: Email, Account Authentication (Optional)

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Signer Events	Signature	Timestamp
Accepted: 2/8/2017 4:52:51 PM ID: 8154723a-9757-4d53-a4b5-794656233671  Jennifer Walters jennifer.walters@cityofdenton.com Security Level: Email, Account Authentication (Optional) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Person Signer Events	Signature	Timestamp
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Robin Fox Robin.fox@cityofdenton.com Security Level: Email, Account Authentication (Optional) <b>Electronic Record and Signature Disclosure:</b> Accepted: 10/9/2015 11:39:51 AM ID: 04463961-03db-4c4d-9228-d660d6146ed6		
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Jane Richardson jane.richardson@cityofdenton.com Security Level: Email, Account Authentication (Optional) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Lee Perry Lee.Perry@cityofdenton.com Security Level: Email, Account Authentication (Optional) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

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**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

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