



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Meeting Agenda Public Utilities Board

Monday, March 25, 2024

9:00 AM

Council Work Session Room

REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD

Citizens will be able to participate in the following way:

- eComment – The agenda was posted online at <https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>. Once the agenda is posted, a link to make virtual comments using the eComment module will be made available next to the meeting listing on the Upcoming Events Calendar. Using eComment, Individuals may indicate support or opposition and submit a brief comment about a specific agenda item. eComments may be submitted up until the start of the meeting at which time the ability to make an eComment will be closed. eComments will be sent directly to members of the Public Utilities Board immediately upon submission and recorded by the Secretary into the Minutes of the Meeting.

After determining that a quorum is present, the Public Utilities Board of the City of Denton, Texas will convene in a Regular Meeting on Monday, March 25, 2024, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

This section of the agenda permits a person to make comments regarding public business on items as listed on the agenda. Each speaker will be allowed a maximum of four (4) minutes. Such person(s) shall have registered under the REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD detailed at the beginning of this agenda. Registration is required prior to the time this agenda item is read into the record.

2. CONSENT AGENDA

Each of the items on the Consent Agenda is recommended by the Staff and approval thereof will be strictly on the basis of the Staff recommendations. Approval of the Consent Agenda authorizes the City Manager or designee to implement each item in accordance with the Staff recommendations. The Public Utilities Board has received background information and has had an opportunity to raise questions regarding these items prior to consideration.

Listed below are bids, purchase orders, contracts, and other items to be approved for payment or other action under the Consent Agenda (Agenda Items A – D). This listing is provided on the Consent Agenda to allow Public Utilities Board Members to discuss or withdraw an item prior to approval of the Consent Agenda. If no items are pulled, the Consent Agenda Items will be approved with one motion. If items are pulled for separate discussion, they may be considered as the first items following approval of the Consent Agenda.

- A. [PUB24-062](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a

Professional Services Agreement with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-031 - Professional Services Agreement for water and wastewater modeling services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$95,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance and Contract](#)

- B.** [PUB24-063](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with PowerWorld Corporation, for the annual licensing, maintenance, and support of PowerWorld Simulator software, currently used by Denton Municipal Electric, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8404 - awarded to PowerWorld Corporation, in the not-to-exceed amount of \$63,112.50, with a contract term expiring February 21, 2027).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance and Contract](#)

- C.** [PUB24-064](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Strong Data, Inc., for scalehouse software and hardware for the Solid Waste and Recycling Department, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8431 - awarded to Strong Data, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$339,080.85).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance and Contract](#)

- D.** [PUB24-065](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Xylem Water Solutions U.S.A., Inc., to purchase Flygt pumps, equipment, parts, supplies, and services to operate and maintain the City of Denton sewage pumping stations and treatment plants for the Water Reclamation Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8476 -

awarded to Xylem Water Solutions U.S.A., Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,875,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance and Contract](#)

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [PUB24-061](#) Consider approval of the March 11, 2024 minutes.

Attachments: [3-11-24 PUB Minutes](#)

- B. [PUB24-039](#) Consider recommending adoption of an ordinance establishing the City of Denton Utility System Nodal Market Revenue Financing Program and authorizing Utility System Nodal Market Revenue Notes, Taxable Series A, in a maximum aggregate principal amount not to exceed sixty million five thousand dollars (\$60,005,000) to satisfy ERCOT financial security requirements; and providing an effective date.

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Ordinance](#)
 [Exhibit 3 - Presentation](#)

- C. [PUB24-059](#) Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$84,770,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date.

Attachments: [Exhibit 1 Agenda Information Sheet](#)
 [Exhibit 2 Ordinance](#)
 [Exhibit 3 Presentation](#)

- D. [PUB24-060](#) Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$177,560,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date.

Attachments: [Exhibit 1 Agenda Information Sheet](#)
 [Exhibit 2 Ordinance](#)
 [Exhibit 3 Presentation](#)

- E. [PUB24-066](#) Management Reports
1. Voting Requirements for Public Utilities Board Members
 2. DME Personnel Expenses
 3. Future Agenda Items
 4. New Business Action Items

Attachments: [1. Voting Requirements for Public Utilities Board Members](#)
 [2. DME Personnel Expenses Memo](#)
 [3. Future Agenda Items](#)
 [4. New Business Action Items](#)

4. CONCLUDING ITEMS

A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the Public Utilities Board or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting AND Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

CERTIFICATE

I certify that the above notice of meeting was posted on the official website (<https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on March 21, 2024, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

OFFICE OF THE CITY SECRETARY

NOTE: THE CITY OF DENTON'S DESIGNATED PUBLIC MEETING FACILITIES ARE ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE ACCOMMODATION, SUCH AS SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED, IF REQUESTED AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 940-349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT REASONABLE ACCOMMODATION CAN BE ARRANGED.



City of Denton

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Legislation Text

File #: PUB24-062, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-031 - Professional Services Agreement for water and wastewater modeling services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$95,000.00).



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AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: March 25, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-031 – Professional Services Agreement for water and wastewater modeling services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$95,000.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The purpose of this contract is to provide on-call engineering services as an extension of the City of Denton’s staff to provide development review assistance, model updates, and any post-analysis services for the City’s water and wastewater system.

Staff reviewed proposed construction plans to determine the impact on the City’s existing water and wastewater system. Kimley-Horn will utilize the City’s existing water and wastewater model to perform this analysis. Kimley-Horn will also prepare a review letter documenting system capacity as it relates to the proposed development. The City of Denton Water Utilities Department will provide expected water and wastewater demand for the proposed development, and review and provide comments on the submitted review letter. Kimley-Horn will update the water and wastewater model with any updated data provided by the City of Denton.

Request for Qualifications for professional engineering services for Water and Wastewater was solicited using the City’s formal solicitation process. City Council approved a pre-qualified list of engineering firms on March 23, 2021 (Ordinance 21-546).

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On March 23, 2021, City Council approved RFQ 7574 for a prequalified list of professional engineering firms for Water and Wastewater (Ordinance 21-546).

RECOMMENDATION

Award a contract with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department, in a not-to-exceed amount of \$95,000.

PRINCIPAL PLACE OF BUSINESS

Kimley-Horn and Associates, Inc.
Dallas, TX

SUSTAINABILITY MEASURES

The contract for Water and Wastewater modeling services will help the City of Denton in planning new water and wastewater infrastructure needed for the City’s growing population. The new additional infrastructure will increase capacity throughout the City. The facilities are essential to the safe treatment of water and wastewater discharge of effluent to the sensitive accepting water bodies.

FISCAL INFORMATION

These services will be funded from the Water Utilities Account #630512517.1360.10100. Requisition #163992 has been entered into the Purchasing software system in the amount of \$95,000. The budgeted amount for this item is \$95,000.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Nicholas Dampf, 940-349-8030.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR WATER AND WASTEWATER MODELING SERVICES FOR THE WATER UTILITIES DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7574-031 – PROFESSIONAL SERVICES AGREEMENT FOR WATER AND WASTEWATER MODELING SERVICES AWARDED TO KIMLEY-HORN AND ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$95,000.00).

WHEREAS, on March 23, 2021, the City Council approved a pre-qualified engineer list for Water and Wastewater (Ordinance 21-546), and the professional services provider (the “Provider”) mentioned in this ordinance is being selected as the most highly qualified on the basis of its demonstrated competence and qualifications to perform the proposed professional services; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the fees under the proposed contract are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees published by the professional associations applicable to the Provider’s profession, and such fees do not exceed the maximum provided by law; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

The motion to approve this ordinance was made by _____ and

seconded by _____ . This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

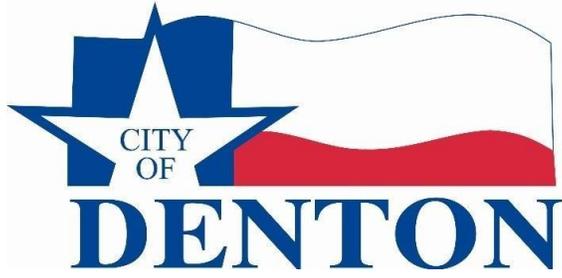
ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:

 Digitally signed by Marcella Lunn
 DN: dc=com, dc=cityofdenton, dc=codad, ou=Department Users and Groups, ou=General Government, ou=Legal, cn=Marcella Lunn, email=Marcella.Lunn@cityofdenton.com
 Date: 2024.03.06 13:00:48 -06'00'



DocuSign City Council Transmittal Coversheet

PSA	7574-031
File Name	Water Modeling
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and **KIMLEY-HORN AND ASSOCIATES, INC.** with its corporate office at 421 Fayetteville Street, Suite 600, Raleigh, NC 27607 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Water Modeling (the "PROJECT").

SECTION 1 **Scope of Services**

- A. The CITY hereby agrees to retain the ENGINEER, and the ENGINEER hereby agrees to perform, professional engineering services set forth in the Scope of Services attached hereto as Attachment A. These services shall be performed in connection with the PROJECT.
- B. Additional services, if any, will be requested in writing by the CITY. CITY shall not pay for any work performed by ENGINEER or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ENGINEER shall not be compensated for any additional work resulting from oral orders of any person.

SECTION 2 **Compensation and Term of Agreement**

- A. The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$95,000.00 in the manner and in accordance with the fee schedule as set forth in Attachment A. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B. Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

SECTION 3 **Terms of Payment**

Payments to the ENGINEER will be made as follows:

A. Invoice and Payment

- (1) The Engineer shall provide the City sufficient documentation, including but not limited to meeting the requirements set forth in the PROJECT schedule as set forth in Attachment A to reasonably substantiate the invoices.
- (2) The ENGINEER will issue monthly invoices for all work performed under this AGREEMENT. Invoices for the uncontested performance of the particular services are due and payable within 30 days of receipt by City.
- (3) Upon completion of services enumerated in Section 1, the final payment of any balance for the uncontested performance of the services will be due within 30 days of receipt of the final invoice.
- (4) In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The CITY will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.
- (5) If the CITY fails to make payment in full to ENGINEER for billings contested in good faith within 60 days of the amount due, the ENGINEER may, after giving 7 days' written notice to CITY, suspend services under this AGREEMENT until paid in full. In the event of suspension of services, the ENGINEER shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

SECTION 4 Obligations of the Engineer

A. General

The ENGINEER will serve as the CITY's professional engineering representative under this AGREEMENT, providing professional engineering consultation and advice and furnishing customary services incidental thereto.

B. Standard of Care

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license; and
- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

C. Subsurface Investigations

- (1) The ENGINEER shall advise the CITY with regard to the necessity for subcontract work such as special surveys, tests, test borings, or other subsurface investigations in connection with design and engineering work to be performed hereunder. The ENGINEER shall also advise the CITY concerning the results of same. Such surveys, tests, and investigations shall be furnished by the CITY, unless otherwise specified in Attachment A.
- (2) In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect the total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER.

D. Preparation of Engineering Drawings

The ENGINEER will provide to the CITY the original drawings of all plans in ink on reproducible mylar sheets and electronic files in .pdf format, or as otherwise approved by CITY, which shall become the property of the CITY. CITY may use such drawings in any manner it desires; provided, however, that the ENGINEER shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

E. Engineer's Personnel at Construction Site

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.
- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the

PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.

- (3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

F. Opinions of Probable Cost, Financial Considerations, and Schedules

- (1) The ENGINEER shall provide opinions of probable costs based on the current available information at the time of preparation, in accordance with Attachment A.
- (2) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the PROJECT, the ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, the ENGINEER makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ENGINEER's opinions, analyses, projections, or estimates.

G. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by the ENGINEER to ascertain that the construction contractor has completed the work in exact accordance with the AGREEMENT Documents; that the final work will be acceptable in all respects; that the ENGINEER has made an examination to ascertain how or for what purpose the construction contractor has used the moneys paid; that title to any of the work, materials, or equipment has passed to the CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

H. Record Drawings

Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. The ENGINEER is not responsible for any errors or omissions in the information from others that is incorporated into the record drawings.

I. Right to Audit

- (1) ENGINEER agrees that the CITY shall, until the expiration of five (5) years after final payment under this AGREEMENT, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of the ENGINEER involving transactions relating to this AGREEMENT. ENGINEER agrees that the CITY shall have access during normal working hours to all necessary ENGINEER facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The CITY shall give ENGINEER reasonable advance notice of intended audits.
- (2) ENGINEER further agrees to include in all its subconsultant agreements hereunder a provision to the effect that the subconsultant agrees that the CITY shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and photocopy any directly pertinent books, documents, papers and records of such subconsultant, involving transactions to the subcontract, and further, that the CITY shall have access during normal working hours to all subconsultant facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section together with subsection (3) hereof. CITY shall give subconsultant reasonable advance notice of intended audits.
- (3) ENGINEER and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ENGINEER for the cost of copies at the rate published in the Texas Administrative Code in effect as of the time copying is performed.

J. INSURANCE

(1) ENGINEER'S INSURANCE

- a. Commercial General Liability – the ENGINEER shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 per each occurrence with a \$2,000,000.00 aggregate. If such Commercial General Liability insurance contains a general aggregate limit, it shall apply separately to this PROJECT or location.
 - i. The CITY shall be included as an additional insured with all rights of defense under the CGL, using ISO additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the CITY. The Commercial General Liability insurance policy shall have no exclusions or endorsements that would alter or nullify: premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained within the policy, unless the CITY specifically approves such exclusions in writing.
 - ii. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained in accordance with this AGREEMENT.
- b. Business Auto – the ENGINEER shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of “any auto”, including owned, hired, and non-owned autos, when said vehicle is used in the course of the PROJECT. If the engineer owns no vehicles, coverage for hired or non-owned is acceptable.
 - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial umbrella liability insurance obtained by ENGINEER pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary,

commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.

- i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

(2) GENERAL INSURANCE REQUIREMENTS

- a. Certificates of insurance evidencing that the ENGINEER has obtained all required insurance shall be attached to this AGREEMENT prior to its execution.
- b. Applicable policies shall be endorsed to name the CITY an Additional Insured thereon, subject to any defense provided by the policy, as its interests may appear. The term CITY shall include its employees, officers, officials, agents, and volunteers as respects the contracted services.
- c. Certificate(s) of insurance shall document that insurance coverage specified in this AGREEMENT are provided under applicable policies documented thereon.
- d. Any failure on part of the CITY to attach the required insurance documentation hereto shall not constitute a waiver of the insurance requirements.
- e. A minimum of thirty (30) days notice of cancellation or material change in coverage shall be provided to the CITY. A ten (10) days notice shall be acceptable in the event of non-payment of premium. Notice shall be sent to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.
- f. Insurers for all policies must be authorized to do business in the State of

Texas and have a minimum rating of A:V or greater, in the current A.M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management.

- g. Any deductible or self insured retention in excess of \$25,000.00 that would change or alter the requirements herein is subject to approval by the CITY in writing, if coverage is not provided on a first-dollar basis. The CITY, at its sole discretion, may consent to alternative coverage maintained through insurance pools or risk retention groups. Dedicated financial resources or letters of credit may also be acceptable to the CITY.
- h. Applicable policies shall each be endorsed with a waiver of subrogation in favor of the CITY as respects the PROJECT.
- i. The CITY shall be entitled, upon its request and without incurring expense, to review the ENGINEER's insurance policies including endorsements thereto and, at the CITY's discretion; the ENGINEER may be required to provide proof of insurance premium payments.
- j. Lines of coverage, other than Professional Liability, underwritten on a claims-made basis, shall contain a retroactive date coincident with or prior to the date of the AGREEMENT. The certificate of insurance shall state both the retroactive date and that the coverage is claims-made.
- k. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption nor restrictive modification or changes from date of commencement of the PROJECT until final payment and termination of any coverage required to be maintained after final payments.
- l. The CITY shall not be responsible for the direct payment of any insurance premiums required by this AGREEMENT.
- m. Sub consultants and subcontractors to/of the ENGINEER shall be required by the ENGINEER to maintain the same or reasonably equivalent insurance coverage as required for the ENGINEER. When sub consultants/subcontractors maintain insurance coverage, ENGINEER shall provide CITY with documentation thereof on a certificate of insurance.

K. Independent Consultant

The ENGINEER agrees to perform all services as an independent consultant and not as a subcontractor, agent, or employee of the CITY. The doctrine of *respondeat superior* shall not apply.

L. Disclosure

The ENGINEER acknowledges to the CITY that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interest, direct or indirect, in property abutting the proposed PROJECT and business relationships with abutting property cities. The ENGINEER further acknowledges that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this AGREEMENT and prior to final payment under the AGREEMENT.

M. Asbestos or Hazardous Substances

- (1) If asbestos or hazardous substances in any form are encountered or suspected, the ENGINEER will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.
- (2) If asbestos or other hazardous substances are suspected, the CITY may request the ENGINEER to assist in obtaining the services of a qualified subcontractor to manage the remediation activities of the PROJECT.

N. Permitting Authorities - Design Changes

If permitting authorities require design changes so as to comply with published design criteria and/or current engineering practice standards which the ENGINEER should have been aware of at the time this AGREEMENT was executed, the ENGINEER shall revise plans and specifications, as required, at its own cost and expense. However, if design changes are required due to the changes in the permitting authorities' published design criteria and/or practice standards criteria which are published after the date of this AGREEMENT which the ENGINEER could not have been reasonably aware of, the ENGINEER shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

O. Schedule

ENGINEER shall manage the PROJECT in accordance with the schedule developed per Attachment A to this AGREEMENT.

P. Equal Opportunity

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.
- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and

ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

SECTION 5 **Obligations of the City**

A. City-Furnished Data

ENGINEER may rely upon the accuracy, timeliness, and completeness of the information provided by the CITY.

B. Access to Facilities and Property

The CITY will make its facilities accessible to the ENGINEER as required for the ENGINEER's performance of its services. The CITY will perform, at no cost to the ENGINEER, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ENGINEER's services. The CITY will be responsible for all acts of the CITY's personnel.

C. Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for the ENGINEER's services or PROJECT construction.

D. Timely Review

The CITY will examine the ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the CITY deems appropriate; and render in writing decisions required by the CITY in a timely manner in accordance with the PROJECT schedule prepared in accordance with Attachment A.

E. Prompt Notice

The CITY will give prompt written notice to the ENGINEER whenever CITY observes or becomes aware of any development that affects the scope or timing of the ENGINEER's services or of any defect in the work of the ENGINEER or construction contractors.

F. Asbestos or Hazardous Substances Release.

(1) CITY acknowledges ENGINEER will perform part of the work at CITY's

facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.

- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

G. Contractor Indemnification and Claims

The CITY agrees to include in all construction contracts the provisions of Article IV.E. regarding the ENGINEER's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ENGINEER for contractor's negligence.

H. Contractor Claims and Third-Party Beneficiaries

- (1) The CITY agrees to include the following clause in all contracts with construction contractors and equipment or materials suppliers:

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."

- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.
- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

I. CITY's Insurance

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement

cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

J. Litigation Assistance

The Scope of Services does not include costs of the ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY. In the event CITY requests such services of the ENGINEER, this AGREEMENT shall be amended or a separate agreement will be negotiated between the parties.

K. Changes

The CITY may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect the ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT with appropriate CITY approval.

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

ENGINEER shall be authorized to proceed with this AGREEMENT upon receipt of a written Notice to Proceed from the CITY.

B. Reuse of Project Documents

All designs, drawings, specifications, documents, and other work products of the ENGINEER, whether in hard copy or in electronic form, are instruments of service for this PROJECT, whether the PROJECT is completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without the written permission of the ENGINEER will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

C. Force Majeure

The ENGINEER is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the ENGINEER that prevent ENGINEER's performance of its obligations hereunder.

D. Termination

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
 - b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.
- (2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:
- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
 - b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
 - c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.
- (3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

E. Suspension, Delay, or Interruption to Work

The CITY may suspend, delay, or interrupt the services of the ENGINEER for the convenience of the CITY. In the event of such suspension, delay, or interruption, an equitable adjustment in the PROJECT's schedule, commitment and cost of the ENGINEER's personnel and subcontractors, and ENGINEER's compensation will be made.

F. Indemnification

IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ENGINEER SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ENGINEER OR ENGINEER'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ENGINEER EXERCISES CONTROL TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER. CITY IS ENTITLED TO RECOVER ITS REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE ENGINEER'S LIABILITY.

G. Assignment

Neither party shall assign all or any part of this AGREEMENT without the prior written consent of the other party.

H. Jurisdiction

The law of the State of Texas shall govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it. The venue for any litigation related to this AGREEMENT shall be Denton County, Texas.

I. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Sections 5.F., 6.B., 6.D., 6.F., 6.H., and 6.I. shall survive termination of this AGREEMENT for any cause.

J. Observe and Comply

ENGINEER shall at all times observe and comply with all federal and State laws and regulations and with all City ordinances and regulations which in any way affect this AGREEMENT and the work hereunder, and shall observe and comply with all orders, laws ordinances and regulations which may exist or may be enacted later by governing bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof shall be considered. **ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LIABILITY ARISING OUT OF THE VIOLATION OF ANY SUCH ORDER, LAW, ORDINANCE, OR REGULATION, WHETHER IT BE BY ITSELF OR ITS EMPLOYEES.**

K. Immigration Nationality Act

ENGINEER shall verify the identity and employment eligibility of its employees who perform work under this AGREEMENT, including completing the Employment Eligibility Verification Form (I-9). Upon request by CITY, ENGINEER shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ENGINEER shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any ENGINEER employee who is not legally eligible to perform such services. **ENGINEER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY ENGINEER, ENGINEER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ENGINEER, shall have the

right to immediately terminate this AGREEMENT for violations of this provision by ENGINEER.

L. Prohibition on Contracts with Companies Boycotting Israel

Engineer acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

M. Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

N. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

O. Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Engineer acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Engineer certifies that Engineer’s signature provides written verification to the City that Engineer: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

P. Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Engineer is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

Q. Prohibition Against Personal Interest in Contracts

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City’s Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City’s Conflict of Interest Questionnaire.

R. Agreement Documents

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, which supersedes all prior written or oral understandings, and may only be

changed by a written amendment executed by both parties. This AGREEMENT may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument. The following attachments and schedules are hereby made a part of this AGREEMENT:

Attachment A - Scope of Services & Compensation

These documents make up the AGREEMENT documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the AGREEMENT documents, the inconsistency or conflict shall be resolved by giving precedence first to the written AGREEMENT then to the AGREEMENT documents in the order in which they are listed above.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

Duly executed by each party's designated representative to be effective on

_____.

BY:
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:
ENGINEER
Kimley-Horn And Associates, INC.

DocuSigned by:
John Atkins Senior Vice President
Authorized Agent, Title

Full Name: John Atkins

2024-1129441
TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational
obligations and business terms.

DocuSigned by:
Stephen Gay
Signature

Director,
Title

Water Utilities
Department

Date Signed: 3/1/2024

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
BY: Marcella Luna
4B070831B4AA438...

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

ATTACHMENT "A"

Scope for:

WATER & WASTEWATER MODELING SERVICES

The ENGINEER will perform its services pursuant to the requirements delineated below. Services under this attachment include analysis related to water and wastewater modeling.

Project Understanding

ENGINEER is to provide on-call engineering services as an extension of the CITY's staff for the purpose of providing development review assistance, model updates, and any post analysis services for the water or wastewater system.

Scope of Services

ENGINEER's scope of services is as follows:

- Task 1 – Development Review- \$50,000
- Task 2 – Model Updates- \$25,000
- Task 3 – Post Analysis Services- \$20,000

Task 1 – Development Review

1. ENGINEER will review proposed construction plans for the purpose of determining the impact to the CITY's existing water or wastewater system. ENGINEER will utilize the CITY's existing water or wastewater model to perform this analysis.
2. ENGINEER will prepare a review letter documenting system capacity as it relates to the proposed development.
3. CITY will:
 - a. Provide expected water or wastewater demand for the proposed development.
 - b. Review and provide comments on submitted review letter.

Task 2 – Model Updates

1. ENGINEER will update the water or wastewater model with any updated data provided by the CITY.

Task 3 – Post Analysis Services

1. Based on any completed water or wastewater model analysis or update, ENGINEER will provide additional scope of services agreed upon by the City. ENGINEER can provide these services, in accordance with the provisions of the Standard Agreement.

ATTACHMENT "A"

Compensation for Engineering Design Related Services for:

WATER & WASTEWATER MODELING SERVICES

ENGINEER will perform the Services in Tasks 1 - 3 on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then-current rates.

Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the CITY. Should the CITY request ENGINEER to advance any such project fees on the CITY's behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the CITY.

Based on current information, ENGINEER estimates that labor fees will be approximately \$95,000. Fee estimates in this Agreement are for general budgeting purposes only. Actual fees may be less or more than the estimates.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and ENGINEER project number.

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

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

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

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

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

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

Kimley-Horn And Associates, Inc.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relations hip with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?
 Yes No
- B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?
 Yes No
- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?
 Yes No
- D. Describe each employment or business and family relationship with the local government officer named in this section.

4 I have no Conflict of Interest to disclose.

5 DocuSigned by:

John Atkins

3/1/2024

Signature of Vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: E92447AB124A46A9984D00F1AE478E57	Status: Sent
Subject: Please DocuSign: City Council Contract 7574-031 Water Modeling	
Source Envelope:	
Document Pages: 23	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Gabby Leeper
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Gabby.Leeper@cityofdenton.com
	IP Address: 198.49.140.104

Record Tracking

Status: Original	Holder: Gabby Leeper	Location: DocuSign
2/29/2024 5:16:23 PM	Gabby.Leeper@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Gabby Leeper gabby.leeper@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.104	Sent: 2/29/2024 5:17:29 PM Viewed: 2/29/2024 5:17:38 PM Signed: 2/29/2024 5:18:31 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 2/29/2024 5:18:34 PM Viewed: 3/1/2024 7:53:24 AM Signed: 3/1/2024 8:14:08 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 107.115.147.128 Signed using mobile	Sent: 3/1/2024 8:14:10 AM Viewed: 3/1/2024 1:32:00 PM Signed: 3/1/2024 1:32:32 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

John Atkins John.Atkins@kimley-horn.com Vice President Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 130.41.212.55	Sent: 3/1/2024 1:32:36 PM Viewed: 3/1/2024 3:25:29 PM Signed: 3/1/2024 3:31:37 PM
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Electronic Record and Signature Disclosure:
Accepted: 3/1/2024 3:25:29 PM
ID: a0fe16fc-6d87-4a50-9a76-201a9f02cec0

Signer Events	Signature	Timestamp
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Stephen Gay
 Stephen.Gay@cityofdenton.com
 Director,
 Water Utilities
 Security Level: Email, Account Authentication
 (None)

DocuSigned by:

 9EBFF5658E56492...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.10

Sent: 3/1/2024 3:31:39 PM
 Viewed: 3/1/2024 3:46:51 PM
 Signed: 3/1/2024 3:48:17 PM

Electronic Record and Signature Disclosure:
 Accepted: 3/1/2024 3:46:51 PM
 ID: 02054601-8e94-4161-a09f-b2474bf380d6

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication
 (None)

Sent: 3/1/2024 3:48:21 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Jesus Salazar
 jesus.salazar@cityofdenton.com
 Security Level: Email, Account Authentication
 (None)

Electronic Record and Signature Disclosure:
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication
 (None)

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Sent: 2/29/2024 5:18:34 PM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
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Gretna Jones
gretna.jones@cityofdenton.com
Legal Secretary
City of Denton
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

COPIED

Sent: 3/1/2024 3:48:21 PM
Viewed: 3/4/2024 11:22:09 AM

City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Jewel Lanning
Jewel.Lanning@cityofdenton.com
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

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

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

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

** 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.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-063, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with PowerWorld Corporation, for the annual licensing, maintenance, and support of PowerWorld Simulator software, currently used by Denton Municipal Electric, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8404 - awarded to PowerWorld Corporation, in the not-to-exceed amount of \$63,112.50, with a contract term expiring February 21, 2027).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: March 25, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with PowerWorld Corporation, for the annual licensing, maintenance, and support of PowerWorld Simulator software, currently used by Denton Municipal Electric, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8404 – awarded to PowerWorld Corporation, in the not-to-exceed amount of \$63,112.50, with a contract term expiring February 21, 2027).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

PowerWorld Simulator is a specialized software tool designed for engineers and energy market analysts to comprehensively model and analyze complex high-voltage power systems, making it an indispensable tool in the planning and operation of modern electrical grids. This powerful software enables analysts to model, simulate, and optimize complex electrical power systems with a high degree of precision. With PowerWorld Simulator, analysts can assess the stability and reliability of the grid, evaluate the impact of various contingencies, and plan for future system expansions or upgrades. Its real-time simulation capabilities allow for dynamic analysis of market operations, helping analysts make informed decisions on energy dispatch, pricing, and resource allocation. Additionally, the software provides insights into transmission congestion and voltage stability issues, assisting analysts in mitigating potential grid disruptions. Since 2020, PowerWorld has successfully provided Denton Municipal Electric (DME) with software that is cost-effective and meets all functional requirements. Additionally, PowerWorld holds all legal, patent, and brand rights for PowerWorld Simulator, thus it qualifies as the sole source vendor of its software suite.

PowerWorld has consistently demonstrated exceptional technical expertise in the energy market, and their support and partnership with DME since 2020 have proven to be invaluable. Their deep understanding of power system modeling and simulation has significantly contributed to DME's ability to navigate the ever-evolving energy landscape. PowerWorld's commitment to staying at the forefront of industry advancements has ensured that DME remains well-equipped to address emerging challenges and

opportunities. Their proactive support and tailored solutions have been instrumental in optimizing grid operations, enhancing reliability, and optimizing resource allocation. This ongoing partnership has not only strengthened DME's technical capabilities but has also fostered a collaborative environment where innovative solutions are continuously explored, solidifying PowerWorld's reputation as a trusted ally in DME's pursuit of excellence in the energy market.

Section 252.022 of the Local Government Code provides that procurement of sole source commodities and services is exempt from competitive bidding, if over \$50,000, shall be awarded by the governing body.

RECOMMENDATION

Award with a contract to PowerWorld Corporation, for the annual licensing, maintenance, and support of PowerWorld Simulator software, currently used by Denton Municipal Electric, in a three (3) year not-to-exceed amount of \$63,112.50.

PRINCIPAL PLACE OF BUSINESS

PowerWorld Corporation
Champaign, IL

ESTIMATED SCHEDULE OF PROJECT

This contract will expire on February 21, 2027.

FISCAL INFORMATION

The services will be funded from DME's account 600750.7899.5880. Requisition #163320 has been entered into the Purchasing software system in the amount of \$63,112.50. The budgeted amount for this item is \$63,112.50.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Jerry Looper, 940-349-7676.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH POWERWORLD CORPORATION, FOR THE ANNUAL LICENSING, MAINTENANCE, AND SUPPORT OF POWERWORLD SIMULATOR SOFTWARE, CURRENTLY USED BY DENTON MUNICIPAL ELECTRIC, WHICH IS THE SOLE PROVIDER OF THIS SOFTWARE, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8404 – AWARDED TO POWERWORLD CORPORATION, IN THE NOT-TO-EXCEED AMOUNT OF \$63,112.50, WITH A CONTRACT TERM EXPIRING FEBRUARY 21, 2027).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function [Engineering functions]; and

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the “File” listed hereon, and on file in the office of the Purchasing Agent, and the license terms attached are hereby approved:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8404	PowerWorld Corporation	\$63,112.50

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library

that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids.

SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager, or their designee, is hereby authorized to execute the contract relating to the items specified in Section 1, attached hereto, and the expenditure of funds pursuant to said contract is hereby authorized.

SECTION 5. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. The ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

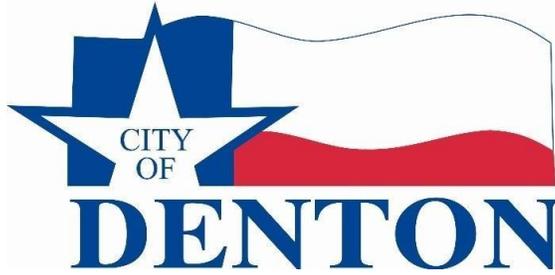
ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

Digitally signed by Marcella Lunn
DN: dc=com, dc=cityofdenton, dc=codad, ou=Department Users and Groups, ou=General Government, ou=Legal, cn=Marcella Lunn, email=Marcella.Lunn@cityofdenton.com
Date: 2024.03.12 12:26:47 -05'00'



DocuSign City Council Transmittal Coversheet

FILE	8404
File Name	POWERWORLD SIMULATOR PRODUCT RENEWAL
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND POWERWORLD CORPORATION
(Contract #8404)**

THIS CONTRACT is made and entered into this date _____, by and between POWERWORLD CORPORATION a Illinois Corporation whose address is 2001 S First Street, STE 203, Champaign, IL 61820, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products in accordance with the City's File #8404 Power World Simulator Product Renewal, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) PowerWorld Maintenance Agreement (**Exhibit "B"**);
- (c) PowerWorld Maintenance Agreement Addendum (**Exhibit "C"**);
- (d) PowerWorld License Agreement Site (**Exhibit "D"**);
- (e) PowerWorld License Agreement Single (**Exhibit "E"**);
- (f) Vendors Proposal (**Exhibit "F"**);
- (g) Standard Addendum to Agreement (**Exhibit "G"**);
- (h) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "H"**);

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

Prohibition on Contracts with Companies Boycotting Israel

Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. *By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.* Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains

written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

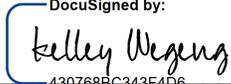
The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR

CITY OF DENTON, TEXAS

BY: 
 AUTHORIZED SIGNATURE

BY: _____
 SARA HENSLEY, CITY MANAGER

Printed Name: kelley wegeng

ATTEST:
 JESUS SALAZAR, CITY SECRETARY

Title: Executive Vice President

+1.217.384.6330 ext. 15

BY: _____

PHONE NUMBER

kelley@powerworld.com

APPROVED AS TO LEGAL FORM:
 MACK REINWAND, CITY ATTORNEY

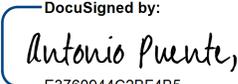
EMAIL ADDRESS

2024- N/A - IL corp, all work done in IL

TEXAS ETHICS COMMISSION
 1295 CERTIFICATE NUMBER

BY:  _____

THIS AGREEMENT HAS BEEN
 BOTH REVIEWED AND APPROVED
 as to financial and operational obligations
 and business terms.


 SIGNATURE Antonio Puente, Jr.
 PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

Exhibit A
Special Terms and Conditions

1. Contract Terms

The contract term will be three (3) year, contract will expire on February 21, 2027.

2. Total Contract Amount

The contract total shall not exceed \$63,112.50. Pricing shall be per Exhibit F attached.

Exhibit B
POWERWORLD Maintenance Agreement

POWERWORLD CORPORATION ("LICENSOR") HAS LICENSED TO YOU ("LICENSEE") SOFTWARE UNDER A SEPARATE LICENSE AGREEMENT. THIS AGREEMENT PERTAINS TO THE MAINTENANCE OF THAT SOFTWARE LICENSE.

Maintenance Terms

1. Licensee's ability to use the software referenced in the License Agreement is NOT contingent upon its desire to continually pay the maintenance fees for this software. The license is a fully paid-up, perpetual license to the Software. It is irrevocable except in the case of a material breach of the license agreement.
2. As long as the maintenance fee is paid-in-full, the Licensee is entitled to no cost support for any of its users/technical support staff via email or phone.
3. As long as the maintenance fee is paid-in-full the Licensee is entitled to no cost access to any patches that are released for their current versions. These patches will be released via the PowerWorld Corporation website and will be accessed using a username and password that will be issued to the licensee.
4. As long as the maintenance fee is paid-in-full the Licensee is entitled to no cost upgrades to any new version of their software that are released. These upgrades will be automatically sent to the licensee without the licensee having to request them.

Maintenance Fees

5. The initial license fee for this software includes a paid-in-full maintenance agreement for one full year after the delivery date of the software.
6. As long as the licensee continues to pay the yearly maintenance fee, their maintenance fee will be considered paid-in-full.
7. Payment of the yearly maintenance as the original or future maintenance periods expire will extend the maintenance agreement for a full year after the payment.
8. If this maintenance agreement lapses renewal will be prorated by month for the period from the date of expiration through one year from the date of renewal, up to but not exceeding 100% of the license fee for the product at the time of renewal.

This Agreement is governed by the laws of the State of Illinois.

If you have any questions concerning this Agreement or wish to contact POWERWORLD for any reason, please email info@powerworld.com or call (217) 384-6330.

Copyright © 1996 - 2022 POWERWORLD CORPORATION. All rights reserved.

Exhibit C

POWERWORLD Maintenance Agreement Addendum

Whereas, PowerWorld Corporation ("Licensor" or "Consultant") and the entity and/or entities set forth on the attached agreement ("Licensee" or "Client") have an existing Software License Agreement (the "License Agreement") which governs the Licensee's use of PowerWorld Software ("Software") and an accompanying Maintenance Agreement (the "Agreement") to which this Addendum ("Addendum") is attached. This Addendum is incorporated into the Agreement by reference.

Whereas the parties desire to incorporate the following additional terms into the contract as follows.

Relationship and Disclosure of Data

1. The technical support, patches, and upgrades provided by the Licensor to the Licensee constitute a Service ("Service") yielding a Consultant/Client relationship that enables the Consultant to support the Client's safe, reliable, and efficient analysis and/or operation of power systems and develop the Software so that it better supports those functions.
2. While providing such Service the Client may need to share information ("Data") which may be proprietary, non-public, sensitive or Controlled Unclassified Information ("Data").
3. Such Data may include (but is not limited to) power flow cases, dynamics files, contingency files, remedial action schemes, operating reliability data, and other data deemed Critical Energy Infrastructure Information by the United States Federal Energy Regulatory Commission ("FERC"), data for which the Consultant has been approved by FERC.
4. Such Data will remain strictly the property of the Client unless it becomes public through no fault of the Consultant and will only be used by the Consultant as needed for providing this Service to the Client.

Treatment of Data

5. The Consultant agrees to take all reasonable precautions to maintain the confidentiality of the Data and to prevent unauthorized access to it.
6. The Consultant agrees to not make available, disclose, provide, or communicate Data to any entity or individual, except employees or contractors of the Consultant using the Data for this Service.
7. Notwithstanding anything to the contrary herein, Consultant may disclose Data to a governmental authority as required by law, provided that to the extent permitted by law the Consultant notifies the Client, withholds such Data until the Client has had a chance to respond to the required disclosure, and cooperates with the Client as they respond to the required disclosure and/or protect their interests in the Data.

Term and Termination of Addendum

8. This Addendum shall continue in effect unless terminated. This Addendum may be terminated by the Consultant or Client at any time at their sole discretion.
9. If the Addendum is terminated the parties may at their mutual discretion continue the Agreement as previously defined.
10. If the Agreement expires the terms of this Addendum regarding the treatment of data shall survive.

Ownership of Work Product

- 11. Although the Service is being provided to the Client by the Consultant, ownership of any Software developed while providing the Service remains exclusively with the Consultant as defined in the License Agreement.
- 12. Additionally, notwithstanding any other provision in this Agreement or any other agreement between Licensor and Licensee (including purchase orders, terms and conditions, master license agreements, consulting agreements, and purchase contracts), all improvements made to the Software remain the sole intellectual property of the Licensor even if they were implemented by the Licensor at the suggestion or funding of the Licensee.

Miscellaneous

- 13. This Agreement is governed by the laws of the State of Illinois. In the event of a dispute relating to the terms of this Agreement, suit shall be brought only in a federal or state court located in Champaign County in the State of Illinois.
- 14. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of the Agreement.

The parties have executed this contract on the dates shown below.

Licensee:

By: _____ Date

Licensor: PowerWorld Corporation, Champaign, Illinois

By: _____ Date

Exhibit D

POWERWORLD License Agreement

This License Agreement (the "Agreement") is between POWERWORLD CORPORATION ("Licensor") and the licensee installing the software to which this Agreement is attached (the "Licensee").

Ownership of the Software

1. The software which accompanies this license (the "Software"), including, but not limited to, object code, source code, data, information, modifications, enhancements, adaptations thereof, and derivative works, and the accompanying written materials, are owned by, and shall remain the sole and exclusive property of, Licensor and/or its suppliers. The Software is protected by United States copyright laws, by laws of other nations, and by international treaties. Any and all rights not specifically granted in this Agreement is expressly reserved by the Licensor. Nothing herein grants Licensee any ownership rights to the Software.

NOTE: This Agreement assumes use of the PowerWorld Simulator software as a SINGLE USER license. Please see PowerWorld Corporation's SITE license agreement if the Software is to be used as part of a site license.

Grant of License

2. Licensor grants to Licensee and Licensee accepts a perpetual, non-exclusive, non-transferable license to use one (1) copy of the Software on one (1) computer (the "License"). Licensee may load one (1) copy of the Software into permanent memory of one (1) computer (the "Primary Installation"). Licensee may install the Primary Installation on a real or virtual machine supporting multiple logins or on a single network server, provided there is no possibility of the Software being used by more than one (1) user simultaneously. Only one (1) user may use the Software at a time. Licensee may not launch more than one (1) concurrent instance of the Software via automation.

3. Licensee may install the Software on multiple machines if a hardware key has been purchased from the Licensor which restricts access to each such installation of the Software to only one (1) user at a time.

4. If no hardware key has been purchased from the Licensor, the primary user of the computer on which the Software is installed may make a second copy on a computer under the exclusive control of the primary user and/or the Licensee, for the primary user's exclusive use only at times when there are no application instances run by the Primary Installation.

Restrictions on Use and Transfer

5. Licensee may not copy the Software, except that (a) Licensee may make one (1) copy of the Software solely for backup or archival purposes, and (b) Licensee may transfer the Software to hard disks as specified in above under Grant of License.

6. Licensee may not re-sell the Software, or incorporate the Software or its results in any product or generalized service without express permission from the Licensor. Licensee's use of the Software and its results in the capacity of Licensee's employment as a consultant by a third-party client (a "Client") does not fall under this restriction on use, provided that Licensee shall not permit such Clients to use or access the Software and shall not transfer any copy or any part of the Software to such Clients.

7. Licensee may not reverse engineer, decompile, or disassemble the Software. Licensee may not alter or modify the Software or create derivative works thereof.

Limited Warranty

8. Licensor warrants that the Software will perform substantially in accordance with the accompanying written materials for a period of 60 days from the date of receipt of the Software. Any implied warranties on the Software are limited to 60 days. Some states do not allow limitations on duration of an implied warranty, so the above limitation may not apply to Licensee.

9. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND THE ACCOMPANYING WRITTEN MATERIALS. This limited warranty gives licensee specific legal rights. Licensee may have others, which vary from state to state.

10. Except as provided in Section 14, LICENSOR'S TOTAL LIABILITY PURSUANT TO THIS AGREEMENT AND RELATING TO THE SOFTWARE, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT, OR OTHERWISE, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID TO LICENSOR BY LICENSEE PURSUANT TO A PURCHASE ORDER, PURCHASE CONTRACT, OR PURCHASE AGREEMENT BETWEEN LICENSOR AND LICENSEE. NOTWITHSTANDING THE FOREGOING, LICENSOR'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY WITH RESPECT TO LICENSOR'S WARRANTY UNDER SECTION 8 SHALL BE REPLACEMENT OF THE SOFTWARE THAT DOES NOT MEET LICENSOR'S LIMITED WARRANTY AND WHICH IS RETURNED TO LICENSOR. Any replacement Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. These remedies are not available outside the United States of America.

11. This Limited Warranty is void if failure of the Software has resulted from modification or alteration of the Software by anyone other than Licensor; negligence, accident, abuse, or any other cause within Licensee's control; the use of the Software in any manner not authorized by this Agreement or for the ordinary purpose for which the Software is designed; or any use of the Software beyond the number of computer systems permitted under this Agreement or by users beyond the number of users permitted under this Agreement.

12. Except as provided in Section 14, IN NO EVENT WILL LICENSOR BE LIABLE TO LICENSEE FOR DAMAGES, INCLUDING ANY LOSS OF PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF LICENSEE'S USE OR INABILITY TO USE THE SOFTWARE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF ANY LEGAL OR EQUITABLE THEORIES WHICH MAY BE ASSERTED. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply.

13. This Agreement is governed by the laws of the State of Illinois. In the event of a dispute relating to the terms of this Agreement, suit shall be brought only in a federal or state court located in Champaign County in the State of Illinois.

14. Notwithstanding any other provision in this Agreement to the contrary, Licensor agrees to indemnify, defend, and hold Licensee and its affiliates harmless from any and all claims or suits for loss or damage (including reasonable attorneys' fees) based upon a claim that the Software infringes a third party's copyright, trademarks or patents, or constitutes an unlawful disclosure, use or misappropriation of a third party's trade secrets or confidential information.

15. In the event of any disagreement between this Agreement and any other agreements between Licensor and Licensee except a Maintenance Agreement provided by Licensor and expressly referencing this Agreement, this agreement shall prevail, and in no event shall terms contained in any such agreements supersede or be made a part of this Agreement. Additionally, notwithstanding any other provision in this Agreement or any other agreement between Licensor and Licensee (including purchase orders, terms and

conditions, master license agreements, consulting agreements, and purchase contracts), all improvements made to the Software remain the sole intellectual property of the Licensor even if they were implemented by the Licensor at the suggestion or funding of the Licensee.

16. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of the Agreement.

17. This Agreement may not be modified or amended except in writing signed by duly authorized representatives of Licensor and Licensee.

Licensee's acceptance of this Agreement will be deemed binding upon the installation of the Software.

Exhibit E
POWERWORLD Site License Agreement

This License Agreement (the "Agreement") is between POWERWORLD CORPORATION ("Licensor") and the licensee installing the software to which this Agreement is attached (the "Licensee").

Ownership of the Software

1. The software which accompanies this license (the "Software"), including, but not limited to, object code, source code, data, information, modifications, enhancements, adaptations thereof, and derivative works, and the accompanying written materials, are owned by, and shall remain the sole and exclusive property of, Licensor and/or its suppliers. The Software is protected by United States copyright laws, by laws of other nations, and by international treaties. Any and all rights not specifically granted in this Agreement is expressly reserved by the Licensor. Nothing herein grants Licensee any ownership rights to the Software.

Grant of License

2. Licensor grants to Licensee and Licensee accepts a perpetual, non-exclusive, non-transferable license to use as many copies of the Software as desired, provided all copies are used by persons employed by, or working under contract for, the Licensee, and that all copies are used within 1,000 meters of the site for which this License is purchased. One Site is defined as one geographic location of radius 1,000 meters.

3. This License is a fully paid-up, perpetual License to the Software. It is irrevocable except in case of a material breach of the Agreement.

4. Licensee has the right to move the Site provided they notify the Licensor of the move and they do not continue to use the Software at the former Site.

Restrictions on Use and Transfer

5. Licensee may not copy the Software, except that (a) Licensee may make one (1) copy of the Software solely for backup or archival purposes, and (b) Licensee may transfer the Software to hard disks as specified in above under Grant of License.

6. Licensee may not re-sell the Software, or incorporate the Software or its results in any product or generalized service without express permission from the Licensor. Licensee's use of the Software and its results in the capacity of Licensee's employment as a consultant by a third-party client (a "Client") does not fall under this restriction on use, provided that Licensee shall not permit such Clients to use or access the Software and shall not transfer any copy or any part of the Software to such Clients.

7. Licensee may not reverse engineer, decompile, or disassemble the Software. Licensee may not alter or modify the Software or create derivative works thereof.

Limited Warranty

8. Licensor warrants that the Software will perform substantially in accordance with the accompanying written materials for a period of 60 days from the date of receipt of the Software. Any implied warranties on the Software are limited to 60 days. Some states do not allow limitations on duration of an implied warranty, so the above limitation may not apply to Licensee.

9. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND THE ACCOMPANYING WRITTEN MATERIALS. This limited warranty gives licensee specific legal rights. Licensee may have others, which vary from state to state.

10. Except as provided in Section 14, LICENSOR'S TOTAL LIABILITY PURSUANT TO THIS AGREEMENT AND RELATING TO THE SOFTWARE, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT, OR OTHERWISE, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID TO LICENSOR BY LICENSEE PURSUANT TO A PURCHASE ORDER, PURCHASE CONTRACT, OR PURCHASE AGREEMENT BETWEEN LICENSOR AND LICENSEE. NOTWITHSTANDING THE FOREGOING, LICENSOR'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY WITH RESPECT TO LICENSOR'S WARRANTY UNDER SECTION 8 SHALL BE REPLACEMENT OF THE SOFTWARE THAT DOES NOT MEET LICENSOR'S LIMITED WARRANTY AND WHICH IS RETURNED TO LICENSOR. Any replacement Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. These remedies are not available outside the United States of America.

11. This Limited Warranty is void if failure of the Software has resulted from modification or alteration of the Software by anyone other than Licensor; negligence, accident, abuse, or any other cause within Licensee's control; the use of the Software in any manner not authorized by this Agreement or for the ordinary purpose for which the Software is designed; or any use of the Software beyond the number of computer systems permitted under this Agreement or by users beyond the number of users permitted under this Agreement.

12. Except as provided in Section 14, IN NO EVENT WILL LICENSOR BE LIABLE TO LICENSEE FOR DAMAGES, INCLUDING ANY LOSS OF PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF LICENSEE'S USE OR INABILITY TO USE THE SOFTWARE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF ANY LEGAL OR EQUITABLE THEORIES WHICH MAY BE ASSERTED. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply.

13. This Agreement is governed by the laws of the State of Illinois. In the event of a dispute relating to the terms of this Agreement, suit shall be brought only in a federal or state court located in Champaign County in the State of Illinois.

14. Notwithstanding any other provision in this Agreement to the contrary, Licensor agrees to indemnify, defend, and hold Licensee and its affiliates harmless from any and all claims or suits for loss or damage (including reasonable attorneys' fees) based upon a claim that the Software infringes a third party's copyright, trademarks or patents, or constitutes an unlawful disclosure, use or misappropriation of a third party's trade secrets or confidential information.

15. In the event of any disagreement between this Agreement and any other agreements between Licensor and Licensee except a Maintenance Agreement provided by Licensor and expressly referencing this Agreement, this agreement shall prevail, and in no event shall terms contained in any such agreements supersede or be made a part of this Agreement. Additionally, notwithstanding any other provision in this Agreement or any other agreement between Licensor and Licensee (including purchase orders, terms and conditions, master license agreements, consulting agreements, and purchase contracts), all improvements made to the Software remain the sole intellectual property of the Licensor even if they were implemented by the Licensor at the suggestion or funding of the Licensee.

16. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of the Agreement.

17. This Agreement may not be modified or amended except in writing signed by duly authorized representatives of Licensor and Licensee.

Licensee's acceptance of this Agreement will be deemed binding upon the installation of the Software.

EXHIBIT F

PowerWorld
Corporation

www.powerworld.com

info@powerworld.com

Phone: +1 (217) 384-6330
2001 South First Street
Champaign, IL 61820
USA

Quote

Number: 230298

Date: August 17, 2023

To:			
City of Denton Nicholas.Dusak@cityofdenton.com 1659 Spence Road Denton, TX 76205			
Quantity	Description	Unit Price	Amount
3	Your PowerWorld Simulator site license maintenance agreement will expire 2/21/2024. Cost to renew for one year.	US\$8,250.00	US\$24,750.00
3	Your two (2) Simulator ATC OPF SCOPF SimAuto TP single-user add-on maintenance agreements will expire 2/21/2024. Cost to renew for one year.	US\$12,787.50	US\$38,362.50
<i>Includes upgrades and technical support through February 21, 2027.</i>		SUBTOTAL	US\$63,112.50
		SALES TAX 0%	US\$0.00
		SHIPPING & HANDLING	US\$0.00
		TOTAL	US\$63,112.50

Terms: Net 30 Days, Net 60 Days purchase orders may be accepted with a 1.5% surcharge. If your company does not issue purchase orders, or if your PO T&C are unacceptable, 100% advance payment via ACH / wire transfer or check in USD is required. Software download instructions sent via email and hardware key sent via USPS within 1-2 days of receipt of an acceptable PO or payment in full. Destination. This quotation is good for 90 days from the date of issuance. If you have any questions or would like copies of applicable license and maintenance agreements purchase of these items mandates acceptance of, please email quotes@powerworld.com. No purchase of the licenses described herein may be made without accepting said agreements.

Exhibit G

Standard Addendum to Agreement

The agreement between the City of Denton, a Texas home-rule municipal corporation ("City"), and the other party to the agreement ("Vendor") to which this Standard Addendum to Agreement (this "Addendum") is attached, is subject to the terms and conditions of this Addendum, which are incorporated for all purposes into the agreement to which they are attached (the "Agreement"). This Addendum is subject to the underlying Agreements provided by Vendor; provided, however, any reference to Governing Law and Venue will be superseded by the Governing Law and Venue provision in this Addendum. For the avoidance of doubt, the Agreement includes: (i) the Site License Agreement (ii) the License Agreement, (iii) the Maintenance Agreement and (iv) the Maintenance Addendum.

Payment. In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or services, (ii) performance is complete, or (iii) delivery of an invoice to City; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Invoices and any required supporting documents must be presented to: City of Denton – Purchasing Department, 901 B Texas Street, Denton, TX 76201.

Tax Exempt. No taxes shall be included in the invoice. City is exempt from the payment of taxes and the purchase order serves as the required exemption certificate for tax exemption. The City will provide other exemption certificates or documentation confirming its tax-exempt status as requested.

Governing Law and Venue. The Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. Venue for all issues arising from or related to the Agreement shall be resolved in the courts of Denton County, Texas, and the parties agree to submit to the exclusive jurisdiction of such courts.

No Excess Obligations. In the event the Agreement spans multiple fiscal years, the City's continuing performance under the Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the City Council of the City of Denton. If the City Council of the City of Denton fails to appropriate or allot the necessary funds, City shall issue written notice to Vendor that City may terminate the Agreement without penalty, further duty, or obligation.

Delivery. Delivery shall be FOB Destination.

Public Information. City shall release information in accordance with the Texas Public Information Act, Tex. Gov't Code Chapter 552, and other applicable law or court orders. If requested, Vendor shall make public information available to City in an electronic format, and any portions of records claimed by the Vendor to be proprietary must be clearly marked as such.

Insurance. City is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by City shall, without further requirement, satisfy all insurance obligations of City under the Agreement.

Israel Non-Boycott Verification. Vendor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. **By signing this Addendum, Vendor certifies that Vendor's signature provides written verification to City that Vendor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement.** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Foreign Terrorist Organization Prohibition Verification. Section 2252 of the Texas Government Code restricts City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. **By signing this Addendum, Vendor certifies that Vendor's signature provides written verification to City that Vendor, pursuant to Chapter 2252, is not ineligible to enter into this Addendum and will not become ineligible to receive payments under the Agreement by doing business with Iran, Sudan, or a foreign terrorist organization.** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Limitations. City is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on City property; disclaimers and limitations of warranties; disclaimers and limitation of liability for damages; waivers, disclaimers, and limitation on litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on City, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Vendor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. By signing this agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations. Vendor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. By signing this agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization. Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. By signing this agreement, Vendor certifies that Vendor's signature provides written verification to the City that Vendor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies. The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Vendor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

VENDOR:

By:
Name:
Title:
Date:

CITY OF DENTON

By:
Name:
Title:
Date:

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ
For vendor or other person doing business with local governmental entity

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

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

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

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

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

POWERWORLD CORPORATION

2 **Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes No

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

4 **I have no Conflict of Interest to disclose.**

5 DocuSigned by:

Kelley Wegung

3/4/2024

Signature of Vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: DF7B93C6EB2347E7A97195C682B194DA	Status: Sent
Subject: Please DocuSign: City Council Contract 8404 PowerWorld Simulator Product Renewal	
Source Envelope:	
Document Pages: 19	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Crystal Westbrook
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	crystal.westbrook@cityofdenton.com
	IP Address: 198.49.140.10

Record Tracking

Status: Original	Holder: Crystal Westbrook	Location: DocuSign
3/1/2024 2:32:59 PM	crystal.westbrook@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 3/1/2024 2:35:32 PM Viewed: 3/1/2024 2:35:41 PM Signed: 3/1/2024 2:36:57 PM

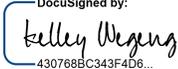
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 3/1/2024 2:37:01 PM Viewed: 3/1/2024 2:47:48 PM Signed: 3/1/2024 2:48:03 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 107.115.147.128 Signed using mobile	Sent: 3/1/2024 2:48:06 PM Viewed: 3/1/2024 3:14:58 PM Signed: 3/1/2024 3:15:58 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Kelley Wegeng kelley@powerworld.com Executive Vice President Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 206.221.149.34	Sent: 3/1/2024 3:16:01 PM Viewed: 3/4/2024 9:36:43 AM Signed: 3/4/2024 9:42:17 AM
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Electronic Record and Signature Disclosure:
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ID: a06dc393-abd2-4ad9-bf9d-d64ef68f608b

Signer Events

Antonio Puente, Jr.
antonio.puente@cityofdenton.com
DME General Manager
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:
Antonio Puente, Jr.
E3760944C2BF4B5...
Signature Adoption: Pre-selected Style
Using IP Address: 198.49.140.10

Timestamp

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Viewed: 3/4/2024 11:10:21 AM
Signed: 3/4/2024 11:10:34 AM

Electronic Record and Signature Disclosure:
Accepted: 3/4/2024 11:10:21 AM
ID: 34fb1d41-abbc-452a-a98c-3e7d18509b8c

Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton
Security Level: Email, Account Authentication (None)

Sent: 3/4/2024 11:10:38 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Sara Hensley
sara.hensley@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Jesus Salazar
jesus.salazar@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Accepted: 2/26/2024 9:37:24 AM
ID: 2dd761df-a516-47b2-a74f-68d75f554a26

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Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee
cheyenne.defee@cityofdenton.com
Procurement Administration Supervisor
City of Denton
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

COPIED

Sent: 3/1/2024 2:37:01 PM

Carbon Copy Events	Status	Timestamp
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Gretna Jones
gretna.jones@cityofdenton.com
Legal Secretary
City of Denton
Security Level: Email, Account Authentication
(None)

COPIED

Sent: 3/4/2024 11:10:38 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Nicholas Dusak
nicholas.dusak@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	3/1/2024 2:35:32 PM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

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

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

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

** 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.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



Legislation Text

File #: PUB24-064, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Strong Data, Inc., for scalehouse software and hardware for the Solid Waste and Recycling Department, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8431 - awarded to Strong Data, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$339,080.85).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: March 25, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Strong Data, Inc., for scalehouse software and hardware for the Solid Waste and Recycling Department, which is the sole provider of this software, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8431 – awarded to Strong Data, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$339,080.85).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

On April 20, 2021, through a competitive Request for Proposal (RFP) and evaluation process, the Solid Waste and Recycling Department identified a software solution offered by Strong Data Inc., to replace the previous outdated scalehouse transaction system.

Through a separate project to enhance the Landfill scalehouse, infrastructure, and approaching roads, the need arose to enhance the Strong Data system, currently in place. Enhancing the Strong Data system will include upgrades, and additional transaction-automated kiosks, with cameras, voice communication, and credit card readers. The upgraded and additional kiosks will require technology infrastructure, connecting the interior operating stations to the communication room, then dispersed to landfill scales transaction kiosks, including cameras, and traffic control devices.

Strong Data technology products are designed to handle all the landfill scale transactions, including any other commodity transactions at the landfill site, and are currently used at the Home Chemical Collections and Compost sales.

Strong Data can be used for future local and remote weight/revenue-generating sites (i.e. transfer stations, drop-off stations, SSO organics facility, etc.)

Strong Data Inc. has accelerated the transaction process and, therefore, has reduced customer wait times. Accelerating transaction times generates additional revenue, manages traffic with efficacy, and reduces or eliminates safety concerns by keeping drivers and customers in the vehicle for the entire transaction process.

Technology Upkeep and Modernization

The interior and exterior of the current building are outdated, and new technology has been merged with outdated technology. With this sole source contract, and assistance from Strong Data, the outdated building's technology will be renovated to accommodate the new and expanding technologies, consisting of automated, unattended kiosks to process transactions more efficiently.

Future Growth

These upgrades will enhance traffic flow and transactions will be expedited with greater efficiency. Landfill scales, the facility, and the associated technology will improve by adding and enhancing the landfill software and hardware technology. The facility will be remodeled to better fit the new technologies and the layout of the staff operating stations. By enhancing the landfill scales and facility at this time we are preparing for future community growth to mitigate waste produced and enhance customer service by expediting transaction time. The community residents, the city's solid waste collection vehicles, and other solid waste transporters performing business at the City of Denton landfill will expedite their service, therefore fewer complaints will be reported to the City Manager's Office and Council.

By not taking action, the outdated equipment, and technology at the facility will cause chaos in customer transactions, wait times, as well as loss of revenue to the city.

Section 252.022 of the Local Government Code provides that procurement of sole source commodities and services are exempt from competitive bidding, if over \$50,000, shall be awarded by the governing body.

RECOMMENDATION

Award with a contract to Strong Data Inc., for scalehouse software and hardware for the Solid Waste and Recycling Department, in a one (1) year, with the option for four (4) additional one (1) year extensions, in a total five (5) year not-to-exceed amount of \$339,080.85.

SUSTAINABILITY MEASURES

With the enhancements to the landfill scale transaction and infrastructure system, traffic will flow smoother, waiting lines will be less, therefore, greenhouse gas emissions will be less, addressing the concerns on air quality and public health, as well as increasing revenue. Promoting growth and upgrading infrastructure to ensure the ever-growing community needs to dispose of solid waste, green waste collections, and recycling.

PRINCIPAL PLACE OF BUSINESS

Strong Data, Inc.
Austin, TX

ESTIMATED SCHEDULE OF PROJECT

This is an initial one (1) year contract with options to extend the contract for four (4) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These items and services will be funded from Solid Waste & Recycling account 660904595.1365.40100. Requisition # 163983 has been entered into the Purchasing software system in the amount of \$105,079.20. The budgeted amount for this item is \$339,080.85.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Arturo (Art) Garcia, 940-349-8021.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH STRONG DATA, INC., FOR SCALEHOUSE SOFTWARE AND HARDWARE FOR THE SOLID WASTE AND RECYCLING DEPARTMENT, WHICH IS THE SOLE PROVIDER OF THIS SOFTWARE, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8431 – AWARDED TO STRONG DATA, INC., FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$339,080.85).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function [Garbage and solid waste removal, collection, and disposal]; and

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the “File” listed hereon, and on file in the office of the Purchasing Agent, and the license terms attached are hereby approved:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8431	Strong Data, Inc.	\$339,080.85

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library

that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids.

SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager, or their designee, is hereby authorized to execute the contract relating to the items specified in Section 1, attached hereto, and the expenditure of funds pursuant to said contract is hereby authorized.

SECTION 5. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. The ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

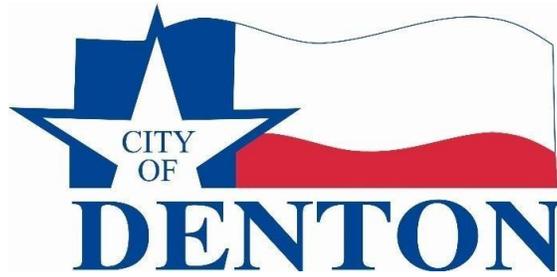
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  _____
Digitally signed by Marcella Lunn
DN: dc=com, dc=cityofdenton, dc=codad, ou=Department Users and Groups, ou=General Government, ou=Legal, cn=Marcella Lunn, email=Marcella.Lunn@cityofdenton.com
Date: 2024.03.08 13:09:02 -06'00'



DocuSign City Council Transmittal Coversheet

FILE	8431
File Name	STRONG DATA, INC.
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND STRONG DATA, INC.
(CONTRACT 8431)**

THIS CONTRACT is made and entered into this date _____, by and between **Strong Data, Inc.** a Canada corporation, whose address is 5900 Balcones Dr., STE 100, Austin, TX 78731 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or their duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products and/or services in accordance with the City's document File #8431 Scalehouse Technology Infrastructure, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's File #8431 (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Certificate of Interested Parties Electronic Filing (**Exhibit "D"**);
- (e) Insurance Requirements (**Exhibit "E"**);
- (f) Contractor's Proposal (**Exhibit "F"**);
- (g) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "G"**);

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

Prohibition on Contracts with Companies Boycotting Israel

Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contract # 8431

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms “boycott energy company” and “company” shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in Contract # 8431

the year and day first above written.

CONTRACTOR

DocuSigned by:
Rocky Strong
BY: _____
9095A0F03037437...
AUTHORIZED SIGNATURE

Printed Name: Rocky Strong

Title: General Manager

7095719776

PHONE NUMBER

rocky@strongdata.ca

EMAIL ADDRESS

2024- 1132039

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn
BY: _____
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THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations
and business terms.

DocuSigned by:
Brian Boerner Brian Boerner
DCD14331B89A4A8...
SIGNATURE PRINTED NAME

Director of Solid Waste

TITLE

SWR

DEPARTMENT

Contract # 8431

Exhibit A

Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed \$339,080.85. Pricing shall be per Exhibit F attached.

2. The Quantities

The quantities indicated on Exhibit F are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the bid price. Individual purchase orders will be issued on an as needed basis.

3. Contract Terms

The contract term will be one (1) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional four (4) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

4. Price Escalation and De-escalation

On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal

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date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

5. Performance Liquidated Damages

The Contractor shall incur contractual payment losses, as initiated by the City for performance that falls short of specified performance standards as outlined below:

- Delivery beyond contracted lead times
- Performance below contracted levels (services only)

The Contractor shall be assessed a one (1%) percent fee each month when any one of the performance standards outlined above are not met in full. The Contractor shall be assessed a two (2%) percent profit fee each month when any two (2) or more performance standards outlined above are not met in full. At the end of each month, the City will review the monthly reports and determine the percentage of penalty to be assessed to the Contractor's monthly profit margin.

Exhibit C
Standard Purchase Terms and Conditions

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the seller's proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

1. CONTRACTOR'S OBLIGATIONS. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. EFFECTIVE DATE/TERM. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. CONTRACTOR TO PACKAGE DELIVERABLES: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. SHIPMENT UNDER RESERVATION PROHIBITED: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. TITLE & RISK OF LOSS: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

6. DELIVERY TERMS AND TRANSPORTATION CHARGES: Deliverables shall be
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shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

7. RIGHT OF INSPECTION AND REJECTION: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. NO REPLACEMENT OF DEFECTIVE TENDER: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

9. PLACE AND CONDITION OF WORK: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

10. WORKFORCE

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent,

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disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

Immigration: The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

Environmental Protection: The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

12. INVOICES:

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

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A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by

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the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. FINAL PAYMENT AND CLOSE-OUT:

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to 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 ten (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 the Contract, and to allow the City 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 City 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 (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City'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.

18. SUBCONTRACTORS:

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute

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any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the

Contract, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. WARRANTY – TITLE: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City

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harmless from and against all adverse title claims to the deliverables.

21. WARRANTY – DELIVERABLES: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. WARRANTY – SERVICES: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery

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of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. RIGHT TO ASSURANCE: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. STOP WORK NOTICE: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

26. DEFAULT: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and Contract # 8431

remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

28. TERMINATION WITHOUT CAUSE: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

29. FRAUD: Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. DELAYS:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

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B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONTRACTOR'S LIABILITY AND INDEMNIFICATION OBLIGATIONS SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THIRTY-SIX MONTHS OF SUBSCRIPTION FEES. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. INSURANCE: The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Exhibit E** for services only. The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.

A. General Requirements:

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

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City of Denton
Materials Management Department
901B Texas Street
Denton, Texas 76209

vii. The “other” insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days’ written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage’s indicated within the Contract.

xiv. The insurance coverage’s specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor’s ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered

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three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

36. NO WARRANTY BY CITY AGAINST INFRINGEMENTS: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. CONFIDENTIALITY: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to Contract # 8431

permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

38. OWNERSHIP AND USE OF DELIVERABLES: Contractor retains all ownership in any of its copyrights related to its Scale House Software and is licensing same to City pursuant to the terms and conditions stated herein; provided however, any equipment purchased by the City hereunder (the "Equipment") will be owned by the City. The City shall own all rights, titles, and interests throughout the world in and to the Equipment.

39. PUBLICATIONS: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. ADVERTISING: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. NO CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. GRATUITIES: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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44. INDEPENDENT CONTRACTOR: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or their designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

45. ASSIGNMENT-DELEGATION: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

46. WAIVER: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

47. MODIFICATIONS: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

48. INTERPRETATION: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it

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is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

49. DISPUTE RESOLUTION:

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void

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should a provision which is the essence of the Contract be determined to be void.

52. **HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veterans Day
Thanksgiving
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or their authorized designee.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

55. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.

B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**

The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –

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i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

57. RIGHT TO INFORMATION: The City of Denton reserves the right to use any and all information presented in any response to this contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

58. LICENSE FEES OR TAXES: Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

59. PREVAILING WAGE RATES: The contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website www.wdol.gov for Denton County, Texas (WD-2509).

60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS: The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, Contract # 8431

which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

61. FEDERAL, STATE, AND LOCAL REQUIREMENTS: Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

62. DRUG FREE WORKPLACE: The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

64. FORCE MAJEURE: The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

65. NON-WAIVER OF RIGHTS: Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as

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a waiver of any continuing or succeeding breach.

66. NO WAIVER OF SOVEREIGN IMMUNITY: The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

67. RECORDS RETENTION: The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.

- 1. Final negotiated contract**
- 2. RFP/Bid documents**
- 3. City's standard terms and conditions**
- 4. Purchase order**
- 5. Supplier terms and conditions**

Exhibit D
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 a 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/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line.
(EX: Contract 1234 – Form 1295)

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

Exhibit E

INSURANCE REQUIREMENTS

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor 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 contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract 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 proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. 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,

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- 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 or materially changed 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 specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The

minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: \$100,000.00 Each Accident

Bodily Injury by Disease: \$100,000.00 Each Employee

Bodily Injury by Disease: \$500,000.00 Policy Limit

NOTES:

a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.

b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of \$500,000.00 per occurrence.

NOTE:

a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

D. CYBER/TECHNOLOGY NETWORK LIABILITY AND RISK INSURANCE

Cyber/Technology Network Liability and Risk Insurance, inclusive of Information Security and Privacy (first and third party coverage) to provide coverage for any damage caused by a network risk, cyber act or breaches of data and privacy right, the rendering of, or the failure to properly perform professional services for, but not limited to, computer programming, management information systems, negligent system design, disclosure of confidential information, and copyright infringement with minimum limits with minimum limits of \$1,000,000.00 per claim.

E. PROFESSIONAL LIABILITY INSURANCE

If CONTRACTOR is a licensed or certified person who renders professional services, then **Professional Liability Insurance** to provide coverage against any claim which the CONTRACTOR becomes legally obligated to pay as damages arising out of the performance of professional services caused by any negligent error, omission or act with minimum limits of \$1,000,000.00 per claim, \$2,000,000.00 annual aggregate.

Contract # 8431

SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

EXHIBIT F



**Initial Estimate for New Scale
House
January-24-2025**

Item Description	Price / Unit	UOM	Qty	Ext Price
LINE # 1 CONTRACT 7447				
2 years of licensing and support @ \$30,600	30,600.00	YR	2	61,200.00
Rubicon Estimate	150.00	HR	50	7,500.00
Pay at the Scale ref Quote April 12th 2023	21,450.00	EA	1	21,450.00
Remaining monies including contingency	669.65	EA	1	669.65
TOTAL VALUE LEFT ON 7447 CONTRACT				<u>90,819.65</u>
LINE # 2 ADDITIONAL 3 YEARS OF ORIGINAL ITEMS				
PARTIAL MANAGE SOFTWARE	350.00	MTH	12	4,200.00
Includes: Enter Management Features, Accounts Receivable, General Ledger, Administration, Online Customer Portal Unlimited email and call support Continuous updates. Never left in an old version.				
‡ Extended Service package - Manage	50.00	MTH	12	600.00
MANAGED CLOUD SERVER - 3-YEAR TERM	900.00	MTH	12	10,800.00
- Server hosted in US on Microsoft Azure - Minimum monthly Windows update checks and monitoring of Windows correspondence with immediate action on security patches. - Automated monitoring of Strong Data Server Software. - Strong Data Server Software updates as released. - 2 Years of photo storage. - Unlimited transaction data storage. - Server Snapshot BU				
SANDBOX SOFTWARE LICENSE	100.00	MTH	12	1,200.00
- Training environment separate from live database, hosted on the same server - Demo new updates prior to updating production server - Update data with Denton's live data upon request, to a maximum of 6x per year. Note: Local computer required for "Enter" scale software; service cannot be activated/deactivated on a month-to-month basis.				
LANE 1 (ATTENDANT SCALE INBOUND)				
Employee-Operated Software License & Service Contract	150.00	MTH	12	1,800.00
‡ Extended Service package - Enter	50.00	MTH	12	600.00
LANE 2 (AUTOMATED LANE INBOUND)				
Fully Automated Software License & Service Contract	250.00	MTH	12	3,000.00

‡ Extended Service package - Enter	50.00	MTH	12	600.00
LANE 4 (ATTENDANT OUTBOUND)				
Employee-Operated Software License & Service Contract	150.00	MTH	12	1,800.00
‡ Extended Service package - Enter	50.00	MTH	12	600.00
Household Hazardous Waste				
Employee-Operated Software License & Service Contract	150.00	MTH	12	1,800.00
‡ Extended Service package - Enter	50.00	MTH	12	600.00
SECURITY CAMERA SYSTEM SUPPORT	250.00	MTH	12	3,000.00
TOTAL YEARLY				<u>30,600.00</u>
TOTAL COST FOR 2 YEARS				<u>61,200.00</u>

LINE # 3 ADDITIONAL 5 YEARS FOR NEW ITEMS BEYOND ORIGINAL 7447 CONTRACT

LANE 3 (AUTOMATED INBOUND)				
Employee-Operated Software License & Service Contract	250.00	MTH	12	3,000.00
‡ Extended Service package - Enter	50.00	MTH	12	600.00
LANE 5 (AUTOMATED OUTBOUND)				
Employee-Operated Software License & Service Contract	250.00	MTH	12	3,000.00
‡ Extended Service package - Enter	50.00	MTH	12	600.00
Added support for Payment	50.00	MTH	12	600.00
Increase in Camera Support fee for extra cameras and intercoms				
Additional Cameras (x3) and Intercoms (x5)	80.00	MTH	12	960.00
TOTAL YEARLY				<u>8,760.00</u>
TOTAL COST FOR 5 YEARS				<u>43,800.00</u>

LINE # 4 PROJECT PLANNING FOR TEMP AND NEW SCALE HOUSE

Project planning time for scoping new scale house.	3,000.00	EA	1	3,000.00
TOTAL				<u>3,000.00</u>

LINE # 5 HARDWARE AND IMPLEMENTATION COSTS TEMPORARY SCALE HOUSE

Cameras and Storage				
- Load Camera from above	2,269.00	EA	1	2,269.00
- License plate camera for inbound automated	1,108.00	EA	2	2,216.00
- Indicator Camera inbound	404.00	EA	1	404.00
- Camera Station License	99.00	EA	4	396.00

- New Storage 12X18TB drives with a 12 Bay NAS (1-2 years)	7,875.00	EA	1	7,875.00
- New Storage 12X22TB drives with a 12 Bay NAS (over 2 years)	9,075.00	EA	0	0.00
- New Switch 48 port POE	625.00	EA	1	625.00
- Camera Station License	99.00	EA	3	297.00
- One traffic light on entrance	250.00	EA	1	250.00
- Cabling camera mounts etc (Estimate)	2,000.00	EA	1	2,000.00
- Cabling for RFID Antenna (up to 100')	150.00	EA	1	150.00
Onsite Installation (Temp Scale House)				
Onsite Day Rate for one technician (includes all expenses)	1,600.00	DAY	10	16,000.00
Mobilization and Demobilization per trip (Travel days for technician)	2,700.00	LOT	1	2,700.00

TOTAL COSTS FOR TEMP SCALE HOUSE HARDWARE AND IMPLEMENTATION**\$35,182.00****LINE # 6 HARDWARE AND IMPLEMENTATION COSTS NEW SCALE HOUSE**

Touchscreen Kiosk with RFID Reader	18,000.00	EA	1	18,000.00
- Computer				
- RFID Reader and QR code				
- 19" Daylight readable touch monitors				
- Receipt printer				
- Climate controlled stands				
- Payment Terminal Installation (NOTE: physical payment terminal billed at cost from payment processor)				
- Intercom				
- Minimum 1 year warranty on parts				
Existing Kiosk Add Ons				
- Cabling for RFID Antenna (up to 100')	150.00	EA	1	150.00
- One traffic light on entrance	250.00	EA	1	250.00
- New Kiosk Doors For existing Kiosks	1,500.00	EA	3	4,500.00
- Payment terminal billed at cost from payment processor.				
- RFID Cable, Camera mounts, Attendant Intercom Mounts, other consumables (estimate)	2,500.00	EA	1	2,500.00
Intercoms				
- Intercom (additional intercoms for existing stands and attendant lanes)	1,308.00	EA	5	6,540.00
- Headsets (Jabra Engage 75)	467.00	EA	4	1,868.00
- Inside SIP device for communicating to intercoms	1,200.00	EA	3	3,600.00
- Camera Station License (one extra for intercom in new kiosk)	99.00	EA	6	594.00

Critical Spares

- Computer	1,893.00	EA	1	1,893.00
- Receipt printer	946.00	EA	1	946.00
- 19" Daylight readable touch monitors	2,468.00	EA	1	2,468.00
- Internet Controlled Power Bar	493.00	EA	1	493.00
- Intercom	1,308.00	EA	1	1,308.00
Onsite Day Rate for one technician (includes all expenses)	1,600.00	DAY	20	32,000.00
Mobilization and Demobilization per trip (Travel days for technician)	2,700.00	LOT	2	5,400.00

TOTAL COST FOR NEW SCALE HOUSE HARDWARE AND IMPLEMENTATION **\$82,510.00**

TOTAL 5 YEAR CONTRACT VALUE INCLUDING REMAINING 7447 VALUE **\$316,511.65**

LINE # 7 Contingency less remaining from original 7447 contract 10% **22,569.20**

TOTAL W/ CONTINGENCY **\$339,080.85**

TERMS

All pricing in USD

Tax and Duties not included.

Quote valid for 120 days from proposal date.

Installation related costs have not been quoted for implementation of optional equipment unless stated otherwise

Installation of equipment and extras does not include the following:

- Electrical work.
- Underground conduit if needed.
- Running of Cat5e (can be discussed during negotiations)
- Suitable mounting surface for all equipment
- Other costs not explicitly stated

† Additional 10% administration fee applied if paid monthly rather than annually.

† Scale software license is required for each individual scale.

† Hardware invoiced on order.

† Hourly and day rates billed monthly.

† License and Support fees to begin once logins are provided.

† Setup fees are billed on kickoff meeting.

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ
For vendor or other person doing business with local governmental entity

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

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

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

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

1 Name of vendor who has a business relationship with local governmental entity.
STRONG DATA, INC.

2 **Check this box if you are filing an update to a previously filed questionnaire.**
(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?
 Yes No
- B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?
 Yes No
- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?
 Yes No
- D. Describe each employment or business and family relationship with the local government officer named in this section.

4 **I have no Conflict of Interest to disclose.**

5 DocuSigned by:
Rocky Strong 3/6/2024
Signature of Vendor doing business with the governmental entity Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: 6AE22C6AACB5446BAC88E1D64043C911	Status: Sent
Subject: Please DocuSign: City Council Contract 8431 Scalehouse Technology Infrastructure	
Source Envelope:	
Document Pages: 36	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Crystal Westbrook
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	crystal.westbrook@cityofdenton.com
	IP Address: 198.49.140.10

Record Tracking

Status: Original	Holder: Crystal Westbrook	Location: DocuSign
3/6/2024 8:14:53 AM	crystal.westbrook@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Crystal Westbrook crystal.westbrook@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 3/6/2024 8:18:15 AM Viewed: 3/6/2024 8:18:26 AM Signed: 3/6/2024 8:19:35 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/6/2024 8:19:38 AM Viewed: 3/6/2024 9:05:21 AM Signed: 3/6/2024 9:05:57 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/6/2024 9:06:01 AM Viewed: 3/6/2024 10:02:52 AM Signed: 3/6/2024 10:07:19 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Rocky Strong rocky@strongdata.ca General Manager Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 50.237.68.146	Sent: 3/6/2024 10:07:22 AM Viewed: 3/6/2024 3:22:08 PM Signed: 3/6/2024 3:51:56 PM
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Electronic Record and Signature Disclosure:
Accepted: 3/6/2024 3:22:08 PM
ID: 6124c421-2b4a-4d43-9ab2-6b740d25e934

Signer Events	Signature	Timestamp
Brian Boerner brian.boerner@cityofdenton.com Director of Solid Waste Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 38.65.73.152	Sent: 3/6/2024 3:52:01 PM Viewed: 3/7/2024 7:21:22 AM Signed: 3/7/2024 7:22:57 AM

Electronic Record and Signature Disclosure:
 Accepted: 3/7/2024 7:21:22 AM
 ID: 3a276c5c-62b7-4cad-b0ff-88468c2c3180

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)

Sent: 3/7/2024 7:23:01 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Sara Hensley
 sara.hensley@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Jesus Salazar
 jesus.salazar@cityofdenton.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Accepted: 3/6/2024 1:10:06 PM
 ID: da891825-f76a-4433-8e64-4a86d2a4a868

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Procurement Administration Supervisor
 City of Denton
 Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

COPIED

Sent: 3/6/2024 8:19:38 AM

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign Arturo Garcia Arturo.Garcia@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 2/8/2024 10:58:53 AM ID: b8721bbf-de91-429d-a1ba-f9696e3b633e	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	Sent: 3/7/2024 7:23:01 AM Viewed: 3/7/2024 9:06:47 AM

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	3/6/2024 8:18:15 AM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

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

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

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

** 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.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-065, Version: 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Xylem Water Solutions U.S.A., Inc., to purchase Flygt pumps, equipment, parts, supplies, and services to operate and maintain the City of Denton sewage pumping stations and treatment plants for the Water Reclamation Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8476 - awarded to Xylem Water Solutions U.S.A., Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,875,000.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: March 25, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Xylem Water Solutions U.S.A., Inc., to purchase Flygt pumps, equipment, parts, supplies, and services to operate and maintain the City of Denton sewage pumping stations and treatment plants for the Water Reclamation Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8476 – awarded to Xylem Water Solutions U.S.A., Inc., for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,875,000.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Promote Sustainability and the Environment.

INFORMATION/BACKGROUND

The Water Reclamation Department is currently under contract with Xylem Water Solutions USA, Inc., for the procurement of Flygt pump equipment, parts, and essential services. These services play a vital role in maintaining, repairing, and improving the infrastructure of the City of Denton's treatment plants and lift stations. The initial contract, approved by the City Council on February 18, 2020, was valued at \$1,000,000, spanning a five-year term. Currently, the expenditure stands at 93 percent, prompting the need for a new contract to continue supporting the wastewater infrastructure of the City of Denton.

Xylem Water Solutions is the exclusive source for Flygt pump equipment and replacement parts. While competitive bidding is involved in acquiring new project equipment, the installations for Plant and Lift Station pumps adhere to precisely engineered design and operating conditions. In cases where replacement becomes necessary, maintaining the use of the same designed operating conditions as the original equipment is crucial. Decisions regarding repair or replacement depend on factors such as the overall condition, age of the pump, and the cost of new equipment.

Repairs may sometimes involve significant lead times. According to the Texas Commission on Environmental Quality (TCEQ) Rule 317.3, it is mandated that "the firm pumping capacity of all lift stations shall be such that the expected peak flow can be pumped to its desired destination." Firm pumping capacity refers to the total maximum pumping capacity of the station, even with the largest pumping unit out of

service. Lack of redundancy when a pump is out of service can pose a challenge in meeting this rule. To uphold health and human safety standards, the City is obligated to ensure that repairs are promptly executed

Project Description	Estimated 5-Year Expenditure
Xylem pumps and services year 1	\$300,000
Xylem pumps and services year 2	300,000
Xylem pumps and services year 3	300,000
Xylem pumps and services year 4	300,000
Xylem pumps and services year 5	300,000
Contingency	375,000
Total	\$1,875,000

Section 252.022 of the Local Government Code stipulates that procurement of sole source commodities and services, exceeding \$50,000, is exempt from competitive bidding and must be awarded by the governing body.

RECOMMENDATION

Award with a contract to Xylem Water Solutions USA, Inc., to purchase Flygt pumps, equipment, parts, supplies, and services to operate and maintain the City of Denton sewage pumping stations and treatment plants for the Water Reclamation Department, in a three (3) year, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,875,000.

SUSTAINABILITY MEASURES

The repair and replacement of existing wastewater pumps ensures the reliable and safe operation of pumps, particularly in critical applications like water supply, wastewater management, and flood control.

PRINCIPAL PLACE OF BUSINESS

Xylem Water Solutions U.S.A., Inc.
Carrollton, TX

ESTIMATED SCHEDULE OF PROJECT

This is an initial three (3) year, with the option to extend the contract for (2) additional one (1) year extensions, with all terms and conditions remaining the same.

FISCAL INFORMATION

These items and services will be funded from Water Reclamation account 640100.6525. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$1,875,000. The City will only pay for parts or services rendered and is not obligated to pay the full contract amount unless needed.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Ordinance and Contract

Respectfully submitted:
Lori Hewell, 940-349-7100
Purchasing Manager

For information concerning this acquisition, contact: Chris Carroll, 940-349-7190.

Legal point of contact: Marcella Lunn at 940-349-8333.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH XYLEM WATER SOLUTIONS U.S.A., INC., TO PURCHASE FLYGT PUMPS, EQUIPMENT, PARTS, SUPPLIES, AND SERVICES TO OPERATE AND MAINTAIN THE CITY OF DENTON SEWAGE PUMPING STATIONS AND TREATMENT PLANTS FOR THE WATER RECLAMATION DEPARTMENT, WHICH IS THE SOLE PROVIDER OF THIS SERVICE, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8476 – AWARDED TO XYLEM WATER SOLUTIONS U.S.A., INC., FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$1,875,000.00).

WHEREAS, Section 252.022 of the Local Government Code provides that procurement of items that are only available from one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function [Water and sewer services]; and

WHEREAS, the City Council wishes to procure one or more of the items mentioned in the above paragraph; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following purchase of materials, equipment or supplies, as described in the “File” listed hereon, and on file in the office of the Purchasing Agent, and the license terms attached are hereby approved:

<u>FILE</u> <u>NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8476	Xylem Water Solutions U.S.A., Inc.	\$1,875,000.00

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including items that are only available from one source because of patents, copyrights, secret processes, or natural

monopolies; films, manuscripts, or books; electricity, gas, water, and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids.

SECTION 3. The acceptance and approval of the above items shall not constitute a contract between the City and the person submitting the quotation for such items until such person shall comply with all requirements specified by the Purchasing Department.

SECTION 4. The City Manager, or their designee, is hereby authorized to execute the contract relating to the items specified in Section 1, attached hereto, and the expenditure of funds pursuant to said contract is hereby authorized.

SECTION 5. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. The ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

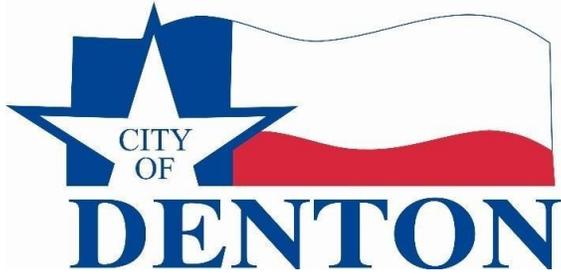
BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _

Marcella Lunn

Digitally signed by Marcella Lunn
DN: dc=com, dc=cityofdenton,
dc=codad, ou=Department Users
and Groups, ou=General
Government, ou=Legal,
cn=Marcella Lunn,
email=Marcella.Lunn@cityofdenton.com
Date: 2024.03.06 13:07:41 -06'00'



DocuSign City Council Transmittal Coversheet

FILE	8476
File Name	xylem Flight Pumps
Purchasing Contact	Ginny Brummett
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND XYLEM WATER SOLUTIONS U.S.A., INC.
(Contract #8476)**

THIS CONTRACT is made and entered into this date _____, by and between Xylem Water Solutions U.S.A., Inc., a Delaware Corporation whose address is 4828 Parkway Plaza Blvd, STE 200, Charlotte, NC 28217, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide products in accordance with the City's Contract # 8476 Xylem Flyght Pumps, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton Standard Terms and Conditions (**Exhibit "B"**);
- (c) Certificate of Interested Parties Electronic Filing (**Exhibit "C"**);
- (d) Contractor's Proposal. (**Exhibit "D"**);
- (e) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "E"**)

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

Prohibition on Contracts with Companies Boycotting Israel

Contractor acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. *By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.* Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. *By signing this agreement, Contractor certifies that Contractor's signature provides written verification to* Contract 8476

the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms “discriminate against a firearm entity or firearm trade association,” “firearm entity” and “firearm trade association” shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. *By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.* Failure to meet or maintain the requirements under this provision will be considered a material breach.

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. *By signing this agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.* Failure to meet or maintain the requirements under this provision will be considered a material breach.

Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies

The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR

BY: Susan Button
AUTHORIZED SIGNATURE

Printed Name: Susan Button

Title: Sr. Mgr. Contracts

508-207-0966
PHONE NUMBER

susan.button@xylem.com
EMAIL ADDRESS

2024-11232156
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____
SARA HENSLEY, CITY MANAGER

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
BY: Marcella Luna
4B070831B4AA438...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations and
business terms.

DocuSigned by:
Stephen Gay
SIGNATURE Stephen Gay
PRINTED NAME

Director,
TITLE

water utilities
DEPARTMENT

Exhibit A Special Terms and Conditions

1. Product Changes During Contract Term

The Contractor shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to purchasing@cityofdenton.com, with the above file number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the contractor's expense. Products that have been installed will be replaced at the contractor's expense.

2. Contract Terms

The contract term will be three (3) year, effective from date of award. The City and the Contractor shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Contractor's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

3. Price Escalation and De-escalation

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The Contractor should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a
Contract 8476

properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: purchasing@cityofdenton.com noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

4. Item #66, NO WAIVER OF SOVEREIGN IMMUNITY, Exception

City and Contractor waive against each other, and against the other's officers, directors, members, partners, and employees any and all claims for or entitlement to special, incidental, indirect, punitive, and consequential damages, loss of use, loss of profits and revenue, and loss of reputation arising out of, resulting from, or related to the Contract. The parties also agree that the total liability of each party to the other for all claims, costs, losses, and damages arising from this Purchase Order will be limited to the Purchase Order value ("Cap"). **This Cap does not apply to or limit any claim by City for the following:** (a) costs, losses, or damages asserted by third parties for destruction of tangible property; (b) bodily injury, sickness, disease, or death or (c) gross negligence or willful misconduct.

5. Total Contract Amount

The contract total shall not exceed \$1,875,000. Pricing shall be per Exhibit D attached.

Exhibit B
City of Denton
Standard Purchase Terms and Conditions

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the seller's proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City and shall continue in effect until all obligations are performed in accordance with the Contract.

3. **CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

6. DELIVERY TERMS AND TRANSPORTATION CHARGES: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

7. RIGHT OF INSPECTION AND REJECTION: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. NO REPLACEMENT OF DEFECTIVE TENDER: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

9. PLACE AND CONDITION OF WORK: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

10. WORKFORCE

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property.

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

Immigration: The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

Environmental Protection: The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

12. INVOICES:

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by Contractor 8476

the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. FINAL PAYMENT AND CLOSE-OUT:

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to 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 ten (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 the Contract, and to allow the City 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 City 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 (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City'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.

18. SUBCONTRACTORS:

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in

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writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the

Contract, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. WARRANTY – TITLE: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. WARRANTY – DELIVERABLES: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. WARRANTY – SERVICES: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above Contract 8476

standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. RIGHT TO ASSURANCE: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. STOP WORK NOTICE: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

26. DEFAULT: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

28. TERMINATION WITHOUT CAUSE: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.

29. FRAUD: Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. DELAYS:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS,

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EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD-PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. **INSURANCE:** The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Appendix A** for services only. The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.

A. General Requirements:

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:
City of Denton
Materials Management Department
901B Texas Street
Denton, Texas 76209
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiv. The insurance coverages specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

33. CLAIMS: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

34. NOTICES: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

36. NO WARRANTY BY CITY AGAINST INFRINGEMENTS: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. CONFIDENTIALITY: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

38. OWNERSHIP AND USE OF DELIVERABLES: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees

to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

39. PUBLICATIONS: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. ADVERTISING: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. NO CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission,

Contract 8476

percentage, brokerage or contingent fee.

42. GRATUITIES: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

44. INDEPENDENT CONTRACTOR: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

45. ASSIGNMENT-DELEGATION: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed Contract 8476

merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

46. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

47. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

49. **DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of

participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

52. HOLIDAYS: The following holidays are observed by the City:

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veterans Day
Thanksgiving
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

53. SURVIVABILITY OF OBLIGATIONS: All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, Contract 8476

or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

55. EQUAL OPPORTUNITY

A. Equal Employment Opportunity: No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.

B. Americans with Disabilities Act (ADA) Compliance: No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)

The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Contract 8476

Certificate".

57. RIGHT TO INFORMATION: The City of Denton reserves the right to use any and all information presented in any response to this contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

58. LICENSE FEES OR TAXES: Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

59. PREVAILING WAGE RATES: The contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website www.wdol.gov for Denton County, Texas (WD-2509).

60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS: The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

61. FEDERAL, STATE, AND LOCAL REQUIREMENTS: Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

62. DRUG FREE WORKPLACE: The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

Contract 8476

64. **FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

65. **NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

66. **NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

67. **RECORDS RETENTION:** The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.

1. **Final negotiated contract**
2. **RFP/Bid documents**
3. **City's standard terms and conditions**
4. **Purchase order**
5. **Contractor terms and conditions**

Exhibit C
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 a 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/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to 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.



Xylem Water Solutions USA, Inc.
2310 McDaniel Road, Carrollton, TX 75006

November 20, 2023

City of Denton, TX
215 E Mckinney St
Denton, TX 76201-4229

Re: Xylem / Flygt Products – Sales/Service Channel

To Whom it May Concern:

From its location in Carrollton, TX, Flygt (a Xylem brand) products are exclusively sold DIRECTLY TO END USERS for the municipal water and wastewater market, including Denton County. No distributors are used in our sales channel for this area. We are offering a 15% discount on all Flygt products (new equipment and repair parts) to The City of Denton. Our shop labor rate is \$140 per hour and our field labor rate is \$175 per hour.

We are the only Flygt Authorized Warranty/Service Center for Flygt Pumps, Mixers, and Monitoring and Control products in this area. Xylem Inc. – Flygt Products offer a large range of pumps (.25Hp – 1140Hp), mixers (1.2Hp – 40Hp) and controls. We invite you and your team to our Carrollton facility (2310 McDaniel Road, Carrollton, TX 75006) where we sell, service and rent units here. We at Xylem Inc. – Flygt Products appreciate working with you for all your pumping, mixing and controls needs.

Please feel free to contact the undersigned with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Rottman".

Matt Rottman
Sales Representative
Flygt Products
Carrollton, TX
O: 972-512-3615
matt.rottman@xylem.com

CONFLICT OF INTEREST QUESTIONNAIRE -**FORM CIQ****For vendor or other person doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

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

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

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

xylem water solutions U.S.A., Inc

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes

No

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

4 I have no Conflict of Interest to disclose.

DocuSigned by:

Susan Button

3/4/2024

Signature of Vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: FF8E2EC28A2C4E7BAB762B0603431238	Status: Sent
Subject: Please DocuSign: City Council Contract 8476 Xylem Flyght Pumps	
Source Envelope:	
Document Pages: 29	Signatures: 4
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Ginny Brummett
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Ginny.Brummett@cityofdenton.com
	IP Address: 198.49.140.10

Record Tracking

Status: Original	Holder: Ginny Brummett	Location: DocuSign
2/28/2024 4:48:12 PM	Ginny.Brummett@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Ginny Brummett ginny.brummett@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 2/28/2024 4:50:35 PM Viewed: 2/28/2024 4:50:44 PM Signed: 2/28/2024 4:50:57 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 2/28/2024 4:50:59 PM Viewed: 2/29/2024 7:58:20 AM Signed: 2/29/2024 7:58:47 AM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn marcella.lunn@cityofdenton.com Senior Deputy City Attorney City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 107.115.147.128 Signed using mobile	Sent: 2/29/2024 7:58:49 AM Viewed: 2/29/2024 5:20:06 PM Signed: 3/1/2024 3:18:36 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Susan Button Susan.Button@xylem.com Sr. Mgr. Contracts Management Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 199.253.110.1	Sent: 3/1/2024 3:18:38 PM Viewed: 3/4/2024 11:16:27 AM Signed: 3/4/2024 11:19:41 AM
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Electronic Record and Signature Disclosure:
Accepted: 3/4/2024 11:16:27 AM
ID: bade4dcb-00b6-43ef-b4c6-9652761467e7

Signer Events	Signature	Timestamp
<p>Stephen Gay Stephen.Gay@cityofdenton.com Director, Water Utilities Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:  9EBFF5658E56492... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 3/4/2024 11:19:44 AM Viewed: 3/4/2024 12:24:49 PM Signed: 3/4/2024 12:43:10 PM</p>

Electronic Record and Signature Disclosure:
Accepted: 3/4/2024 12:24:49 PM
ID: 2ac0e185-8427-4260-98a2-4667fe731736

<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p>	<p>Sent: 3/4/2024 12:43:13 PM</p>
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p>
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

<p>Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None)</p>
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<p>Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p> <p>City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p> <p>Rusty Willard Rusty.Willard@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p> <p>Chris Carroll Chris.Carroll@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 2/27/2024 5:21:42 PM ID: e4a8c514-d1ae-4e3a-90d4-dda6a6ddaff8</p>	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	<p>Sent: 3/4/2024 12:43:13 PM Viewed: 3/4/2024 12:56:05 PM</p>
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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"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-061, **Version:** 1

AGENDA CAPTION

Consider approval of the March 11, 2024 minutes.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
March 11, 2024

After determining that a quorum was present of the Public Utilities Board of the City of Denton, convened in a Regular Meeting on Monday, March 11, 2024, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Lee Riback, Robert Rayner, Thomas Plock

Also present: General Manager Antonio Puente and Deputy City Attorney Marcella Lunn

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

There were no presentations from the public.

2. CONSENT AGENDA

The Consent Agenda consisted of Items 2 A - E

Board Member Riback moved to recommend adoption of agenda items 2 A-D. Motion seconded by Board Member Cheek; motion carried.

YES (6): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Lee Riback, Robert Rayner and Thomas Plock

NO (0):

- A. PUB24-051** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and Halff Associates, Inc., amending the contract approved by the City Council on November 15, 2022, in the not-to-exceed amount of \$1,144,280.00; said first amendment to provide additional engineering and design services for a Conditional Letter of Map Revision and a Letter of Map Revision in relation to the Westgate Drive Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7599-011 - providing for an additional first amendment expenditure amount not-to-exceed \$62,000.00, with the total contract amount not-to-exceed \$1,206,280.00).

- B. PUB24-052** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with TREG Erosion Control Specialists, LLC., for the Avondale Park Streambank Restoration Project for the Capital Projects Department; providing for the expenditure of

funds therefor; and providing an effective date (IFB 8288 - awarded to TREG Erosion Control Specialists, LLC., in the not-to-exceed amount of \$974,148.00).

- C. PUB24-053** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Tyndale Enterprises, Inc., for the supply of flame-resistant clothing and uniform management for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8349 - awarded to Tyndale Enterprises, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,316,700.00).
- D. PUB24-054** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Pipe View, LLC dba Pipe View America, as the primary vendor, and Pro-Pipe, Inc., as the secondary vendor, for storm pipe cleaning and inspection services for the Drainage Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8395 - awarded to Pipe View, LLC dba Pipe View America and Pro-Pipe, Inc. for one (1) year, with the option for four (4) additional one (1) year extensions, in total five (5) year not-to-exceed amount of \$2,500,000.00).
- E. PUB24-057** Consider recommending approval of a resolution of the City of Denton authorizing the submission of an application through the Water Utilities Department to the Texas Water Development Board for financial assistance via a fixed rate loan in the amount of \$195,845,000 from the State Water Implementation Fund for Texas to fund the Ray Roberts Water Treatment Plant Expansion Project; and providing an effective date.

Board member Cheek pulled this item for questions. Katie Koch was available to answer questions. Stephen Gay also added to the answers. Jessica Williams also added to the answers.

Board Member Riback moved to recommend approval of agenda item 2E. Motion seconded by Board Member Taylor; motion carried.

YES (5): Chair Susan Parker, Devin Taylor, Lee Riback, Thomas Plock and Robert Rayner

NO (0):

ABSTAIN (1): Vice Chair Billy Cheek

Board Member Cheek abstained but member did not provide an affidavit pursuant to Sec 2-83.

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. PUB24-055** Consider approval of the February 26, minutes.

Board Member Taylor moved to recommend approval of agenda item 3A. Motion seconded by Board Member Riback; motion carried.

YES (6): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Lee Riback, Robert Rayner and Thomas Plock

NO (0):

- B. PUB24-050** Consider recommending adoption of an ordinance of the City of Denton, Texas establishing the schedule of rates for electric service; providing for a repealer; providing for a severability clause; and providing for an effective date.

Bill Shepherd gave a presentation. There were questions by board members that staff answered.

Board Member Cheek moved for approval of agenda item 3B. Motion seconded by Board Member Riback; motion carried.

YES (6): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Lee Riback and Robert Rayner, Thomas Plock

NO (0):

- C. PUB24-056** Management Reports
1. Design Criteria Manual Cost Impact
 2. Future Agenda Items
 3. New Business Action Items

4. CONCLUDING ITEMS

none

With no further business, the meeting was adjourned at 9:44 AM.

**SUSAN PARKER
CHAIR
CITY OF DENTON, TEXAS**

**CASSIE BLACKBURN
DME ADMIN SUPERVISOR
CITY OF DENTON, TEXAS**

Minutes approved on: March 25, 2024.



City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
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Legislation Text

File #: PUB24-039, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance establishing the City of Denton Utility System Nodal Market Revenue Financing Program and authorizing Utility System Nodal Market Revenue Notes, Taxable Series A, in a maximum aggregate principal amount not to exceed sixty million five thousand dollars (\$60,005,000) to satisfy ERCOT financial security requirements; and providing an effective date.



AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Cassandra Ogden

DATE: March 25, 2024

SUBJECT

Consider recommending adoption of an ordinance establishing the City of Denton Utility System Nodal Market Revenue Financing Program and authorizing Utility System Nodal Market Revenue Notes, Taxable Series A, in a maximum aggregate principal amount not to exceed sixty million five thousand dollars (\$60,005,000) to satisfy ERCOT financial security requirements; and providing an effective date.

BACKGROUND

As a direct result of the short pay and defaults of ERCOT market participants during winter storm Uri, ERCOT staff recommended to the ERCOT Board of Directors that the practice of granting unsecured credit to market participants with excellent credit (like DME) be terminated. The default of Brazos Electric Cooperative for \$1.2 billion and Rayburn Electric Cooperative for \$800 million, both of whom had been extended a level of unsecured credit, was cited as the reason for this policy change. It is important to note that the elimination of unsecured credit to investment grade entities is counter to best practices in the commodity and energy trading business.

Under the approved credit protocol changes adopted by the ERCOT Board, market participants can use cash or letters of credit to securitize their credit and collateral obligations. The City's Finance Department has explored the cost of obtaining and using a bank letter of credit as the mechanism to meet this requirement as opposed to posting the daily cash margin requirements, which would require the City to keep funds liquid and not invested. Given current interest rates for instruments authorized for investment by the City, staff has determined that it will be more cost effective to utilize a bank letter of credit. The letter of credit will not exceed DME's ability to provide payment to the bank or ERCOT if so required. The use of the letter of credit is only to meet the day-to-day collateral requirements that became effective on October 1, 2023.

Previously DME had a \$40 million unsecured line of credit with ERCOT based upon the A+ (S&P) and A (Fitch) ratings of DME's revenue bonds and the City's credit rating of AA+. On average DME's use of this credit line is approximately \$15 million but during high priced periods in the summer and winter, the use of the credit line approaches \$30 million. While not anticipated to happen because of market changes and conservative operations by ERCOT since winter storm Uri, maximum credit requirements could rise as high as \$60 million. These conditions would only persist for a limited number of days since DME is both a payer to ERCOT for the energy purchased to serve load (creating the need to post credit to meet payment obligations) and a receiver of funds from ERCOT associated with the sale of energy by DME from our renewable PPA positions and the Denton Energy Center. However, under ERCOT protocols, accounts payable to ERCOT are due at least one day prior to amounts receivable from ERCOT. Consequently, these

positions do not offset one another to reduce ERCOT's credit exposure to DME or DME's collateral posting requirements to ERCOT.

The City issued a letter of credit request for proposal on July 9, 2023, for ERCOT qualified banking institutions for up to \$60 million and Wells Fargo Bank was selected.

Finance sought and obtained an opinion from Bond Counsel indicating that such a letter of credit can be legally obtained for the purpose of providing collateral to meet DME's obligations and other electric utilities have already put the letter of credit in place. DME currently has approximately \$10 million in cash with ERCOT to meet the daily cash margin requirements.

RECOMMENDATION

Finance recommends approval the Letter of Credit

FISCAL INFORMATION

Funds to meet these obligations are budgeted in the Electric Fund.

EXHIBITS

1. Agenda Information Sheet
2. Ordinance
3. Presentation

Respectfully submitted:
Jessica Williams
Chief Financial Officer
940-349-7899

Prepared by:
Vis Bouaphanthavong
Assistant Director of Finance
940-349-7743

**ORDINANCE ESTABLISHING THE
CITY OF DENTON
UTILITY SYSTEM NODAL MARKET REVENUE NOTES FINANCING PROGRAM
AND AUTHORIZING
UTILITY SYSTEM NODAL MARKET REVENUE NOTES, TAXABLE SERIES A, IN A
MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SIXTY
MILLION FIVE THOUSAND DOLLARS (\$60,005,000)
TO SATISFY ERCOT FINANCIAL SECURITY REQUIREMENTS; AND PROVIDING
AN EFFECTIVE DATE**

Adopted: April 2, 2024

ORDINANCE

**ORDINANCE ESTABLISHING THE
CITY OF DENTON
UTILITY SYSTEM NODAL MARKET REVENUE FINANCING PROGRAM
AND AUTHORIZING
UTILITY SYSTEM NODAL MARKET REVENUE NOTES, TAXABLE SERIES A, IN A
MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SIXTY
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EXHIBIT A – FORM OF NOTES	A-

ORDINANCE ESTABLISHING THE CITY OF DENTON UTILITY SYSTEM NODAL MARKET REVENUE FINANCING PROGRAM AND AUTHORIZING UTILITY SYSTEM NODAL MARKET REVENUE NOTES, TAXABLE SERIES A, IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SIXTY MILLION FIVE THOUSAND DOLLARS (\$60,005,000) TO SATISFY ERCOT FINANCIAL SECURITY REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton, Texas (the “City” or the “Issuer”) is a home-rule municipality, acting as such under the Constitution and laws of the State of Texas, has a population in excess of 50,000, and has outstanding long-term indebtedness that is rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for long-term obligations; and

WHEREAS, capitalized terms used herein shall have the meanings given to them in Section 1.01 hereof; and

WHEREAS, the Outstanding Senior Lien Obligations and the Outstanding Subordinate Lien Obligations are payable from Pledged Revenues; and

WHEREAS, the Senior Lien Obligation Ordinances for the Outstanding Senior Lien Obligations and the Subordinate Lien Obligation Ordinance for the Outstanding Subordinate Lien Obligations permit the Issuer to encumber the Pledged Revenues with additional Senior Lien Obligations or additional Subordinate Lien Obligations or other bonds or obligations payable from a subordinate lien on the Pledged Revenues; and

WHEREAS, on December 1, 2010, a nodal wholesale electric market design was implemented within ERCOT's service area, and various electric market participants, including the Issuer, are required to comply with the ERCOT Nodal Protocols adopted by ERCOT; and

WHEREAS, pursuant to Section 16.11.1 of such ERCOT Nodal Protocols, the Issuer has previously provided and currently has in place with ERCOT additional financial security sufficient to satisfy the requirements of such ERCOT Nodal Protocols; and

WHEREAS, the City Council finds that it is necessary for the Issuer to establish a note program in an amount not to exceed \$60,005,000 to provide financial security to ERCOT and, in furtherance thereof, the City Council hereby authorizes the Notes and their installment deliveries to the Note Purchaser, to induce the Note Purchaser to enter into the Note Purchase Agreement and deliver the Financial Security to ERCOT as is necessary for the Issuer to participate in the ERCOT electric nodal market at the levels it deems prudent; and

WHEREAS, the City Council finds and determines that it should issue the Notes, in a principal amount not to exceed \$60,005,000, as a series of Subordinate Lien Obligations pursuant to this Ordinance to finance Project Costs of Eligible Projects, all in accordance with and subject to Chapter 1371, Texas Government Code, as amended, and the terms, conditions, and limitations

contained herein; and

WHEREAS, the City Council finds, determines and represents that (i) the proceeds of any draw upon the Financial Security by ERCOT are for the payment, on behalf or for the benefit of the Issuer, of Project Costs of Eligible Projects, (ii) such proceeds and the drawing upon such Financial Security shall constitute and shall be the payment of the purchase price of the corresponding Authorized Installment pursuant to the provisions of this Ordinance and (iii) the Note Purchaser's delivery of the Financial Security to ERCOT is additional and sufficient consideration for the transactions and agreements contemplated in this Ordinance; and

WHEREAS, this Ordinance constitutes an "obligation authorization," as defined in Chapter 1371; and

WHEREAS, the Notes are issued pursuant to Texas law, including the Acts; and

WHEREAS, the City Council further finds and determines that all terms and conditions for the issuance of the Notes herein authorized as Subordinate Lien Obligations have been or can be met and satisfied; and

WHEREAS, the City Council intends to refinance the Notes with refunding bonds issued under Chapter 1207, Texas Government Code, as amended, on parity with or subordinate to Issuer's Outstanding Senior Lien Obligations and, therefore (in accordance with Section 1371.057(c) of Chapter 1371), the Issuer will treat the Notes as having the intended term and payment schedule of such refunding bonds, as determined by the City Authorized Representative.

WHEREAS, the meeting was open to the public and public notice of the time, place and purpose of said meeting was given pursuant to Chapter 551, Texas Government Code; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

ARTICLE I DEFINITIONS AND CONSTRUCTION OF TERMS

Section 1.01. Definitions.

“Accountant” means an independent certified public accountant or accountants or a firm of independent certified public accountants, in either case, with demonstrated expertise and competence in public accountancy.

“Acts” means Chapter 1371 and Chapter 1502, Texas Government Code, as amended.

“Amended Ordinance” means any ordinance amending or amending and restating this Ordinance entered into as provided in Article VI of this Ordinance.

“Authorized Installment” means on the Original Issue Date, an amount determined in the Pricing Certificate and on each Issue Date thereafter, an amount equal to the amount of any draw upon the Financial Security by ERCOT, reflecting payment by the Note Purchaser of the purchase price of such Authorized Installment of the Notes to ERCOT on behalf of the Issuer.

“Authorized Installment Draw Period” means the period commencing on the Original Issue Date and ending immediately following the effective date of the end of the term of the Financial Security, whether by termination, non-renewal or otherwise.

“Bond Counsel” means McCall, Parkhurst & Horton L.L.P. or an attorney or law firm of attorneys of national recognition selected or engaged by the Issuer with knowledge and experience in the field of municipal finance.

“Chapter 1371” means Chapter 1371, Texas Government Code, as amended.

“City Authorized Representative” means one or more of the following officers or employees of the Issuer: the City Manager, the Chief Financial Officer, the Director of Finance (or successors to any such positions), or such other officer or employee of the Issuer authorized by the City Council to act as a City Authorized Representative.

“City Council” means the City Council of the Issuer.

“Defeasance Securities” means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the Issuer adopts or approves the proceedings authorizing the financial arrangements are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable state law in existence at the time of such defeasance that may be used to defease obligations such as the Notes.

“Depository” means such banks or trust companies, or any one of them at any time, selected by the Issuer for the custody of the special funds to be maintained by the Issuer.

“Eligible Projects” means, as permitted by the Acts, including Chapter 1371, the acquisition, purchase, sale of any property, including any contractual obligations related thereto, for which, except with respect to the initial Authorized Installment, ERCOT may draw upon the Financial Security for the payment thereof, on behalf or for the benefit of the Issuer.

“ERCOT” means The Electric Reliability Council of Texas and any successor thereto.

“Financial Security” means the letter of credit of the Note Purchaser provided for in the Note Purchase Agreement (and any extension or amendment of such letter of credit or any substitute or replacement letter of credit of the Note Purchaser) provided to ERCOT for the benefit of the Issuer pursuant to Section 16 of the ERCOT Nodal Protocols.

“Fiscal Year” means the 12-month operational period of the Issuer commencing on October 1 of each year, or such other twelve month period as may in the future be designated as the Fiscal Year of the Issuer.

“Fitch” means Fitch Ratings, Inc or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities ratings services, such other nationally recognized securities rating agency as may be designated in writing by the City Council.

“Gross Revenues” mean all revenues, income and receipts of every nature derived or received by the Issuer from the operation and ownership of the System, including the interest income from investment or deposit of money in any fund or account created by any Senior Lien Obligation Ordinance or Subordinate Lien Obligation Ordinance or maintained by the Issuer in connection with the System.

“Initial Note” means the non-interest bearing Note, numbered T-1, delivered to and held by the Paying Agent/Registrar in accordance with Section 2.02 hereof.

“Issue Date” means the date of delivery of an Authorized Installment of the Notes..

“Issuer” means the City of Denton, Texas.

“Latest Draw Date” shall mean the last date a draw may be made under the Financial Security pursuant to the Note Purchase Agreement.

“Maximum Available Amount” means the maximum amount that is available to be drawn on the Financial Security on any particular day.

“Maximum Maturity Date” means the ninetieth day after the Latest Draw Date, as may be extended in accordance with the Note Purchase Agreement.

“Maximum Rate” means the lesser of the (i) maximum net effective interest rate (as defined in and calculated in accordance with the provisions of Chapter 1204, Texas Government Code, as amended) and (ii) maximum non-usurious lawful rate of interest permitted by applicable law.

“Moody’s” means Moody’s Investors Service, Inc., or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Issuer.

“Net Revenues” mean all Gross Revenues remaining after deducting Operating Expenses.

“Note Purchase Agreement” means the Note Purchase Agreement between the Issuer and the Note Purchaser, including any amendment, supplement, restatement or extension of such Note Purchase Agreement pursuant to the terms thereof.

“Note Purchaser” means Wells Fargo Bank, National Association, and its successors and assigns under the Note Purchase Agreement.

“Notes” means the “City of Denton Utility System Nodal Market Revenue Notes, Taxable Series A”, including any Authorized Installments, issued pursuant to the provisions of this Ordinance, having the terms and characteristics specified in Section 2.02 and in the form described in Exhibit A hereto.

“Operating Expenses” means the reasonable and necessary expenses of operation and maintenance of the System, including all salaries, labor, materials, repairs and extensions necessary to render efficient service (but only such repairs and extensions as, in the judgment of the Issuer, are necessary to keep the System in operation and render adequate service or such as might be necessary to meet some physical accident or conditions which would otherwise impair the Senior Lien Obligations or Subordinate Lien Obligations), and all payments under contracts for materials and services (including water supply contracts) provided to the Issuer that are required to enable the Issuer to render efficient service. The following shall never be considered as an Operating Expense: (1) depreciation, (2) franchise fees paid to the Issuer or transferred to the general fund or other fund of the Issuer, and (3) return on investment payments made to the Issuer or transferred to the general fund or other fund of the Issuer.

“Ordinance” means this Ordinance establishing the City of Denton Utility System Nodal Protocols Financing Program and Authorizing Utility System Nodal Market Revenue Notes, Taxable Series A, adopted by the City Council on April 2, 2024 and as it may be amended or supplemented from time to time by an Amended Ordinance.

“Original Issue Date” means the date of delivery of the initial Authorized Installment, the Note Purchase Agreement and the Financial Security.

“Outstanding”, when used with respect to Notes, shall mean all Notes which have been authenticated and delivered under this Ordinance, except: (a) Notes cancelled or purchased by the Paying Agent/Registrar for cancellation or delivered to or acquired by the Paying Agent/Registrar for cancellation and, in all cases, with the intent to extinguish the debt represented thereby (including Notes surrendered pursuant to Section 2.10 hereof); (b) Notes in lieu of which other Notes have been authenticated; (c) Notes that have become due (at maturity or on redemption or otherwise) and for the payment of which sufficient moneys, including interest accrued to the due date, are held by the Paying Agent/Registrar; (d) Notes which, under the terms of this Ordinance, are deemed to be no longer Outstanding; and (e) for purposes of any consent or other action to be taken by the Registered Owners of a specified percentage of Notes under this Ordinance, Notes held by or for the account of the Issuer or by any person controlling, controlled by or under common control with the Issuer.

“Outstanding”, when used with reference to Senior Lien Obligations or Subordinate Lien Obligations other than the Notes, shall mean all such bonds or other obligations theretofore delivered except: (i) any such obligations canceled by or on behalf of the Issuer at or before said date; (ii) any such obligations defeased pursuant to the defeasance provisions of the Senior Lien Obligation Ordinance or Subordinate Lien Obligation Ordinance authorizing their issuance, or otherwise defeased as permitted by applicable law; and (iii) any such obligations in lieu of or in substitution for which another obligation shall have been delivered pursuant to the ordinance authorizing the issuance of such obligations.

“Paying Agent/Registrar” means such entity or entities acting as such which are appointed by the City Authorized Representative pursuant to Section 2.03 hereof and have executed and delivered a Paying Agent/Registrar Agreement as approved and executed by a City Authorized Representative. When there is a co-Paying Agent/Registrar, either may perform the functions and duties of the Paying Agent/Registrar hereunder and under the Paying Agent/Registrar Agreement.

“Paying Agent/Registrar Agreement” means any paying agent and registrar agreement authorized to be entered into by Section 2.03 hereof, and any and all modifications, alterations, amendments and supplements thereto, or any other Paying Agent/Registrar Agreement entered into by the Issuer and the Paying Agent/Registrar with respect to the Notes.

“Payment Fund” means that fund created pursuant to Section 4.01 hereof.

“Permitted Investments” means any investment permitted by the Public Funds Investment Act, Chapter 2256, Texas Government Code, and the investment policy of the Issuer.

“Pledged Revenues” means

(a) the Net Revenues, plus

(b) any additional revenues, income, receipts, or other resources, including, without limitation, any grants, donations or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which hereafter are pledged by the Issuer to the payment of the Senior Lien Obligations and Subordinate Lien Obligations,

and excluding those revenues excluded from Gross Revenues or excluded from Net Revenues.

“Project Costs” means all costs and expenses defined as "project costs" under Chapter 1371 incurred in relation to Eligible Projects and permitted by law to be paid with the proceeds of the Notes.

“Rating Agency” means, any of the following: (i) Moody’s, (ii) Standard & Poor’s, (iii) Fitch or (iv) any other nationally recognized credit rating agency specified in an Amended Ordinance that maintains a rating on the Notes at the request of the Issuer.

“Registered Owner” means the person or entity in whose name any Note is registered in the Security Register.

“Security Register” means the books and records kept and maintained by the Paying Agent/Registrar relating to the registration and payment of the Notes and the interest thereon.

“Senior Lien Obligations” means any Outstanding “City of Denton Utility System Revenue Bonds, Series 2017” and “City of Denton Utility System Revenue Refunding Bonds, Taxable Series 2021” of the Issuer, and any other obligations issued or incurred by the Issuer from time to time that are specified to be on parity with such Senior Lien Obligations pursuant to any ordinance authorizing Senior Lien Obligations. The Senior Lien Obligations, and the interest thereon, are payable from and secured by a first lien on and pledge of Pledged Revenues.

“Senior Lien Obligation Ordinance” or “Senior Lien Obligation Ordinances” shall mean, individually or collectively, as appropriate, the Issuer’s Ordinance adopted June 21, 2016 authorizing the issuance of the “City of Denton Utility System Revenue Bonds, Series 2017”, as may be amended, the Issuer’s Ordinance adopted January 12, 2021 authorizing the issuance of the “City of Denton Utility System Revenue Refunding Bonds, Taxable Series 2021”, as amended to date and as may be further amended, and all other ordinances, as amended, authorizing the issuance of the Senior Lien Obligations.

“Special Project” means any water, wastewater, electric, drainage or other facilities of any kind or other public improvement declared by the Issuer not to be part of the System, for which the costs of acquisition, construction and installation are paid from proceeds of Special Project Bonds, but only to the extent that and for so long as all or any part of the revenues or proceeds of which are or will be pledged to secure the payment or repayment of such costs of acquisition, construction and installation under such financing transaction.

“Special Project Bonds” means special revenue obligations of the Issuer which are not secured by the Pledged Revenues, but which are secured by and payable solely from liens on and pledges of any other revenues, sources, or payments, including, but not limited to, special contract revenues or payments received from the System, any other legal entity, or any combination thereof, in connection with a Special Project; and such revenues, sources or payments shall not be considered as or constitute Gross Revenues of the System, unless and to the extent otherwise provided in the ordinance or ordinances authorizing the issuance of such Special Project Bonds.

“Standard & Poor’s” means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Issuer.

“State” means the State of Texas.

“Subordinate Lien Obligations” means any Outstanding “City of Denton Utility System

Revenue Extendable Commercial Paper Notes, Series A” and “City of Denton Utility System Nodal Market Revenue Notes, Taxable Series A” of the Issuer, and any other bonds, notes, contractual obligations or other debt issued or incurred by the Issuer that are payable from or reasonably expected to be payable in whole from, and equally and ratably secured by a lien on and pledge of the Pledged Revenues, such pledge being subordinate and inferior to the lien on and pledge of the Pledged Revenues that are or will be pledged to the payment of any Senior Lien Obligations issued by the Issuer.

“Subordinate Lien Obligation Ordinance” or “Subordinate Lien Obligation Ordinances” shall mean, individually or collectively, as appropriate, the Issuer’s Ordinance adopted January 12, 2021 authorizing the issuance of the “City of Denton Utility System Revenue Extendable Commercial Paper Notes, Series A”, as may be amended, this Ordinance authorizing the issuance of the “City of Denton Utility System Nodal Market Revenue Notes, Taxable Series A”, as may be amended, and all other ordinances, as amended, authorizing the issuance of the Subordinate Lien Obligations.

“System” means the Issuer's entire existing waterworks system, the Issuer's entire existing wastewater system, the Issuer's entire existing electric light and power system, and the Issuer's entire existing drainage system, together with all future extensions, improvements, enlargements, and additions thereto, and all replacements thereof; provided that, notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term System shall not include any Special Projects which are hereafter acquired or constructed by the Issuer with the proceeds of Special Project Bonds.

Section 1.02. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

Section 1.03. Interpretation. All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Ordinance, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Ordinance as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II NOTE AUTHORIZATION AND SPECIFICATIONS

Section 2.01. Amount, Purposes and Designation of the Notes. Under and pursuant to the authority granted hereby and subject to the limitations contained herein, the City Council hereby authorizes the issuance of a series of notes designated "CITY OF DENTON UTILITY SYSTEM NODAL MARKET REVENUE NOTES, TAXABLE SERIES A" (the "Notes") in a maximum aggregate principal amount not to exceed SIXTY MILLION FIVE THOUSAND DOLLARS (\$60,005,000) for the purpose to finance Project Costs of Eligible Projects, all in accordance with the Acts and the terms, conditions, and limitations contained in this Ordinance. The authority to issue Notes from time to time under the provisions of this Ordinance and the Note

Purchase Agreement shall exist until the end of the Authorized Installment Draw Period regardless of whether at any time prior to the end of the Authorized Installment Draw Period there are any Notes outstanding.

Section 2.02. Date, Denominations, Numbers, Maturities, and Terms of the Notes.

(a) *Terms of Notes.* There initially shall be issued, sold and delivered fully registered notes reflecting Authorized Installments (except for the Initial Note), without interest coupons, numbered consecutively from R-1 upward (except the Initial Note provided to the Attorney General of the State of Texas which shall be numbered T-1), payable to the Note Purchaser, maturing not later than the Maximum Maturity Date, in the manner, on the dates, in the years and in the principal amounts, respectively, and dated, all as set forth in this Ordinance, the Pricing Certificate to be executed and delivered by the City Authorized Representative pursuant to subsection (b) of this Section and the Note Purchase Agreement. The Pricing Certificate is hereby incorporated in and made a part of this Ordinance.

An Initial Note bearing interest at zero percent (0%) in the aggregate principal amount determined in the Pricing Certificate will be issued on the Original Issue Date and will be dated as set forth in the Pricing Certificate. The Initial Note shall, after approval by the Attorney General of the State of Texas and registration by the Comptroller of Public Account of the State of Texas, be provided to the Paying Agent/Registrar, and concurrently with the delivery of the Initial Note, the initial Authorized Installment of the Notes, in the aggregate principal amount determined in the Pricing Certificate, will be issued, in accordance with the terms of the Note Purchase Agreement executed by the Issuer and Wells Fargo Bank, National Association, as the Note Purchaser.

The initial Authorized Installment of the Notes delivered on the Original Issue Date shall be dated as determined in the Pricing Certificate. An Authorized Installment of the Notes delivered after the Original Issue Date shall be dated as of its Issue Date. The Authorized Installments of the Notes shall bear interest as determined in the Pricing Certificate and the Note Purchase Agreement from the Issue Date of an Authorized Installment of the Notes until payment of the principal amount thereof at maturity or prior redemption or prepayment.

Subject to applicable terms, limitations, and procedures contained herein, after the delivery of the initial Authorized Installment, Authorized Installments of the Notes may be sold and delivered pursuant to the terms of the Note Purchase Agreement in consideration of and in the amount of, any draw upon the Financial Security by ERCOT, reflecting payment by the Note Purchaser of the purchase price of such Notes concurrently upon payment to ERCOT, on behalf of the Issuer, pursuant to such draw upon the Financial Security. No Authorized Installments may be issued and delivered after the end of the Authorized Installment Draw Period, and no Authorized Installment may be issued and delivered in an amount that exceeds the Maximum Available Amount in effect as of the date of the applicable draw on the Financial Security; provided that the aggregate principal amount of all Authorized Installments issued and delivered under this Ordinance may at times exceed the then applicable Maximum Available Amount due to a reduction in such amount subsequent to the issuance of Authorized Installments pursuant to the

terms of the Financial Security, if provided for by the Financial Security, but in no case may the aggregate principal amount of all Authorized Installments issued and delivered under this Ordinance exceed the amount of Notes authorized by the Pricing Certificate. The Issuer shall promptly notify the Paying Agent/Registrar of any changes to the Maximum Available Amount made pursuant to the Note Purchase Agreement and of the end of the Authorized Installment Draw Period, provided that the Paying Agent/Registrar may alternatively receive actual notice of such events from the Note Purchaser.

The Note Purchaser shall give written notice to the Issuer and the Paying Agent/Registrar of any draw upon the Financial Security by ERCOT, provided such notice is not required for the delivery of an Authorized Installment. The Paying Agent/Registrar shall issue and deliver an Authorized Installment in the principal amount of any draw on the Financial Security to the Note Purchaser pursuant to the terms of this Ordinance and the Note Purchase Agreement; provided, however, in consideration of the delivery of the Financial Security and the unconditional obligation of the Note Purchaser thereunder, any particular Authorized Installment corresponding to the related draw on the Financial Security is deemed issued and delivered to the Note Purchaser on the date of any such drawing.

In the event the Pricing Certificate and the Note Purchase Agreement as provided in Section 2.05 shall not be executed on or before 5:00 p.m. on October 2, 2024, the delegation to the City Authorized Representatives pursuant to this Ordinance shall cease to be effective unless the City Council shall act to extend such delegation.

(b) *Selling and Delivering Notes.* As authorized by Chapter 1371, Texas Government Code, as amended and this Ordinance, a City Authorized Representative is hereby authorized to act on behalf of the Issuer in selling and delivering the Notes, including the Authorized Installments, and carrying out the other procedures specified in this Ordinance, including determining and fixing (i) the Original Issue Date of the Notes, (ii) the principal amount of the initial Authorized Installment, (iii) the price at which the Notes will be sold, (iv) the date or dates in which the Notes will mature, (v) the aggregate principal amount to mature on any such date or dates, (vi) the aggregate principal amount of Notes, (vii) the fixed or variable rate of interest to be borne by the Notes, (viii) the interest payment periods, (ix) the dates, price, and terms, if any, upon and at which the Notes shall be subject to redemption or prepayment prior to maturity at the option of the Issuer, (x) the dated dates of the Initial Note and the initial Authorized Installment of the Notes delivered on the Original Issue Date and (xi) all other matters relating to the issuance, sale, and delivery of the Notes and the delivery of the Note Purchase Agreement (as provided in Section 2.05 hereof), all of which shall be specified in the Pricing Certificate; provided that (A) the price to be paid for the Notes shall not be less than 100% of the aggregate original principal amount thereof plus accrued interest thereon from their date to their delivery and (B) none of the Notes shall bear interest at a rate greater than the Maximum Rate. It is further provided, however, that, notwithstanding the foregoing provisions, the Initial Note shall not be delivered unless prior to delivery, the Notes have been rated by a nationally recognized rating agency for municipal securities (I) in one of the four highest rating categories for long-term obligations or (II) in one of the three highest rating categories for short-term obligations, as required by Chapter 1371.

(c) *General.* The Notes (i) may be redeemed or prepaid prior to the respective scheduled maturity dates, (ii) shall have the characteristics, and (iii) shall be signed and sealed and the principal of and interest on the Notes shall be payable, all as provided, and in the manner required or indicated, in this Ordinance, including the FORM OF NOTES set forth in Exhibit A to this Ordinance, as may be modified in the Pricing Certificate, and in the Note Purchase Agreement.

(d) *Payments on Holidays.* In the event that any date for payment of the principal of or interest on the Notes is a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment will be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close, and such extended period of time shall be included in the computation of interest; provided, however, that the payment of interest on the Notes on such extended date shall have the same force and effect as if made on the original payment date.

Section 2.03. Payment of Notes; Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Notes shall be payable in immediately available funds, without exchange or collection charges to the Note Purchaser, in any coin or currency of the United States of America that at the time of payment is legal tender for the payment of public and private debts. Payments of principal of and interest on the Notes may be made by wire transfer of immediately available funds at no cost to the Note Purchaser.

The City Authorized Representative shall designate in the Pricing Certificate a bank to act as the Paying Agent/Registrar for the Notes. In the Note Purchase Agreement, the Note Purchaser, by accepting the appointment as Paying Agent/Registrar, will acknowledge receipt of copies of this Ordinance, and is deemed to have agreed to the provisions hereof. The Issuer agrees and covenants to cause to be kept and maintained at the office of the Paying Agent/Registrar a Security Register, all as provided herein, in accordance with the terms and provisions of the Paying Agent/Registrar Agreement and such reasonable rules and regulations as the Paying Agent/Registrar and the Issuer may prescribe. In addition, to the extent required by law, the Issuer covenants to cause to be kept and maintained the Security Register or a copy thereof in the State of Texas. The Issuer covenants to maintain and provide a Paying Agent/Registrar at all times until the Notes are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution, or other entity duly qualified and legally authorized to serve as and perform the duties and services of Paying Agent/Registrar for the Notes. The Issuer will not, without the prior written consent of the Note Purchaser (such consent not to be unreasonably withheld), appoint or permit the appointment of a successor Paying Agent/Registrar.

The principal of, premium, if any, and interest on the Notes due and payable by reason of maturity, redemption, or otherwise, shall be payable only to the owner thereof appearing on the Security Register, and, to the extent permitted by law, neither the Issuer nor the Paying Agent/Registrar, nor any agent of either, shall be affected by notice to the contrary.

Section 2.04. Redemption. The Notes shall be subject to redemption or prepayment prior to scheduled maturity at such times and with such provisions as provided in the Pricing Certificate

and the Note Purchase Agreement.

Section 2.05. Note Purchase Agreement. The draft of the Note Purchase Agreement relating to the Notes, in substantially the form presented to the City Council, is hereby approved pursuant to the terms of this Ordinance, including the prepayment, redemption, term and interest rates applicable to any Notes purchased thereunder. Subject to the provisions of this Ordinance, the City Authorized Representative may determine the final terms of the Note Purchase Agreement consistent with Section 1371.056(c) of Chapter 1371. The Note Purchase Agreement shall constitute a "credit agreement" under Chapter 1371. Any City Authorized Representative and the Issuer's Bond Counsel are each hereby authorized to complete, amend and modify the Note Purchase Agreement and the Mayor and Mayor Pro Tem, and any City Authorized Representative are each hereby authorized to execute and deliver such Note Purchase Agreement, in the form so amended, completed and modified, and to take such other actions as shall be required under the Note Purchase Agreement in connection with the issuance of the Financial Security. The Note Purchase Agreement and the obligation of the Issuer to make certain payments thereunder, including certain fees, will constitute a Subordinate Lien Obligation. Any City Authorized Representative may enter into transactions under the Note Purchase Agreement and execute any instruments in connection therewith, including requesting any increases or decreases to the stated amount of the Financial Security in accordance with the provisions of the Note Purchase Agreement but in no case may the stated amount of the Financial Security exceed (i) the amount of Notes authorized by the Pricing Certificate minus (ii) the amount of the initial Authorized Installment of the Notes delivered on the Original Issue Date.

Section 2.06. Registration and Ownership.

(a) *Registration of Notes.* The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each owner of any Note issued under and pursuant to the provisions of this Ordinance.

(b) *Ownership of Notes.* The entity in whose name any Note shall be registered in the Security Register at any time shall be deemed and treated as the absolute owner thereof for all purposes of this Ordinance, whether or not such Note shall be overdue, and, to the extent permitted by law, the City Council and the Paying Agent/Registrar shall not be affected by any notice to the contrary; and payment of, or on account of, the principal of, premium, if any, and interest on any such Note shall be made only to such Registered Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Section 2.07. Form of Notes. The Notes and the Authentication Certificate of the Paying Agent/Registrar to appear on each of the Notes, shall be substantially in the form set forth in Exhibit A to this Ordinance with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers or other marks of identification and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as may be established by the Issuer or determined by the officers executing such Notes as evidenced by their execution thereof. Any portion of the text of any Notes

may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

The Notes shall be typewritten, photocopied, printed, lithographed, engraved, or produced in any other similar manner, all as determined by the officers executing such Notes as evidenced by their execution thereof.

Section 2.08. Execution and Registration. Notes shall be executed on behalf of the Issuer by the Mayor and City Secretary under its seal reproduced or impressed thereon. The signature of said officers on the Notes may be manual or facsimile. Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Issuer as of their authorization shall be deemed to be duly executed on behalf of the Issuer, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Notes to the Note Purchaser, all as authorized and provided in Chapter 1201, Texas Government Code.

Subject to Section 2.02(a) hereof, no Note shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Note the Authentication Certificate of the Paying Agent/Registrar substantially in the form provided in Exhibit A to this Ordinance, executed by the manual signature of an authorized officer or employee of the Paying Agent/Registrar, and either such certificate duly signed upon any Note shall be conclusive evidence that such Note has been duly certified, registered, and delivered.

Section 2.09. Control and Custody of Notes. The City Authorized Representative shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of printed Notes.

Furthermore, any one or more of the Mayor and Mayor Pro Tem, and the City Authorized Representative are each hereby authorized and directed to furnish and execute such documents relating to the Issuer and its financial affairs as may be necessary for the issuance of Notes, the approval of the Attorney General of the State of Texas of Notes and, together with the Issuer's bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of Notes to the Note Purchaser thereof.

Section 2.10. Mutilated, Destroyed, Lost, and Stolen Notes. If (1) any mutilated Note is surrendered to the Paying Agent/Registrar, or the Issuer and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss or theft of any Note, and (2) there is delivered to the Issuer and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the Issuer or the Paying Agent/Registrar that such Note has been acquired by a bona fide purchaser, the Issuer shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of the same maturity date and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note and the interest due thereon to the date of payment.

Upon the issuance of any new Note under this Section, the Issuer may require payment by the Note Purchaser of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Note issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Note shall constitute a replacement of the prior obligation of the Issuer, whether or not the mutilated, destroyed, lost, or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other outstanding Notes.

ARTICLE III ESTABLISHMENT OF NODAL MARKET REVENUE NOTE PROGRAM AND SECURITY THEREFOR

Section 3.01. Establishment of Program. This Ordinance is intended to establish a master plan for the authorization, issuance, sale, delivery, form, characteristics, provisions of payment and redemption, and security of the Notes.

Section 3.02. Security; Subordinate Lien; and Pledge.

(a) The Notes and the other obligations under the Note Purchase Agreement are special obligations of the Issuer, and the payment of the principal of and interest on the Notes and the other obligations under the Note Purchase Agreement are and shall be secured by and payable only from a lien on and pledge of (i) the Pledged Revenues, and the Pledged Revenues are further pledged to the establishment and maintenance of the Payment Fund; provided that the pledge of Pledged Revenues securing the Notes and the other obligations under the Note Purchase Agreement is expressly made subordinate and inferior to the lien on and pledge of Pledged Revenues securing Senior Lien Obligations, and the Notes and the other obligations under the Note Purchase Agreement shall constitute Subordinate Lien Obligations, as provided in the Senior Lien Obligation Ordinances, payable on a parity with all Subordinate Lien Obligations, and (ii) all amounts in the Payment Fund created and maintained pursuant to this Ordinance, and such amounts constitute funds held for that purpose, subject only to the provisions of this Ordinance permitting the application thereof for the purposes and on the terms and conditions set forth herein. The pledge herein made shall be irrevocable until the Notes and the other obligations under the Note Purchase Agreement have been paid and retired. The granting of this pledge by the Issuer does not limit in any manner the rights of the Issuer to issue any additional debt or incur any other obligations, except as otherwise set forth in the Note Purchase Agreement. The Notes are not secured by or payable from any funds raised or to be raised by the levy of taxes by the Issuer nor a mortgage or deed of trust on any properties, whether real, personal, or mixed, constituting the System or otherwise, nor from any source other than as specified in this Ordinance.

(b) The Issuer shall not issue Notes on a parity with the Senior Lien Obligations.

(c) The Issuer covenants to pay the principal of, premium, if any, and the interest on the Notes when due, whether by reason of maturity or redemption.

(d) Chapter 1208, Texas Government Code, applies to the issuance of the Notes and the pledge of the proceeds of the sale of Notes and the Pledged Revenues granted by the Issuer under this section, and such pledge is therefore valid, effective, and perfected. If State law is amended at any time while the Notes are outstanding such that the pledge granted by the Issuer under this section is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the Note Purchaser the perfection of the security interest in said pledge, the Issuer agrees to take such measures as it determines are reasonable and necessary under State law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

ARTICLE IV CREATION OF FUNDS; PAYMENT

Section 4.01. Payment Fund. (a) A City Authorized Representative may create and establish a separate and special fund to be designated as the "City of Denton Utility System Nodal Market Revenue Notes, Taxable Series A Payment Fund" (the "Payment Fund"). Moneys on deposit in the Payment Fund shall be used to pay principal of and interest on Notes hereafter issued at the respective interest payment, maturity or redemption dates (if any) of each issue of such Notes as provided herein and the repayment of any amounts owing under a Note Purchase Agreement.

(b) Pending the expenditure of moneys in the Payment Fund, if created and established, for authorized purposes, moneys deposited in said fund may be invested and reinvested by a City Authorized Representative in Permitted Investments, as directed in writing by a City Authorized Representative. Funds in the Payment Fund shall be held by a Depository.

Section 4.02. Disposition of Note Proceeds. Proceeds from the initial Authorized Installment of the Notes shall, as determined in the Pricing Certificate, promptly upon receipt thereof, be applied by the City Authorized Representative to pay a portion of the costs of issuance of the Notes.

Proceeds relating to any other Authorized Installments of the Notes corresponding to a drawing upon the Financial Security by ERCOT will be for the payment, on behalf or for the benefit of the Issuer, of Project Costs of Eligible Projects.

Section 4.03. Defeasance of Notes. Notes shall not be deemed to have been paid in full unless payment of the principal of and interest on the Notes either (a) shall have been made or caused to be made in accordance with the terms of the Notes, the Note Purchase Agreement and this Ordinance, or (b) shall have been provided for on or before such due date by irrevocably

depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument for such payment (i) lawful money of the United States of America sufficient to make such payment or (ii) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability of sufficient money to provide for such payment.

ARTICLE V COVENANTS OF THE ISSUER

Section 5.01. Limitation on Issuance. Unless this Ordinance is amended and modified by the Issuer in accordance with the provisions of Article VI, the Issuer covenants that there will not be issued and Outstanding at any time more than the maximum aggregate principal amount of Notes as provided in Section 2.01 of this Ordinance. The Issuer, however, does reserve the right to increase said amount by an amendment to this Ordinance duly adopted by the City Council.

Section 5.02. Tax Exemption. The Issuer does not intend to issue the Notes in a manner such that the Notes would constitute obligations described in section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable temporary, proposed, and final regulations and procedures promulgated thereunder (the "Regulations"). The Issuer covenants that it will not file an Internal Revenue Form 8038 or an Internal Revenue Form 8038-G with respect to the Notes.

Section 5.03. Federal Tax Information Reporting. To the extent required by the Code and the Regulations it shall be the duty of the Paying Agent/Registrar to report to the Registered Owners and the Internal Revenue Service (i) the amount of "reportable payments," if any, subject to back up withholding during each year and the amount of tax withheld, if any, with respect to the payments on the Notes and (ii) the amount of interest or amount treated as interest, such as original issue discount, on the Notes required to be included in the gross income of the owners thereof for federal income tax purposes.

Section 5.04. Performance. The Issuer will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions authorizing the issuance of the Notes, and in each and every Note; promptly pay or cause to be paid the principal of and interest on every Note, on the dates and in the places and manner prescribed, and will, at the times and in the manner prescribed, deposit or cause to be deposited the amounts required to be deposited into the Payment Fund, and any Registered Owner of Notes may require the Issuer, its City Council, and its officials and employees, to carry out, respect, or enforce the covenants and obligations of this Ordinance, by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction, against the Issuer, its City Council, and its officials and employees.

Section 5.05. Legal Authority. The Issuer represents that it is a municipal corporation, a political subdivision of the State and a body politic and corporate, duly created, organized, and existing, under the Constitution and general laws of the State, and is duly authorized under the

laws of the State to create and issue the Notes; that all action on its part for the creation and issuance of the Notes has been duly and effectively taken, and that the Notes in the hands of the Registered Owners thereof are and will be valid and enforceable special obligations of the Issuer in accordance with their terms.

Section 5.06. Operation of System. The Issuer will, while any Notes are Outstanding, continuously and efficiently operate the System, and shall maintain the System in good condition, repair and working order, all at reasonable cost. No free service of the System shall be allowed, and should the Issuer or any of its agencies, instrumentalities, lessors, or concessionaires make use of the services and facilities of the System, payment monthly of the standard retail price of the services provided shall be made by the Issuer or any of its agencies, instrumentalities, lessors, or concessionaires out of funds from sources other than the revenues of the System, unless made from surplus Pledged Revenues.

Section 5.07. Further Encumbrance. While the Notes are Outstanding, the Issuer shall not, except with respect to the issuance of Senior Lien Obligations, additionally encumber the Pledged Revenues, unless said encumbrance is made on a parity with, or junior and subordinate in all respects to the liens, pledges, covenants and agreements hereof; but the right of the Issuer to issue obligations subordinate to the Notes for any lawful purpose payable from a lien on the Pledged Revenues that is subordinate to the Notes is specifically recognized and retained. This Ordinance does not and is not intended to affect, limit, or prohibit the issuance of bonds payable wholly or in part from ad valorem taxes.

Section 5.08. Sale or Disposal of Property. While any Notes are Outstanding, it will not sell, convey, mortgage, encumber, lease or in any manner transfer title to, or otherwise dispose of, the System, or any significant or substantial part thereof, except as follows:

(a) To the extent permitted by law, the Issuer may sell, exchange or otherwise dispose of at any time and from time to time any property or facilities constituting part of the System only if (i) it shall determine such property or facilities are not useful in the operation of the System, (ii) the proceeds of such sale are \$500,000 or less, or it shall have received a certificate of a City Authorized Representative stating in the opinion of the signer, that the fair market value of the property or facilities exchanged is \$500,000 or less, or (iii) if such proceeds or fair market value exceeds \$500,000 it shall have received a certificate of a City Authorized Representative stating, in the opinion of the signer, that the sale or exchange of such property or facilities will not impair the ability of the Issuer to comply during the current or any future year with the provisions of Section 5.10 of this Ordinance. The proceeds of any such sale or exchange not used to acquire other property necessary or desirable for the safe or efficient operation of the System shall forthwith, at the option of the Issuer (i) be used to redeem or purchase Senior Lien Obligations, (ii) otherwise be used to provide for the payment of Senior Lien Obligations, or (iii) be used for any other lawful purpose; and

(b) To the extent permitted by law, the Issuer may lease or make contracts or grant licenses for the operation of or make arrangements for the use of or grant easements or

other rights with respect to, any part of the System, provided that any such lease, contract, license, arrangement, easement or right (i) does not impede the operation by the Issuer of the System and (ii) does not in any manner impair or adversely affect the rights or security of the Registered Owners under this Ordinance; and provided, further, that if the depreciated cost of the property to be covered by any such lease, contract, license, arrangement, easement or other right is in excess of \$1,000,000, the Issuer shall have received a certificate of a City Authorized Representative that the action of the Issuer with respect thereto does not result in a breach of the conditions under this clause (b). Any payments received by the Issuer under or in connection with any such lease, contract, license, arrangement, easement or right in respect of the System or any part thereof shall constitute Gross Revenues.

Section 5.09. Insurance. (a) The Issuer shall insure such parts of the System as would usually be insured by corporations operating like properties, with responsible insurance companies, or through self-insurance with adequate stop-loss reinsurance, against loss to the extent insurance is usually carried by corporations operating like properties, including, to the extent reasonably obtainable, insurance against the perils of fire, extended coverage and flooding and use and occupancy insurance. Public liability and property damage insurance shall also be carried unless the Issuer's attorney gives a written opinion to the effect that the Issuer is not liable for claims which would be protected by such insurance. At any time while any contractor engaged in construction work shall be fully responsible therefor, the Issuer shall not be required to carry insurance on the work being constructed if the contractor is required to carry appropriate insurance. All such policies shall be open to the inspection of the Registered Owners and their agents and representatives at all reasonable times. Upon the happening of any loss or damage covered by insurance from one or more of said causes, the Issuer shall make due proof of loss and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly to the Issuer. The proceeds of insurance covering such property, together with any other funds necessary and available for such purpose, shall be used forthwith by the Issuer for repairing the property damaged or replacing the property destroyed; provided, however, that if said insurance proceeds and other funds are insufficient for such purpose, then said insurance proceeds pertaining to the System shall be deposited in a special and separate trust fund, at a Depository, to be designated the Insurance Account. The Insurance Account shall be held until such time as other funds become available which, together with the Insurance Account, will be sufficient to make the repairs or replacements originally required, whichever of said events occurs first; provided that the Issuer may, in its discretion, use funds in the Insurance Account for the redemption or purchase of Senior Lien Obligations.

(b) The foregoing provisions of clause (a) above notwithstanding, the Issuer shall have authority to enter into coinsurance or similar plans where risk of loss is shared in whole or in part by the Issuer.

(c) The annual audit hereinafter required may contain a section commenting on whether or not the Issuer has complied with the requirements of this Section with respect to the maintenance of insurance, and listing all policies carried, and whether or not all insurance premiums upon the insurance policies to which reference is hereinbefore made have been paid.

Section 5.10. Rate Covenant. The Issuer will fix, establish, maintain and collect such rates, charges and fees for the use and availability of the System at all times as are necessary to produce Gross Revenues, together with any other Pledged Revenues, sufficient (1) to pay all current Operating Expenses, and (2) to produce Pledged Revenues for each Fiscal Year at least equal to 1.00 times the Annual Debt Service Requirements (as defined and determined in accordance with the Senior Lien Obligation Ordinances) of all then Outstanding Senior Lien Obligations for that Fiscal Year, and (3) to make all payments and deposits required to be made into the Payment Fund for the Notes (including any obligations due and owing under a Note Purchase Agreement) and produce amounts required to pay all other obligations of the System reasonably anticipated to be paid from Pledged Revenues during the current Fiscal Year. For purposes of calculating Annual Debt Service Requirements on the Notes, the City shall assume the Maximum Available Amount is fully drawn and amortized over a period of up to thirty (30) years at the Assumed Rate (as defined in the Note Purchase Agreement).

Section 5.11. Governmental Agencies. The Issuer will comply with all of the terms and conditions of any and all franchises, permits and authorizations applicable to or necessary with respect to the System, and which have been obtained from any governmental agency; and the Issuer has or will obtain and keep in full force and effect all franchises, permits, authorization and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation and maintenance of the System.

Section 5.12. Title. The Issuer has or will obtain lawful title to the lands, buildings, structures and facilities constituting the System, that it warrants that it will defend the title to all the aforesaid lands, buildings, structures and facilities, and every part thereof, for the benefit of the holders and owners of the Senior Lien Obligations and Notes, against the claims and demands of all persons whomsoever, that it is lawfully qualified to pledge the Pledged Revenues to the payment of the Senior Lien Obligations and the Notes in the manner prescribed herein, and has lawfully exercised such rights.

Section 5.13. Liens. The Issuer will from time to time and before the same become delinquent pay and discharge all taxes, assessments and governmental charges, if any, which shall be lawfully imposed upon it, or the System; it will pay all lawful claims for rents, royalties, labor, materials and supplies which if unpaid might by law become a lien or charge thereon, the lien of which would be prior to or interfere with the liens hereof, so that the priority of the liens granted hereunder shall be fully preserved in the manner provided herein, and it will not create or suffer to be created any mechanic's, laborer's, materialman's or other lien or charge which might or could be prior to the liens hereof, or do or suffer any matter or thing whereby the liens hereof might or could be impaired; provided, however, that no such tax, assessment or charge, and that no such claims which might be used as the basis of a mechanic's, laborer's, materialman's or other lien or charge, shall be required to be paid so long as the validity of the same shall be contested in good faith by the Issuer.

Section 5.14. No Competition. So far as it legally may, the Issuer will not grant any franchise or permit for the acquisition, construction or operation of any competing facilities which

might be used as a substitute for the System's facilities and, to the extent that it legally may, the Issuer will prohibit any such competing facilities.

Section 5.15. Records. The Issuer will keep proper books of record and account in which full, true and correct entries will be made of all dealings, activities and transactions relating to the System, the Pledged Revenues, and the funds created pursuant to this Ordinance and Senior Lien Ordinances, and all books, documents and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of a Registered Owner; provided, that all books, documents, and vouchers relating to the Issuer's electric system shall be made available for inspection only to the extent required by law, including, without limitation, the provisions of Section 552.133 of the Texas Government Code.

Section 5.16. Audits. After the close of each Fiscal Year while any Note is Outstanding, it will cause an audit to be made of the books and accounts relating to the Issuer, including the System and the Pledged Revenues by an Accountant. Such annual audit reports shall be open to the inspection of the Registered Owners and their agents and representatives at all reasonable times.

ARTICLE VI AMENDMENTS

Section 6.01. Amendments or Modifications with Consent of Note Purchaser. Any amendment to this Ordinance shall be subject to the prior written approval of the Note Purchaser as provided in the Note Purchase Agreement.

Section 6.02. Effect of Amendments. Upon the adoption by the City Council of any ordinance to amend this Ordinance pursuant to the provisions of this Article VI, this Ordinance shall be deemed to be amended in accordance with the Amended Ordinance, and the respective rights, duties, and obligations of the Issuer and all the owners of then Outstanding Notes and all future Notes shall thereafter be determined, exercised, and enforced under this Ordinance.

Section 6.03. Additional Amendments. Subject to the provisions of Section 6.01 hereof, the Issuer may, from time to time and at any time, adopt an Amended Ordinance which amends the provisions of an earlier Amended Ordinance.

ARTICLE VII MISCELLANEOUS

Section 7.01. Ordinance to Constitute a Contract; Equal Security. In consideration of the acceptance of the Notes by those who shall hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and the Registered Owners and the Note Purchaser and the pledge made in this Ordinance by the Issuer and the covenants and agreements set forth in this Ordinance to be performed by the Issuer shall be for the equal and

proportionate benefit, security, and protection of all owners of the Notes and the Note Purchaser, without preference, priority, or distinction as to security or otherwise of any of the Notes over any of the others by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Ordinance or with respect to the Notes, the Note Purchase Agreement.

Section 7.02. Individuals Not Liable. All covenants, stipulations, obligations, and agreements of the Issuer contained in this Ordinance shall be deemed to be covenants, stipulations, obligations, and agreements of the Issuer and the City Council to the full extent authorized or permitted by the Constitution and laws of the State of Texas. No covenant, stipulation, obligation, or agreement herein contained shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council or agent or employee of the Issuer in his or her individual capacity and neither the members of the City Council nor any officer of the Issuer shall be liable personally on the Notes or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 7.03. Additional Actions; Recitals.

(a) The Mayor and Mayor Pro Tem, the City Authorized Representatives and the City Secretary, and all other officers, employees and agents of the Issuer are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance, sale, and delivery of the Notes and otherwise to effectuate the purposes of this Ordinance, the Note Purchase Agreement, and the Paying Agent/Registrar Agreement. In addition, the Mayor and Mayor Pro Tem, the City Secretary, the City Authorized Representatives, and Bond Counsel are hereby authorized to approve, subsequent to the date of adoption of this Ordinance, any amendments or supplements to the above named documents, and any technical amendments to this Ordinance as may be required by a Rating Agency as a condition to the granting or maintaining of a rating on the Notes acceptable to a City Authorized Representative, or as may be required by the Office of the Attorney General of the State in connection with the approval of this Ordinance or to correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance. In addition, the statements, findings, representations, and determinations set forth in the recitals to this Ordinance are hereby incorporated into and made a part of this Ordinance for all purposes.

(b) The obligation of the Note Purchaser to accept delivery of the Initial Note is subject to the Note Purchaser being furnished with the final, approving opinion of Bond Counsel, which opinion shall be dated as of and delivered on the date of initial delivery of the Initial Note.

(c) A City Authorized Representative shall promptly give written notice to each Rating Agency then rating the Notes, as appropriate, of any changes or amendments to this Ordinance, or any other operative document used in connection with the issuance from time to time of the Notes.

Section 7.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements, or provisions herein contained shall be held contrary to any express provisions of law

or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Notes issued hereunder.

Section 7.05. Performance on Business Days. Except as set forth in Section 2.02(d) hereof, whenever under the terms of this Ordinance or the Notes, the performance date of any provision hereof or thereof shall occur on a day other than a business day, then the performance thereof need not be made on such day but may be performed on the next succeeding business day with the same force and effect as if made on the date of performance is scheduled.

Section 7.06. Limitation of Benefits With Respect to the Ordinance. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Ordinance or the Notes is intended or should be construed to confer upon or give to any person other than the Issuer, the Note Purchaser, and the Paying Agent/Registrar, any legal or equitable right, remedy, or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Issuer, the Note Purchaser, and the Paying Agent/Registrar as herein and in the Paying Agent/Registrar Agreement and the Note Purchase Agreement provided.

Section 7.07. Approval of Attorney General. No Notes herein authorized to be issued shall be sold or delivered by a City Authorized Representative until the Attorney General of the State shall have approved the Notes authorized by this Ordinance and the proceedings related thereto and the Note Purchase Agreement, and other agreements and proceedings as may be required in connection therewith, and the Comptroller of Public Accounts of the State of Texas has registered the record of proceedings relating to this Ordinance and the Notes, all as is required by the Acts.

Section 7.08. Notices. (a) The City Authorized Representative shall provide the Rating Agencies with written notice of the occurrence of the following events: (i) the appointment of a successor Paying Agent/Registrar, (ii) amendments or supplements to the Ordinance or the Paying Agent/Registrar Agreement, (iii) the defeasance of all Outstanding Notes and (iv) the termination of the Note program. Any notice under this paragraph (a) shall be sent to the Rating Agencies at the following addresses, as applicable:

Standard & Poor's: Attention: Muni Structured Finance
55 Water Street, 38th Floor
New York, New York 10041
phone: 212-438-2000
fax: 212-438-2157
email: pubfin_structured@sandp.com

Moody's: Attention: Public Finance Department – Rating Desk/CP
Moody's Investors Service, Inc.
99 Church Street
New York, New York 10007
phone: 212-553-0300
fax: 212-964-5082

Fitch Ratings: Fitch Ratings - U.S. Public Finance
33 Whitehall Street
New York, New York 10004
phone: 212-908-0889

(b) Except as otherwise required herein, all notices required or authorized to be given to the Issuer or the Paying Agent/Registrar pursuant to this Ordinance shall be in writing and shall be sent by registered or certified mail, postage prepaid, to the following addresses or otherwise given in a manner deemed, in writing, acceptable to the party to receive the notice:

1. to the Issuer, to:
 215 E. McKinney Street.
 Denton, Texas 76201
 Attn: Jessica Williams, Chief Financial Officer
 Telephone: (940) 349-8244
2. to the Paying Agent/Registrar, to:
 (as provided in the Paying Agent/Registrar Agreement)
3. to the Note Purchaser, to:
 (as provided in the Note Purchase Agreement)

or to such other addresses as may from time to time be furnished to the parties, effective upon the receipt of notice thereof given as set forth above.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Each of the following events shall constitute and is referred to in this Ordinance as an "Event of Default":

(a) a failure by the Issuer to pay principal of or interest on any Note when the same shall have become due and payable;

(b) a failure by the Issuer to observe and perform any covenant, condition, agreement or provision contained in the Notes or in this Ordinance on the part of the Issuer to be observed or performed, which materially, adversely affects the rights of the owners of the Notes, including,

but not limited to, their prospect or ability to be repaid in accordance with this Ordinance and which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, shall have been given to the Issuer by the Paying Agent/Registrar or any owner of the Notes;

(c) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, including, without limitation, proceedings under the United States Bankruptcy Code (as the same may from time to time be hereafter amended), or other proceedings for relief under any federal or State bankruptcy law or similar law for the relief of debtors are instituted by the Issuer;

(d) an “Event of Default” shall have occurred and be continuing under the Note Purchase Agreement; or

(e) the occurrence of any other Event of Default as is provided in an Amended Ordinance.

If any Event of Default has occurred, but is subsequently cured or waived, then such Event of Default shall no longer constitute an Event of Default hereunder.

Section 8.02. Remedies for Default.

(a) Upon the happening of any Event of Default, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefore, may proceed against the Issuer or the City Council, as appropriate, for the purpose of protecting and enforcing the rights of the owners of Notes under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the owners of Notes hereunder or any combination of such remedies. It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all owners of Notes then Outstanding.

(b) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Notes or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Notes shall not be available as a remedy under this Ordinance.

(c) By accepting the delivery of an Note authorized under this Ordinance, a Registered Owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers or employees of the Issuer or the City Council.

The motion to approve this Ordinance was made by [_____] and seconded by [_____]. This Ordinance was passed and approved by the following vote [__ - __]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

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PASSED, APPROVED AND EFFECTIVE this 2nd day of April, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

EXHIBIT A

FORM OF NOTES

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF DENTON
UTILITY SYSTEM NODAL MARKET REVENUE NOTE
SERIES A

NO.: ____ Issue Date: _____

Principal Amount: \$_____ Maturity Date: _____

Dated Date: _____

Interest Rate or Interest Rate Formula (%): _____¹

THE CITY OF DENTON, IN DENTON COUNTY, TEXAS (the "Issuer") being a political subdivision of the State of Texas, hereby promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the order of

WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Bank")

on the Maturity Date specified above [or date of prior redemption]², the Principal Amount set forth above, and to pay interest on said Principal Amount, if any, on the dates provided in the Note Purchase Agreement at said Maturity Date [or date of prior redemption]², from the above specified Issue Date to said Maturity Date [or date of prior redemption]² at the rate of interest calculated as shown above (computed on the basis of actual days elapsed and a 360 day year) and as provided for in the Note Purchase Agreement (as defined herein); both principal and interest on this Note being payable in lawful money of the United States of America in freely transferable and immediately available funds at the principal corporate office of the Paying Agent/Registrar executing the "Certificate of Authentication" endorsed hereon and appearing below.

This Note is one of a duly authorized issue of notes of the Issuer (the "Notes") issued in the aggregate principal amount of \$_____,000, pursuant to the laws of the State of Texas, including specifically Chapter 1371 and Chapter 1502, Texas Government Code, as amended (the "Acts"), and under and pursuant to an ordinance of the City Council of the Issuer adopted April 2,

¹ As provided for in the Pricing Certificate.

² If the Notes are subject to redemption as provided in the Pricing Certificate.

2024 (the "Ordinance") for the purpose of financing Project Costs of Eligible Projects. The Notes are secured by the Ordinance, on a parity with all other Subordinate Lien Obligations and subject only to the payment of Senior Lien Obligations, if any. Terms used herein and not otherwise defined shall have the meanings given in the Ordinance and in the Note Purchase Agreement dated _____, 2024 between the Issuer and the Bank relating to the Notes (the "Note Purchase Agreement").

The initial Authorized Installment of the Notes issued on the Original Issue Date is in the principal amount of \$_____,000. Thereafter, additional Authorized Installments of the Notes in a principal amount not to exceed \$_____,000 may be issued on any date so long as the total aggregate principal amount of Notes issued does not exceed \$_____,000, as reflected in the Schedule of Authorized Installment Deliveries attached to the Initial Note. The foregoing notwithstanding, in no event shall an Authorized Installment of the Notes be issued after the end of the Authorized Installment Draw Period, and in no event shall an Authorized Installment be issued and delivered in an amount that exceeds the Maximum Available Amount in effect as of the date of the applicable draw on the Financial Security; provided that the aggregate principal amount of all Authorized Installments issued and delivered under the Ordinance may at times exceed the then applicable Maximum Available Amount due to a reduction in such amount subsequent to the issuance of Authorized Installments pursuant to the terms of the Financial Security but in no case shall the aggregate principal amount of all Authorized Installments issued and delivered under the Ordinance exceed \$_____,000.

Anything contained herein to the contrary notwithstanding, if the rate of interest payable under any Authorized Installment shall exceed the Maximum Interest Rate (as defined in the Note Purchase Agreement) for any period for which interest is payable, then (i) interest at the Maximum Interest Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof without regard to the Maximum Interest Rate and (B) the Maximum Interest Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Interest Rate, at which time the Issuer shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Interest Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank, not to exceed the Maturity Date.

The Notes are special obligations of the Issuer, and the payment of the principal of and interest on the Notes is and shall be secured by and payable only from a lien on and pledge of the Pledged Revenues; provided that the pledge of Pledged Revenues securing the Notes is expressly made subordinate and inferior to the lien on and pledge of Pledged Revenues securing Senior Lien Obligations, and the Notes shall constitute Subordinate Lien Obligations, payable, together with all Outstanding Subordinate Lien Obligations and any additional Subordinate Lien Obligations hereafter, solely from and equally secured by a lien on and pledge of the Pledged Revenues. The Notes are not secured by or payable from any funds raised or to be raised by the levy of taxes by

the Issuer nor a mortgage or deed of trust on any properties, whether real, personal, or mixed, constituting the System or otherwise, nor from any source other than as specified in the Ordinance.

[INSERT ADDITIONAL PROVISIONS, IF ANY, PROVIDED FOR IN THE PRICING CERTIFICATE AND THE NOTE PURCHASE AGREEMENT DEEMED NECESSARY BY THE AUTHORIZED REPRESENTATIVE, INCLUDING ANY PREPAYMENT AND/OR REDEMPTION PROVISIONS, ALL PURSUANT TO SECTIONS 2.02 AND 2.04 OF THE ORDINANCE.]

The pledge of Pledged Revenues under the Ordinance may be discharged at or prior to the maturity of the Notes upon the making of provision for their payment on the terms and conditions set forth in the Ordinance.

Subject to satisfying the terms and conditions stated in the Ordinance, the Issuer has reserved the right to issue additional Subordinate Lien Obligations payable solely from and equally and ratably secured by a parity lien on and pledge of the Pledged Revenues and other moneys and securities pledged under the Ordinance to the payment of the Notes.

Reference is hereby made to the Ordinance, copies of which may be obtained upon request to the Issuer, and to all of the provisions of which any owner of this Note by its acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the Notes; the Pledged Revenues; the nature and extent and manner of enforcement of the pledge; the terms and conditions for the issuance of additional Subordinate Lien Obligations; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Registered Owners; the rights and remedies of the owner hereof with respect hereto and thereto; the rights, duties and obligations of the Issuer; the terms and provisions upon which the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity or redemption of this Note and this Note thereafter no longer to be secured by the Ordinance or be deemed to be outstanding thereunder; and for the other terms and provisions thereof.

It is hereby certified, recited, represented, and declared that the Issuer is a duly organized and legally existing political subdivision of the State of Texas, organized under and by virtue of the Constitution and laws of the State of Texas; that the issuance of this Note and the series of which it is a part are duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of this Note to render the same lawful and valid have been properly done, have happened and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas and the Ordinance; that this series of Notes does not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on this Note and the series of which it is a part as aforestated. In case any provision in this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Note and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

This Note has been issued pursuant to proceedings approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Except as provided in Section 2.02(a) of the Ordinance, this Note shall not be entitled to any benefit under the Ordinance or be valid or become obligatory for any purpose until this Note shall have been authenticated by the execution by the Paying Agent/Registrar or the Comptroller of Public Accounts, as applicable, of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, the Issuer has authorized and caused this Note to be executed and attested on its behalf by the manual or facsimile signatures of the Mayor of the Issuer (or in the Mayor's absence, of the Mayor Pro-Tem) and countersigned with the manual or facsimile signature of the City Secretary of said Issuer and its official seal impressed or a facsimile thereof to be printed hereon.

City Secretary

Mayor

(SEAL)

Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Note only.

**REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS**

**OFFICE OF THE COMPTROLLER
OF PUBLIC ACCOUNTS
THE STATE OF TEXAS**

'
'
' **REGISTER NO.** _____

I HEREBY CERTIFY that this Note has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

Form of Authentication Certificate of Paying Agent/Registrar.

**AUTHENTICATION CERTIFICATE OF
PAYING AGENT/REGISTRAR**

This Note has been duly issued and registered under the provisions of the within-mentioned Resolution; the note or notes of the above titled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

[_____]
as Paying Agent/Registrar

Registered this date:

By: _____
Authorized Signature

Form of Schedule of Authorized Installments Deliveries to appear on Initial Note only.

SCHEDULE OF AUTHORIZED INSTALLMENT DELIVERIES

<u>Issue Date</u>	<u>No.</u>	<u>Principal Amount</u>	<u>Remaining Available Principal Balance</u>	<u>Extended Maturity Date</u>	<u>Date Paid</u>	<u>Principal and Interest Paid</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____



Wells Fargo Letter of Credit

Vis Bouaphanthavong
Assistant Director of Finance
March 25, 2024

ERCOT Credit and Collateral Protocol

Prior to October 1, 2023

- ERCOT maintained \$40 million of unsecured credit for DME based on revenue rating of A/Stable
- DME occasionally posted cash to supplement the unsecured credit when additional collateral was necessary

October 1, 2023, ERCOT Credit Protocol Changes

- Eliminated unsecured credit for any market participant
- Market participants required to issue cash or letter of credit to secure credit and collateral obligations
- DME provided cash collateral for all ERCOT financial activity
- DME issued RFP to obtain letter of credit to satisfy new ERCOT protocol



Letter of Credit Program and Benefits

Program

- \$500,000 estimated cost per year for a three-year term
- Drawdown is not anticipated - DME will continue to prepay for power and cash settle all ERCOT accounts
- In the unlikely event of a drawdown, City will explore more effective financing options

Staff recommends the use of a letter of credit for the following benefits

- Protects City's liquidity
- Interest earnings on City's cash will offset cost
- Meets ERCOT collateral requirements



Authority Requested

City to enter into agreement with Wells Fargo to provide a Letter of Credit of up to \$60 million to satisfy new ERCOT protocols.



Questions





City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-059, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$84,770,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date.



AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Cassey Ogden

DATE: March 25, 2024

SUBJECT

Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$84,770,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date.

BACKGROUND

The Board’s review of this item includes consideration of only Solid Waste capital projects.

This ordinance provides the Notice of Intention (NOI) to issue \$4,199,730 of Certificates of Obligation (CO) of the City of Denton for Solid Waste projects, as required by state law. The notice will be published once a week for two consecutive weeks in the Denton Record Chronicle, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the ordinance authorizing the issuance of the bonds. The notice will also be posted on the City’s website.

Staff recommends the sale of \$4,199,730 in COs for Solid Waste. Below is a listing of recommended Solid Waste CO funded projects for FY 2023-24 CIP. The project list changes are associated with pushing the construction of cells into future fiscal years and prioritizing the completion of the Fleet Shop.

	Budget	NOI
Home Chemical Collection Storage Capacity	\$2,000,000	\$ -
Fleet Shop at Solid Waste	-	2,000,000
Cell 5 & 6 Construction	1,950,000	-
Vehicles - New Additions	130,000	130,000
Vehicles - Replacements	3,000,000	2,069,730
Solid Waste Total	\$7,080,000	\$4,199,730

The City sells bonds in accordance with the useful life of the asset that is being acquired. For example, vehicles are typically sold with bonds that will be paid within five years. For the FY 2023-24 proposed debt issuance for Solid Waste COs: \$2,199,730 will be 5-year debt, and \$2,000,000 will be 20-year debt.

Concurrently with the sale of COs for Solid Waste, the City anticipates the sale of approximately \$79,805,775 in General Government COs and \$88,717,000 in General Obligation Bonds (GO) to fund the 2019 and 2023 Bond Programs and approximately \$177,560,000 in COs for Water, Wastewater and Electric.

If approved by the City Council, staff will proceed with the publication of the Notice of Intention and will schedule the Bond Ordinance consideration and adoption for June 4, 2024. The bond ordinance will dictate the parameters of the bond sale. Under such an arrangement, staff will be permitted to execute the bond sale within six (6) months of June 4, 2024, provided certain interest rate parameters are met.

RECOMMENDATION

Staff recommends adoption of the ordinance.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On October 24, 2023, the City Council adopted a reimbursement ordinance (Ord. No. 23-1426) authorizing the reimbursement of capital program expenditures of \$35,600,000 in GO and \$308,624,582 in CO funded projects for General Government, Solid Waste, Electric, Water and Wastewater.

FISCAL INFORMATION

The ordinance is for the authorization to publish the Notice of Intention to sell \$84,770,000 of Certificates of Obligation for General Government and Solid Waste projects. A notice is only required for Certificates of Obligation.

EXHIBITS

1. Agenda Information Sheet
2. Ordinance
3. Presentation

Respectfully submitted:
Vis Bouaphanthavong
Assistant Director of Finance

Prepared by:
Ranee Klingele
Treasury Manager

ORDINANCE NO. 24-___

AN ORDINANCE DIRECTING THE PUBLICATION OF NOTICE OF INTENTION TO ISSUE \$84,770,000 IN PRINCIPAL AMOUNT OF CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON FOR GENERAL GOVERNMENT AND SOLID WASTE PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is deemed necessary and advisable that the Notice of Intention to Issue Certificates of Obligation be given as hereinafter provided; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That attached hereto is a form of "NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON", the form and substance of which are hereby adopted and approved, and made a part of this Ordinance for all purposes.

SECTION 2. That the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be published once a week for two consecutive weeks in a newspaper of general circulation in the City, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the Ordinance authorizing the issuance of such Certificates of Obligation. And further that the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be posted continuously on the City's Internet website for at least 45 days before the date tentatively set for the passage of the Ordinance authorizing the issuance of the Certificates of Obligation.

SECTION 3. That for purposes of Texas Local Government Code, Subchapter C of Chapter 271, as amended, the City has currently designated \$663,075,000 in principal amount of the following \$1,014,935,000 of outstanding debt obligations as self-supporting debt, provided that such designated amount may be changed from time to time:

- Certificates of Obligation, Series 2014
- General Obligation Refunding and Improvement Bonds, Series 2014
- General Obligation Refunding Bonds, Series 2014
- Certificates of Obligation, Series 2015
- General Obligation Refunding and Improvement Bonds, Series 2015
- General Obligation Refunding Bonds, Series 2015
- Certificates of Obligation, Series 2016
- General Obligation Refunding and Improvement Bonds, Series 2016
- General Obligation Refunding Bonds, Series 2016
- Certificates of Obligation, Series 2017
- General Obligation Refunding and Improvement Bonds, Series 2017
- Certificates of Obligation, Series 2018

- General Obligation Bonds, Series 2018
- Certificates of Obligation, Series 2018A
- Certificates of Obligation, Series 2019
- General Obligation Refunding and Improvement Bonds, Series 2019
- Certificates of Obligation, Series 2020
- General Obligation Refunding and Improvement Bonds, Series 2020
- General Obligation Refunding Bonds, Series 2020A
- Certificates of Obligation, Series 2021
- General Obligation Bonds, Series 2021
- Certificates of Obligation, Series 2022
- General Obligation Refunding and Improvement Bonds, Series 2022
- Certificates of Obligation, Series 2023
- General Obligation Refunding and Improvement Bonds, Series 2023
- Extendable Commercial Paper Notes, Series A

SECTION 4. That this Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the rules and regulations of the United States Department of the Treasury.

SECTION 5. That this Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. The ordinance was passed and approved by the following vote [__ – __]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the 2nd day of April, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

THE STATE OF TEXAS :
COUNTY OF DENTON :
CITY OF DENTON :

NOTICE OF INTENTION
TO ISSUE CERTIFICATES OF OBLIGATION
OF THE CITY OF DENTON
(GENERAL GOVERNMENT AND SOLID WASTE PROJECTS)

THE CITY OF DENTON, in Denton County, Texas, hereby gives notice of its intention to issue CITY OF DENTON CERTIFICATES OF OBLIGATION, in accordance with the Certificate of Obligation Act of 1971, as amended and codified, and other applicable laws, in the maximum principal amount of \$84,770,000 for the purpose of paying all or a portion of the City's contractual obligations incurred pursuant to contracts for the purchase, construction and acquisition of certain real and personal property, to wit: (a) renovating, constructing, expanding, improving and equipping existing municipal service center building; (b) acquisition of vehicles and equipment for the fire, police, building inspections, community improvement services, animal services, streets and traffic control, facilities management, airport, technology services, fleet management, warehouse management, and parks and recreation departments; (c) renovations to, and equipping of, existing municipal buildings, including the acquisition and installation of replacement heating, venting and air conditioning equipment, roofing and flooring; (d) acquiring, expanding, constructing, renovating, improving and equipping parking facilities; (e) acquiring, constructing and installing building security systems, including security system technology equipment and software, for municipal buildings; (f) constructing, reconstructing, renovating, installing and equipping municipal parks; (g) renovations to and equipping existing municipal vehicle maintenance facility; (h) acquisition and installation of technology equipment, including radio equipment, computer equipment and software, for various municipal departments; (i) constructing and improving streets, including traffic signalization, landscaping, drainage, sidewalks, utility line relocations and the acquisition of land and rights-of-way therefor; (j) acquisition of equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's drainage and storm sewer systems; and (k) acquisition of vehicles and equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's solid waste disposal system; and also for the purpose of paying all or a portion of the City's contractual obligations for professional services, including engineers, architects, attorneys, map makers, auditors, and financial advisors, in connection with said projects and said Certificates of Obligation. The City proposes to provide for the payment of such Certificates of Obligation from the levy and collection of ad valorem taxes in the City as provided by law, and from certain surplus revenues (not to exceed \$1,000 in aggregate amount) derived by the City from the ownership and operation of the City's Utility System (consisting of the City's combined waterworks system, wastewater system and electric light and power system). The City Council of the City tentatively proposes to authorize the issuance of such Certificates of Obligation, in one or more series, at a meeting commencing at 6:30 p.m. on June 4, 2024, in the City Council room at the Municipal Building (City Hall), 215 E. McKinney, Denton, Texas. In the event the City Council will be unable to meet at the Municipal Building (City Hall) on June 4, 2024, the City will post on its website, www.cityofdenton.com, information for persons to attend the meeting by telephone, teleconference or other electronic means.

The maximum interest rate for such Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for such Certificates of Obligation is February 15, 2054, and the

estimated combined principal and interest required to pay such Certificates of Obligation to be authorized on time and in full is \$113,920,043.

The City has separately provided notice of its intention to also issue additional Certificates of Obligation in the maximum principal amount of \$177,560,000 for water system, wastewater system and electric system projects (the “Utility System Certificates of Obligation”). The maximum interest rate for the Utility System Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for the Utility System Certificates of Obligation is February 15, 2054, and the estimated combined principal and interest required to pay the Utility System Certificates of Obligation to be authorized on time and in full is \$277,753,063.

The City currently has outstanding debt obligations secured by and payable from ad valorem taxes (not including \$663,075,000 principal amount of outstanding debt obligations the City has designated as self-supporting debt) equal to \$351,860,000 in principal amount and \$464,843,469 in combined principal and interest required to pay such outstanding debt obligations on time and in full. The City reasonably expects to pay self-supporting debt obligations from revenue sources other than ad valorem taxes, provided, however, that in the event such self-supporting revenue sources are insufficient to pay debt service, the City is obligated to levy ad valorem taxes to pay such debt obligations. Ordinance No. 24-___ designating certain outstanding debt obligations of the City as self-supporting for purposes of Texas Local Government Code, Subchapter C of Chapter 271 is available upon request to the City at the address noted above.

CITY OF DENTON, TEXAS

By: Jesus Salazar, City Secretary



Public Utilities Board Notice of Intentions

Randee Klingele
Treasury Manager



Purpose of Notice of Intention

- State Law requires the publication of a Notice of Intent to issue Certificates of Obligation (COs). *(Texas Local Government Code, Chapter 271, Subchapter C – Certificate of Obligation Act)*
- The notice must be published in a newspaper of general circulation in the City (Denton Record Chronicle) and on the City's website.
- Publication must be once a week for two consecutive weeks.
- Passage of Bond Ordinance authorizing the sale of COs must be at least 46 days after the date of the first publication.

Solid Waste Projects

	Budget	NOI
Home Chemical Collection Storage Capacity	\$2,000,000	\$ -
Fleet Shop at Solid Waste	-	2,000,000
Cell 5 & 6 Construction	1,950,000	-
Vehicles - New Additions	130,000	130,000
Vehicles - Replacements	3,000,000	2,069,730
Solid Waste Total	\$7,080,000	\$4,199,730

Utility Projects - Water

	Budget	NOI
AMI/AMR Replacements	\$ 7,000,000	\$ 2,000,000
Sampling Station Upgrades	500,000	500,000
Distributor Replacement Program	4,320,572	4,320,572
LLRWPS Redundant Power Supply	250,000	250,000
LLWTP Clarifiers Rehab (Sludge Rake Coating & Sludge Valves)	3,500,000	3,500,000
LLWTP Raw Water Transmission Line	7,500,000	1,500,000
Robson Ranch Water Line (WMP:15)	400,000	400,000
RRWTP Capacity Rerate and Performance Upgrades	8,000,000	8,000,000
RRWTP Disinfection Conversion and Chemical Improvements	4,000,000	4,000,000
RRWTP Expansion #1 (HC:O-1); RRWTP Expansion #2 (HC:O-6)	31,580,500	20,000,000
Supplement to Bond Election 2019 Projects	12,200,000	12,200,000
Transmission Line Condition Repairs	1,000,000	1,000,000
LLWTP Sludge Dewatering Improvement Project	500,000	500,000
Service Center Renovation	2,000,000	2,000,000
Water Total	\$82,751,072	\$60,170,572

Utility Projects - Wastewater

	Budget	NOI
12/15-inch Robson Ranch Interceptor (HC: O-4)	\$ 2,361,900	\$ 2,361,900
Clear Creek Water Reclamation Plant (CCWRP)	460,000	460,000
Collector Replacement Program	4,915,318	4,915,318
Hickory Creek Water Reclamation Plant Ph 1 (HC: O-1, O-2, O-3)	171,178	171,178
Milam Creek Basin Wastewater Line and Lift Station	5,752,000	5,752,000
PCWRP New 75 MGD Headworks	24,000,000	24,000,000
PCWRP Expansion to 26 MGD	6,300,000	6,300,000
Supplement to Bond Election 2019 Projects	8,000,000	8,000,000
Oversize Participation - Waterline Increases	4,000,000	4,000,000
Wastewater Total	\$55,960,396	\$55,960,396

Utility Projects - Electric

	Budget	NOI
Automated Meter Reading	\$ 1,194,689	\$ 1,250,000
Building Construction	5,000,000	5,000,000
Distribution Substations	8,170,000	6,980,000
Distribution Transformers	7,000,000	5,000,000
Feeder Extensions and Improvements	14,975,000	6,902,100
New Residential & Commercial	7,100,000	5,269,000
Power Factor Improvement	500,000	150,000
Street Lighting	1,800,000	500,000
Transmission Lines	14,850,000	11,800,000
Transmission Substation	15,860,000	9,220,000
Technology - Software/Hardware	100,000	4,528,900
Electric Relocations	6,000,000	3,400,000
Electric Total	\$ 82,549,689	\$ 60,000,000

Total CO Notice of Intentions

Solid Waste	\$ 4,199,730
<hr/>	
Total General Government	
Water	\$ 60,170,572
Wastewater	55,960,396
Electric	60,000,000
Issuance Cost & Pricing Flexibility	1,429,032
<hr/>	
Total Utilities	\$ 177,560,000

Next Steps

- **April 2, 2024**
 - Council considers approval of NOI ordinances.
- **May 20, 2024**
 - PUB considers approval of bond ordinance authorizing the sale of Certificates of Obligation.
- **June 4, 2024**
 - Council considers approval of bond ordinances authorizing the sale of both General Obligation bonds and Certificates of Obligation.
- **June 12, 2024**
 - Preliminary date of sale if market conditions are favorable.
- **July 16, 2024**
 - Preliminary date of close and delivery of funds.

Questions





City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-060, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$177,560,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date.



City of Denton

City Hall
215 E. McKinney Street
Denton, Texas
www.cityofdenton.com

AGENDA INFORMATION SHEET

DEPARTMENT: Finance

ACM: Cassey Ogden

DATE: March 25, 2024

SUBJECT

Consider recommending adoption of an ordinance directing the publication of Notice of Intention to issue \$177,560,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date.

BACKGROUND

This ordinance provides the Notice of Intention (NOI) to issue \$176,130,968 of Certificates of Obligation (CO) of the City of Denton for Water, Wastewater and Electric System projects, as required by state law. The notice will be published once a week for two consecutive weeks in the Denton Record Chronicle, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the ordinance authorizing the issuance of the bonds. The notice will also be posted on the City’s website. The additional \$1,429,032 is for issuance costs and to allow flexibility in marketing and pricing the bond sale.

Staff recommends the sale of \$177,560,000 in COs for Water, Wastewater and Electric System. Changes to material pricing and project requirements for large projects were compared to the initial 2023 scopes and pricing in developing the NOI project list. The reduction in Water is associated with some projects still in design deferring expenses to next fiscal year. An overall review of Electric’s capital projects resulted in a reduction of NOI project dollars.

Below is a listing of recommended Water, Wastewater and Electric System CO funded projects for FY 2023-24.

	Budget	NOI
AMI/AMR Replacements	\$7,000,000	\$2,000,000
Sampling Station Upgrades	500,000	500,000
Distributor Replacement Program	4,320,572	4,320,572
LLRWPS Redundant Power Supply	250,000	250,000
LLWTP Clarifiers Rehab (Sludge Rake Coating & Sludge Valves)	3,500,000	3,500,000
LLWTP Raw Water Transmission Line	7,500,000	1,500,000
Robson Ranch Water Line (WMP:15)	400,000	400,000
RRWTP Capacity Rerate and Performance Upgrades	8,000,000	8,000,000
RRWTP Disinfection Conversion and Chemical Improvements	4,000,000	4,000,000
RRWTP Expansion #1 (HC:O-1); RRWTP Expansion #2 (HC:O-6)	31,580,500	20,000,000
Supplement to Bond Election 2019 Projects	12,200,000	12,200,000
Transmission Line Condition Repairs	1,000,000	1,000,000
LLWTP Sludge Dewatering Improvement Project	500,000	500,000
Service Center Renovation	2,000,000	2,000,000
Water Total	\$82,751,072	\$60,170,572

	Budget	NOI
12/15-inch Robson Ranch Interceptor (HC: O-4)	\$2,361,900	\$2,361,900
Clear Creek Water Reclamation Plant (CCWRP)	460,000	460,000
Collector Replacement Program	4,915,318	4,915,318
Hickory Creek Water Reclamation Plant Ph 1 (HC: O-1, O-2, O-3)	171,178	171,178
Milam Creek Basin Wastewater Line and Lift Station	5,752,000	5,752,000
PCWRP New 75 MGD Headworks	24,000,000	24,000,000
PCWRP Expansion to 26 MGD	6,300,000	6,300,000
Supplement to Bond Election 2019 Projects	8,000,000	8,000,000
Oversize Participation - Waterline Increases	\$4,000,000	4,000,000
Wastewater Total	\$55,960,396	\$55,960,396
Automated Meter Reading	\$1,194,689	\$1,250,000
Building Construction	5,000,000	5,000,000
Distribution Substations	8,170,000	6,980,000
Distribution Transformers	7,000,000	5,000,000
Feeder Extensions and Improvements	14,975,000	6,902,100
New Residential & Commercial	7,100,000	5,269,000
Power Factor Improvement	500,000	150,000
Street Lighting	1,800,000	500,000
Transmission Lines	14,850,000	11,800,000
Transmission Substation	15,860,000	9,220,000
Technology - Software/Hardware	100,000	4,528,900
Electric Relocations	\$6,000,000	\$3,400,000
Electric Total	\$82,549,689	\$60,000,000
Subtotal All Funds		\$176,130,968
Issuance Cost and Pricing Flexibility		1,429,032
Total Water, Wastewater and Electric		\$177,560,000

The City sells bonds in accordance with the useful life of the asset that is being acquired. For example, vehicles are typically sold with bonds that will be paid within five years. For the FY 2023-24 proposed debt issuance for Water, Wastewater and Electric System COs: \$116,130,968 will be 20-year debt, and \$60,000,000 will be 30-year debt.

If approved by the City Council, staff will proceed with the publication of the Notice of Intention and will schedule the Bond Ordinance consideration and adoption for June 4, 2024. The bond ordinance will dictate the parameters of the bond sale. Under such an arrangement, staff will be permitted to execute the bond sale within six (6) months of June 4, 2024, provided certain interest rate parameters are met.

RECOMMENDATION

Staff recommends adoption of the ordinance.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On October 24, 2023, the City Council adopted reimbursement ordinance (Ord. 23-1426) authorizing the reimbursement of capital program expenditures of \$35,600,000 in GO and \$308,624,528 in CO funded projects for General Government, Solid Waste, Electric, Water and Wastewater.

FISCAL INFORMATION

The ordinance is for the authorization to publish the Notice of Intention to sell \$177,560,000 of Certificates of Obligation for Water, Wastewater and Electric System projects. A notice is only required for Certificates of Obligation.

EXHIBITS

1. Agenda Information Sheet
2. Ordinance
3. Presentation

Respectfully submitted:
Vis Bouaphanthavong
Assistant Director of Finance

Prepared by:
Ranee Klingele
Treasury Manager

ORDINANCE NO. 24-____

AN ORDINANCE DIRECTING THE PUBLICATION OF NOTICE OF INTENTION TO ISSUE \$177,560,000 IN PRINCIPAL AMOUNT OF CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON FOR WATERWORKS AND WASTEWATER SYSTEM AND ELECTRIC SYSTEM PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is deemed necessary and advisable that the Notice of Intention to Issue Certificates of Obligation be given as hereinafter provided; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That attached hereto is a form of "NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON", the form and substance of which are hereby adopted and approved, and made a part of this Ordinance for all purposes.

SECTION 2. That the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be published once a week for two consecutive weeks in a newspaper of general circulation in the City, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the Ordinance authorizing the issuance of such Certificates of Obligation. And further that the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be posted continuously on the City's Internet website for at least 45 days before the date tentatively set for the passage of the Ordinance authorizing the issuance of the Certificates of Obligation.

SECTION 3. That this Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the rules and regulations of the United States Department of the Treasury.

SECTION 4. That this Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. The ordinance was passed and approved by the following vote [__ - __]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the 2nd day of April, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

THE STATE OF TEXAS :
COUNTY OF DENTON :
CITY OF DENTON :

NOTICE OF INTENTION
TO ISSUE CERTIFICATES OF OBLIGATION
OF THE CITY OF DENTON
(WATERWORKS AND WASTEWATER SYSTEM AND ELECTRIC SYSTEM PROJECTS)

THE CITY OF DENTON, in Denton County, Texas, hereby gives notice of its intention to issue CITY OF DENTON CERTIFICATES OF OBLIGATION, in accordance with the Certificate of Obligation Act of 1971, as amended and codified, and other applicable laws, in the maximum principal amount of \$177,560,000 for the purpose of paying all or a portion of the City's contractual obligations incurred pursuant to contracts for the purchase, construction and acquisition of certain real and personal property, to wit: (a) acquisition of equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's waterworks and wastewater system; and (b) acquisition of equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's electric light and power system; and also for the purpose of paying all or a portion of the City's contractual obligations for professional services, including engineers, architects, attorneys, map makers, auditors, and financial advisors, in connection with said projects and said Certificates of Obligation. The City proposes to provide for the payment of such Certificates of Obligation from the levy and collection of ad valorem taxes in the City as provided by law, and from certain surplus revenues (not to exceed \$1,000 in aggregate amount) derived by the City from the ownership and operation of the City's Utility System (consisting of the City's combined waterworks system, wastewater system and electric light and power system). The City Council of the City tentatively proposes to authorize the issuance of such Certificates of Obligation, in one or more series, at a meeting commencing at 6:30 p.m. on June 4, 2024, in the City Council room at the Municipal Building (City Hall), 215 E. McKinney, Denton, Texas. In the event the City Council will be unable to meet at the Municipal Building (City Hall) on June 4, 2024, the City will post on its website, www.cityofdenton.com, information for persons to attend the meeting by telephone, teleconference or other electronic means.

The maximum interest rate for such Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for such Certificates of Obligation is February 15, 2054, and the estimated combined principal and interest required to pay such Certificates of Obligation to be authorized on time and in full is \$277,753,063.

The City has separately provided notice of its intention to also issue additional Certificates of Obligation in the maximum principal amount of \$84,770,000 for general government and solid waste disposal system projects (the "General Government & Solid Waste Certificates of Obligation"). The maximum interest rate for the General Government & Solid Waste Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for the General Government & Solid Waste Certificates of Obligation is February 15, 2054, and the estimated combined principal and interest required to pay the General Government & Solid Waste Certificates of Obligation to be authorized on time and in full is \$113,920,043.

The City currently has outstanding debt obligations secured by and payable from ad valorem taxes (not including \$663,075,000 principal amount of outstanding debt obligations the City has designated as self-supporting debt) equal to \$351,860,000 in principal amount and \$464,843,469 in combined principal and interest required to pay such outstanding debt obligations on time and in full. The City reasonably expects to pay self-supporting debt obligations from revenue sources other than ad valorem taxes, provided, however, that in the event such self-supporting revenue sources are insufficient to pay debt service, the City is obligated to levy ad valorem taxes to pay such debt obligations. Ordinance No. 24-___ designating certain outstanding debt obligations of the City as self-supporting for purposes of Texas Local Government Code, Subchapter C of Chapter 271 is available upon request to the City at the address noted above.

CITY OF DENTON, TEXAS

By: Jesus Salazar, City Secretary



Public Utilities Board Notice of Intentions

Randee Klingele
Treasury Manager



Purpose of Notice of Intention

- State Law requires the publication of a Notice of Intent to issue Certificates of Obligation (COs). *(Texas Local Government Code, Chapter 271, Subchapter C – Certificate of Obligation Act)*
- The notice must be published in a newspaper of general circulation in the City (Denton Record Chronicle) and on the City's website.
- Publication must be once a week for two consecutive weeks.
- Passage of Bond Ordinance authorizing the sale of COs must be at least 46 days after the date of the first publication.

Solid Waste Projects

	Budget	NOI
Home Chemical Collection Storage Capacity	\$2,000,000	\$ -
Fleet Shop at Solid Waste	-	2,000,000
Cell 5 & 6 Construction	1,950,000	-
Vehicles - New Additions	130,000	130,000
Vehicles - Replacements	3,000,000	2,069,730
Solid Waste Total	\$7,080,000	\$4,199,730

Utility Projects - Water

	Budget	NOI
AMI/AMR Replacements	\$ 7,000,000	\$ 2,000,000
Sampling Station Upgrades	500,000	500,000
Distributor Replacement Program	4,320,572	4,320,572
LLRWPS Redundant Power Supply	250,000	250,000
LLWTP Clarifiers Rehab (Sludge Rake Coating & Sludge Valves)	3,500,000	3,500,000
LLWTP Raw Water Transmission Line	7,500,000	1,500,000
Robson Ranch Water Line (WMP:15)	400,000	400,000
RRWTP Capacity Rerate and Performance Upgrades	8,000,000	8,000,000
RRWTP Disinfection Conversion and Chemical Improvements	4,000,000	4,000,000
RRWTP Expansion #1 (HC:O-1); RRWTP Expansion #2 (HC:O-6)	31,580,500	20,000,000
Supplement to Bond Election 2019 Projects	12,200,000	12,200,000
Transmission Line Condition Repairs	1,000,000	1,000,000
LLWTP Sludge Dewatering Improvement Project	500,000	500,000
Service Center Renovation	2,000,000	2,000,000
Water Total	\$82,751,072	\$60,170,572

Utility Projects - Wastewater

	Budget	NOI
12/15-inch Robson Ranch Interceptor (HC: O-4)	\$ 2,361,900	\$ 2,361,900
Clear Creek Water Reclamation Plant (CCWRP)	460,000	460,000
Collector Replacement Program	4,915,318	4,915,318
Hickory Creek Water Reclamation Plant Ph 1 (HC: O-1, O-2, O-3)	171,178	171,178
Milam Creek Basin Wastewater Line and Lift Station	5,752,000	5,752,000
PCWRP New 75 MGD Headworks	24,000,000	24,000,000
PCWRP Expansion to 26 MGD	6,300,000	6,300,000
Supplement to Bond Election 2019 Projects	8,000,000	8,000,000
Oversize Participation - Waterline Increases	4,000,000	4,000,000
Wastewater Total	\$55,960,396	\$55,960,396

Utility Projects - Electric

	Budget	NOI
Automated Meter Reading	\$ 1,194,689	\$ 1,250,000
Building Construction	5,000,000	5,000,000
Distribution Substations	8,170,000	6,980,000
Distribution Transformers	7,000,000	5,000,000
Feeder Extensions and Improvements	14,975,000	6,902,100
New Residential & Commercial	7,100,000	5,269,000
Power Factor Improvement	500,000	150,000
Street Lighting	1,800,000	500,000
Transmission Lines	14,850,000	11,800,000
Transmission Substation	15,860,000	9,220,000
Technology - Software/Hardware	100,000	4,528,900
Electric Relocations	6,000,000	3,400,000
Electric Total	\$82,549,689	\$60,000,000

Total CO Notice of Intentions

Solid Waste	\$ 4,199,730
<hr/>	
Total General Government	
Water	\$ 60,170,572
Wastewater	55,960,396
Electric	60,000,000
Issuance Cost & Pricing Flexibility	1,429,032
<hr/>	
Total Utilities	\$ 177,560,000

Next Steps

- **April 2, 2024**
 - Council considers approval of NOI ordinances.
- **May 20, 2024**
 - PUB considers approval of bond ordinance authorizing the sale of Certificates of Obligation.
- **June 4, 2024**
 - Council considers approval of bond ordinances authorizing the sale of both General Obligation bonds and Certificates of Obligation.
- **June 12, 2024**
 - Preliminary date of sale if market conditions are favorable.
- **July 16, 2024**
 - Preliminary date of close and delivery of funds.

Questions





City of Denton

City Hall
215 E. McKinney St.
Denton, Texas 76201
www.cityofdenton.com

Legislation Text

File #: PUB24-066, **Version:** 1

AGENDA CAPTION

Management Reports

1. Voting Requirements for Public Utilities Board Members
2. DME Personnel Expenses
3. Future Agenda Items
4. New Business Action Items



MEMORANDUM

DATE: March 25, 2024
TO: Public Utilities Board
FROM: Marcella Lunn, Senior Deputy City Attorney
SUBJECT: Voting Requirements for Public Utilities Board Members

This memorandum addresses voting requirements for Public Utilities Board Members.

City of Denton Code of Ordinances Section 2-83(b) provides:

Voting required. No attending member of a board shall be excused or shall abstain from voting on any matter before the board on which a vote is called or required, except where a board member's personal interest is involved. When such member's personal interest is involved, such member shall announce such interest at the commencement of consideration of the matter, and such member shall not enter into discussion or debate on such matter and shall abstain from voting thereon and shall fill out an affidavit stating such interest in accordance with V.T.C.A., Texas Local Government Code § 171.004. A member shall be considered to have a personal interest in a matter whenever any matter before the board could or does affect the member's financial interest. The phrase "financial interest" when used herein shall have the same meaning as "substantial interest in a business entity" as that phrase is defined in V.T.C.A., Texas Local Government Code § 171.002.

Due to this requirement, Public Utilities Board Members are required to vote on all items unless there is a personal interest. If a Public Utilities Board Member has questions about an item or does not think the item was ripe for discussion at the time it is brought before the board, the Public Utilities Board Member can either vote no on the item or move to postpone the item until additional information can be provided.

OUR CORE VALUES

Inclusion • Collaboration • Quality Service • Strategic Focus • Fiscal Responsibility



MEMORANDUM

DATE: March 25, 2024
TO: Public Utilities Board
FROM: Tony Puente, DME General Manager
SUBJECT: DME Personnel Expenses

During the March 11th PUB meeting, Board Members requested information regarding the variance in personnel expenses from FY 23 to FY 24. The figures shown on the FY 2024 Updated Financial Forecast reflected actual year-end expenses of \$20,533,872 for FY 23 and budgeted expenses of \$26,881,551 for FY 24. After further review of FY 23 expenses, staff determined that a year-end entry was incorrectly posted that reduced reported expenses by \$1,695,812. Therefore, the corrected actual year-end personnel expenses for FY 23 should be \$22,229,684.

Below is a detailed breakdown and comparison of corrected FY 23 actuals to FY 24 budget:

Expense Category	FY 23 Actuals	FY 24 Budget	Actual / Budget	% Inc/Dec
Base Salaries	\$14,441,516	\$16,014,663	\$1,573,147	10.9%
Overtime	\$1,504,603	\$1,481,147	\$(23,456)	-1.6%
Other Pay	\$137,597	\$158,239	\$20,642	15.0%
FICA/Medicare	\$1,150,358	\$1,569,524	\$419,166	36.4%
TMRS	\$2,898,173	\$4,006,595	\$1,108,422	38.2%
Health Insurance	\$2,072,282	\$2,823,840	\$751,558	36.3%
Other Benefits	\$25,155	\$36,458	\$11,303	44.9%
Total	\$22,229,684	\$26,090,466	\$3,860,782	17.4%

To better compare year-over-year amounts, staff recommends that the analysis center on budgeted amounts. As such, the FY 23 Budget was \$24,893,470 versus the FY 24 Budget of \$26,090,466. This represents an increase of \$1,196,996 or 4.8%. The year-over-year increase is primarily attributed to the impact of cost of living/merit increases, implementation of compensation study salary adjustments, and market-driven health insurance and retirement benefits. While a minor overall impact, DME did add three new positions in FY 24 that increased total positions to 187 vs the 184 that were budgeted in FY 23. In addition, staff would point out that DME has decreased positions from a high of 199 in FY 18 but as we continue to be challenged with unprecedented growth, additional positions will be needed to provide the level of service our customers expect.

Finally, our current best estimate for FY 24 is that we will likely end the year about 10% below the budget amount or \$23,481,419. This is based on historical outcomes based on employee turnover, capitalized labor, and mutual aid responses, and would represents a 5.6% increase over FY 23 actuals or \$1,251,735.

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Future Public Utilities Board Agenda Items

Note: This is a working draft of pending PUB items and is subject to change without notice.

Meeting Date	Item	Dept
March 25, 2023		
April 8, 2024		
April 22, 2024		
May 6, 2024		
May 20, 2024	Preliminary Electric/Water/Wastewater/Solid Waste/Drainage Budget Review Forecasted Electric/Water/Wastewater/Solid Waste Rate Increases	Finance Finance
June 10, 2024		
June 24, 2024	Reviews proposed Electric/Water/Wastewater/Solid Waste Rate Increases Reviews Electric, Water, Wastewater, Drainage and Solid Waste Budget	Finance Finance
July 8, 2024	Recommends approval Utility rate changes and ordinances Recommends approval Electric, Water, Wastewater, Drainage and Solid Waste budgets	Finance Finance
July 22, 2024		
August 12, 2024		
August 26, 2024		
September 9, 2024		
September 23, 2024		
October 14, 2024		
October 28, 2024		
November 18, 2024		
December 9, 2024		

Codes: Work Session WS, Consent Agenda CA, Individual Consideration IC

PUBLIC UTILITIES BOARD - NEW BUSINESS ACTION ITEMS

	DATE REQUESTED	REQUESTOR	ITEM	DEPT	STATUS
1.	10/23/23	Taylor	Would like a comparison of our experience with EVs vs Combustion Engine cars and trucks.	Fleet	10/28/24
2.	1/22/24	Riback	A cost analysis to implement the new criteria manual items	Development Services	Complete 3/11/24
3.	3/11/24	Riback	Explanation of DME personnel costs from FY 23 actuals to FY 24 budget.	DME/ Finance	4/8/24