



City of Denton

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

Meeting Agenda Public Utilities Board

Monday, April 8, 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, April 8, 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. [PUB24-068](#) 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 Freese and Nichols, Inc., amending the contract approved by City Council on December 12, 2017, in the not-to-exceed amount of \$1,200,000.00, said first amendment to provide full depth reconstruction and utility improvements within the project limits for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (File 6625 - providing for an additional first amendment expenditure amount not-to-exceed \$1,630,500.00, for a total contract amount not-to-exceed \$2,830,500.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Original Ordinance and Contract](#)
 [Exhibit 3 - Ordinance and Amendment 1](#)

- B. [PUB24-069](#) 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 Burns & McDonnell Engineering Company, Inc., to manage and control improvement to the Supervisory Control and Data Acquisition (SCADA) network in the capacity of Owner Engineer for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-013 - awarded to Burns & McDonnell Engineering Company, Inc., in the not-to-exceed amount of \$1,399,998.00).

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

- C. [PUB24-070](#) 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 Atmospheric G2, LLC, for weather forecasting services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date. (RFP 8420 - awarded to Atmospheric G2, LLC, in the three (3) year not-to-exceed amount of \$165,240.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Pricing Evaluation](#)
 [Exhibit 3 - Ordinance and Contract](#)

- D. [PUB24-076](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas Home-Rule Municipal Corporation, authorizing the filing of applications, forms, and associated documents with the Texas Commission on Environmental Quality (“TCEQ”) by the City Manager, to seek permits, permit amendments, permit renewals, and authorizations needed for the operation of the City’s Water Utility, the expenditure of funds needed to receive TCEQ Permits and Authorizations, providing an effective date.

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

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [PUB24-074](#) Consider approval of the March 25, 2024 minutes.
Attachments: [3.25.24 PUB Minutes](#)
- B. [PUB24-067](#) Consider recommending adoption of an ordinance of the City of Denton, A Texas Home-Rule Corporation (“City”), amending the City’s Water Conservation and Drought Contingency Plan previously adopted by the City Council in Ordinance No. 19-863 enacted on April 16, 2019, providing an effective date.
Attachments: [Exhibit 1. Agenda Information Sheet](#)
[Exhibit 2. Presentation](#)
[Exhibit 3. Draft Water Conservation Plan](#)
[Exhibit 4. Ordinance](#)
- C. [PUB24-073](#) Consider recommending adoption of an ordinance of the City Council of the City of Denton, a Texas home-rule municipal corporation (“Denton”) providing for, authorizing, and approving the execution by the City Manager of the Power Purchase Agreement (“PPA”) between Denton and Yellow Viking Development One, LLC (“Yellow Viking”); authorizing the acceptance and approval by the City Manager of the Letter of Credit or other credit support issued on behalf of Yellow Viking further securing the obligations of Yellow Viking to Denton for the benefit of Denton; approving the execution of such other and further related documents deemed necessary to effectuate the transactions allowed under this agreement by the City Manager, which are incident to or related to the PPA; finding that that the purchase of capacity and energy made by Denton under the terms of the PPA are in the public welfare; authorizing the expenditure of funds; determining that specific information contained in documents involved in this transaction pertain to a “Competitive Electric Matter” as set forth under the provisions of §551.086 and §552.133 of the Texas Government Code, as amended; allowing the public to inspect and reproduce the PPA as redacted; and providing an effective date.
Attachments: [Attachment 1 - Agenda Information Sheet](#)
[Attachment 2 - Ordinance](#)
[Attachment 3 - Redacted Power Purchase Agreement](#)
[Attachment 4 - Presentation](#)
- D. [PUB24-075](#) Management Reports
1. Future Agenda Items
2. New Business Action Items
Attachments: [1 Future Agenda Items](#)
[2 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 salutory 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.

Following the completion of the Regular Meeting, the Public Utilities Board (PUB) will convene in a Closed Meeting to consider specific items when these items are listed below under the Closed Meeting section of this agenda. The Public Utilities Board (PUB) reserves the right to adjourn into a Closed Meeting on any item on its Open Meeting agenda consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law.

CLOSED MEETING

A. [PUB24-072](#) Deliberations Regarding Certain Public Power Utilities Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071.

Receive information from staff regarding a proposed Power Purchase Agreement with Yellow Viking Development One, LLC that includes data stemming from public power utility competitive data; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding issues associated with the above matter where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative or potential litigation.

Any final action, decision, or vote on a matter deliberated in a Closed Meeting will only be taken in an Open Meeting that is held in compliance with Texas Government Code, Chapter 551, except to the extent such final action, decision, or vote is taken in the Closed Meeting in accordance with the provisions of Section 551.086 of the Texas Government Code (The 'Public Power Exception'). The Public Utilities Board reserves the right to adjourn into a Closed Meeting or Executive Session as authorized by Texas Government Code, Section 551.001, et seq. (The Texas Open Meetings Act) on any item on its Open Meeting agenda or to reconvene in a continuation of the Closed Meeting on the Closed Meeting items noted above, in accordance with the Texas Open Meetings Act, including, without limitation Section 551.071-551.086 of the Texas Open Meetings Act.

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 April 5, 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 #: PUB24-068, **Version:** 1

AGENDA CAPTION

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 Freese and Nichols, Inc., amending the contract approved by City Council on December 12, 2017, in the not-to-exceed amount of \$1,200,000.00, said first amendment to provide full depth reconstruction and utility improvements within the project limits for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (File 6625 - providing for an additional first amendment expenditure amount not-to-exceed \$1,630,500.00, for a total contract amount not-to-exceed \$2,830,500.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: April 8, 2024

SUBJECT

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 Freese and Nichols, Inc., amending the contract approved by City Council on December 12, 2017, in the not-to-exceed amount of \$1,200,000.00, said first amendment to provide full depth reconstruction and utility improvements within the project limits for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (File 6625 – providing for an additional first amendment expenditure amount not-to-exceed \$1,630,500.00, for a total contract amount not-to-exceed \$2,830,500.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

In December 2017, City Council approved a contract with Freese and Nichols Inc. for the design of the Pecan Creek 4 Phase 3 & 4 Project. Staff has reevaluated the project scope of Pecan Creek 4 Phase 3 & 4 to incorporate full-depth pavement reconstruction into the project design along with additional utility work along West Mulberry Street, West Sycamore Street, and Stroud Street. The additional utility work includes the replacement of the water mains on West Mulberry and West Sycamore Streets, the wastewater main on West Mulberry Street, and additional drainage on Stroud Street to replace aging infrastructure. The purpose of this amendment is to provide funding to address additional scope, update design standards and technical specifications, and right-of-way or easement acquisitions. On November 7, 2023, voters approved this project as part of the 2023 Bond Program.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On December 12, 2017, City Council approved a contract with Freese and Nichols Inc., in the not-to-exceed amount of \$1,200,000 (Ordinance 2017-403).

RECOMMENDATION

Award Amendment No. 1 with Freese and Nichols Inc., to provide full depth reconstruction and utility improvements within the project limits for the Capital Projects Department, in a not-to-exceed amount of \$1,630,500, for a total amended contract amount of \$2,830,500.

PRINCIPAL PLACE OF BUSINESS

Freese and Nichols, Inc.
Fort Worth, TX

ESTIMATED SCHEDULE OF PROJECT

This project design will be started upon approval, followed by Right-Of-Way acquisition into construction. Construction is estimated to take 24 months.

FISCAL INFORMATION

These services will be funded from Drainage Projects Fund C.O. account 650118455 and Drainage Projects G.O. account 650118459. Purchase Order #184278 will be revised to include the first amendment amount of \$1,630,500. The total amended amount of this contract is \$2,830,500.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Original Ordinance and Contract
Exhibit 3: Ordinance and Amendment 1

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

For information concerning this acquisition, contact: Sheldon Gatewood, 940-349-7423.

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

ORDINANCE NO. 2017-403

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING DESIGN SERVICES RELATING TO THE DESIGN, BID PHASE, AND CONSTRUCTION SERVICES FOR THE PEC-4 PHASES 3 AND 4 DRAINAGE IMPROVEMENTS PROJECT WHICH INCLUDES APPROXIMATELY 2,700 LINEAR FEET OF REINFORCED CONCRETE BOX, 2,300 LINEAR FEET OF WATERLINE RELOCATION AND LOWERING, 1,700 LINEAR FEET OF SANITARY SEWER LINE RELOCATION AND ADJUSTMENT, AND PAVEMENT REPAIR FROM WEST PRAIRIE STREET TO THE BEGINNING OF THE OPEN CHANNEL NEAR THE INTERSECTION OF WEST MULBERRY STREET AND BERNARD STREET; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 6625 AWARDED TO FREESE AND NICHOLS, INC. IN THE NOT-TO-EXCEED AMOUNT OF \$1,200,000).

WHEREAS, 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, 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. That the City Manager is hereby authorized to enter into a professional service contract with Freese and Nichols, Inc., to provide professional engineering services for PEC-4 Phase 3 and 4 Drainage Improvements, a copy of which is attached hereto and incorporated by reference herein.

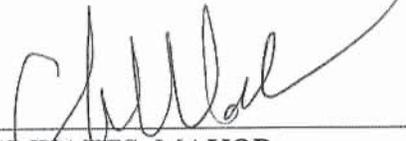
SECTION 2. The City Manager is authorized to expend funds as required by the attached contract.

SECTION 3. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under the File 6625 to the City Manager of the City of Denton, Texas, or his designee.

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

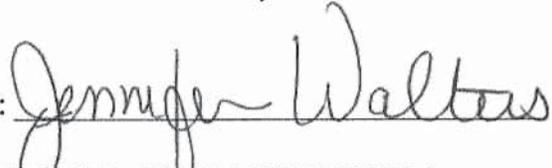
SECTION 5. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 12th day of December, 2018.



CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: 



DocuSign City Council Transmittal Coversheet

PSA	6625
File Name	PEC 4 Phase 3 & 4 Drainage project
Purchasing Contact	Rebecca Hunter
City Council Target Date	12/12/17
Contract Value	1,200,000.00
Piggy Back Option	yes
Contract Expiration	N/A
Ordinance	2017-403

**PROFESSIONAL ENGINEERING SERVICES
FOR
PEC 4 Drainage Improvements Phase 3 & 4
(CONTRACT 6625)**

THIS AGREEMENT is made and entered into this date December 12, 2017, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "Owner" and Freese and Nichols, Inc., with its corporate office at 4055 International Plaza, Suite 200, Fort Worth, Texas, 76109, hereinafter called "Design Professional," acting herein, by and through their duly authorized representatives.

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

**SECTION 1
EMPLOYMENT OF DESIGN PROFESSIONAL**

The Owner hereby contracts with the Design Professional, a licensed Texas engineer, as an independent contractor. The Design Professional hereby agrees to perform the services in conjunction with the PEC 4 Drainage Improvements Phase 3&4 project as described herein and in the Scope of Work (**Exhibit 4**), the General Conditions (**Exhibit 3**), and other attachments to this Agreement that are referenced in Section 4. The Project shall include, but shall not be limited to, the following major components (for a more precise or comprehensive description of the Scope refer to **Exhibit 4**):

Design drainage improvements for CITY for Stream PEC-4 from West Prairie Street to the beginning of the open channel near the intersection of West Mulberry Street and Bernard Street. Stream PEC-4 is currently an aging system of undersized open channels and culverts throughout the project area. The purpose of this project is to alleviate flooding along the channel by designing a closed pipe system for Phases 3 and 4.

The PEC-4 – Phase 3 and 4 Drainage Improvements (PROJECT) includes approximately 2,700 linear feet of reinforced concrete box, 2,300 linear feet of waterline relocation and lowering, 1,700 linear feet of sanitary sewer line relocation and adjustment, and pavement repair by the project. The ENGINEER will prepare construction documents for design of improvements. Figure 1 shows the location and preliminary design extents for the drainage improvements.

**SECTION 2
COMPENSATION AND SCHEDULE**

Total compensation for the Design Professional contemplated under the terms of this agreement **shall be a total not-to-exceed \$1,200,000** for all services including reimbursable expenses. The Owner shall compensate the Design Professional as follows:

2.1 BASIC AND SPECIAL SERVICES

2.1.1 For Basic Services the total compensation shall be an hourly not to exceed total of \$918,000 and for Special Services the total compensation shall not exceed \$282,000.

2.1.2 Progress payments for Basic Services shall be paid monthly based on the actual work satisfactorily completed per month in each phase as a percentage of the overall compensation for that phase, with the following amounts of the total compensation for the Basic Services for each phase of the Project:

Task Description	Type	Fee
Task 1 - Design Management	Basic	\$ 80,000
Task 2 - Conceptual Design	Basic	\$ 143,000
Task 3 - Preliminary Design	Basic	\$ 240,000
Task 4 - Final Design	Basic	\$ 300,000
Task 5 - Bid Phase Services	Basic	\$ 15,000
Task 6 - Construction Phase Services	Special	\$ 130,000
Task 7 - FEMA Coordination Services	Special	\$ 45,000
Task 8 - Survey and SUE Services	Basic	\$ 140,000
Task 9 - ROW Services	Special	\$ 60,000
Task 10 - Geotechnical Investigation	Special	\$ 30,000
Task 11 - Public Involvement	Special	\$ 17,000
	Total Basic	\$ 918,000
	Total Special	\$ 282,000
	Total Fee	\$ 1,200,000

2.2 ADDITIONAL SERVICES

2.2.1 If Scope of Services change so that Additional Services are needed, including but not limited to those services described as Additional Services in Exhibit 6, DESIGN PROFESSIONAL will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges as shown in Exhibit 5.

2.3 SCHEDULE The Design Professional will be authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the detailed design services in 12 months and construction in 3 years for a total contract term of 4 years.

SECTION 3 INVOICES

Invoices shall be sent directly to the City of Denton Accounts Payable Department, 215 E. McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall be sent to the contract administrator as identified in the Notice to Proceed. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

SECTION 4
ENTIRE AGREEMENT

This Agreement includes this executed agreement and the following documents all of which are attached hereto and made a part hereof by reference as if fully set forth herein:

- Exhibit 1 Certificate of Interested Parties Electronic Filing
- Exhibit 2 City of Denton Insurance Requirements for Consultants/Contractors
- Exhibit 3 City of Denton General Conditions to Agreement for Architectural or Engineering Services
- Exhibit 4 Scope of Services
- Exhibit 5 Compensation
- Attachment House Bill 89 Verification
- Attachment Senate Bill 252 Certification

By executing this Agreement below in conformance with Sec. 2270 of the Texas Government Code, the Supplier verifies that the Supplier: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.

This Agreement is signed by the parties hereto effective as of the date first above written.

CITY OF DENTON, TEXAS
A Municipal Corporation

BY: DocuSigned by:
Todd Hileman
E776C711BA0D454...
TODD HILEMAN
CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: DocuSigned by:
Jennifer Walters
C5BF AFC1821946D...

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: DocuSigned by:
Jennifer W. Belcuria
5972538AC4584B9...

Freese & Nichols
A Corporation

BY: DocuSigned by:
Kelley Dillner
9F8753B1C544455...
AUTHORIZED AGENT

skh@freese.com

EMAIL ADDRESS

2017-290119

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

Exhibit 1
Certificate of Interested Parties Electronic Filing

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

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

The contractor shall:

1. Log onto the State Ethics Commission Website at :
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on the signature page of this contract.
5. Sign and notarize the Form 1295
6. Email the notarized 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 2
CITY OF DENTON
INSURANCE REQUIREMENTS FOR
CONSULTANTS/CONTRACTORS

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

STANDARD PROVISIONS:

Without limiting any of the other obligations or liabilities of the Consultant/Contractor, the Consultant/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 award, Consultant/Contractor shall file with the Purchasing Department satisfactory certificates of insurance, containing the proposal/bid number and title of the project. Consultant/Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Consultants/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. Consultant/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 or bid. 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 Consultant/Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:

- Name as additional insured the City of Denton, its Officials, Agents, Employees and volunteers.
- That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- ***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, Consultant/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 Consultant/Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. General Liability Insurance:

General Liability insurance with combined single limits of not less than **\$500,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

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

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.

- Coverage C, medical payments, is not required.

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

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

[X] Automobile Liability Insurance:

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

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

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

[X] Workers' Compensation Insurance

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

Owner's and Contractor's Protective Liability Insurance

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the

prosecution of the work or Contractor's operations under this contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least combined bodily injury and property damage per occurrence with a __ aggregate.

Professional Liability Insurance

Professional liability insurance with limits not less than **\$1,000,000.00** per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.

Environmental Liability Insurance

Environmental liability insurance for \$1,000,000 to cover all hazards contemplated by this contract.

Riggers Insurance

The Contractor shall provide coverage for Rigger's Liability. Said coverage may be provided by a Rigger's Liability endorsement on the existing CGL coverage; through and Installation Floater covering rigging contractors; or through ISO form IH 00 91 12 11, Rigger's Liability Coverage form. Said coverage shall mirror the limits provided by the CGL coverage

Builders' Risk Insurance

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

Commercial Crime

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

Additional Insurance

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

Exhibit 3
CITY OF DENTON
GENERAL CONDITIONS
TO
AGREEMENT FOR ARCHITECTURAL OR ENGINEERING SERVICES

ARTICLE 1. ARCHITECT OR ENGINEER'S RESPONSIBILITIES

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

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

ARTICLE 2 SCOPE OF BASIC SERVICES

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

2.2 SCHEMATIC DESIGN PHASE

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

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

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

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

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

2.3 DESIGN DEVELOPMENT PHASE

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

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

2.4 CONSTRUCTION DOCUMENTS PHASE

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

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

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

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

2.5 CONSTRUCTION CONTRACT PROCUREMENT

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

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

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

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

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

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

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

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

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

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

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

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

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

2.6.11 The Design Professional shall have the responsibility and authority to reject work which does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Professional will have authority to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not exercise such

authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

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

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

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

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

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

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

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

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

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

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

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

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

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

3.3 CONTINGENT ADDITIONAL SERVICES

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

1. inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;

2. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or
3. due to changes required as a result of the Owner's failure to render decision in a timely manner.

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

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

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

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

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

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

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

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

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing financial feasibility or other special studies.

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

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

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

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

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

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

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

3.4.9 Providing analyses of operating and maintenance costs.

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

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

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

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

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

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

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

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 CONSTRUCTION COST

5.1 CONSTRUCTION COST DEFINED

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

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

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

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

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

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

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

ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS

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

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

ARTICLE 7 TERMINATION, SUSPENSION OR ABANDONMENT

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

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

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

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

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

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

ARTICLE 8 PAYMENTS TO THE DESIGN PROFESSIONAL

8.1 DIRECT PERSONNEL EXPENSE

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

8.2 REIMBURSABLE EXPENSES

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

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

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

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

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

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

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

8.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

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

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

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

8.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

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

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

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

ARTICLE 9 INDEMNITY

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

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

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

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

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

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

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

10.5 The Design Professional shall furnish insurance certificates or insurance policies to the Owner evidencing insurance in compliance with this Article 10 at the time of the execution of the Agreement. The General Liability and Automobile Liability insurance policies shall name the Owner as an additional insured, the Workers' Compensation policy shall contain a waiver of subrogation in favor of the Owner, and each policy shall contain a

provision that such insurance shall not be canceled or modified without thirty (30) days' prior written notice to Owner and Design Professional. In such event, the Design Professional shall, prior to the effective date of the change or cancellation, furnish Owner with substitute certificates of insurance meeting the requirements of this Article 10.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 4

SCOPE OF SERVICES

PEC-4 - Phase 3 and 4 Drainage Improvements

The scope set forth herein defines the work to be performed by the ENGINEER in completing the project. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the Project. Under this scope, "ENGINEER" is expanded to include any sub-consultant, including surveyor, employed or contracted by the ENGINEER.

GENERAL OVERVIEW

Freese and Nichols, Inc., (ENGINEER) has been contracted by the City of Denton (CITY) to design drainage improvements for CITY for Stream PEC-4 from West Prairie Street to the beginning of the open channel near the intersection of West Mulberry Street and Bernard Street.

Stream PEC-4 is currently an aging system of undersized open channels and culverts throughout the project area. The purpose of this project is to alleviate flooding along the channel by designing a closed pipe system for Phases 3 and 4.

The PEC-4 – Phase 3 and 4 Drainage Improvements (PROJECT) includes approximately 2,700 linear feet of reinforced concrete box, 2,300 linear feet of waterline relocation and lowering, 1,700 linear feet of sanitary sewer line relocation and adjustment, and pavement repair by the project. The ENGINEER will prepare construction documents for design of improvements. Figure 1 shows the location and preliminary design extents for the drainage improvements.

WORK TO BE PERFORMED

- Task 1. Design Management
- Task 2. Conceptual Design
- Task 3. Preliminary Design
- Task 4. Final Design
- Task 5. Bid Phase Services
- Task 6. Construction Phase Services (Special Service)
- Task 7. FEMA Coordination Services (Special Service)
- Task 8. Survey Services
- Task 9. ROW Services (Special Service)
- Task 10. Geotechnical Investigation (Special Service)
- Task 11. Public Involvement (Special Service)

TASK 1. DESIGN MANAGEMENT.

ENGINEER will manage the work outlined in this scope to ensure efficient and effective use of ENGINEER's and CITY's time and resources. ENGINEER will manage change, communicate effectively, coordinate internally and externally as needed, and proactively address issues with the CITY's Project Manager and others as necessary to make progress on the work.

1.1. Managing the Team

- Lead, manage and direct design team activities
- Ensure quality control is practiced in performance of the work
- Communicate internally among team members
- Task and allocate team resources

1.2. Communications and Reporting

- Attend a pre-design project kickoff/chartering meeting with CITY staff to confirm and clarify scope, understand CITY objectives, and ensure economical and functional designs that meet CITY requirements.
- Conduct up to three (3) review meetings with the CITY, one at the end of each design phase.
- Conduct one (1) meeting during the Bid Phase with the CITY.
- Prepare and submit monthly progress reports.
- Prepare and submit baseline Project Schedule initially, and Project Schedule updates monthly.
- Coordinate with other agencies and entities as necessary for the design of the proposed infrastructure, and provide and obtain information needed to prepare the design.

ASSUMPTIONS

- A total of ten (10) meetings are assumed, including one (1) project kickoff meeting, three (3) meetings at the end of 30%, 60%, and 90% design phases, one (1) meeting during the bid phase, and up to five (5) additional meetings to coordinate various project elements.

DELIVERABLES

- A. Meeting summaries with action items
- B. Monthly progress reports
- C. Baseline design schedule

TASK 2. CONCEPTUAL DESIGN (30 PERCENT).

The Conceptual Design shall be submitted to CITY per the approved Project Schedule.

The purpose of the conceptual design is for the ENGINEER to identify, develop, communicate through the defined deliverables, and recommend the design concept that successfully addresses the design problem, and to obtain the CITY's endorsement of this concept. ENGINEER will utilize concepts and criteria contained in the current City of Denton Design Criteria Manual (2013).

ENGINEER will develop the conceptual design of the infrastructure as follows.

2.1. Data Collection

- In addition to data obtained from the CITY, ENGINEER will research and make efforts to obtain pertinent information to aid in coordination of the proposed improvements with any planned future improvements that may influence the project. ENGINEER will also identify and seek to obtain data for existing conditions that may impact the project including: record drawings, utilities, agencies (such as TxDOT and railroads), CITY Master Plans, CITY drainage complaint files, existing applicable drainage studies, FEMA floodplain and floodway maps, existing models of project area (if any) and property ownership as available from the Tax Assessor's office.
- Engineer will make site visits to become familiar, or verify, the site and observe existing conditions.

2.2. Hydrologic and Hydraulic Analysis

ENGINEER will prepare a hydrologic and hydraulic analysis of the proposed drainage improvements as a basis for the design. This analysis will prepare a single combined model for the drainage improvements that can be used to communicate project benefits to interested parties as well as gain FEMA approval for a Letter of Map Revision (LOMR).

2.2.1 Hydrology

- Delineate contributing drainage area based on aerial topography, survey data, site exploration and LiDAR provided by the CITY
- Develop design discharges using NRCS Unit Hydrograph method for standard design storms including the 2,5, 10, 25, 50, and 100-year events.

2.2.2 Hydraulics

- Develop 2D hydraulic model of study area using XP-SWMM.
- Execute hydraulic model for the following scenarios:
 - i. Pre-project model representing existing conditions.
 - ii. Post-project model representing proposed box system.
- Evaluate impacts of proposed box system on water surface elevation within the study area and document in tabular and graphical format.
- Evaluate capacity of drainage infrastructure for laterals and inlets. Model may identify additional drainage infrastructure necessary to collect runoff for project. Design of additional laterals not shown on project exhibit shall be considered an additional service.
- Document proposed versus existing conditions results in a technical memorandum.

2.3. The Conceptual Design Package shall include the following:

- Project Schematic – Overall project plan and profile illustrating project improvements as a single roll plot. Schematic may include standards cross sections or details as needed clarify design.
- Estimates of probable construction cost: ENGINEER will prepare Opinion of Probable Construction Cost based on 30% schematic

- Drainage analysis technical memorandum.

ASSUMPTIONS

- All storm water lateral and inlet design shall conform to the City of Denton Design Manual 2013.
- Main trunk line will be designed using modeling results from XP-STORM.
- Waterline design replacement to include new 8" waterline along Mulberry from Bernard to 400 feet east of Carroll, a 20" waterline lowering on Sycamore at the new storm drain crossing, an 8" waterline lowering on Sycamore at the new storm drain crossing, and an 8" waterline lowering on Stroud at the new storm drain crossing.
- Sewerline design replacement to include new 18" sanitary sewer from Bernard to Carroll along Mulberry, and two sanitary sewer relocations on Sycamore with one being at the new storm drain crossing and the other being approximately 200 feet of sewer line from Sycamore to the North in an easement.
- Conceptual design package will consist of one (1) drainage analysis technical memorandum, four (4) copies of full size project schematic plans, one (1) copy of the 30% estimate of probable construction cost, and PDF copy of the above items.
- ENGINEER shall not proceed with Preliminary Design activities without written approval by the CITY of the Conceptual Design Package.

DELIVERABLES

- A. Conceptual Design Package.

TASK 3. PRELIMINARY DESIGN (60 PERCENT).

Preliminary plans shall be submitted to CITY per the approved Project Schedule.

ENGINEER will develop the preliminary design of the infrastructure as follows.

3.1. Development of Preliminary Design Drawings shall include the following:

- Cover Sheet
- General Notes
- Horizontal Control
- Overall Project Layout
- Demolition Sheet
- Drainage Area Map
- Drainage Calculations
- Storm Drain Plan and Profiles
- Storm Drain Cross Sections
- Relic Channel Design (as needed)
- Sewer Plan and Profiles
- Water Plan and Profiles
- Pavement Plan and Profiles
- Structural Sections

- General Details (as needed)

3.2 Utility Clearance

- The ENGINEER will consult with the CITY, public utilities, private utilities, and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. ENGINEER will design CITY facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs.
- Coordination of utility relocations, if required, will be the responsibility of the ENGINEER.

3.3. The Preliminary Design Package shall include the following:

- Preliminary Plans to include drawings identified above.
- ENGINEER will prepare Opinion of Probable Construction Cost based on 60% plans.

ASSUMPTIONS

- Provide roadway plan and profile design for Mulberry Street from approximately 200' east of Bernard Street to approximately 300' east of S. Carrol Blvd. Provide horizontal and vertical layout of proposed roadway. Provide cross section drawings at 50' intervals. Project details to be utilized will be standard from City or TxDOT. Details requiring specific design may be an additional service. Identify applicable client and agency standard specifications for use on the project. Project specific specifications may be an additional service.
- Provide one-way traffic control for Mulberry Street from Bernard St to US HWY 77. It is anticipated that the project will remain outside of TxDOT right-of-way and no permitting will be required. If permitting is required, this may be an additional service. Provide intersection phasing plan at S. Carrol Blvd and Mulberry St. Provide full closure detour plan for Sycamore Street from S. Carrol Blvd to US HWY 77 and Stroud St from Pierce St to US HWY 77.
- Preliminary design package will consist one (1) final drainage analysis technical memorandum, four (4) copies of half size (11"x17"), one (1) copy of full size (22"x34") drawings, one (1) copy of the 60% estimate of probable construction cost, and PDF copy of the above items.
- ENGINEER shall not proceed with Final Design activities without written approval by the CITY of the Preliminary Design plans.

DELIVERABLES

- A. Preliminary Design drawings
- B. Outline of technical specifications
- C. Estimates of probable construction cost

TASK 4. FINAL DESIGN (90 PERCENT) AND FINAL CONSTRUCTION DOCUMENTS (100 PERCENT).

- 4.1 Upon approval of the Preliminary plans, ENGINEER will prepare construction plans as follows:

Final draft construction plans and specifications shall be submitted to CITY per the approved Project Schedule.

- Cover Sheet
 - General Notes
 - Horizontal Control
 - Project Layout
 - Erosion Control
 - Drainage Area Map
 - Drainage Model Identifier Sheets
 - Drainage Calculations
 - Demolition Sheet
 - Storm Drain Plan and Profiles
 - Storm Drain Cross Sections
 - Lateral Profiles
 - Relic Channel Design
 - Sewer Plan and Profiles
 - Water Plan and Profiles
 - Pavement Plan and Profiles
 - Structural Sections
 - General Details
 - Storm Drain Details
 - Sewer Details
 - Water Details
 - Pavement Details
 - Structural Details
- The ENGINEER shall submit a final design estimate of probable construction cost with the final design plans submitted.

- 4.2 Following a 90% construction plan review meeting with the CITY, the ENGINEER shall submit Final Plans (100%) to the CITY per the approved Project Schedule. Each plan sheet shall be stamped, dated, and signed by the ENGINEER registered in State of Texas.

ASSUMPTIONS

- Project will be separated into phases within the plan set so the City has the flexibility to bid as a single project or separate projects.
- 90% design package will consist of four (4) copies of half size (11"x17"), one (1) copy of full size (22"x34") drawings, one (1) copy of the 90% estimate of probable construction cost, and PDF copy of the above items.

- Final design package will consist of four (4) copies of half size (11"x17"), two (2) copies of full size (22"x34") drawings, one (1) copy of the 100% estimate of probable construction cost, and PDF copy of the above items.

DELIVERABLES

- A. 90% construction plans and specifications.
- B. 100% construction plans and specifications.
- C. Detailed estimates of probable construction cost for the authorized construction project, including summaries of bid items and quantities using the CITY's standard format.

TASK 5. BID PHASE SERVICES.

ENGINEER will support the bid phase of the project as follows.

- The ENGINEER will provide technical assistance with questions and plan revisions as needed.
- Attend the prebid conference in support of the CITY.
- ENGINEER will check contractor references and prepare letter of recommendation of award.

ASSUMPTIONS

- The project will be bid only once and awarded to one contractor.

DELIVERABLES

- A. Plan Revisions (if required)
- B. Letter of Recommendation

TASK 6. CONSTRUCTION PHASE SERVICES.

ENGINEER will support the construction phase of the project as follows.

6.1 Construction Support shall include:

- The ENGINEER shall attend the preconstruction conference.
- The ENGINEER shall visit the project site twice (2) per month as construction proceeds to observe and report on progress. ENGINEER shall create meeting agenda and record meeting minutes for each meeting.
- The ENGINEER shall review shop drawings, samples and other submittals submitted by the contractor for general conformance with the design concepts and general compliance with the requirements of the contract for construction. Such review shall not relieve the Contractor from its responsibility for performance in accordance with the contract for construction, nor is such review a guarantee that the work covered by the shop drawings, samples and submittals is free of errors, inconsistencies or omissions. The ENGINEER shall log and track all shop drawings, samples and other submittals.

- As requested by the CITY, the ENGINEER shall provide necessary interpretations and clarifications of contract documents, review change orders, and make recommendations as to the acceptability of the work.
- The ENGINEER shall attend the “Final” project walk through and assist with preparation of final punch list.

6.2 Record Drawings

- The ENGINEER shall prepare record drawings from information provided by the CITY depicting any changes made to the Final Drawings during construction. The following information shall be provided by the CITY:
 - As-Built Survey
 - Red-Line Markups from the Contractor
 - Red-Line Markups from City Inspector
 - Copies of Approved Change Orders
 - Approved Substitutions
- The ENGINEER shall modify the Final Drawings electronically and shall place a stamp on the plans indicating that they represent Record Drawings of the project as constructed. The stamp shall be signed and dated by the ENGINEER and shall be placed on each plan sheet, whether there are any revisions on the sheet or not. Each sheet shall clearly indicate all changes which apply to that sheet by clouding and numbering, or other suitable means.

ASSUMPTIONS

- 2 site visits per month are assumed.
- Construction schedule is assumed at 30 months.
- 10 submittal reviews are assumed.
- 4 RFI's are assumed.
- 4 Change Orders are assumed.

DELIVERABLES

- A. Response to Contractor's Request for Information
- B. Review of Change Orders
- C. Review of shop drawings
- D. Final Punch List items
- E. Record Drawings

TASK 7. FEMA COORDINATION SERVICES.

ENGINEER will prepare a LOMR application for PEC-4 - Phase 1 and 2 as outlined below. Preparation of a LOMR for Phases 3 and 4 will be considered an additional service to be authorized following the completion of construction.

7.1. Modeling

- The ENGINEER shall utilize the XP-STORM model as developed in Section 2.2.
- The ENGINEER shall develop a truncated hydraulic model representing PEC-4 Phase 1 and 2 improvements only. The ENGINEER will incorporate any changes during construction of Phase 1 and 2 into the model.

7.2 FEMA Submittal

- The ENGINEER shall prepare LOMR submittal to FEMA including MT-2 forms and summary report.
- The ENGINEER shall coordinate with FEMA for approval of the LOMR applications.
- The CITY shall be responsible for all application fees to FEMA.

ASSUMPTIONS

- FEMA LOMR submittal to include summary report including figures and supporting data, FEMA required forms and digital model for application

DELIVERABLES

- A. FEMA LOMR submittal.

TASK 8. SURVEY AND SUE.

ENGINEER will provide survey support as follows.

8.1 Design Survey

- ENGINEER will perform field surveys to collect horizontal and vertical elevations and other information needed by ENGINEER in design and preparation of plans for the project. Information gathered during the survey shall include topographic data, utilities based on CITY records and observable surface features (it is assumed that SUE is not necessary), structures, trees 6" and larger, and other features relevant to the final plan sheets.
- The minimum survey information to be provided on the plans shall include the following:
 - A Project Control Sheet, showing **ALL** Control Points, used or set while gathering data. Generally on a scale of not less than 1:400:
 - The following information about each Control Point;
 - a. Identified (Existing. CITY Monument #8901, PK Nail, 5/8" Iron Rod)
 - b. X, Y and Z Coordinates, in an identified coordinate system, and a referred bearing base. Z coordinate on CITY Datum only.
 - c. Descriptive Location (Ex. Set in the centerline of the inlet in the South

curb line of North Side Drive at the East end of radius at the Southeast corner of North Side Drive and North Main Street).

8.2. Temporary Right of Entry Preparation and Submittal

- Prior to entering the property for the purposes of field survey and data collection, the ENGINEER shall prepare letters for Temporary Right of Entry for property owners and provide them to the surveyor for distribution. The CITY shall gain access permission to properties where access is denied.

8.3 Subsurface Utility Engineering

Provide a Subsurface Utility Engineering (SUE) Quality combination of Level B and A as described below. The SUE shall be performed in accordance with CI/ASCE 38-02.

Quality Level D

- Conduct appropriate investigations (e.g., owner records, County/CITY records, personal interviews, visual inspections, etc.), to help identify utility owners that may have facilities within the project limits or that may be affected by the project.
- Collect applicable records (e.g., utility owner base maps, "as built" or record drawings, permit records, field notes, geographic information system data, oral histories, etc.) on the existence and approximate location of existing involved utilities.
- Review records for: evidence or indication of additional available records; duplicate or conflicting information; need for clarification.
- Develop SUE plan sheets and transfer information on all involved utilities to appropriate design plan sheets, electronic files, and/or other documents as required. Exercise professional judgment to resolve conflicting information. For information depicted, indicate: utility type and ownership; date of depiction; quality level(s); end points of any utility data; line status (e.g., active, abandoned, out of service); line size and condition; number of jointly buried cables; and encasement.

Quality Level C (includes tasks as described for Quality Level D)

- Identify surface features, from project topographic data and from field observations, that are surface appurtenances of subsurface utilities.
- Include survey and correlation of aerial or ground-mounted utility facilities in Quality Level C tasks.
- Survey surface features of subsurface utility facilities or systems.
- The survey shall also include (in addition to subsurface utility features visible at the ground surface): determination of invert elevations of any manholes and vaults; sketches showing interior dimensions and line connections of such manholes and vaults; any surface markings denoting subsurface utilities, furnished by utility owners for design purposes.
- Exercise professional judgment to correlate data from different sources, and to resolve conflicting information.
- Update (or prepare) plan sheets, electronic files, and/or other documents to reflect the integration of Quality Level D and Quality Level C information.
- Recommend follow-up investigations (e.g., additional surveys, consultation with utility owners, etc.) as may be needed to further resolve discrepancies.

- Provide Quality Level C to identify overhead utilities on the project and provide the overhead utility information on the SUE plan sheets.

Level B (includes tasks as described for Quality Level C)

- Select and apply appropriate surface geophysical method(s) to search for and detect subsurface utilities within the project limits, and/or to trace a particular utility line or system.
- Based on an interpretation of data, mark the indications of utilities on the ground surface for subsequent survey. Utilize paint or other method acceptable for marking of lines.
- Unless otherwise directed, mark centerline of single-conduit lines, and outside edges of multi-conduit systems.
- Resolve differences between designated utilities and utility records and surveyed appurtenances.
- Recommend additional measures to resolve differences if they still exist. Recommendations may include additional or different surface geophysical methods, exploratory excavation, or upgrade to Quality Level A data.
- As an alternative to the physical marking of lines, the ENGINEER may, with CITY's approval, utilize other means of data collection, storage, retrieval, and reduction, that enables the correlation of surface geophysical data to the project's survey control.

Level A

- Expose and locate utilities at specific locations.
- Tie horizontal and vertical location of utility to survey control.
- Provide utility size and configuration.
- Provide paving thickness and type, where applicable.
- Provide general soil type and site conditions and such other pertinent information as is reasonably ascertainable from each test hole site.

ASSUMPTIONS

- A total of eighteen (18) pothole locations are expected for Level A SUE collection
- The CITY will obtain Right of Entry (ROE) from necessary landowners.

TASK 9. ROW SERVICES

ENGINEER will support and perform activities related to ROW and easements as outlined below, per scoping direction and guidance from the CITY's Project Manager

9.1. Right-of-Way Research

- The ENGINEER shall determine rights-of-way and easement needs for construction of the project. Required temporary and permanent easements will be identified based on available information and recommendations will be made for approval by the CITY.

9.2 Right-of-Way/Easement Preparation and Submittal.

- The ENGINEER shall prepare documents to be used to obtain right-of-way and permanent and/or temporary easements required to construct the improvements.
- The ENGINEER shall provide field staking of easements on private property to demonstrate limits of easements and assist in easement negotiations to be conducted by CITY.

9.3 Temporary Right of Entry Preparation and Submittal

- Prior to construction, the ENGINEER shall prepare letters for Temporary Right of Entries from landowners. It is assumed that letters will only be required for land owners adjacent to temporary construction easements or who are directly affected by the project and no easement is required to enter their property. ENGINEER shall prepare letters and CITY will mail them and coordinate with property owners.

ASSUMPTIONS

- A total of fifteen (15) permanent and fifteen (15) temporary easements are included.
- Right-of-Way research includes review of property/right-of-way records based on current internet based Denton Appraisal District (DAD) information available at the start of the project and available on-ground property information (i.e. iron rods, fences, stakes, etc.). It does not include effort for chain of title research, parent track research, additional research for easements not included in the TAD, right-of-way takings, easement vacations and abandonments, right-of-way vacations, and street closures.

DELIVERABLES

- B. Right-of-Way, easement exhibits and metes and bounds
- C. Temporary Right of Entry Letters

TASK 10. GEOTECHNICAL INVESTIGATION

10.1 Field Exploration

- Select and mark five (5) boring locations and notify Texas 811, appropriate City department(s) and other agencies to request location and marking of existing underground utilities prior to the field exploration.
- Coordinate with City to arrange access to boring locations in areas where access may need to cross private properties.
- Arrange for two (2) full days of traffic control during drilling to maintain a safe working environment for the field crew.
- Advance five (5) geotechnical borings along the Phase 3 and 4 alignment at locations that are accessible to a truck-mounted drill rig and free of subsurface and overhead conflicts. Each boring will be drilled to a maximum depth of 35 feet. Drilling fieldwork is expected to require three (3) full days of effort.

- Where required, existing pavement will be penetrated and then patched at completion. Areas drilled through landscaping grass will include a tarp or plywood to maintain cleanliness at completion.
- During drilling, samples will be collected intermittently using continuous flight augers or hollow stem augers, with either split-spoon or tube samplers. Rock and rock-like materials will be tested insitu using a TxDOT Cone Penetration Test with rock core samples collected, when possible, in a maximum of two borings.
- Groundwater levels will be collected during drilling, at completion, and after a period of 15 minutes. After collecting these readings, the boreholes will be backfilled with auger cuttings.
- Provide an Engineer or Geologist experienced in logging borings to direct the drilling, log the borings, and handle and transport the samples. Visual classification of the subsurface stratigraphy shall be provided per the Unified Soil Classification System (USCS).

10.2 Laboratory Testing

- Testing shall be performed on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials. FNI will select samples for laboratory testing, assign tests, and review the test results. Testing will be performed by a geotechnical testing subcontractor.
- Laboratory tests will be assigned based on the specific subsurface materials encountered during exploration. Test type and quantity may vary, but are expected to include: liquid and plastic limits, percent passing the no. 200 sieve or gradation, moisture content, dry unit weight, and unconfined compressive strength.

10.3 Engineering Analysis and Study Report

- Prepare a summary report (in technical memorandum format) of the geotechnical investigation to include:
 - Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
 - Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.
 - Recommendations for use during design of the junction box foundations, including allowable bearing pressure, settlement potential, and equivalent lateral earth pressures due to backfill.
 - Recommended pavement thicknesses for Mulberry Street using standard City sections, including subgrade modification requirements.
 - General discussion of expected construction related issues.
 - Earthwork related recommendations for use during development of the plans and specifications.
- The geotechnical engineer will collaborate with the design team on the implementation of recommendations, and will review submittals to assist with geotechnical related items.

10.4 Design of Excavation Support for Existing Structures

- Prepare a technical memorandum providing proposed excavation retention systems that are for the protection of existing structures, including type,

parameters for design, minimum geometry for stability, and the results of the analysis.

- Provide a typical section and details for the excavation retention system, and assist lead designer with alignment for plan and profile sheets.

DELIVERABLES

- A. One (1) hard copy and one (1) electronic copy of Geotechnical Report.

TASK 11. PUBLIC INVOLVEMENT

- ENGINEER shall use already prepared project drawings and attend public meeting to help explain the proposed project to residents.
- Engineer shall attend the following meetings
 - After 30% Design Approval
 - After 90% Design Approval
 - Prior to start of construction

ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

CITY and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

- Negotiation of easements or property acquisition.
- Revisions to easement documents as a result of negotiations or project changes after prior City direction and approval
- Services related to development of the CITY's project financing and/or budget.
- Services related to disputes over pre-qualification, bid protests, bid rejection and re-bidding of the contract for construction.
- Construction management and inspection services
- Performance of materials testing or specialty testing services.
- Services necessary due to the default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement and inspection after final completion.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
- Stormwater Pollution Prevention Plan (SWPPP) permitting
- Section 404 of the Clean Water Act permitting
- Section 10 Permitting with the USACE.
- Preparation of a formal written request for USACE authorization under a letter of permission procedure.

- Preparation of a standard individual Section 404 permit application.
- Preparation of Environmental Information Document, Environmental Assessment, or an Environmental Impact Statement.
- Meetings or consultation with the USACE or other resource agencies, except as specifically noted in the scope of services.
- Presence/absence surveys for federally listed threatened/endangered species.
- Preparation of a mitigation plan to compensate for impacts to waters of the U.S.
- Application to Texas Commission on Environmental Quality for individual 401 Water Quality Certification.
- Application for General Land Office easements.
- Application for Texas Parks & Wildlife Department Sand and Gravel Permit.
- Additional field investigations or analysis required to respond to public or regulatory agency comments.
- Field survey or analysis required for cultural resources investigations.
- Consultation with the U. S. Fish and Wildlife Service under Section 7 of the Endangered Species act.
- Expert representation at legal proceedings or at contested hearings.
- Mitigation monitoring if required by permit conditions.
- Monitoring for compliance with permit conditions.
- Additional modifications to the compensatory mitigation plan.
- Phase I or Phase II Environmental Site Assessment.

EXHIBIT 5 COMPENSATION

Compensation to FNI for Basic Services in Attachment SC shall be computed on the basis of the Schedule of Charges, but shall not exceed One Million, Two Hundred Thousand Dollars (\$1,200,000). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges

<u>Position</u>	<u>Min</u>	<u>Max</u>
Professional - 1	73	121
Professional - 2	103	155
Professional - 3	124	201
Professional - 4	151	220
Professional - 5	183	263
Professional - 6	192	364
Construction Manager - 1	92	118
Construction Manager - 2	107	165
Construction Manager - 3	157	185
Construction Manager - 4	165	242
CAD Technician/Designer - 1	64	114
CAD Technician/Designer - 2	94	142
CAD Technician/Designer - 3	123	183
Corporate Project Support - 1	40	119
Corporate Project Support - 2	73	142
Corporate Project Support - 3	90	288
Intern/ Coop	39	70

Rates for In-House Services

Technology Charge

\$8.50 per hour

Bulk Printing and Reproduction

	<u>B&W</u>	<u>Color</u>
Small Format (per copy)	\$0.10	\$0.25
Large Format (per sq. ft.)		
Bond	\$0.25	\$0.75
Glossy / Mylar	\$0.75	\$1.25
Vinyl / Adhesive	\$1.50	\$2.00
Mounting (per sq. ft.)	\$2.00	
Binding (per binding)	\$0.25	

Travel

Standard IRS Rates

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and rates will be adjusted annually in February. Last updated February 2017.

350022017

Exhibit 6

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).

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. N/A

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.

N/A

Name of 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?

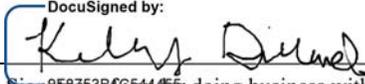
Yes No

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

N/A

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

5

DocuSigned by:


12/7/2017

Signature of vendor doing business with the governmental entity Date

HOUSE BILL 89 VERIFICATION

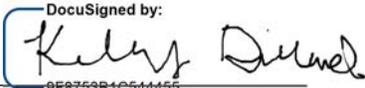
I, Kelly Dillard , the undersigned representative of Freese and Nichols, Inc.
 (Company Name) (hereafter referred to as company), being an adult over the age of eighteen (18) years of age, verify that the company above-named, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

- 1. Does not boycott Israel currently; and**
- 2. Will not boycott Israel during the term of its contract with City of Denton.**

Pursuant to Section 2270.001, Texas Government Code:

- 1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
- 2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

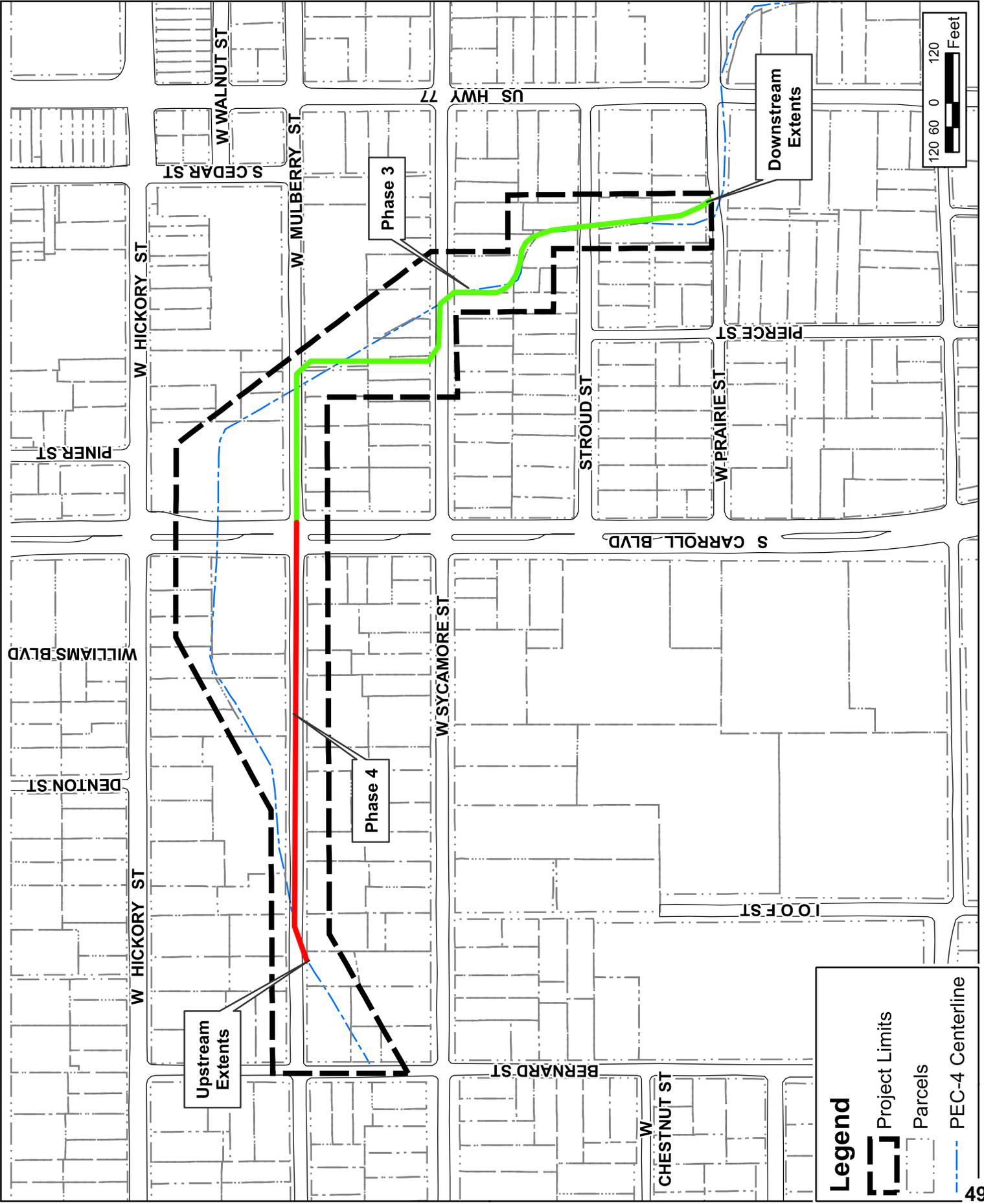
COMPANY REPRESENTATIVE:

By: 
 Its: Vice President
 Date: 12/7/2017 /



City of Denton, Texas PEC-4 Phase 3 & 4 Project Limits

PREPARED BY: FREESE AND NICHOLS
DATE: 9/29/2017
COORDINATE SYSTEM: NAD83 STATE PLANE TX CENTRAL (FEET)
FILE: I:\Projects\2017\PEC-4 Phase 3 & 4\Drawings\1 - Project Limits.dwg
PROJECT: OFF-17041
02415
 4055 International Plaza
 Suite 200
 Fort Worth, TX 76109



Legend

-  Project Limits
-  Parcels
-  PEC-4 Centerline

Certificate Of Completion

Envelope Id: 7B04A9A0A3FD498CA407A5E3E605E5AC

Status: Completed

Subject: Please DocuSign: City Council Contract 6625

Source Envelope:

Document Pages: 39

Signatures: 7

Envelope Originator:

Certificate Pages: 6

Initials: 0

Jamie Cogdell

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US & Canada)

Jamie.Cogdell@cityofdenton.com

IP Address: 129.120.6.150

Record Tracking

Status: Original

Holder: Jamie Cogdell

Location: DocuSign

12/7/2017 10:53:26 AM

Jamie.Cogdell@cityofdenton.com

Signer Events

Signature

Timestamp

Jamie Cogdell

Completed

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jamie.cogdell@cityofdenton.com

Viewed: 12/7/2017 11:21:51 AM

Senior Buyer

Signed: 12/7/2017 11:22:48 AM

City Of Denton

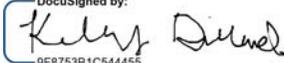
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Kelly Dillard

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skh@freese.com

Resent: 12/7/2017 2:10:25 PM

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Signed: 12/7/2017 2:35:37 PM

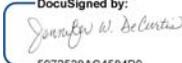
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Jennifer DeCurtis

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jennifer.decurtis@cityofdenton.com

Viewed: 12/7/2017 3:40:59 PM

Deputy City Attorney

Signed: 12/7/2017 3:41:11 PM

City of Denton

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Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Julia Winkley

Completed

Sent: 12/7/2017 3:41:14 PM

julia.winkley@cityofdenton.com

Viewed: 12/13/2017 10:20:22 AM

Contracts Administration Supervisor

Signed: 12/13/2017 10:20:48 AM

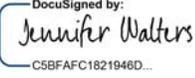
City of Denton

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Not Offered via DocuSign

Signer Events	Signature	Timestamp
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<p>Jennifer Walters jennifer.walters@cityofdenton.com City Secretary City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>DocuSigned by:  C5BF AFC1821946D...</p> <p>Using IP Address: 129.120.6.150</p>	<p>Sent: 12/13/2017 10:54:06 AM Viewed: 12/13/2017 2:43:50 PM Signed: 12/13/2017 2:44:25 PM</p>
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
<p>Thomas Hester th@freese.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 12/7/2017 11:22:50 AM</p>
<p>Sherri Thurman sherri.thurman@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 12/7/2017 2:35:40 PM</p>
<p>Julia Winkley julia.winkley@cityofdenton.com Contracts Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 12/7/2017 2:35:41 PM Viewed: 12/8/2017 9:49:50 AM</p>
<p>Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure:</p>	<div style="border: 2px solid blue; padding: 5px; text-align: center; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 12/13/2017 10:20:51 AM Viewed: 12/13/2017 11:54:52 AM</p>

Carbon Copy Events	Status	Timestamp
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<p>Not Offered via DocuSign</p> <p>Robin Fox Robin.fox@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; width: fit-content; margin: 0 auto;">COPIED</div>	<p>Sent: 12/13/2017 10:20:52 AM</p>
<p>Jennifer Bridges jennifer.bridges@cityofdenton.com Procurement Assistant City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; width: fit-content; margin: 0 auto;">COPIED</div>	<p>Sent: 12/13/2017 2:44:29 PM</p>
<p>Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; width: fit-content; margin: 0 auto;">COPIED</div>	<p>Sent: 12/13/2017 2:44:30 PM Viewed: 12/13/2017 2:58:17 PM</p>
<p>Lee Perry lee.perry@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; width: fit-content; margin: 0 auto;">COPIED</div>	<p>Sent: 12/13/2017 2:44:31 PM Viewed: 12/13/2017 2:57:57 PM</p>

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Completed	Security Checked	12/13/2017 2:44:31 PM

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.

ORDINANCE NO. _____

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 FREESE AND NICHOLS, INC., AMENDING THE CONTRACT APPROVED BY CITY COUNCIL ON DECEMBER 12, 2017, IN THE NOT-TO-EXCEED AMOUNT OF \$1,200,000.00, SAID FIRST AMENDMENT TO PROVIDE FULL DEPTH RECONSTRUCTION AND UTILITY IMPROVEMENTS WITHIN THE PROJECT LIMITS FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 6625 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$1,630,500.00, FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$2,830,500.00).

WHEREAS, on December 12, 2017, City Council awarded a contract to Freese and Nichols, Inc. in the amount of \$1,200,000.00, for engineering design services relating to the design, bid phase, and construction services for the PEC-4 Phases 3 and 4 Drainage Improvements project which includes approximately 2,700 linear feet of reinforced concrete box, 2,300 linear feet of waterline relocation and lowering, 1,700 linear feet of sanitary sewer line relocation and adjustment, and pavement repair from West Prairie Street to the beginning of the open channel near the intersection of West Mulberry Street and Bernard Street; and

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

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees 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 First Amendment, increasing the amount of the contract between the City and Freese and Nichols, Inc., which is on file in the office of the Purchasing Agent, in the amount of One Million Six Hundred Thirty Thousand Five Hundred and 0/100 (\$1,630,500.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to \$2,830,500.00.

SECTION 2. 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

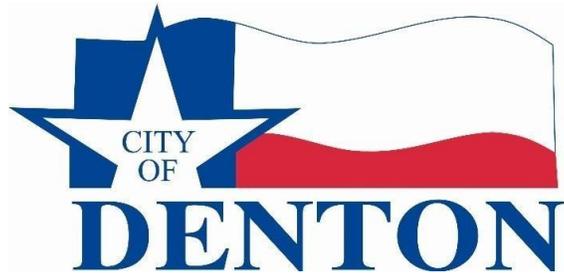
ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

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@cityofdent
on.com
Date: 2024.03.21 14:50:26 -05'00'



DocuSign City Council Transmittal Coversheet

PSA	6625
File Name	PEC 4 Drainage Improvements 3&4 Formal Amendment 1
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND FREESE AND NICHOLS, INC.
PSA 6625**

THE STATE OF TEXAS §

COUNTY OF DENTON §

THIS FIRST AMENDMENT TO CONTRACT 6625 (“Amendment”) by and between the City of Denton, Texas (“City”) and Freese and Nichols, Inc. (“Engineer”); to that certain contract executed on December 12, 2017, in the original not-to-exceed amount of \$1,200,000 (the “Agreement”); for services related to the design of the PEC 4 Drainage Phases 3&4.

WHEREAS, the City deems it necessary to further expand the services provided by Engineer to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$1,630,500 with this Amendment for an aggregate not-to-exceed amount of \$2,830,500; and

FURTHERMORE, the City deems it necessary to further expand the goods/services provided by Engineer to the City;

NOW THEREFORE, the City and Engineer (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for professional services related to the design of the PEC 4 Drainage Phases 3&4, are hereby authorized to be performed by Engineer. For and in consideration of the additional services to be performed by Engineer, the City agrees to pay, based on the cost estimate detail attached as Exhibit “B” to this Amendment, attached hereto and incorporated herein for all purposes, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$1,630,500.
2. This Amendment modifies the Agreement amount to provide an additional \$1,630,500 for the additional services with a revised aggregate not to exceed total of \$2,830,500.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the Engineer, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date _____.

“City”

“Engineer”

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

FREESE AND NICHOLS, INC.

By:

SARA HENSLEY, CITY MANAGER

By:  Vice-President

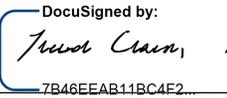
AUTHORIZED SIGNOR, TITLE

ATTEST:
JESUS SALAZAR, CITY
SECRETARY
By:

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

By:  _____

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

 Trevor Crain, PMP

SIGNATURE PRINTED NAME

Director of Capital Projects

TITLE
Engineering services

DEPARTMENT



PROFESSIONAL SERVICES AGREEMENT
AMENDMENT #1

City of Denton
901-A Texas Street
Denton, Texas 76209

FNI PROJECT NO.: DTN18102

CLIENT CONTRACT REFERENCE: PO 184278

DATE: 02/21/2024

Project Name: PEC-4 Drainage Improvements Phase 3 & 4

Description of Services: Addition of services to complete the design, bid, and construction of the project including special services anticipated to be necessary. The scope of services is described in the attached Exhibit A and replaces all previous scope.

Amended Deliverables: As described in the attached Exhibit A.

Amended Schedule: FNI is authorized to commence work on the project upon execution of this amendment and agrees to complete the design services within nine (9) months. If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay.

Compensation shall be amended as follows: A not to exceed amount of One Million Six Hundred Thirty Thousand Five Hundred Dollars. A breakdown of this fee by Task is provided in the attached Exhibit B. A current rate schedule is provided as Attachment CO.

Current Contract Amount:	\$1,200,000.00
Amount of this Amendment:	\$1,630,500.00
Revised Total Amount Authorized:	\$2,830,500.00

The above described services shall proceed upon execution of this amendment. All other provisions, terms and conditions of the Professional Services Agreement which are not expressly amended shall remain in full force and effect.

FREESE AND NICHOLS, INC.

CITY OF DENTON, TEXAS

BY: 

BY: _____

Scott Hubley

Print Name

Print Name

TITLE: Vice-President

TITLE: _____

DATE: 2/22/24

DATE: _____

EXHIBIT A

Scope of Services for PEC-4 - Phase 3 and 4 Drainage Improvements

The scope set forth herein defines the work to be performed by the ENGINEER in completing the project after the project was placed on hold. Both the CITY and ENGINEER have attempted to clearly define the work to be performed and address the needs of the Project. Under this scope, "ENGINEER" is expanded to include any sub-consultant, including surveyor, employed or contracted by the ENGINEER. For clarity in understanding the scope after resuming the project, this scope of work replaces all previous scope of work remaining to be completed.

WORK TO BE PERFORMED

- Task 1. Design Management
- Task 2. Final Design
- Task 3. Bid Phase Services
- Task 4. Construction Phase Services
- Task 5. FEMA Coordination Services
- Task 6. Survey and SUE
- Task 7. ROW Services
- Task 8. Public Involvement
- Task 9. Contingency

TASK 1. DESIGN MANAGEMENT

ENGINEER will manage the work outlined in this scope to ensure efficient and effective use of ENGINEER's and CITY's time and resources. ENGINEER will manage change, communicate effectively, coordinate internally and externally as needed, and proactively address issues with the CITY's Project Manager and others as necessary to make progress on the work.

1.1. Managing the Team

- Lead, manage and direct design team activities
- Ensure quality control is practiced in performance of the work
- Communicate internally among team members
- Task and allocate team resources

1.2. Communications and Reporting

- Attend and document a design review meeting for the 90% plans dated February 2020
- Attend and document a design review meeting after submittal of 95% plans.
- Attend and document up to six (6) in-person and up to six (6) virtual coordination meetings to discuss the design with the City or other stakeholders such as franchise utility owners or property owners affected by the project.

- Prepare and submit monthly progress reports.
- Prepare and submit baseline Project Schedule initially, and Project Schedule updates monthly.

DELIVERABLES

- A. Meeting summaries with action items
- B. Monthly progress reports
- C. Baseline design schedule

TASK 2. FINAL DESIGN

ENGINEER will develop the final design of the infrastructure as follows.

- 2.1. Perform a site visit to review for changed conditions and to observe the existing conditions of the additional design service areas discussed below.
- 2.2. Compile necessary design changes based on a review of the current plan set, a review of the current City standards, a review of changed field conditions and the comments received in the design review meeting.
- 2.3. Progress previous design to final design based on the items identified. It is expected some minor changes in the design concept may be necessary, but significant changes to the concept and/or drainage calculations are not included in this scope.

The following contemplated changes are specifically included in this scope:

- Minor revisions related to changes in City specifications and standard details since the previous design was completed.
- Realigning the drainage pipe between the Denton County property and old DATCU site including revisions to special junction structures in this vicinity.
- Modifying the water line alignment along the new bank site at Mulberry Street and Carroll Boulevard due to conflicts with site improvements.
- Changes to accommodate water line improvements currently in progress along Bernard Street.
- Consolidating individual apartment meters into vaults at several locations along Mulberry Street. Vaults will be shown using a typical detail and will not be individually detailed.
- Minor revisions to address concerns identified by key property owners affected by the project.
- Updating ROW/Easement Plan

- 2.4. Add additional design services along Stroud Street:

- Extension of storm drain along Stroud Street for approximately 300 feet to the intersection with Pierce Street. Adjustment of water line by typical detail as needed. Pavement repaired either full width or trench width.

2.5. Add additional design services along Sycamore Street:

- Replace 8" water line and appurtenances for the block from Carroll Boulevard to Elm Street.
- Replace 8" sewer including services and appurtenances from Elm Street to the eastern edge of the old DATCU drive through bank (a distance of approximately 500 feet) as shown in the previous design concept from the City.
- Full reconstruction of the street from Carroll Boulevard to Elm Street. Cross sections will be provided at every driveway or every 50 feet minimum. Temporary construction easements will be identified where needed to reconstruct driveways to City standards.

2.6. Add additional design services along Mulberry Street:

- Replace 6" sewer with 8" sewer including services and appurtenances for approximately 300 feet as shown in previous design concept from City.
- Replace 6" water line with 8" water line including services and appurtenances for approximately 500 feet as shown in previous design concept from City.
- Full width pavement repair for approximately 500 feet as shown in the previous design concept from City. Center line striping will be shown.

2.7. Utility Clearance

- The ENGINEER will consult with the CITY, public utilities, private utilities, and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. ENGINEER will design CITY facilities to avoid or minimize conflicts with existing utilities, and where known and possible consider potential future utilities in designs.
- Meetings with utility owners are included in the scope of Task 1. Additional services may be required if coordination exceeds the number of meetings identified.
- ENGINEER will review proposed relocation plans provided by the conflicting utilities. ENGINEER will tabulate the conflicts and track the resolution status.
- CITY Program Administrator will coordinate with franchise utilities to clear them.

2.8. Finalize 95% Design Package

- The ENGINEER shall submit a final design estimate of probable construction cost with the final design plans submitted.
- The ENGINEER will prepare technical specifications and bid documents utilizing standards provided by the CITY.

- 2.9. Following a 95% design review meeting with the CITY, the ENGINEER shall submit Final Plans (100%) to the CITY. Each plan sheet shall be stamped, dated, and signed by the ENGINEER registered in State of Texas.
- 2.10. ENGINEER will register the project with the Texas Department of Licensing and Regulation (TDLR) and retain the services of a Registered Accessibility Specialist (RAS) to review the design plans.

ASSUMPTIONS

- 95% design package will consist of six (6) copies of half size (11"x17") plans, two (2) copies of the specifications and estimate of probable construction cost.
- Final design package will be delivered as PDF only.

DELIVERABLES

- A. 95% construction plans and specifications.
- B. 100% construction plans and specifications.
- C. Detailed estimates of probable construction cost for the authorized construction project, including summaries of bid items and quantities using the CITY's standard format.

TASK 3. BID PHASE SERVICES

ENGINEER will support the bid phase of the project as follows.

- Submit electronic copies of plans, specifications, and bidding documents to the City's purchasing department.
- Assist City by responding to questions and interpreting bid documents.
- Assist the City in conducting up to one (1) pre-bid conferences for the project and coordinate responses to questions asked.
- Issue addenda to address questions identified during bidding.
- Attend the bid opening and assist City in analyzing the bids received. Review the qualifications provided by the apparent low bidder to determine if, based on information available, they appear to be qualified to construct the project. Recommend award of contracts or other actions as appropriate to be taken by the City.

ASSUMPTIONS

- The project will be bid only once and awarded to one contractor.
- Up to four (4) addenda will be issued
- CITY will tabulate bids
- CITY will coordinate finalizing and executing contracts with successful bidder

DELIVERABLES

A. Letter of Recommendation

TASK 4. CONSTRUCTION PHASE SERVICES

ENGINEER will support the construction phase of the project as follows. In performing these services, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the contractor or any subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the project site or otherwise performing any of the work of the project.

4.1. Construction Support shall include:

- Attend the preconstruction conference.
- Visit the project site as construction proceeds to observe and report on progress.
- Review shop drawings, samples and other submittals submitted by the contractor for general conformance with the design concepts and general compliance with the requirements of the contract for construction. Such review shall not relieve the Contractor from its responsibility for performance in accordance with the contract for construction, nor is such review a guarantee that the work covered by the shop drawings, samples and submittals is free of errors, inconsistencies or omissions. The ENGINEER shall log and track all shop drawings, samples and other submittals.
- As requested by the CITY, provide necessary interpretations and clarifications of contract documents, review change orders, and make recommendations as to the acceptability of the work.
- Attend the "Final" project walk through and assist with preparation of final punch list.
- Coordinate one (1) inspection with the City inspector and Registered Accessibility Specialist (RAS) inspector no later than thirty (30) calendar days after construction substantial completion.

4.2. Record Drawings

- Prepare record drawings from information provided by the CITY depicting any changes made to the Final Drawings during construction. The following information shall be provided by the CITY:
 - As-Built Survey
 - Red-Line Markups from the Contractor
 - Red-Line Markups from City Inspector
 - Copies of Approved Change Orders

- Approved Substitutions
- Modify the Final Drawings electronically and shall place a stamp on the plans indicating that they represent Record Drawings of the project as constructed. The stamp shall be signed and dated by the ENGINEER and shall be placed on each plan sheet, whether there are any revisions on the sheet or not. Each sheet shall clearly indicate all changes which apply to that sheet by clouding and numbering, or other suitable means.

ASSUMPTIONS

- 20 monthly construction site visits are assumed.
- 50 submittal reviews are assumed.
- 40 RFIs are assumed.
- 4 Change Orders are assumed including minor design revisions if required.

DELIVERABLES

- A. Response to Contractor's Request for Information
- B. Review of Change Orders
- C. Review of submittals
- D. Final Punch List items
- E. Record Drawings

TASK 5. FEMA COORDINATION SERVICES

ENGINEER will prepare a LOMR application as outlined below following the completion of construction.

5.1. Modeling

- The ENGINEER shall utilize the XP-STORM model previously developed for this project and utilized for the Phase 1 & 2 LOMR.
- The modeling will be updated as appropriate to reflect the as-built conditions of the project.

5.2. LOMR Application

- A LOMR report will be created documenting the methodology of the modeling and the proposed revision. The report will include a hydraulic workmap, hydrologic workmap and parameters, annotated FIRM, and FIS tables and profile revisions.
- The MT-2 application and associated forms will be prepared.
- Property owner notifications will be prepared if required. City is responsible for posting letters.

- The draft LOMR report and application will be provided to the City for review. One iteration of comments will be addressed before submitting the application.
- ENGINEER will pay FEMA application fees up to \$10,000.

5.3. Application Review

- Due to the complexity of the modeling multiple review iterations are expected. ENGINEER will submit a total of three iterations to address the FEMA comments. Additional submittal iterations are an additional service.
- ENGINEER will meet with the FEMA reviewer up to two (2) times to resolve the comments.

DELIVERABLES

- A. FEMA LOMR submittal.

TASK 6. SURVEY AND SUE

ENGINEER will provide survey services as follows. Survey and SUE work will be performed where agreed upon with the City generally in areas where field conditions have changed or where additional design scope has been added.

6.1 Design Survey

- ENGINEER will perform field surveys to collect horizontal and vertical elevations and other information needed by ENGINEER in design and preparation of plans for the project. Information gathered during the survey shall include topographic data, utilities based on CITY records and observable surface features, structures, trees 6" and larger, and other features relevant to the final plan sheets.

6.2 Subsurface Utility Engineering

Provide a Subsurface Utility Engineering (SUE) Quality combination of Level B and A as described below. The SUE shall be performed in accordance with CI/ASCE 38-02.

Quality Level D

- Conduct appropriate investigations (e.g., owner records, County/CITY records, personal interviews, visual inspections, etc.), to help identify utility owners that may have facilities within the project limits or that may be affected by the project.
- Collect applicable records (e.g., utility owner base maps, "as built" or record drawings, permit records, field notes, geographic information system data, oral histories, etc.) on the existence and approximate location of existing involved utilities.
- Review records for: evidence or indication of additional available records; duplicate or conflicting information; need for clarification.
- Develop SUE plan sheets and transfer information on all involved utilities to appropriate design plan sheets, electronic files, and/or other documents as required. Exercise professional judgment to resolve conflicting information. For information depicted, indicate: utility type and ownership; date of depiction; quality level(s); end points of any utility data; line status (e.g., active, abandoned,

out of service); line size and condition; number of jointly buried cables; and encasement.

Quality Level C (includes tasks as described for Quality Level D)

- Identify surface features, from project topographic data and from field observations, that are surface appurtenances of subsurface utilities.
- Include survey and correlation of aerial or ground-mounted utility facilities in Quality Level C tasks.
- Survey surface features of subsurface utility facilities or systems.
- The survey shall also include (in addition to subsurface utility features visible at the ground surface): determination of invert elevations of any manholes and vaults; sketches showing interior dimensions and line connections of such manholes and vaults; any surface markings denoting subsurface utilities, furnished by utility owners for design purposes.
- Exercise professional judgment to correlate data from different sources, and to resolve conflicting information.
- Update (or prepare) plan sheets, electronic files, and/or other documents to reflect the integration of Quality Level D and Quality Level C information.
- Recommend follow-up investigations (e.g., additional surveys, consultation with utility owners, etc.) as may be needed to further resolve discrepancies.
- Provide Quality Level C to identify overhead utilities on the project and provide the overhead utility information on the SUE plan sheets.

Level B (includes tasks as described for Quality Level C)

- Select and apply appropriate surface geophysical method(s) to search for and detect subsurface utilities within the project limits, and/or to trace a particular utility line or system.
- Based on an interpretation of data, mark the indications of utilities on the ground surface for subsequent survey. Utilize paint or other method acceptable for marking of lines.
- Unless otherwise directed, mark centerline of single-conduit lines, and outside edges of multi-conduit systems.
- Resolve differences between designated utilities and utility records and surveyed appurtenances.
- Recommend additional measures to resolve differences if they still exist. Recommendations may include additional or different surface geophysical methods, exploratory excavation, or upgrade to Quality Level A data.
- As an alternative to the physical marking of lines, the ENGINEER may, with CITY's approval, utilize other means of data collection, storage, retrieval, and reduction, that enables the correlation of surface geophysical data to the project's survey control.

Level A

- Expose and locate utilities at specific locations.
- Tie horizontal and vertical location of utility to survey control.
- Provide utility size and configuration.
- Provide paving thickness and type, where applicable.

- Provide general soil type and site conditions and such other pertinent information as is reasonably ascertainable from each test hole site.

ASSUMPTIONS

- A total of ten (10) pothole locations are assumed for Level A SUE
- Topographic survey and Level B SUE is assumed to be performed for a length of approximately 3,000 feet.
- The CITY will obtain Right of Entry (ROE) from necessary landowners.

TASK 7. ROW SERVICES

ENGINEER will support and perform activities related to ROW and easement acquisition s as outlined below, per scoping direction and guidance from the CITY's Project Manager

7.1. Property Acquisition Assessment and Management

- The ENGINEER shall determine rights-of-way and easement needs for construction of the project. Required temporary and permanent easements will be identified based on available information and recommendations will be made for approval by the CITY.
- Up to 48 hours of coordination/meetings will be performed with CITY to coordinate acquisition efforts.

7.2 Document Preparation

- The ENGINEER shall prepare exhibits and metes and bounds descriptions for permanent and/or temporary easements required to construct the improvements.

7.3 Title/Negotiations

- Research ownership of the subject parcels. If ownership cannot be verified, curative measures will be identified. Title search/policy commitment is not included in this scope.
- Order appraisals for parcels affected by construction (excludes easements necessary for driveway reconnections). Complex appraisals may require additional services.
- Deliver initial offer including Landowner Bill of Rights. Meet with and negotiate with property owner. Discuss counter offer with CITY and present final offer to the property owner. Records will be retained of all contact made with property owners or their representatives.
- Final documents will be recorded in real property records and a final file will be delivered to the CITY with all pertinent records for the project. Up to \$10,000 in recording or other document expenses is included in the scope. Fees in excess of this amount are an additional service.

ASSUMPTIONS

- All work will be performed in accordance with applicable State and Federal regulations.
- Up to eighty (80) easement exhibits and metes and bounds descriptions is included (either permanent or temporary easements)
- Individual appraisals of up to twenty five (25) parcels is included for permanent easements. It is assumed appraisals will not be necessary for temporary easements associated with driveway reconnections.
- An average of 35 hours is assumed per parcel to deliver initial offer, negotiate with property owner, submit signed documents/counteroffers to City, curing title issues obtaining partial release of liens, delivery of the final offer, recording original conveyance documents in real property records and submitting final file to City. This assumes negotiations will be limited to an initial and final offer. It is assumed negotiations will be held for up to 65 parcels (this assumes several properties will have both temporary and permanent easements which can be negotiated jointly). Extended title/negotiation services are an additional service.
- Condemnation services are not included in this scope but can be provided as an additional service if authorized by CITY.

DELIVERABLES

- A. Easement exhibits and metes and bounds
- B. Final file for each acquired property

TASK 8. PUBLIC INVOLVEMENT

Prepare and attend up two (2) public meetings to present the proposed project to the general public and City officials. The City will prepare materials and present at the meeting. Engineer will attend and assist in answering questions. The City will be responsible for the scheduling and organization of the meeting as well as public notifications. Meetings are anticipated to be in-person at City facilities, but Engineer will host the meeting as a virtual meeting via Zoom as needed.

TASK 9. MISCELLANEOUS ENGINEERING

This task serves as a contingency for additional miscellaneous engineering efforts that may be identified during the course of the project. These services may be authorized in writing by City staff.

ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

CITY and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

- Redesign of the project requiring changes to the overall project concept.
- Condemnation services

- Revisions to easement documents as a result of negotiations or project changes after prior City direction and approval
- Services related to development of the CITY's project financing and/or budget.
- Services related to disputes over pre-qualification, bid protests, bid rejection and re-bidding of the contract for construction.
- Construction management and inspection services
- Performance of materials testing or specialty testing services.
- Services necessary due to the default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement and inspection after final completion.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
- Stormwater Pollution Prevention Plan (SWPPP) permitting
- Section 404 of the Clean Water Act permitting
- Section 10 Permitting with the USACE.
- Preparation of a formal written request for USACE authorization under a letter of permission procedure.
- Preparation of a standard individual Section 404 permit application.
- Preparation of Environmental Information Document, Environmental Assessment, or an Environmental Impact Statement.
- Meetings or consultation with the USACE or other resource agencies, except as specifically noted in the scope of services.
- Presence/absence surveys for federally listed threatened/endangered species.
- Preparation of a mitigation plan to compensate for impacts to waters of the U.S.
- Application to Texas Commission on Environmental Quality for individual 401 Water Quality Certification.
- Application for General Land Office easements.
- Application for Texas Parks & Wildlife Department Sand and Gravel Permit.
- Additional field investigations or analysis required to respond to public or regulatory agency comments.
- Field survey or analysis required for cultural resources investigations.
- Consultation with the U. S. Fish and Wildlife Service under Section 7 of the Endangered Species act.
- Expert representation at legal proceedings or at contested hearings.
- Mitigation monitoring if required by permit conditions.
- Monitoring for compliance with permit conditions.
- Additional modifications to the compensatory mitigation plan.
- Phase I or Phase II Environmental Site Assessment.

Exhibit B

Compensation to FNI shall be computed on the basis of the attached Schedule of Charges on an hourly not-to-exceed basis.

Amendment #1 Compensation Summary

Amendment Tasks	Totals	Sub Totals
Task 1 Design Management	\$ 75,500.00	
Task 2 Final Design	\$ 535,700.00	
-Review Previous Work		\$ 54,200.00
-Additional Design Scope		\$ 210,000.00
-Finalize Previous Design		\$ 271,500.00
Task 3 Bid Phase Services	\$ 33,500.00	
Task 4 Construction Phase Services	\$ 170,900.00	
Task 5 FEMA Coordination	\$ 111,700.00	
Task 6 Survey and SUE	\$ 127,600.00	
Task 7 ROW Services	\$ 716,100.00	
Task 8 Public Involvement	\$ 14,500.00	
Task 9 Miscellaneous Engineering	\$ 50,000.00	
Total	\$ 1,835,500.00	
Previous Authorized Amount Remaining	\$ 205,000.00	
Amendment Amount	\$ 1,630,500.00	

COMPENSATION

ATTACHMENT CO

Position	Hourly Rate	
	Min	Max
Professional 1	91	181
Professional 2	123	199
Professional 3	140	324
Professional 4	161	344
Professional 5	238	361
Professional 6	242	445
Construction Manager 1	119	166
Construction Manager 2	123	206
Construction Manager 3	154	206
Construction Manager 4	179	269
Construction Manager 5	214	313
Construction Manager 6	284	372
Construction Representative 1	81	92
Construction Representative 2	95	122
Construction Representative 3	130	195
Construction Representative 4	130	195
CAD Technician/Designer 1	88	125
CAD Technician/Designer 2	105	206
CAD Technician/Designer 3	137	261
Corporate Project Support 1	74	162
Corporate Project Support 2	84	239
Corporate Project Support 3	105	350
Intern / Coop	56	96

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>			<u>Equipment</u>		
Standard IRS Rates		<u>B&W</u>	<u>Color</u>	Valve Crew Vehicle (hour)		\$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logger (each)		\$200
<u>Technology Charge</u>	Large Format (per sq. ft.)			Water Quality Meter (per day)		\$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each)		\$150
	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (per day)		\$100
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness Guage (per day)		\$275
	Mounting (per sq. ft.)	\$2.00		Coating Inspection Kit (per day)		\$275
	Binding (per binding)	\$0.25		Flushing / Cfactor (each)		\$500
				Backpack Electrofisher (each)		\$1,000
					<u>Survey Grade</u>	<u>Standard</u>
				Drone (per day)	\$200	\$100
				GPS (per day)	\$150	\$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.15. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2024.

350022024

Certificate Of Completion

Envelope Id: 413C3DFEF5B34FE9A5A33D81F809AAFC	Status: Sent
Subject: Please DocuSign: City Council Contract 6625 PEC 4 Drainage Phases 3&4 Formal Amendment 1	
Source Envelope:	
Document Pages: 17	Signatures: 3
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Erica Garcia
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	erica.garcia@cityofdenton.com
	IP Address: 198.49.140.10

Record Tracking

Status: Original	Holder: Erica Garcia	Location: DocuSign
3/14/2024 11:05:23 AM	erica.garcia@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Erica Garcia erica.garcia@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	Completed Using IP Address: 198.49.140.10	Sent: 3/14/2024 11:11:33 AM Viewed: 3/14/2024 11:11:44 AM Signed: 3/14/2024 11:13:40 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: 198.49.140.104	Sent: 3/14/2024 11:13:42 AM Viewed: 3/15/2024 8:29:14 AM Signed: 3/15/2024 8:30:49 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: 3/15/2024 8:30:51 AM Viewed: 3/18/2024 1:15:54 PM Signed: 3/18/2024 1:19:39 PM
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Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Scott Hubley scott.hubley@freese.com Vice-President Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 97.75.108.6	Sent: 3/18/2024 1:19:41 PM Viewed: 3/18/2024 1:25:39 PM Signed: 3/19/2024 3:25:05 PM
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Electronic Record and Signature Disclosure:
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Signer Events	Signature	Timestamp
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Trevor Crain, PMP
 Trevor.Crain@cityofdenton.com
 Director of Capital Projects
 City of Denton
 Security Level: Email, Account Authentication (None)

DocuSigned by:

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 Signature Adoption: Pre-selected Style
 Using IP Address: 47.190.47.120
 Signed using mobile

Sent: 3/19/2024 3:25:06 PM
 Viewed: 3/19/2024 3:28:40 PM
 Signed: 3/19/2024 3:29:19 PM

Electronic Record and Signature Disclosure:
 Accepted: 3/19/2024 3:28:40 PM
 ID: fe0f996f-f10e-4e92-b481-71c52dffe0c6

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

Sent: 3/19/2024 3:29:23 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)

COPIED

Sent: 3/14/2024 11:13:42 AM

Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
<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>Sheldon Gatewood sheldon.gatewood@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 2/29/2024 10:25:43 AM ID: 3b09699d-1af6-4f36-a8b1-6c2a8ed7fef2</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: 3/19/2024 3:29:21 PM Viewed: 3/19/2024 3:43:36 PM</p>

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	3/14/2024 11:11:33 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 #: PUB24-069, **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 Burns & McDonnell Engineering Company, Inc., to manage and control improvement to the Supervisory Control and Data Acquisition (SCADA) network in the capacity of Owner Engineer for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-013 - awarded to Burns & McDonnell Engineering Company, Inc., in the not-to-exceed amount of \$1,399,998.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: April 8, 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 Burns & McDonnell Engineering Company, Inc., to manage and control improvements to the Supervisory Control and Data Acquisition (SCADA) network in the capacity of Owner Engineer for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7804-013 – awarded to Burns & McDonnell Engineering Company, Inc., in the not-to-exceed amount of \$1,399,998.00).

STRATEGIC ALIGNMENT

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

INFORMATION/BACKGROUND

The City of Denton utilizes and maintains a SCADA (Supervisory Control and Data Acquisition) network for various operations throughout the City. Denton Municipal Electric (DME) is proposing several improvements to this network that will improve functionality and compliance with various regulations. To ensure the best outcome, DME recommends that an Owner Engineer (OE) contract be awarded to help coordinate and implement the necessary improvements. This includes aiding DME in developing an RFP and selecting a qualified vendor to perform the improvements.

DME has obtained feedback from impacted stakeholders and collaborated on determining that Burns & McDonnell Engineering Company has superior experience and a specific project background relevant to SCADA isolation. DME and its stakeholders used the list of Pre-Qualified Engineering Firms (RFQ 7804) and a qualification matrix to reach its conclusion and used the following criteria when deciding: General Information, Capabilities, Customer References, Individual Project Experience, and Relevant SCADA Experience. Burns & McDonnell Engineering Company comprises a team of highly skilled systems engineering specialists and support staff.

The OE will act diligently as an advocate for DME while managing all participating vendors in the design and implementation of this project. In addition, the OE will represent DME through procurement, design, development, execution, integrations, and functional testing of the systems to confirm that the work is done according to specifications and within legal standards. With the collaboration from the City of Denton Technology Services, DME has established an attentive plan for these improvements in the following sequence:

- 1) Plan & Analyze in 2024
- 2) RFP Documentation Development in 2024
- 3) RFP Process & Templates in 2024
- 4) RFP Responses Evaluation in 2024
- 5) Plan & Design Improvements in Fall 2024
- 6) Execute Improvements in Spring 2025
- 7) Go Live in Fall 2025

Burns & McDonnell Engineering Company has gathered requirements from DME stakeholders and understands the organization's vision, including ongoing or planned initiatives. As a result, Burns & McDonnell Engineering Company can provide the expertise and resources needed to keep the project on schedule and aligned with DME's future business objectives.

Request for Qualifications for professional engineering services for Denton Municipal Electric was solicited using the City's formal solicitation process. City Council approved a pre-qualified list of engineering firms on December 14, 2021.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On December 14, 2021, City Council approved RFQ 7804 for a prequalified list of professional engineering services for Denton Municipal Electric (Ordinance 21-2687).

RECOMMENDATION

Award a contract with Burns & McDonnell Engineering Company, Inc., to manage and control improvements to the Supervisory Control and Data Acquisition (SCADA) network in the capacity of Owner Engineer for Denton Municipal Electric, in a not-to-exceed amount of \$1,399,998.

PRINCIPAL PLACE OF BUSINESS

Burns & McDonnell Engineering Company, Inc.
Austin, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with a proposed completion date of October 2025.

FISCAL INFORMATION

These services will be funded from DME pre-qualified engineering services account 605467500. Requisition #164289 has been entered into the Purchasing software system in the amount of \$800,000. The budgeted amount for this item is \$1,399,998.

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: Cameron Molsbee, 940-349-7619.

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 BURNS & MCDONNELL ENGINEERING COMPANY, INC., TO MANAGE AND CONTROL IMPROVEMENTS TO THE SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) NETWORK IN THE CAPACITY OF OWNER ENGINEER FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7804-013 – AWARDED TO BURNS & MCDONNELL ENGINEERING COMPANY, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$1,399,998.00).

WHEREAS, on December 14, 2021, the City Council approved a pre-qualified professional services list of professional engineering services for Denton Municipal Electric (Ordinance 21-2687), 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 Burns & McDonnell Engineering Company, Inc., to provide professional engineering services for the City of Denton, 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.

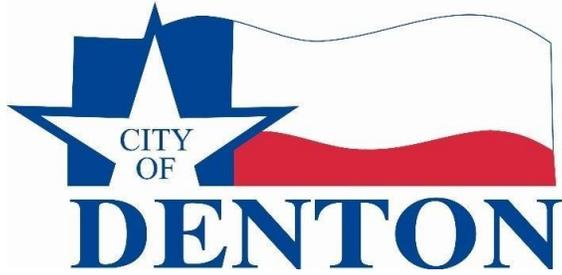
GERARD HUDSPETH, MAYOR

ATTEST:
LAUREN THODEN, 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: 2024.04.03 08:06:23 -05'00'



DocuSign City Council Transmittal Coversheet

PSA	7804-013
File Name	DME SCADA MIGRATION
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

CITY OF DENTON, TEXAS
7804-013 OWNERS ENGINEER FOR SCADA MIGRATION & REDESIGN
STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL
SERVICES

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and **BURNS & MCDONNELL ENGINEERING COMPANY, INC.**, with its corporate office at 100 Energy Way, Suite 1700, Fort Worth TX 76102 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: 7804-013 Owner's for SCADA Migration & Redesign (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 **\$1,399,998.00** 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. 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 Engineer submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Engineer 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 7804-013** – 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.

O. 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 Engineer shall complete and submit the City's Conflict of Interest Questionnaire.

P. 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 – Statement of Work

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 _____.

Burns & McDonnell Engineering Company Inc.

BY: DocuSigned by:
Chris Underwood

063FF78795AF44A
AUTHORIZED SIGNATURE

Printed Name: Chris Underwood

Title: Vice President

913-486-6858
PHONE NUMBER

chris.underwood@1898andco.com
EMAIL ADDRESS

2024- chris.underwood@1898andco.com
TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: ^{DocuSigned by:}
Marcella Lunn
4B070831B4AA438...

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

^{DocuSigned by:}
Antonio Puente, Jr. Antonio Puente, Jr.
E3760944C2BE4B5...
SIGNATURE PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT



City of Denton

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

Legislation Text

File #: PUB24-070, **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 Atmospheric G2, LLC, for weather forecasting services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date. (RFP 8420 - awarded to Atmospheric G2, LLC, in the three (3) year not-to-exceed amount of \$165,240.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: April 8, 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 Atmospheric G2, LLC, for weather forecasting services for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date. (RFP 8420 – awarded to Atmospheric G2, LLC, in the three (3) year not-to-exceed amount of \$165,240.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Foster Economic Opportunity and Affordability.

INFORMATION /BACKGROUND

Denton Municipal Electric (DME) is highly dependent on weather forecasting services to manage electric demand. The most important factor affecting customer usage is weather. DME requires additional sources for weather forecast information, data, and interpretation to assist with accuracy and confidence in outcomes for short, medium, long-term, and seasonal periods as well as understand alternative forecast outcomes. DME is seeking approval for Weather Forecasting services.

The major functions of the Forecasting solution(s) are as follows:

1. Weather Forecasting
 - a. Short Term Weather (7 Day)
 - b. Mid Term Weather (15 Day)
 - c. Long Term Weather (90 - 180 Day)
 - d. Seasonal Weather
 - e. Climate Prediction and interpretation

Weather Forecasting Services	Estimated Expenditure
Forecasting Year 1	\$33,210
Forecasting Year 2	\$33,210
Forecasting Year 3	\$33,210
Contingency for Optional 12-month extension	\$33,210
Contingency	\$32,600
Total	\$165,240

If approved, staff will utilize this solution to support effective energy portfolio management operations, increase efficiencies, and data collection, increase staff performance, and provide management with reporting data.

Request for Proposals was sent to 477 prospective suppliers of this item. including 47 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Two (2) proposals were received, references were checked, and proposals were evaluated based upon published criteria including ease of function and use, compliance with specifications, probable performance, and price. Based upon this evaluation, Atmospheric G2, LLC was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	961 - (Service Only) - Miscellaneous Services, No. 1 (Not Otherwise Classified)
Notifications sent for Solicitation sent in IonWave:	477
Number of Suppliers that viewed Solicitation in IonWave:	12
HUB-Historically Underutilized Business Invitations sent out:	52
SBE-Small Business Enterprise Invitations sent out:	198
Responses from Solicitation:	2

RECOMMENDATION

Award a contract with Atmospheric G2, LLC, for weather forecasting services for Denton Municipal Electric, in a three (3) year not-to-exceed amount of \$165,240.

PRINCIPAL PLACE(S) OF BUSINESS

Atmospheric G2, LLC
Atlanta, GA

ESTIMATED SCHEDULE OF PROJECT

This is a three (3) year contract.

FISCAL INFORMATION

These services will be funded from the Denton Municipal Electric Power Supply, Energy Management division budget account 600003.7804. Requisition #163958 has been entered into the Purchasing software system in the amount of \$165,000. The budgeted amount for this item is \$165,240.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Pricing Evaluation
- Exhibit 3: Ordinance and Contract

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

For information concerning this acquisition, contact: Stephen Johnson, 940-349-7516.

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

Exhibit 2
RFP 8420 - Pricing Evaluation for Weather Services Forecasting

Respondent's Business Name: **Atmospheric G2, LLC** DTN, LLC.
 Principal Place of Business (City and State): **Atlanta, GA** Burnsville, MN

Line #	Description	QTY	UOM	Unit	Unit
1	WEATHER SERVICES FORECASTING- Unit Price (Annual)	1	Annual	\$33,210.00	\$56,874.40
2	WEATHER SERVICES FORECASTING -Total Contract Price (3 Year cost)	1	LS	\$99,630.00	\$170,623.20
3	WEATHER SERVICES FORECASTING -Estimated Implementation ARO (Days)	1	DAYS	1	15
Total:				\$132,840.00	\$227,497.60

Evaluation					
Item #	Standard Criteria	Atmospheric G2, LLC		DTN, LLC.	
1	Ease of use and Function - 20%	20.00		14.40	
2	Compliance with Specifications - 30%	30.00		22.80	
3	Probable Performance - 20%	20.00		17.60	
4	Price, Total Cost of Ownership - 30%	30.00		18.00	
Total Score:		100.00		72.80	

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH ATMOSPHERIC G2, LLC, FOR WEATHER FORECASTING SERVICES FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE. (RFP 8420 – AWARDED TO ATMOSPHERIC G2, LLC, IN THE THREE (3) YEAR NOT-TO-EXCEED AMOUNT OF \$165,240.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for weather forecasting services for Denton Municipal Electric; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

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

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8420	Atmospheric G2, LLC	\$165,240.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the

proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. 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 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

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 _____. 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:	_____	_____	_____	_____

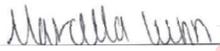
PASSED AND APPROVED this the _____ day of _____, 2024.

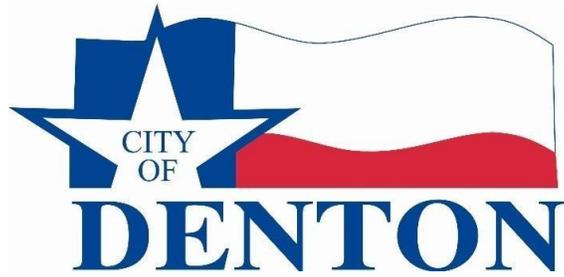
GERARD HUDSPETH, MAYOR

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: 2024.03.25 08:32:07 -05'00'



DocuSign City Council Transmittal Coversheet

RFP	8420
File Name	Weather Services Forecasting
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND ATMOSPHERIC G2, LLC
(CONTRACT 8420)**

THIS CONTRACT is made and entered into this date _____, by and between **ATMOSPHERIC G2, LLC** a DELAWARE Limited Liability Company, whose address is 1266 W. Paces Ferry Road, Suite 627, Atlanta, GA 30327 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 RFP 8420 – Weather Services Forecasting, 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 RFP 8420 (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) Contractor's Order Form (**Exhibit "C"**);
- (d) City of Denton Standard Addendum to Agreement (**Exhibit "D"**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit "E"**);
- (f) Insurance Requirements (**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."

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
Contract # 8420

and day first above written.

ATMOSPHERIC G2, LLC

DocuSigned by:
Todd Navarra
BY: _____
9C83F10A8A454A5
AUTHORIZED SIGNATURE

Printed Name: Todd Navarra

Title: CEO

4124276390

PHONE NUMBER

tn@atmosphericg2.com

EMAIL ADDRESS

2024-tn@atmosphericg2.com

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: _____
4B070831B4AA438...

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

DocuSigned by:
Antonio Puente, Jr.
Antonio Puente, Jr.
SIGNATURE PRINTED NAME
E3768941G3B54B5...

DME General Manager

TITLE

Electric

DEPARTMENT

Exhibit A Special Terms and Conditions

1. Total Contract Amount

The contract total for services shall not exceed \$165,240. Pricing shall be per Exhibit C attached.

2. The Quantities

The quantities indicated on Exhibit C are estimates based upon the best available information. The City reserves the right to 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 three (3) years, effective from date of award or notice to proceed as determined by the City of Denton Purchasing Department. At the mutual agreement of the parties, the Contract may be further extended as needed, not to exceed a total of 12 (12) 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 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.

Exhibit B
(On File at the Office of the Purchasing Agent)

Exhibit C
(Contractor's Order Form)



ORDER FORM

Customer Address: **City of Denton**
("Customer")
901B Texas St
Denton, TX 76209
USA
(940) 349-7614

Atmospheric G2 LLC ("AG2")
1266 W. Pages Ferry Rd. Suite 627
Atlanta, GA 30327
USA
+1 470 377 1487

Contact Name: Stephen Johnson

Mike Germaske

Contact Email: Stephen.Johnson@cityofdenton.com mg@atmosphericg2.com

This Order Form and the Subscription Services Agreement (<https://www.atmosphericg2.com/agreements/ssa>), collectively referred to as the "Agreement", is made effective ("Effective Date"): (a) if this Agreement entered into by the parties via a signed Order Form, on the effective date set forth on the Order Form, or the date when you first use any of the Service Offerings. The Agreement is by and between Atmospheric G2, LLC ("AG2"), and the company on whose behalf you are entering into this Agreement ("Customer"). You represent to AG2 that you are lawfully able to enter into this Agreement (i.e., you are over the age of 18), and you represent to AG2 that you have legal authority to bind that entity. Customer may at any time during the Agreement request additional Services via an Order Form which shall be incorporated in this Agreement automatically as of the date of its execution by both parties.

Product Code	Service	Currency	Billing Cycle Frequency	Contract Term	Effective Date	AG2 Quantity	Billing Period Price	Total 3 Year Price
D1RERLL	AG2 Energy Trader North America Complete East User per Month	USD	Monthly	36 Mths	4/1/2024	5.00	\$1,867.50	\$67,230.00
D1WWJLL	AG2 Energy Trader North America - Probabilistic Add-On User per Month	USD	Monthly	36 Mths	4/1/2024	1.00	\$900.00	\$32,400.00
						Total Annual Fee:		\$33,210.00

Invoices to be sent to: Linda.Ames@cityofdenton.com PO #, if

applicable: Total Annual Fee: \$33,210.00

All Services will be billed 30 days in advance.

~~*Upon expiration of the Initial Term, the order will be renewed automatically for an additional 12-month term unless canceled pursuant to the Agreement.*~~

Payment terms are net 30.

Service Agreement Number: 0077452084

This Agreement is governed by the Subscription Services Agreement at <https://www.atmosphericg2.com/agreements/ssa>.

In the event of any inconsistency between the terms of this Order Form and the Subscription Services Agreement, the terms of the Subscription Services Agreement will take precedence unless this Order Form expressly states its intent to supersede (and identifies by section reference) the affected provision of the Governing Contract. For the avoidance of doubt, the terms of Exhibit A supersede any unnegotiated terms in the Order Form or Subscription Services Agreement.

The customer represents to AG2 that you are lawfully able to enter into this Agreement, and you represent to AG2 that you have legal authority to bind that entity.

This Service Description describes the Energy Trader Services AG2 provides to Client. [AG2 Trader Services Description](#)

This Service Description describes the Data API Services AG2 provides to Client. [AG2 Data Services Description](#)

Company:

City of Denton
("Customer")
901B Texas St
Denton, TX 76209
USA

AG2:

Atmospheric G2 LLC ("AG2")
1266 W. Pages Ferry Rd. Suite
627 Atlanta, GA 30327
USA
+1 470 377 1487

Signature:

Signature:

DocuSigned by:
Todd Navarra
9C83F10A8A454A5...

Name:

Title:

Name:

Title:

Todd Navarra
CEO

Effective Date: 04/01/2024

Exhibit D: Standard Addendum to Agreement (Tech Services Addendum)

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”). In the event of a conflict between the Agreement and this Addendum, this Addendum shall govern, and no term or condition in subsequent invoices or statements shall serve to modify the terms of this Addendum. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

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.

INDEMNITY. THE VENDOR SHALL INDEMNIFY AND SAVE AND HOLD HARMLESS THE CITY AND ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO COURT COSTS AND REASONABLE ATTORNEY FEES ASSERTED AGAINST OR INCURRED BY CITY, AND INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BODILY AND PERSONAL INJURY, DEATH AND PROPERTY DAMAGE, RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE VENDOR OR ITS OFFICERS, SHAREHOLDERS, AGENTS, OR EMPLOYEES INCIDENTAL TO, RELATED TO, AND IN THE EXECUTION, OPERATION, OR PERFORMANCE OF THE AGREEMENT. Nothing in this Addendum shall be construed to create a liability to any person who is not a party to this Addendum, and nothing herein shall waive any of the parties’ defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

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.

Exhibit E
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 8420 – 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 F

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, 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 Weather Services Forecasting – 8420 combined

bodily injury (including death) and property damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

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.

Atmospheric G2, LLC

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:
Todd Navarra

Signature of Vendor doing business with the governmental entity

3/20/2024

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/hm/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: 7B9EBBCF4B634ECF8CFFB72C78DB454B	Status: Sent
Subject: Please DocuSign: City Council Contract 8420 - Weather Services Forecasting	
Source Envelope:	
Document Pages: 17	Signatures: 5
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Christa Christian
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Christa.Christian@cityofdenton.com
	IP Address: 198.49.140.104

Record Tracking

Status: Original	Holder: Christa Christian	Location: DocuSign
3/19/2024 7:26:01 PM	Christa.Christian@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
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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: 3/19/2024 7:30:47 PM Viewed: 3/20/2024 10:43:05 AM Signed: 3/20/2024 10:43:27 AM
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: 3/20/2024 10:43:30 AM Viewed: 3/20/2024 5:06:36 PM Signed: 3/20/2024 5:08:31 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Todd Navarra tn@atmosphericg2.com CEO Atmospheric G2 Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 71.60.217.115 Signed using mobile	Sent: 3/20/2024 5:08:37 PM Viewed: 3/20/2024 5:09:04 PM Signed: 3/20/2024 5:11:11 PM
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Gretna Jones
 gretna.jones@cityofdenton.com
 Legal Secretary
 City of Denton
 Security Level: Email, Account Authentication (None)



Sent: 3/20/2024 5:21:32 PM
 Viewed: 3/22/2024 8:38:54 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

Stephen Johnson
 Stephen.Johnson@dmepower.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 Updated	Security Checked	3/22/2024 7:10:55 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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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.

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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 #: PUB24-076, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas Home-Rule Municipal Corporation, authorizing the filing of applications, forms, and associated documents with the Texas Commission on Environmental Quality (“TCEQ”) by the City Manager, to seek permits, permit amendments, permit renewals, and authorizations needed for the operation of the City’s Water Utility, the expenditure of funds needed to receive TCEQ Permits and Authorizations, providing an effective date.



AGENDA INFORMATION SHEET

DEPARTMENT: Water Utilities
ACM: Cassandra Ogden
DATE: April 8, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas Home-Rule Municipal Corporation, authorizing the filing of applications, forms, and associated documents with the Texas Commission on Environmental Quality (“TCEQ”) by the City Manager, to seek permits, permit amendments, permit renewals, and authorizations needed for the operation of the City’s Water Utility, the expenditure of funds needed to receive TCEQ Permits and Authorizations, providing an effective date.

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Pursue Organizational Excellence and Collaborative and Respectful Leadership.

INFORMATION/BACKGROUND

The City of Denton, Texas (Denton) owns water rights authorizing storage, conveyance, diversion, and use of water in Lake Lewisville, as evidenced by Certificate of Adjudication No. 08-2348, as amended. Amendment A to Certificate of Adjudication No. 08-2348 granted Denton water rights authority to use the bed and banks of named state watercourses including Lake Lewisville to convey, divert, and reuse surfacewater based return flows discharged from Denton’s municipal wastewater treatment facilities under two water quality permits issued by the Texas Commission on Environmental Quality (TCEQ).

Denton also owns water rights authorizing storage, diversion, and use of water in Lake Ray Roberts, as evidenced by Certificate of Adjudication No. 08-2335, as amended. Denton uses the authorizations in Certificate of Adjudication Nos. 08-2348, as amended, and 08-2335, as amended, for providing water supply to its retail and wholesale customers.

Accelerated population growth is driving an increase in proposed capital improvements for Denton’s Water and Wastewater systems that will require an increased number of permit applications to TCEQ which require the payment of fees from the Water Utilities budget. In Ordinance Number 22-1994, the City Council authorized and directed the City Manager or their designee, to take actions as they find reasonable and appropriate to file applications for and pursue amendment of the City’s water rights and to obtain new water reuse rights.

Denton has an opportunity to further enhance operational flexibility in the Water Utilities Department by authorizing the City Manager or designee to pursue permits and applications with the TCEQ, and provide payments where funds are available in the budget for associated permit or application fees.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

none

RECOMMENDATION

Staff recommends approval of the ordinance.

EXHIBITS

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

Exhibit 3: Presentation

Respectfully submitted:
Stephen Gay
Water Utilities Director

Prepared by:
Kyle Pedigo
Asset Management & Infrastructure Division Manager

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE FILING OF APPLICATIONS, FORMS, AND ASSOCIATED DOCUMENTS WITH THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (“TCEQ”) BY THE CITY MANAGER, TO SEEK PERMITS, PERMIT AMENDMENTS, PERMIT RENEWALS, AND AUTHORIZATIONS NEEDED FOR THE OPERATION OF THE CITY’S WATER UTILITY, THE EXPENDITURE OF FUNDS NEEDED TO RECEIVE TCEQ PERMITS AND AUTHORIZATIONS, PROVIDING AN EFFECTIVE DATE.

WHEREAS, to conduct its operations, including those associated with future capital improvements, the City of Denton Water Utility (“Water Utility”) must acquire permits and authorizations from TCEQ; and

WHEREAS, the Water Utility must submit forms and applications, along with associated documents, to TCEQ to receive permits and authorizations; and

WHEREAS, TCEQ issuance of permits, permit amendments, permit renewals, and authorizations may require the payment of fees from funds available in the City of Denton’s budget; and

WHEREAS, due to accelerated growth in the City of Denton and the region, the Water Utility must apply for TCEQ permits and authorizations at an increased rate; and

WHEREAS, in Ordinance No. 22-1994, the City Council authorized and directed the City Manager or their designee, to take such actions as they find reasonable and appropriate to file applications for and pursue amendment of the City’s water rights and to obtain new water reuse rights; and

WHEREAS, the City Council finds that the delegation of its authority solely to the City Manager under this Ordinance is in the public interest and will lead to the efficient implementation of Water Utility initiatives conducted pursuant to the policies and direction of the City Council; and

WHEREAS, the City Council finds that it is in the public interest to seek and obtain permits and authorizations from TCEQ.

NOW, THEREFORE THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations contained in the preamble of this ordinance are incorporated herein by reference as findings of the City Council.

SECTION 2. In addition to the delegation in Ordinance No. 22-1994, the City Council hereby authorizes the City Manager to take such actions as they find reasonable and appropriate to file applications, forms, and associated documents to acquire permits, permit amendments, permit

renewals, and authorizations from TCEQ, consistent with the intents and purposes of this ordinance and state law.

SECTION 3. The City Council authorizes the City Manager to provide for payment, where funds are available in the budget, of regulatory and notice fees required to receive permits, permit amendments, permit renewals, and authorizations from TCEQ.

SECTION 4. Any provision of any prior ordinance of the City which conflicts with any provision of this ordinance is hereby repealed to the extent of the conflict, but all other provisions of the ordinance of the city which are not in conflict with the provisions of this ordinance shall remain in full force and effect.

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 [_____].

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:
LAUREN THODEN, CITY SECRETARY

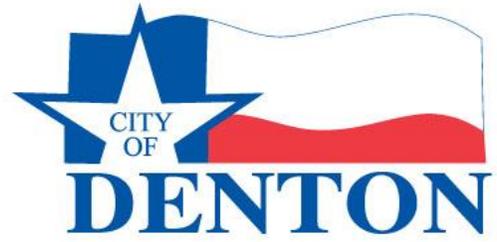
BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  Christopher Mullins
2024.04.03 17:24:31 -05'00'

TCEQ Delegation of Authority PUB 24-076

Kyle Pedigo
Water Utilities
April 8, 2024

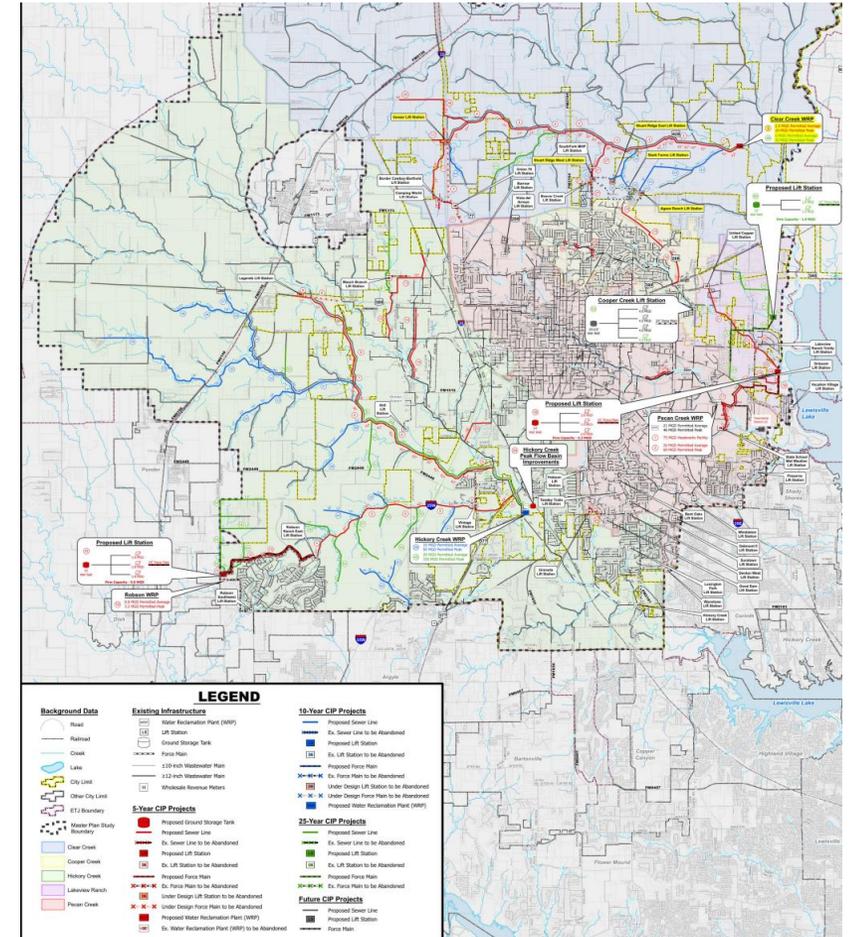


Background

- The City of Denton has water rights in both Lake Lewisville and Lake Ray Roberts that are managed by the Texas Commission on Environmental Quality (TCEQ)
- Capital improvements on water and wastewater treatment plants, changes to effluent discharge, water quality reporting, and other construction activities on Water Utilities infrastructure require TCEQ permitting and authorization
- In Ordinance 22-1994 Council authorized/directed the City Manager, or their designee, to pursue amendments to the City's water rights through TCEQ

Scope

- Water Utilities will be renovating the existing Water Reclamation Plant (WRP) at Pecan Creek as well as building new WRPs in the Clear Creek and Hickory Creek drainage basins within the 10-year horizon
- The Ray Roberts Water Treatment Plant will also be expanded
- These projects will greatly increase the number of permits and authorizations required by the City of Denton from TCEQ
- Currently all permits and authorization require approval from City Council



Recommendation

- Granting the City Manager, or designee, authority to pursue permits and authorizations increases organizational flexibility and reduces agenda congestion
- Water Utilities staff recommend adoption of the TCEQ Delegation Ordinance

QUESTIONS?

Kyle Pedigo

Planning and Engineering Division Manager

Water Utilities



City of Denton

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

Legislation Text

File #: PUB24-074, **Version:** 1

AGENDA CAPTION

Consider approval of the March 25, 2024 minutes.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
March 25, 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 25, 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, Robert Rayner and Thomas Plock

Also present: General Manager Antonio Puente and Deputy City Attorney Marcella Lunn

Absent: Lee Riback

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 - D

Board Member Plock moved to recommend adoption of agenda items 2 A-D. Motion seconded by Board Member Taylor; motion carried.

YES (5): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner and Thomas Plock

NO (0):

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).

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).

- 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).
- 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).

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. PUB24-061** Consider approval of the March 11, 2024, minutes.

Board Member Cheek moved to recommend approval of agenda item 3A. Motion seconded by Board Member Plock; motion carried.

YES (5): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner and Thomas Plock

NO (0):

- 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.

Vis Bouaphanthavong gave the presentation. There were questions by the Board Members that staff answered.

Board Member Cheek moved for approval of agenda item 3B. Motion seconded by Board Member Taylor; motion carried.

YES (5): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner and Thomas Plock

NO (0):

- 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.

Randee Klingele gave the presentation for items C and D. There were questions by Board Members that staff answered.

Board Member Cheek moved for approval of agenda item 3B. Motion seconded by Board Member Plock; motion carried.

YES (5): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner and Thomas Plock

NO (0):

- 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.

Board Member Taylor moved for approval of agenda item 3D. Motion seconded by Board Member Cheek; motion carried.

YES (5): Chair Susan Parker, Vice Chair Billy Cheek, Devin Taylor, Robert Rayner and Thomas Plock

NO (0):

- 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

4. CONCLUDING ITEMS

none

With no further business, the meeting was adjourned at 9:22 AM.

SUSAN PARKER
CHAIR
CITY OF DENTON, TEXAS

KIM MANKIN
UTILITIES ADMIN MANAGER
CITY OF DENTON, TEXAS

Minutes approved on: April 8, 2024.



City of Denton

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

Legislation Text

File #: PUB24-067, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, A Texas Home-Rule Corporation ("City"), amending the City's Water Conservation and Drought Contingency Plan previously adopted by the City Council in Ordinance No. 19-863 enacted on April 16, 2019, providing an effective date.



AGENDA INFORMATION SHEET

DEPARTMENT: Water Utilities
CM/DCM/ACM: Cassandra Ogden
DATE: April 8, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, A Texas Home-Rule Corporation (“City”), amending the City’s Water Conservation and Drought Contingency Plan previously adopted by the City Council in Ordinance No. 19-863 enacted on April 16, 2019, providing an effective date.

STRATEGIC ALIGNMENT

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

BACKGROUND

The Water Conservation Plan must be updated every 5 years, with the next deadline for update as May 1, 2024. The Water Utilities Department seeks Public Utility Board and Council Approval for the updated document. The approved plan will then be submitted to the Water Development Board.

The Water Conservation Plan is comprised of two separate guidance documents, the Conservation Plan and the Drought Contingency Plan.

The purpose of the Drought Contingency Plan is to enhance the resilience of our community and our water system during times of drought, to minimize water related risks and ensure the sustainable management of water resources during times of water scarcity. This plan defines what constitutes a drought situation, the severity of the situation, and the appropriate mitigation measures.

The purpose of the Conservation Plan is to provide a framework that will allow the City’s Water Utilities Department to effectively manage and preserve the water resources in its portfolio. By conserving water, The City of Denton can better ensure sustainable access to clean water for current and future generations. To achieve this purpose, the department will implement a comprehensive and integrated approach that addresses the multiple drivers of water consumption and incorporates a range of strategies tailored to the City’s use profile. The plan leverages tools and programs such as proactive leak detection and repair; aggressive meter testing, maintenance and repair; defined customer outdoor watering schedules; robust public education and outreach to encourage water conservation.

As part of the review and update process for 2024, staff tested the practical application of the existing content by reviewing each drought mitigation strategy, then identifying and discussing with the impacted department(s). Departments were given the opportunity to eliminate or modify any restriction measures deemed non-feasible, however throughout this process, all measures were deemed actionable and appropriate.

The Conservation Plan was modified with a single substantial update, adoption of a twice-per-week outdoor irrigation schedule. To support this update, the department is recruiting a public outreach and water efficiency coordinator. Additionally, a Discuss Denton website was created specifically for water conservation, this website is updated daily with actual usage volumes, as well as conservation opportunities and other water utility updates.

OPTIONS

The plan may be adopted as presented. If the plan is not adopted, staff will return with revisions based on comments received.

RECOMMENDATION

Staff recommends approval of the updated Water Conservation Plan.

PRIOR ACTION/REVIEW (Council, Boards, Commissions)

On April 5, 2024, a draft of this report was attached to an Informal Staff Report and included in the Friday Report.

EXHIBITS

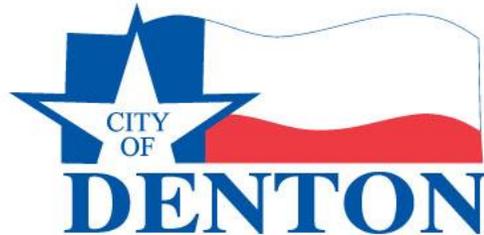
1. Agenda Information Sheet
2. Presentation
3. 2024 Draft Water Conservation Plan
4. Ordinance

Respectfully submitted:
Stephen Gay
Director of Water Utilities

Prepared by:
Haley Salazar
Water Resource Administrator

Water Conservation Plan Update

Haley Salazar
Water Resources Administrator
April 8, 2024



Summary

- Recommended adoption of 5-year update
- Texas Water Development Board (TWDB) and Texas Commission on Environmental Quality (TCEQ) requirement
- Conservation Framework and Drought Management
- Year-Round Two-day-a-week Irrigation Schedule Implementation
- Annual summer watering ordinance, which prohibits irrigation between 10a-6p from June 1 - Sept.30 remains in effect



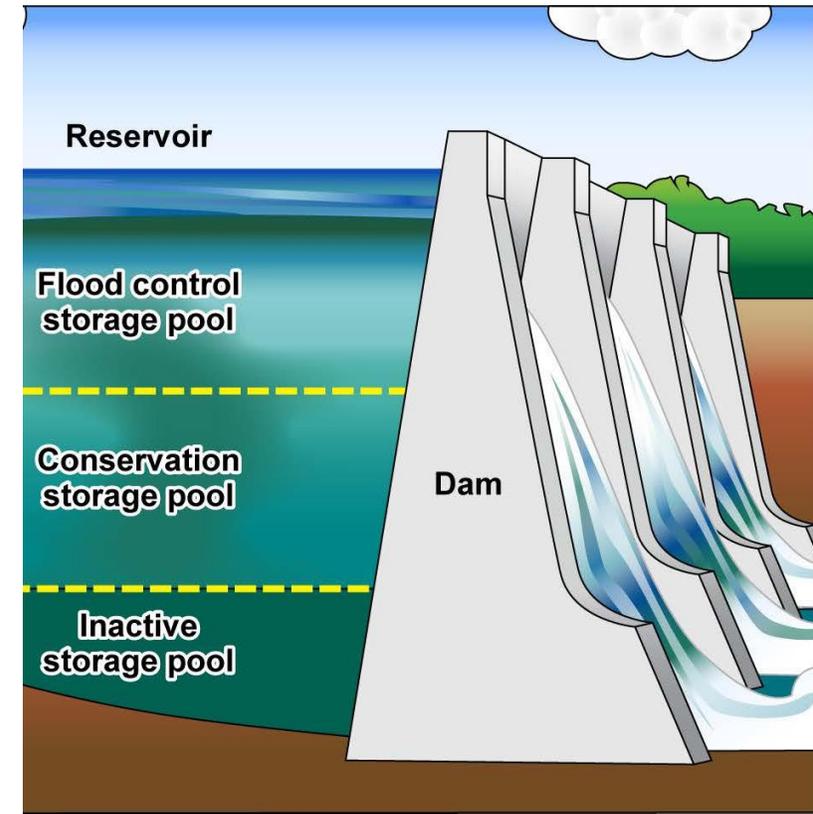
Background

- Prior plans were approved in 2005, 2009, 2014 and 2019.
- Drought plan almost enacted in 2014, 2023
- Population growth and weather variability increase likelihood of enacting
- Conservation strategies preserve resources

Drought Triggers Explained

Drought Contingency Plan

	Stage 1 Mild	Stage 2 Moderate	Stage 3 Severe
Supply	Lake Levels 65%	Lake Levels 50%	Lake Levels 35%
Demand	85% (42.5 MGD - 4 days)	90% (45 MGD - 3 days)	95% (47.5 MGD - 2 days)
Operational	Situational – Including but not limited to mechanical failure/ infrastructure Failure, contamination		



Overview

Update

Address	Irrigation Day
Even Addresses (ending in 0,2,4,6,8 or no address)	Tuesday and Saturday
Odd Addresses (ending in 1,3,5,7,9)	Wednesday and Sunday
Commercial and Multi-Family	Monday and Thursday

Utility Support

Note: Annual summer watering ordinance, which prohibits irrigation between 10a-6p from June 1 - Sept.30 remains in effect

- <https://www.discussdenton.com/water-wise-denton> for transparency
- Conservation Community Engagement FTE
- Sustainability Partnership
- Reuse investment
- Rebate programs pending budget approval
- Alternative supply strategies



QUESTIONS?

Haley Salazar
Water Resources Administrator
Water Utilities

CITY OF DENTON WATER CONSERVATION PLAN

April 2024

1. INTRODUCTION AND OBJECTIVES

Water supply has always been a key issue in the development of Texas. The increasing population and economic development in Region C have led to growing demands for water. Additional supplies to meet higher demands will be expensive and difficult to develop. It is important to preserve water availability by making efficient use of existing supplies. Effective conservation strategies will delay the need for new supplies, minimize the environmental impacts associated with developing new supplies, and delay the high cost of additional water supply development.

Recognizing the need for efficient use of existing water supplies, the Texas Commission on Environmental Quality (TCEQ) has developed guidelines and requirements governing the development of water conservation and drought contingency plans for public water suppliers.¹ The TCEQ guidelines and requirements for water suppliers are included in Appendix B. The City of Denton has adopted this water conservation and drought contingency plan pursuant to TCEQ guidelines and requirements.

The objectives of the water conservation plan are:

- To reduce per capita water consumption.
- To reduce operational water loss
- To reduce wasteful uses of water.
- To promote water reuse.
- To improve efficiency in the use of water.
- To extend the life of current water supplies by implementing sustainable practices

The objectives of the drought contingency plan are:

- To conserve the available water supply in times of drought and emergency.
- To maintain supplies for domestic water use, sanitation, and fire protection.
- To protect and preserve public health, welfare, and safety.
- To minimize the adverse impacts of water supply shortages.
- To minimize the adverse impacts of emergency water supply conditions.

2. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES

2.1 Conservation Plans

The TCEQ rules governing development of water conservation plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2 of the Texas Administrative Code, which is included in Appendix B. For the purpose of these rules, a water conservation plan is defined as:

“A strategy or combination of strategies for reducing the volume of water withdrawn from a water supply source, for reducing the loss or waste of water, for maintaining or improving the efficiency in the use of water, for increasing the recycling and reuse of water, and for preventing the pollution of water. A water conservation plan may be a separate document identified as such or may be contained within another water management document(s).”¹

According to TCEQ rules, water conservation plans for public water suppliers must have a certain minimum content (Section 3), must have additional content for public water suppliers that are projected to supply 5,000 or more people in the next ten years (Section 4), and may have additional optional content (Section 5).

2.2 Drought Contingency Plans

The TCEQ rules governing development of drought contingency plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter B, Rule 288.20 of the Texas Administrative Code, which is included in Appendix B. The rules for wholesale water suppliers are contained in Rule 288.22, included in Appendix B. For the purpose of these rules, a drought contingency plan is defined as:

“A strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies. A drought contingency plan may be a separate document identified as such or may be contained within another water management document(s).”¹

The drought contingency plan for the City of Denton is contained in Section 6 of this water conservation and drought contingency plan.

3. MINIMUM REQUIRED WATER CONSERVATION PLAN CONTENT

The minimum requirements in the Texas Administrative Code for water conservation plans for public drinking water suppliers covered in this report are as follows:

- 288.2(a)(1)(A) – Utility Profile – Section 3.1 and Appendix C
- 288.2(a)(1)(B) – Records Management System – Section 3.2

- 288.2(a)(1)(C) – Specification of 5- and 10-Year Savings Targets – Section 3.3
- 288.2(a)(1)(D) – Accurate Metering – Sections 3.4.A
- 288.2(a)(1)(E) – Universal Metering – Section 3.4.B
- 288.2(a)(1)(F) – Determination and Control of Unaccounted Water – Section 3.5
- 288.2(a)(1)(G) – Public Education and Information Program – Section 3.6
- 288.2(a)(1)(H) – Non-Promotional Water Rate Structure – Section 3.7
- 288.2(a)(1)(I) – Reservoir System Operation Plan – Section 3.8
- 288.2(a)(1)(J) – Means of Implementation and Enforcement – Section 3.9, Appendix D
- 288.2(a)(1)(K) – Coordination with Regional Water Planning Group – Section 3.10 and Appendix E

TCEQ places additional requirements on wholesale water suppliers in Title 30, Part 1, Chapter 288, Subchapter B, Rule 288.5 of the Texas Administrative Code. This Rule is included in Appendix B.

TCEQ's minimum requirements for water conservation plans are addressed in the following subsections of this report:

- 288.5(1)(C) – Maximum Acceptable Unaccounted-For Water Goal – Section 3.5

3.1 Utility Profile

Appendix C to this water conservation plan is a water utility profile for the City of Denton, based on the format recommended by the TCEQ.²

3.2 Records Management System

The Texas Administrative Code requires water systems maintain a record management system which allows for the classification of water sales and uses into the most detailed level of water use data currently available to it, including, if possible, the sectors listed in clauses (i) - (vi) of this subparagraph. Any new billing system purchased by a public water supplier must be capable of reporting detailed water use data as described in clauses (i) - (vi) of this subparagraph:

- (i) residential;
 - (I) single family;
 - (II) multi-family;
- (ii) commercial;
- (iii) institutional;
- (iv) industrial;

- (v) agricultural; and,
- (vi) wholesale.

The City of Denton Currently Utilizes NorthStar Billing System. While the acquisition and implementation of this software predates the above records management requirements, the system can accommodate the classification of water uses into detailed water use data.

3.3 Specification of 5- and 10-Year Savings Targets

The Texas Administrative Code requires specific, quantified five-year and ten-year targets for water savings to include goals for water loss programs and goals for municipal use in total GPCD and residential GPCD.

In December of 1999, the average gallon per capita per day (gpcd) water usage was roughly 160. This figure is arrived at by taking the amount of produced water, subtracting wholesale water amounts, then dividing the remaining amount by the current population. It is important to note, that gpcd is an industry standard, however gpcd does include commercial and industrial water usages. Therefore, it is important to make the distinction that a gpcd figure does not represent household usage alone, but also considers an individual's "water footprint" based on the water consumption of goods and services they enjoy.

In 1999, when gpcd was 160, the original water conservation plan articulated a conservation goal of a 15 percent reduction in per capita water use by 2050, which would be 136 gpcd.

The City's water conservation goals were further amended May 1, 2005, to include the goal of a one percent reduction yearly in per-capita usage for ten years. Resulting in 152 gpcd by 2024. Weather variability presents data interpretation challenges. On average, Denton receives 38 inches of rain. In 2015 Denton received 69.5 inches of rain, that year saw a 132.64 gpcd consumption, surpassing our 2050 goal. In 2023 Denton received 28.8 inches of rain, that year saw 149.78 gpcd consumption. While the 2024 usage is much higher than the 2015 usage, it is fair to argue 2024 more accurately represents successful reduction. Additionally, the pattern and frequency of rainfall has significant effects on irrigation patterns. For example, if 1" of rain falls per week in .25" increments every other day in August, irrigation would be largely curtailed, however if 1" of rain falls on a Sunday then the rest of the week is dry, irrigation would likely occur by mid-to-end of the week.

Due to a shift in a larger percent of population living in multifamily homes, some of the assumptions comprising the 2050 goal of 136 gpcd were reexamined, and a new goal of 130 gpcd by 2050 is the new target.

The figure below represents Denton’s conservation in 2019, 2024 to date actuals, and 5-, 10- and 15-year goals through 2039.

Unit	Unit	2019	2024	2029	2034	2039
City of Denton Population		133,610	156,643	231,334	255,412	281,995
Gallons Per Capita per Day	gpcd	140	148	145	142	140
Residential Gallons Per-Capita per Day	gpcd	58.3	63.38	60	56.5	53

3.4.A Accurate Metering of Raw Water Supplies and Treated Water Deliveries

The City of Denton meters all raw water diversions from Lake Lewisville and Lake Ray Roberts to each of the Water Treatment Plants. The City of Denton also meters all treated water deliveries to the distribution system from each water treatment plant. Each meter has an accuracy of plus or minus one percent. The meters are calibrated on a semiannual basis by City of Denton personnel to maintain the required accuracy and are repaired or replaced as needed. Both Raw meters for Lake Ray Roberts were replaced in 2018, and both Lake Lewisville meters were replaced in 2021.

3.4.B Metering of Customer and Public Uses and Meter Testing, Repair, and Replacement

Water usage for all customers of the City of Denton, including public and governmental use, is metered. As part of the water conservation plan, the City of Denton will continue to implement a meter replacement program. Denton Water Utility (DWU) staff conducted an extensive study in 2004 in which over 2,000 water meters were bench tested for accuracy. Throughout the years since this study was conducted, it has been updated and to date holds validity in results. In addition, a cost-benefit analysis was conducted to maximize the efficiency of the meters versus the costs of the replacement program. Based on the study, ¾ to 2-inch meters are replaced on a twelve- to fourteen-year cycle. The program focused on replacing the oldest meters in the system first. From 2009 to 2013 DWU has replaced meters to meet the twelve- to fourteen-year cycle. Meters that are 3-inch or larger are tested every year and repaired or replaced as necessary. The meter inventory for the city is in the process of transitioning to AMI or Automatic Meters. A pilot study is currently in progress and it is anticipated that the AMI meters will begin to replace analogue meters in 2027.

In addition, meters registering any unusual or questionable readings are automatically flagged in the billing process and be tested and repaired to restore full functionality.

3.5 Determination and Control of Water Loss

The amended 2003, Texas Water Code (Chapter 16.0121) requires that DWU (a retail public utility that provides potable water) to file an annual audit of system water loss. DWU continues to follow annually in compliance with the TWC.

DWU staff performs a yearly water audit, using the International Water Association/ American Water Works Association (IWA/AWWA) method required by the TWDB. DWU staff has been conducting water audits since the early 1990s. Historically, the City of Denton's non-revenue water, has always been below the AWWA goal. The City of Denton unaccounted-for water is also below the national average and the 2017 Texas average. The City of Denton's system has always met the suggested targets of the newer IWA/AWWA methodology as specified by the TWDB Task Force on water conservation.

The City of Denton will continue to conduct annual water audits using the IWA/AWWA methodologies.

Non-revenue water for the City of Denton has varied from 3.3 percent to 7.5 percent in the last five years, with the highest value still under review regarding accuracy of a source meter. Previous audits led to the discovery and correction of a systematic source metering error at the Ray Roberts Water Treatment Plant. Staff will continue to conduct comprehensive water audits annually and take appropriate measure to minimize system water loss.

3.6 Public Education and Information; Partnerships with Non-profits

The City of Denton continues to have an active role in the education of water conservation with several methods of outreach and public information. Along with their Partnerships with Non-Profits, they execute campaigns throughout the year(s) to spread information on conservation. The continuing public education and information campaign and the partnerships with Non-Profit organizations on water conservation includes the following elements:

- a. Promote the City's water conservation measures (presented in Sections 3, 4, and 5).
- b. Enforcement of a mandatory twice-a-week watering schedule for landscape.
- c. Include inserts on water conservation with water bills at least twice per year. Inserts will include material developed by City of Denton staff and material obtained from the TWDB, the TCEQ, and other sources that pertain to water conservation, irrigation conservation, and protecting pipes from freezing.
- d. Encourage local media coverage of water conservation issues and the importance of water conservation.
- e. Make the Texas Smartscape materials, water conservation brochures, and other water conservation materials available to the public at the City of Denton Utility Department, other City facilities, and at special events.

- f. Make information pertaining to water conservation and irrigation conservation available online at www.sustainabledenton.com and water utilities website www.discussdenton.com/water-wise-denton include links to the Texas Smartscape website and to information relating to water conservation on the TWDB and TCEQ web sites.
- g. Provide a Xeriscape class once a year to promote conservation landscaping and conservation irrigation practices.
- h. Encourage attendance at Texas A&M Water University water classes. Offered options include Rain barrel and Drip irrigation classes.
- i. Promote and educate with non-profit conservation partners such as Master Naturalist, Master Gardeners, and Natural Plant Society, organizations that actively hold informational and educational meetings and volunteer opportunities regularly within our community.
- j. Offer presentations to local organizations, schools, and civic groups on the importance of water conservation and ways to save water.

3.7 Non-Promotional Water Rate Structure

With the intent of encouraging water conservation and discouraging waste and excessive use of water, the City of Denton adopted an increasing block (inverted block) rate in 1998. In an inverted-block structure the unit price of water increases with increasing water use.

The City of Denton initially employed an inverted-block rate from May through October. We have since adopted this structure year-round. The structure consists of four blocks. The first block provides enough water to cover a typical household's water usage, which includes a moderate amount for irrigation. The second, third, and fourth blocks are designed to curb discretionary and seasonal outdoor water use. The inverted-block structure only applies to residential customers. DWU bills commercial customers on a flat rate, but has implemented seasonal pricing on commercial irrigation meters to curb summer peak demand.

3.8 Reservoir System Operation Plan

The City of Denton has the right to divert water from Lake Lewisville and Lake Ray Roberts, which we limit to firm yield calculations as follows:

- 19.76 MGD from Lake Ray Roberts
- 4.34 MGD from Lake Lewisville

The City of Denton is the minority water right holder in both reservoirs. The expired agreement with the City of Dallas (majority water right holder) delegates comprehensive coordination of reservoir management to the City of Dallas.

3.9 Implementation and Enforcement of the Water Conservation Plan

Appendix D contains a copy of the resolution of the City of Denton City Council adopting this water conservation and drought contingency plan. The resolution designates responsible officials to implement and enforce the water conservation and drought contingency plan.

3.10 Coordination with Regional Water Planning Group

The City of Denton will provide a copy of this water conservation and drought contingency plan to the Region C Water Planning Group, which is currently developing the Regional Water Plan. Appendix E includes a copy of a letter sent to the Chair of the Region C Water Planning Group.

4. ADDITIONAL REQUIRED WATER CONSERVATION PLAN CONTENT

The Texas Administrative Code also includes additional requirements for water conservation plans for public drinking water suppliers that serve a population of 5,000 people or more and/or a projected population of 5,000 people or more within the next 10 years:

- §288.2(a)(2)(A) – Leak Detection, Repair, and Water Loss Accounting – Sections 3.5, 4.1, and 5.5
- §288.2(a)(1)(B) – Record Management System – Section 4.2
- §288.2(a)(2)(C) – Requirement for Water Conservation Plans by Wholesale Customers – Section 4.3

4.1 Leak Detection and Repair; Pressure Control

Measures to control unaccounted-for water are part of the routine operations of the City of Denton. Meter readers, water and wastewater utility personnel, and the public report leaks in the system. Maintenance crews are on-call 24-hours a day and respond quickly to repair reported leaks. DWU has invested in leak detection and correlator equipment that helps in identifying more leaks and locating leaks more accurately for repair.

The City of Denton also proactively decreases water loss through the waterline replacement program. Areas of the water distribution system in which numerous leaks and line breaks occur are targeted for replacement.

DWU will continue analysis on the life cycle of transmission lines. These pipes have an assumed lifespan of 75 years. DWU continuously assesses the current condition of existing transmission lines and maintains a detailed maintenance history. DWU revises the replacement schedules accordingly for all existing transmission lines to reduce water loss from main breaks by better estimating end of useful life.

To reduce real water losses, the City of Denton will maintain a proactive water loss program. As part of this program, the City will implement the following actions:

- a. Continue to implement and improve the waterline replacement program.
- b. Conduct an analysis to revise the replacement schedule of transmission lines.
- c. Conduct regular inspections of all water main fittings and connections during periods of maintenance and repair.

4.2 Record Management System

As required by TAC Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2(a)(1)(B), the record management system for the City of Denton records water pumped, water delivered, and water sold. However, the City of Denton's record management system does not allow for the separation of water sales and uses into residential, commercial, public/institutional, and industrial categories as required.

The current billing system separates sales and uses into residential, commercial, and wholesale user classes. At such time that the City of Denton procures a new record management system, such system will have the capabilities required in section 288.2(a)(1)(B).

4.3 Requirement for Water Conservation Plans by Wholesale Customers

Each contract for the wholesale sale of water by the City of Denton will include a requirement that the wholesale customer develop and implement a water conservation plan meeting the requirements of Title 30, Part 1, Chapter 288, Subchapter A, Rule 288.2(a)(2)(c) of the Texas Administrative Code. If the customer intends to resell the water, then the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of Chapter 288.

5. OPTIONAL WATER CONSERVATION PLAN CONTENT

TCEQ rules also list optional (not required) conservation strategies, which may be adopted by suppliers to achieve the stated goals of the plan. The following optional strategies are listed in the rules; some are not included in this plan:

- §288.2(a)(3)(A) – Conservation Oriented Water Rates – Section 3.7
- §288.2(a)(3)(B) – Ordinances, Plumbing Codes or Rules on Water-Conserving Fixtures – Section 5.1
- §288.2(a)(3)(C) – Programs for the Replacement or Retrofit of Water-Conserving Plumbing Fixtures in Existing Structures – (Not included in plan)
- §288.2(a)(3)(D) – Reuse and Recycling of Wastewater – Section 5.2
- §288.2(a)(3)(E) – Pressure Control and/or Reduction – (Not included in plan)
- §288.2(a)(3)(F) – Landscape Water Management Ordinance – Section 5.3
- §288.2(a)(3)(G) – Monitoring Method – Section 5.4

- §288.2(a)(3)(H) – Other Conservation Methods – Section 5.5 and 5.6

5.1 Ordinances, Plumbing Codes, or Rules on Water-Conserving Fixtures

The State of Texas has required 2.5 gpm faucets, 3.0 gpm showerheads, and 1.6 gpf toilets for new construction since 1992. Similar standards are also required under federal law. Denton’s Plumbing Code complies with the State of Texas requirements. The implementation of the federal rules requiring energy-conserving clothes washers in 2007 improved the water-efficiency of residential clothes washers.

5.2 Reuse and Recycling of Wastewater

The City of Denton’s current reuse program delivers approximately 0.5 MGD of reclaimed wastewater effluent. The current distribution system has a maximum capacity of 4 MGD. The city is currently partnering with a consultant to perform an analysis on the system and increase usage by identifying new customers that can feasibly be connected to the system, and identifying infrastructure improvements to allow for expansion. Lastly, new developments of a certain size are required to be constructed with purple pipe to accommodate future system expansion. Staff is identifying internal processes that can be accomplished with reuse water, such as sewer cleaning and street sweeping, and working to accommodate the change from potable to reuse water to accomplish these tasks.

5.3 Landscape Management Ordinance

As part of the development of this water conservation plan, the City of Denton has implemented a lawn and landscape irrigation and water waste ordinance. This ordinance is intended to minimize waste in landscape irrigation and other uses. The ordinance was implemented in 2006, during a drought period when public awareness of the drought was high. The ordinance includes the following elements:

- a. Prohibition of outdoor watering, except by hand and for watering foundations, from 10:00 a.m. to 6:00 p.m. every day from June 1 through September 30.
- b. Requirement that all new irrigation systems include rain and freeze sensors.
- c. Prohibition of designs and installations that spray directly onto impervious surfaces such as sidewalks and roads or onto other non-irrigated areas.
- d. Prohibition of use of poorly maintained sprinkler systems that waste water.
- e. Requirement that any outside faucet or service line leak be repaired.
- f. Enforcement of the ordinance by a system of warnings followed by fines for continued or repeat violations.

Staff is expanding the rules and regulations above to include a twice a week irrigation schedule for all users, as well as hiring an additional staff member to support the public and uphold the restrictions.

The irrigation schedule is as follows:

Address	Irrigation Day
Even Addresses (ending in 0,2,4,6,8 or no address)	Tuesday and Saturday
Odd Addresses (ending in 1,3,5,7,9)	Wednesday and Sunday
Commercial and Multi-Family	Monday and Thursday

5.4 Monitoring Method

Currently there is not a system in place to accurately measure consumption per capita per day. The meter inventory for the city is in the process of transitioning to AMI or Automatic Meters. A pilot study is currently in progress and it is anticipated that the AMI meters will begin to replace analogue meters in 2027. As meters are replaced, AMI technology will allow for individual gpcd monitoring.

5.5 Customer Water Audit

The City of Denton will continue to conduct water audits for single- and multi-family residential customers. The four main purposes are to: educate customers about conservative water use habits and replacement of inefficient toilets, clothes washers, and dishwashers; educate customers about water-efficient showerheads and faucet aerators; identify leaks; and optimize irrigation water usage. The City’s auditor will review the water use habits of the customer, inspect the system for leaks and excessive use, and recommend any equipment repairs or changes to increase the efficiency of both the domestic and irrigation water systems. Although overall water savings from residential water audits are minimal, residential water audits are crucial to maintaining good customer relations particularly related to high billing complaints.

The City of Denton has and will explore new organizational options that would allow for expansion of the water audit program. In addition to increasing availability of personnel for residential water audits, DWU will begin to expand its focus and implement a program for commercial customers. As Denton’s highest volume water customers are in the commercial sector, commercial water efficiency is expected to make a significant impact toward overall reductions.

5.6 Park, Athletic Fields and Golf Course Conservation

The City of Denton will explore the possibility of additional savings by the proper management of park and athletic field irrigation, landscape, and turf practices. The Texas Water Development Board Water

Conservation Best Management Practices Guide includes guidelines for water conservation in parks, athletic fields, and golf courses.³ DWU will work with other city departments to determine the potential for water and cost savings by proper management practices and implement them when practical. Additionally, Denton is exploring the use of Effluent or Reuse water as a sustainable alternative to potable water. We are currently in the planning stage of this process.

DRAFT

6. DROUGHT CONTINGENCY PLAN

6.1 Introduction

The purpose of this drought contingency plan is as follows:

- a. To conserve the available water supply in times of drought and emergency.
- b. To maintain supplies for domestic water use, sanitation, and fire protection.
- c. To protect and preserve public health, welfare, and safety.
- d. To minimize the adverse impacts of water supply shortages.
- e. To minimize the adverse impacts of emergency water supply conditions.

6.2 State Requirements for Drought Contingency Plans

This drought contingency plan is consistent with Texas Commission on Environmental Quality (TCEQ) guidelines and requirements for the development of drought contingency plans by public drinking water suppliers, contained in Title 30, Part 1, Chapter 288, Subchapter B, Rule 288.20 of the Texas Administrative Code. This rule is included in Appendix B.

TCEQ's minimum requirements for drought contingency plans are addressed in the following subsections of this report:

- 288.20(a)(1)(A) – Provisions to Inform the Public and Provide Opportunity for Public Input – Section 6.3
- 288.20(a)(1)(B) – Provisions for Continuing Public Education and Information – Section 6.4
- 288.20(a)(1)(C) – Coordination with the Regional Water Planning Group – Section 6.9
- 288.20(a)(1)(D) – Criteria for Initiation and Termination of Drought Stages – Section 6.5
- 288.20(a)(1)(E) – Drought and Emergency Response Stages – Section 6.6
- 288.20(a)(1)(F) – Specific, Quantified Targets for Water Use Reductions – Section 6.6
- 288.20(a)(1)(G) – Water Supply and Demand Management Measures for Each Stage – Section 6.6
- 288.20(a)(1)(H) – Procedures for Initiation and Termination of Drought Stages – Section 6.6
- 288.20(a)(1)(I) - Procedures for Granting Variances – Section 6.8
- 288.20(a)(1)(J) - Procedures for Enforcement of Mandatory Restrictions – Section 6.7
- 288.20(a)(3) – Consultation with Wholesale Supplier – Not applicable
- 288.20(b) – Notification of Implementation of Mandatory Measures – Section 6.6

288.20(c) – Review and Update of Plan – Section 6.10 TCEQ places additional requirements on wholesale water suppliers in Title 30, Part 1, Chapter 288, Subchapter B, Rule 288.22 of the Texas Administrative Code. This Rule is included in Appendix B.

TCEQ's minimum requirements for drought contingency plans are addressed in the following subsections of this report:

- 288.22(a)(1) – Provisions to Inform Wholesale – Section 6.3
- 288.22(a)(7) – Water Supply and Demand Management Measures Conform to Texas Water Code 11.039 – Section 6.6
- 288.22(a)(8) – Wholesale Contract Supply Provisions Conform to Texas Water Code 11.039 – Section 6.6

6.3 Provisions to Inform the Public and Opportunity for Public Input

The City of Denton provided opportunity for public input in the development of this drought contingency plan from January 22 through February 22 of 2024:

- a. Written notice of the proposed plan and the opportunity to comment on the plan was posted on the water utilities website www.discussdenton.com/water-wise-denton
- b. Notification was given before, after and during the comment period
- c. The plan is always available to the public at the City of Denton's web site www.cityofdenton.com and water utilities website www.discussdenton.com/water-wise-denton
- d. The public may comment on updates to the plan.
- e. The plan will be provided to anyone requesting a copy.

The City of Denton shares water rights with the City of Dallas. Denton is the minority water right holder in both water supply reservoirs. It is by design that Denton's Drought Contingency Plan closely resembles Dallas' plan. The need to coordinate Denton's Plan with the Dallas plan is appropriate and fosters consistent communication within a media market common to many different water utilities.

6.4 Provisions for Continuing Public Education and Information

The City of Denton will inform and educate the public about its drought contingency plan by the following means:

- a. The plan is available to the public through the City of Denton web site at www.cityofdenton.com and the water utility's website www.discussdenton.com/water-wise-denton
- b. Including information about the drought contingency plan on the City of Denton's web site, www.cityofdenton.com water utility's website www.discussdenton.com/water-wise-denton.
- c. Upon request, make presentations to local organizations, schools, and civic groups on the drought contingency plan (usually in conjunction with presentations on water conservation programs).

- d. Open public meetings with the Public Utilities Board, Environment Committee, and City Council.

Any time the drought contingency plan is activated, or the drought stage changes, the City of Denton will notify local media of the issues, the drought response stage, and the specific actions required of the public. The information will also be publicized on the City of Denton website, www.cityofdenton.com. Billing inserts will be used as appropriate.

6.5 Initiation and Termination of Drought Response Stages

6.5.1 Initiation of Drought Response Stages

The Director of Water Utilities or designee may order the implementation of a drought response stage or water emergency when one or more of the trigger conditions for that stage are met. The following actions will be taken when a drought stage is initiated:

- a. The public will be notified through local media.
- b. Wholesale customers will be notified by telephone with a follow-up letter or email.
- c. If any mandatory provisions of the drought contingency plan are activated, the City of Denton will notify the Executive Director of the TCEQ within 5 business days.

The Director of Water Utilities or designee may decide not to order the implementation of a drought response stage or water emergency even though one or more of the trigger criteria for the stage are met. Factors that could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs.

Trigger Condition Types: The three types of water management conditions are discussed below:

For a ***Type A situation***, preservation of the total water supply is critical and corresponding water management measures should stress overall reductions in water use. This condition is measured by a reduction in lake supply and results from extended drought. The best opportunity to respond to a drought is early in the drought cycle. Drought Contingency measures should stress overall reductions in water demand (i.e., average-day water demand).

For a ***Type B situation***, in which the water demand approaches the delivery capacity of the system, managing and lessening the peak water demand will be critical, and corresponding drought contingency measures should stress water-use reductions or shifts to off-peak hours. In this situation, the objective of Stages 1 and 2 are to avoid triggering the next stage. A Stage 3 trigger requires immediate and severe water demand reductions. Equipment or system failures that result from

increased stresses to the transmission, treatment, or distribution systems can worsen a **Type B** situation. This condition is a result of an increase in demand. In the short term, this typically occurs during the summer months when irrigation requires more water. In the long term, it could occur if treatment plant or distribution system expansions do not keep pace with the growth in consumer demand, which is especially possible in times of significant population growth. Drought contingency measures should stress reductions in peak water demand or redistribution of the demand to off-peak hours.

For a **Type C situation** where deficiencies limit the supply capacity, both water-use reductions and shifts to off-peak hours may be necessary. Although the area involved may be localized, immediate action requiring water demand reduction is necessary. Depending upon the severity of the triggering conditions, it is feasible that the plan could proceed immediately to implementation of stage 3. This condition is a result of a break in a large transmission main, mechanical failure to one or more large pumps, or production plant breakdown. Contamination of water supplies or other unforeseen occurrences may also instigate this condition. They may arise with little warning and require immediate and/or aggressive actions.

Drought contingency measures should stress reductions in peak water demand and/or redistribution of the demand to off-peak hours.

6.5.2 Termination of Drought Response Stages

The Director of Water Utilities or designee may order the termination of a drought response stage or water emergency when the conditions for termination are met or at his/her discretion. The following actions will be taken when a drought stage is terminated:

- a. The public will be notified through local media.
- b. Wholesale customers will be notified by telephone with a follow-up letter or email.
- c. When any mandatory provisions of the drought contingency plan that have been activated are terminated, the City of Denton will notify the Executive Director of the TCEQ within 5 business days.

The Director of Water Utilities or designee may decide not to order the termination of a drought response stage or water emergency even though the conditions for termination of the stage are met. Factors that could influence such a decision include, but are not limited to, the time of the year, weather conditions, or the anticipation of conditions that warrant the continuation of the drought stage.

6.6 Drought and Emergency Response Stages

6.6.1 Stage 1, Mild

6.6.1.1 Triggering and Termination Conditions for Stage 1, Mild

6.6.1.1.1 **Type A** Water Management Condition

Total raw water supply in (1) Denton and Dallas connected lakes (east and west); or (2) western connected lakes; or (3) eastern connected lakes drops below 65% of the total conservation storage of the lakes

6.6.1.1.2 **Type B** Water Management Condition

Water demand reaches or exceeds 85% of delivery capacity for 4 consecutive days

6.6.1.1.3 **Type C** Water Management Condition

- a. Water demand approaches a reduced delivery capacity for all or part of the system, as determined by DWU
- b. A major water line breaks, or a pump or system failure occurs, which cause unprecedented loss of capability to provide treated water service
- c. Natural or man-made contamination of the water supply

Requirements for Termination:

Stage 1 may be terminated when Stage 1 conditions no longer exist and would be unlikely to recur upon termination.

6.6.1.2 Goal for Use Reductions And Actions Available Under Stage 1, Mild

The goal for water use reduction under Stage 1, Mild, is a 5 percent reduction of the use that would have occurred in the absence of drought contingency measures. The Director of Water Utilities or a designee can order the implementation of any of the actions listed below, or other actions not listed, as deemed necessary:

All Water Users

- a. Require that all landscape watering be limited to the day-of-week schedule between the hours of 6:00PM to 10:00AM. Irrigation of landscaped areas with hose-end sprinklers, or automatic irrigation systems should be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8) and for locations without addresses and limited to Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9). Apartments, office building complexes or other property containing multiple addresses may be identified by the lowest address number.
- b. Require written approval for additional watering beyond twice a week for new and first year landscaping.
- c. Encourage only initial filling of ornamental fountains.
- d. Encourage reduction in frequency of washing or rinsing of vehicles. Use of bucket/container, hand-held hose with positive shut-off valve or commercial car wash is required.
- e. Require written approval for the draining and refilling of swimming pools.
- f. Encourage reduction in frequency of recreational water use including use of faucets, hoses or hydrants.
- g. Foundations may be watered on any day of the week between the hours of 10 PM and 6 AM. Foundations may be watered with a soaker hose or a hand-held hose equipped with a positive shutoff nozzle only.
- h. Prohibit using the hose to clean paved areas, buildings, windows or other surfaces.

City Government

- a. Staff will begin review of the problems initiating Stage 1 actions and will identify possible solutions to address the water shortage.
- b. Initiate public education campaign teaching and encouraging reduced water use practices.
- c. Intensify normal leak detection and repair activities on water pipes and mains.
- d. Restrict use of potable water for the irrigation of parks by 25 percent. Park landscape may be irrigated on any day of the week, portions of the park irrigated with reuse water are not required to reduce irrigation,
- e. Only flush newly constructed mains and mains that are essential for water quality maintenance.

- f. Encourage 25 percent reduction in frequency of wet street sweeping and city vehicle washing and rinsing. Street sweeping and vehicle washing with reuse water are not subject to potable water restrictions.

Commercial Customers

- a. Identify and encourage voluntary reduction measures by high-volume water users through water use audits.
- b.
- c. Restrict water use for the irrigation of parks by 25 percent. Park landscape may be irrigated on any day of the week. Park facilities irrigating with reuse water are not subject to the same watering restrictions.
- d. Reduce potable water use for landscape nursery stock by 25 percent.
- e.
- f. Require reduction of water use through day-of-week landscape watering schedule for golf courses. Golf courses irrigating with reuse water are not subject to the same watering restrictions.
- g. Encourage area restaurants to serve customers water by request only.
- h. Encourage hotel/motels to request multiple day patrons to reuse linens instead of changing every day.

Interruptible Customers

- a. Reduce usage for interruptible customers per contract terms.

Wholesale Customer Cities

- a. Request proof of implementation of like procedures by wholesale customers.

Notifications

City of Denton

- d. Notify major City departments, by telephone and follow-up memo, of Water Awareness Stage #1 and request voluntary water use reduction.

- e. Stress voluntary elimination of non-essential uses.

External Customers

- f. Issue press release, radio and video public service announcement to area media describing Water
 - Awareness Stage #1 and the voluntary restrictions that apply.
- Distribute water conservation materials to Denton Independent School District, UNT, TWU and community groups if appropriate.
- Post Water Awareness notices at public buildings including city buildings, county buildings and the federal post office.
- Stress reduction of water use through the publication of the mandatory landscape watering schedule.

Wholesale Customers

- g. Advise wholesale customers by telephone and follow-up memo, of Water Awareness Stage #1 and request proof of water use reduction consistent with actions taken by the City of Denton.

6.6.2 Stage 2, Moderate

6.6.2.1 Triggering Conditions for Stage 2, Moderate

6.6.2.1.1 **Type A** Water Management Condition

Total raw water supply in (1) Denton and Dallas connected lakes (east and west); or (2) western connected lakes; or (3) eastern connected lakes drops below 50% of the total conservation storage

6.6.2.1.2 **Type B** Water Management Condition

Water demand reaches or exceeds 90% of delivery capacity for 3 consecutive days

6.6.2.1.3 **Type C** Water Management Condition

- h. Water demand equals a reduced delivery capacity for all or part of the system, as determined by DWU
- i. A major water line breaks, or a pump or system failure occurs, which cause unprecedented loss of capability to provide treated water service
- j. Natural or man-made contamination of the water supply

Requirements for Termination:

Stage 2 may be terminated when Stage 2 conditions no longer exist and would be unlikely to recur upon termination.

6.6.2.2 Goal For Use Reduction And Actions Available Under Stage 2, Moderate

The goal for water use reduction under Stage 2, Moderate, is a 15 percent reduction of the use that would have occurred in the absence of drought contingency measures. The Director of Water Utilities or a designee can order the implementation of any of the actions listed below, or other actions not listed, as deemed necessary:

All Water Users

- a. Require that all landscape watering be limited to single day-of-week schedule between the hours of 6:00 PM to 10:00AM. Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems should be limited to Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8) and for locations without addresses, and Wednesdays

- for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9). Apartments, office building complexes or other property containing multiple addresses may be identified by the lowest address number.
- b. Restrict operation of ornamental fountains or ponds to initial only filling except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
 - c. Prohibit recreational water use including use of faucets, hoses or hydrants.
 - d. Restrict washing of any motor vehicle, motorbike, boat, trailer, airplane or other vehicle to the use of a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses on the designated watering day. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.
 - e. Restrict water use to replacing losses during normal use and replacing evaporation in order to maintain proper water quality and proper operation of the pool equipment. Request that use of water to fill, refill, or add to any indoor or outdoor swimming, wading, or jacuzzi pools be limited to the day-of-week schedule.
 - f. Prohibit hosing off paved areas, buildings, windows, or other surfaces.
 - g. Foundations may be watered for a two-hour period only between the hours of 10 PM and 6 AM on the designated single day of the week watering day with soaker or hand-held hose equipped with a positive shutoff nozzle on the watering schedule.

City Government

- a. Staff will begin review of the problems initiating Stage 2 actions and will identify possible solutions to address the water shortage.
- b. Accelerate public education campaign teaching and encouraging reduced water use practices.
- c. Restrict flushing of new mains not immediately required to provide service.
- d. Continue intensified leak detection and repair activities on water pipes and mains.
- e. Restrict water use for the irrigation of parks by 50 percent. Park landscape may be irrigated on any day of the week. Portions of the park irrigated with reuse water are not subject to the same restrictions.
- f. Increase enforcement efforts.
- g. Reduce frequency of wet street sweeping and city vehicle washing by 50 percent.
- h. Use of water from fire hydrants is limited to firefighting and essential distribution system activities. All other water use from fire hydrants will be by special permit only, including SWPPP related activities. Reuse water hydrants are not subject to the same restrictions.

Commercial Customers

- a. Enforce single day-of-week watering schedule for golf courses. Golf courses irrigating with reuse water are not subject to the same restrictions.
- b. Reduce potable water use for landscape nursery stock by 50 percent. Nurseries irrigating with reuse water are not subject to the same restrictions.
- c. Restrict water use for the irrigation of parks by 50 percent. Park landscape may be irrigated on any day of the week. Park areas irrigated with reuse water are not subject to the same restrictions.

Interruptible Customers

- a. Reduce usage for interruptible customers per contract terms.

Wholesale Customers

- a. Require proof of water demand reductions in accordance with contract obligations for wholesale customers.
- b. Wholesale water systems asked to abide by City of Denton policy for both internal operations and all retail customers. Reduction in rate of flow controller settings by 10% -20% are optional.

Notifications*City of Denton*

- a. By telephone and attached follow-up memo, notify all major City department water users of Water Watch Stage #2 and the water use restrictions under this stage. Instruct them to implement restrictions on non-essential uses. Use city department contacts in Appendix F.
- b. Coordinate distribution of water emergency plan details, posters, and handouts to customer service representatives, utility dispatch personnel and Denton public access buildings.

Retail Customers

- a. TCEQ notified of Stage 2 restrictions.
- b. Issue press release, radio and video public service announcement to area media describing Water Watch Stage #2 and the water use restrictions under this stage. Keep media updated on the water situation. Use media contacts listed in Appendix F.
- c. By telephone and follow-up letter, notify major area water users of Water Watch Stage #2 and the restrictions that apply. Use plant manager contacts listed in Appendix F.
- d. Accelerate public education campaign to promote and encourage efficient water use.

- e. If applicable, notify the U.S. Corp of Engineers by telephone and follow-up letter of the Water Watch Stage #2 conservation measures.

Wholesale Customers

Advise wholesale customers by telephone and attached letter of the actions taken by the City of Denton in response to Water Watch Stage #2 and require the implementation of like procedures among their customers. Wholesale customer cities shall either impose water use restrictions equivalent to those imposed on Denton's retail customers OR where applicable, Denton may reduce rate-of-flow controller settings by 10%-20%. Use wholesale customer contacts in Appendix F.

Penalties

- a. Initiate a 10% rate increase for residential customers for water usage greater than 15,000 gallons per account per 30 days.
- b. Impose a 10% surcharge penalty for commercial and industrial customers for monthly water use above 80% of prior billing volumes for a 30-day period.
- c. Initiate code enforcement fines for any violation of the Drought Contingency Plan.

6.6.3 Stage 3, Severe

6.6.3.1 Triggering Conditions for Stage 3, Severe

6.6.3.1.1 **Type A** Water Management Condition

Total raw water supply in (1) Denton and Dallas connected lakes (east and west); or (2) western connected lakes or (3) eastern connected lakes, drops below 35% of the total conservation storage.

6.6.3.1.2 **Type B** Water Management Condition

Water demand reaches or exceeds 95% of delivery capacity for 2 consecutive days.

6.6.3.1.3 **Type C** Water Management Condition

- a. Water demand exceeds a reduced delivery capacity for all or part of the system, as determined by DWU
- b. A major water line breaks, or a pump or system failure occurs, which cause unprecedented loss of capability to provide treated water service
- c. Natural or man-made contamination of the water supply

Requirements for Termination:

Stage 3 may be terminated when Stage 3 conditions no longer exist and would be unlikely to recur upon termination.

6.6.3.2 Goal For Use Reduction And Actions Available Under Stage 3, Severe

The goal for water use reduction under Stage 3, Severe, is a reduction of 20 percent of the use that would have occurred in the absence of drought contingency measures. If the circumstances warrant, the Director of Water Utilities, or a designee can set a goal for greater water use reduction. The Director of Water Utilities or a designee can order the implementation of any of the actions listed below, or other actions not listed, as deemed necessary:

All Water Users

- a. Irrigation of landscape with potable water is absolutely prohibited unless otherwise indicated within this section.
- b. Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane other vehicle not occurring on the premises of a commercial car wash and commercial service stations and not in the immediate interest of public health, safety, and welfare is prohibited. Further, such vehicle washing at commercial car washes and commercial service stations shall occur only between the hours of 6 PM to 10 AM.
- c. The filling, refilling, or adding of water to swimming pools, wading pools, and Jacuzzi type pools is prohibited. Existing pools may add water to replace losses during normal use and to replace evaporation to maintain proper water quality and proper operation of the pool equipment.
- d. Prohibit operation of ornamental fountains or ponds to initial filling except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- e. Foundations may be watered for a two-hour period only between the hours of 10 PM and 6 AM on the designated watering day from Stage 2 with soaker or hand-held hose equipped with a positive shutoff nozzle on the watering schedule.
- f. No application for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be approved, and time limits for approval of such applications are hereby suspended for such time as this drought response stage or a higher-numbered stage shall be in effect.
- g. Permitting of new swimming pools, hot tubs, spas, ornamental ponds and fountain construction is prohibited.
- h. Request a 25% reduction of indoor water uses.

City Government

- a. Wet street sweeping and city vehicle washing or rinsing using potable water is prohibited, except when in the immediate interest of public health, safety, and welfare.

- b. Restrict water use for the irrigation of parks by 75 percent. Park landscape may be irrigated on any day of the week.
- c. Restrict use of water from fire hydrants to firefighting, essential distribution system maintenance and related activities. All other water use from fire hydrants will be by special permit only.

Commercial Customers

- a. Restrict watering of golf course greens and tee boxes restricted to the allowed watering hours and the day-of-week watering schedule from Stage 2; watering of other golf course areas and parks is prohibited unless the golf course utilizes non potable water or another water source other than that provided by the City of Denton.
- b. Reduce potable water use for landscape nursery stock by 75 percent.
- c. Restrict potable water use for the irrigation of parks by 75 percent. Park landscape may be irrigated on any day of the week. Parks irrigated with reuse water are not subject to the same restrictions.

Interruptible Customers

- a. Service to interruptible customers is temporarily suspended.

Wholesale Customers

- b. Same external restrictions apply to wholesale suppliers.

Notifications

City of Denton

- a. Coordinate dissemination of water conservation plan details, posters, and handouts to customer service representatives, utility dispatch personnel and public access buildings.
- b. By telephone and attached follow-up memo, notify all major City department users of Water Warning Stage #3 and of the water use restrictions under this stage. Instruct them to eliminate non-essential uses including street and vehicle washing and operation of ornamental fountains, and to implement restrictions on essential uses. Use same contacts as those listed in Appendix F.

Retail Customers

- a. TCEQ notified of Stage 3 restrictions.
- b. Issue press release, radio and video public service announcement to area media describing Water Warning Stage #3 and the water use restrictions under this stage. Keep media updated on the water situation. Use same media contacts as those in Appendix F.
- c. By telephone and follow-up letter, notify major water users of Water Warning #3 and the mandatory water use reduction. Use contacts listed in Appendix F.

- d. Post Water Warning notices at public buildings including city buildings, county buildings, and the federal post office.
- e. If applicable, notify U.S. Corps of Engineers by telephone and attached letter of the Water Warning Stage #3 conservation measures.

Wholesale Customers

- a. Advise wholesale customers by telephone and attached letter of actions being taken by the City in response to Water Warning Stage #3 and mandatory implementation of similar procedures among their customers. Wholesale customer cities shall impose water use restrictions equivalent to those imposed on Denton’s retail customers or, where applicable, reduce their rate-of-flow controller settings by a percentage determined by the Director of Water Utilities. Appendix F lists wholesale customers that need to be contacted.

Penalties

- a. Initiate a 20% rate increase for residential customers for water usage greater than 15,000 gallons per account per 30 days.
- b. Impose a 20% surcharge penalty for commercial and industrial customers for monthly water use above 70% of prior billing volumes for a 30-day period.
- c. Initiate code enforcement fines for any violation of the Drought Contingency Plan.

Water Allocation

Retail Customers:

During Stages 2 and 3 of the Drought Contingency Plan, DWU may impose a retail water rate increase to discourage water use. All rates for usage more than 15,000 gallons per month (per single-family residential account), or any other usage amount above 15,000 gallons per month, as deemed appropriate by the Director, may be increased by a minimum of an additional 10 percent or any other percentage deemed appropriate by the Director.

Wholesale Customers

If the triggering criteria specified above for Stage 3 have been met, the Director is hereby authorized to initiate allocation of water supplies on a pro rata basis in accordance with the latest revision of Texas Water Code Section 11.039. Texas Water Code Section 1.039, Distribution of Water During Shortage, states:

- a. (If a shortage of water in a water supply not covered by a water conservation plan prepared in compliance with Texas Commission on Environmental Quality or Texas Water Development Board rules results from drought, accident, or other cause, the water to be distributed shall be divided among all customers pro rata, according to the amount each may be entitled to, so that preference is given to no one and everyone suffers alike.
- b. (If a shortage of water in a water supply covered by a water conservation plan prepared in compliance with Texas Commission on Environmental Quality or Texas Water Development Board rules results from drought, accident, or other cause, the person, association of person, or corporation owning or controlling the water shall divide the water to be distributed among all customers pro rata, according to:
 1. the amount of water to which each customer may be entitled; or
 2. the amount of water to which each customer may be entitled, less the amount of water the customer would have saved if the customer had operated its water system in compliance with water conservation plan.
- c. Nothing in Subsection (a) or (b) precludes the person, association of persons or corporation owning or controlling the water from supplying water to a person who has a prior vested right to the water under the laws of this state.

DWU may curtail water deliveries or reduce diversions in accordance with the terms and conditions of its wholesale water supply contracts. If necessary, or if specific contract provisions are not provided for, DWU may curtail water deliveries or reduce diversions in accordance with Texas Water Code Section 11.039. DWU will have authority to restrict flow to its wholesale water customers through the rate-of-flow controllers.

The Director will establish pro rata water allocations, determined as a percentage reduction of the wholesale customer's water usage, at the time of implementation. The total volume reduction for each wholesale customer will be calculated monthly, based on average water usage for the previous three years. The Director will establish the percentage reduction based on an assessment of the severity of the water shortage condition and the need to curtail water diversions and/or deliveries, and the percentage reduction may be adjusted periodically by the Director. Once pro rata allocation is in effect, water diversions by, or deliveries to, each wholesale customer will be limited to the allocation established for each month.

6.7 Procedures for Enforcement of Mandatory Restrictions

Violations

A person commits an offense if he or she knowingly makes, causes, or permits a use of water contrary to the measures implemented in the Drought Contingency Plan. It is presumed that a person has knowingly made, caused, or permitted use of water contrary to the measures implemented if the mandatory measures have been implemented according to the Plan and any one of the following conditions apply:

- a. The Drought Contingency Plan prohibits the manner of use.
- b. The amount of water used exceeds that allowed by the Drought Contingency Plan.
- c. The manner of use or the amount used violates the terms and conditions of a compliance agreement made following a variance granted by the ACM/Utilities.

Any person in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for their minor children and proof that a violation, committed by a child, occurred on the property within control of the parents shall constitute a rebuttable presumption that the parent committed the violation. But, any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation.

Any Code Enforcement Officer, Police Officer, or other city employee designated by the City Manager, Assistant City Manager or Director of Utilities, may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charged, and shall direct him/her to appear in municipal court on the date shown on the citation.

Any person who violates this Plan is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$250 and not more than \$2,000. Each day that one or more provisions in this Plan is violated shall constitute a separate offense. Flow restrictors may be placed in lines after two violations have occurred to limit the amount of water passing through the meter in a 24-hour period. The City of Denton Utilities reserves the right to temporarily cancel water service to the customer until the situation can be resolved. Services

discontinued under such circumstances shall be restored only upon payment of a re-connection charge, at an amount established by City ordinance, and any other costs incurred by the DWU in discontinuing service. In addition, suitable assurance must be given to the Director that the same action will not be repeated while the Plan is in effect. Compliance with this Plan may also be sought through injunctive relief in the district court.

6.8 Procedures for Granting Variances

Granting a Variance

The ACM/Utilities may grant variances from the Drought Contingency Plan in special cases to persons demonstrating extreme hardship and need. In order to obtain a variance, the applicant must sign a compliance agreement on forms provided by the ACM/Utilities and approved by the City Attorney. The applicant must agree to use the water only in the amount and manner permitted by the variance. A variance must meet the following conditions:

- a. Granting of a variance must not cause an immediate significant reduction in the City's water supply.
- b. The applicant must demonstrate that the extreme hardship or need is related to the health, safety, or welfare of the person requesting it.
- c. The variance will not adversely affect the health, safety, or welfare of other persons.
- d. No variance is retroactive, nor can it justify any violation of this Drought Contingency Plan before its issuance.
- e. The variance will remain in effect during the stage in which it was issued and will expire when the Plan is no longer in effect, or a new stage is activated.

Revoking a Variance

The ACM may revoke a variance granted when the Director of Water Utilities determines any one of the following:

- a. Conditions causing initial issuance of the variance are no longer applicable.
- b. Violation of the terms of the compliance agreement.
- c. The health, safety, or welfare of other persons requires revocation.

Wholesale Customer Variances

The ACM/Utilities may grant variances from the Drought Contingency Plan to wholesale water customers in special cases. Wholesale water customers may request reduced variance allocations for the following conditions:

- a. The designated period does not accurately reflect a wholesale customer's normal water usage.
- b. The customer agrees to transfer part of its allocation to another wholesale customer.
- c. Other objective evidence demonstrates that the designated allocation is inaccurate under present conditions.

To grant a variance, the applicant must sign a compliance agreement on forms provided by the ACM/Utilities and approved by the City Attorney. No variance shall be retroactive or otherwise justify any violation of this Drought Contingency Plan occurring before the issuance of the variance.

6.9 Coordination with the Regional Water Planning Group

The City of Denton is located within the Region C water planning area. Appendix E includes a copy of a letter sent to the Chair of the Region C Water Planning Group (RCWPG) along with the water conservation and drought contingency plan.

6.10 Review and Update of Drought Contingency Plan

As required by TCEQ rules, the City of Denton will review this drought contingency plan every five years, beginning in 2009. The plan will be updated as appropriate based on new or updated information. As the plan is reviewed and subsequently updated, a copy of the revised Drought Contingency Plan will be submitted to the TCEQ and the RCWPG for their records.

7.0 Severability

The City of Denton Public Utility Board agrees that sections, paragraphs, sentences, clauses, and phrases of this Drought Contingency Plan are severable. If any phrase, clause, sentence, paragraph, or section of this Drought Contingency Plan is declared unconstitutional by the valid judgment or

decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Drought Contingency Plan, since the same City of Denton Public Utility Board without the incorporation into this Drought Contingency Plan of any such unconstitutional phrase clause, sentence paragraph, or section.

ORDINANCE NO. 24-640

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE CORPORATION (“CITY”), AMENDING THE CITY’S WATER CONSERVATION AND DROUGHT CONTINGENCY PLAN PREVIOUSLY ADOPTED BY THE CITY COUNCIL IN ORDINANCE NO. 19-863 ENACTED ON APRIL 16, 2019, PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council recognizes persistent drought and near-drought conditions can occur in this geographic area and that water supply in area lakes and reservoirs can become severely depleted; and

WHEREAS, the City Council recognizes the importance of water conservation and its vital role in preserving the City’s water supply; and

WHEREAS, sections 11.1271 and 11.1272 of the Texas Water Code and applicable rules of the Texas Commission on Environmental Quality require the City to adopt a Water Conservation Plan and a Drought Contingency Plan; and

WHEREAS, the City must include specific, quantified five-year and ten-year targets for water savings in its Water Conservation Plan and specific quantified targets in its Drought Contingency Plan for water use reductions during periods of water shortages and drought; and

WHEREAS, on April 19, 2005, the City Council adopted Ordinance No. 2005-121 providing for a Water Conservation and Drought Contingency Plan; and

WHEREAS, on May 2, 2006, the City Council adopted the ordinance providing for an Amended Water Conservation and Drought Contingency Plan for the City, by enacting Ordinance No. 2006-127, by adding Appendix “G” to said plan, which was the "Lawn and Landscape Irrigation and Water Waste Ordinance"; and

WHEREAS, on June 2, 2009, the City Council adopted the ordinance providing for the further Amended Water Conservation and Drought Contingency Plan, by enacting Ordinance No. 2009-134, by including two additional Texas Water Development Board Best Management Practices recommended by the Task Force’s Water Conservation Best Management Practices Guide that relates to park and athletic field conservation; and

WHEREAS, on March 6, 2012, the City Council recognized that the amount of water available to the City and its water utility customers is limited, is subject to depletion, and should be used efficiently; and the City Council desired to further amend the Water Conservation and Drought Contingency Plan to include amendments to Sections 6.6 and 6.7 thereof; as evidenced by Ordinance No. 2012-064; and

WHEREAS, on April 15, 2014, the City Council adopted an ordinance providing for the further Amended Water Conservation and Drought Contingency Plan, by enacting Ordinance No. 2014-

109, which adjusted the four-stage drought contingency plan to a three-stage plan; and

WHEREAS, on April 16, 2019, the City Council adopted the ordinance providing for the readoption of the Water Conservation and Drought Contingency Plan, by enacting Ordinance No. 19-863; and

WHEREAS, the City Council wishes to amend the "Water Conservation and Drought Contingency Plan," by including a required twice weekly irrigation schedule to the conservation portion of the Plan; and

WHEREAS, the City Council accordingly finds that this ordinance is necessary to protect the health, life, and property of the residents of the City of Denton, Texas, in accordance with sections 54.001 and §54.004 of the Texas Local Government Code; and

WHEREAS, the City Council deems it in the public interest to adopt the following amendments to the Water Conservation and the Drought Contingency Plan adopted on April 16, 2019, by adopting the provisions in the "Water Conservation and Drought Contingency Plan" attached hereto as Exhibit "A".

NOW, THEREFORE, THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitations contained in the preamble of this ordinance are incorporated herein by reference as findings of the City Council.

SECTION 2. City of Denton Ordinance No. 2005-121, pertaining to the "Water Conservation and Drought Contingency Plan," and codified in Chapter 26 of the Code of Ordinances of the City of Denton, Texas, at sections 26-233 and 26-234, amended, by City of Denton Ordinance No. 2006-127, by adding to it Appendix "G", which is the "Land and Landscape Irrigation and Water Waste Ordinance"; and as further amended by the "Water Conservation and Drought Contingency Plan - April 2009" by City of Denton Ordinance No. 2009-134; and as further amended by the "April 2009 - Water Conservation and Drought Contingency Plan (updated February 2012)" by City of Denton Ordinance No. 2012-064; and as amended by the "April 2014 Water Conservation and Drought Contingency Plan (updated April 2014)" by City of Denton Ordinance No. 2014-109; adopted again April 2019 by Ordinance 19-863; and as now amended to include a required twice weekly irrigation schedule to the conservation portion of the Water Conservation and Drought Contingency Plan, attached hereto as Exhibit "A".

SECTION 3. Any provision of any prior ordinance of the City which conflicts with any provision of this ordinance is hereby repealed to the extent of the conflict, but all other provisions of the ordinance of the city which are not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and, if any phrase,

clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this ordinance since the same would have been enacted by the City Council without the incorporation of this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

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 [_____].

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:
LAUREN THODEN, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: *Christopher Mullins* Christopher Mullins
2024.04.03 17:34:09 -05'00'



Legislation Text

File #: PUB24-073, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City Council of the City of Denton, a Texas home-rule municipal corporation (“Denton”) providing for, authorizing, and approving the execution by the City Manager of the Power Purchase Agreement (“PPA”) between Denton and Yellow Viking Development One, LLC (“Yellow Viking”); authorizing the acceptance and approval by the City Manager of the Letter of Credit or other credit support issued on behalf of Yellow Viking further securing the obligations of Yellow Viking to Denton for the benefit of Denton; approving the execution of such other and further related documents deemed necessary to effectuate the transactions allowed under this agreement by the City Manager, which are incident to or related to the PPA; finding that that the purchase of capacity and energy made by Denton under the terms of the PPA are in the public welfare; authorizing the expenditure of funds; determining that specific information contained in documents involved in this transaction pertain to a “Competitive Electric Matter” as set forth under the provisions of §551.086 and §552.133 of the Texas Government Code, as amended; allowing the public to inspect and reproduce the PPA as redacted; and providing an effective date.



AGENDA INFORMATION SHEET

DEPARTMENT: Energy Management Organization; DME

CM/ACM/GM: Antonio Puente, Jr. General Manager, DME

DATE: April 8, 2024

SUBJECT

Consider recommending adoption of an ordinance of the City Council of the City of Denton, a Texas home-rule municipal corporation (“Denton”) providing for, authorizing, and approving the execution by the City Manager of the Power Purchase Agreement (“PPA”) between Denton and Yellow Viking Development One, LLC (“Yellow Viking”); authorizing the acceptance and approval by the City Manager of the Letter of Credit or other credit support issued on behalf of Yellow Viking further securing the obligations of Yellow Viking to Denton for the benefit of Denton; approving the execution of such other and further related documents deemed necessary to effectuate the transactions allowed under this agreement by the City Manager, which are incident to or related to the PPA; finding that that the purchase of capacity and energy made by Denton under the terms of the PPA are in the public welfare; authorizing the expenditure of funds; determining that specific information contained in documents involved in this transaction pertain to a “Competitive Electric Matter” as set forth under the provisions of §551.086 and §552.133 of the Texas Government Code, as amended; allowing the public to inspect and reproduce the PPA as redacted; and providing an effective date.

BACKGROUND

As part of the City of Denton’s continuing efforts to achieve 100% renewable energy supply consistent with the Denton Renewable Resource Plan (DRRP) additional renewable energy supplies are required to keep up with load growth and to replace expiring renewable energy power purchase agreements. At the end of 2023 the White Tail wind power purchase agreement ended and the Energy Management Organization (“EMO”) entered into several short-term renewable energy supply transactions to maintain adequate supplies of renewable energy and renewable energy credits (RECs). Additionally, the default and termination of the Samson Solar power purchase agreement, which was a 15 year contract for 75 MW of solar energy created additional needs for new renewable energy power purchase agreements. In September 2023 DME issued a competitive solicitation for up to 250 MW of renewable energy power purchase agreements.

Requests for Proposals were sent to 1199 prospective suppliers of this item. In addition, the RFP was placed on the Materials Management website for prospective respondents to download and advertised in the local newspaper. Seventeen (17) SOPs were received.

Based upon the proposal received pursuant to the RFP (#8271), the EMO evaluated and selected the proposal from Osaka Gas for its Yellow Viking solar farm to be constructed near Cleburne, Texas. The proposed solar farm is anticipated to be constructed with a capacity of 204 MW on 1185 acres with a target

commercial operations day of December 31, 2026. DME has negotiated a Power Purchase Agreement (PPA) for 100 MWs of capacity from the Yellow Viking project.

RECOMMENDATION

Provide a recommendation to the Denton City Council to approve an ordinance authorizing the City Manager to execute the 15 year power purchase agreement and attendant schedules, including required Letter(s) of Credit securing performance, with Yellow Viking Development One, LLC.

FISCAL INFORMATION

Funds for the required payments to Yellow Viking Development One, LLC after the solar farm achieves commercial operating status will be from the DME operating budget and will be included in the Energy Cost Adjustment (ECA) component of DME customer bills.

EXHIBITS

- Exhibit 1: Agenda Information Sheet
- Exhibit 2: Ordinance
- Exhibit 3: Redacted Power Purchase Agreement
- Exhibit 4: Presentation

Respectfully submitted:
Terrance Naulty, P.E.
Asst. General Manager
(940) 349-7565

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION (“DENTON”) PROVIDING FOR, AUTHORIZING, AND APPROVING THE EXECUTION BY THE CITY MANAGER OF THE POWER PURCHASE AGREEMENT (“PPA”) BETWEEN DENTON AND YELLOW VIKING DEVELOPMENT ONE, LLC (“YELLOW VIKING”); AUTHORIZING THE ACCEPTANCE AND APPROVAL BY THE CITY MANAGER OF THE LETTER OF CREDIT, OR OTHER CREDIT SUPPORT ISSUED ON BEHALF OF YELLOW VIKING, FURTHER SECURING THE OBLIGATIONS OF YELLOW VIKING TO DENTON FOR THE BENEFIT OF DENTON; APPROVING THE EXECUTION OF SUCH OTHER AND FURTHER RELATED DOCUMENTS DEEMED NECESSARY TO EFFECTUATE THE TRANSACTIONS ALLOWED UNDER THIS AGREEMENT BY THE CITY MANAGER, WHICH ARE INCIDENT TO OR RELATED TO THE PPA; FINDING THAT THAT THE PURCHASE OF CAPACITY AND ENERGY MADE BY DENTON UNDER THE TERMS OF THE PPA ARE IN THE PUBLIC WELFARE; AUTHORIZING THE EXPENDITURE OF FUNDS; DETERMINING THAT SPECIFIC INFORMATION CONTAINED IN DOCUMENTS INVOLVED IN THIS TRANSACTION PERTAIN TO A “COMPETITIVE ELECTRIC MATTER” AS SET FORTH UNDER THE PROVISIONS OF §551.086 AND §552.133 OF THE TEXAS GOVERNMENT CODE, AS AMENDED; ALLOWING THE PUBLIC TO INSPECT AND REPRODUCE THE PPA AS REDACTED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Denton is a home-rule city and a Texas municipal corporation governed by the constitution and laws of the State of Texas (“State”); and

WHEREAS, in accordance with the provisions of §551.086 of the Texas Government Code, after due notice of the public meeting was provided as required by law, the PPA between Denton and Yellow Viking (hereafter the “Transaction”) was submitted for final consideration of the Denton Public Utilities Board on April 8, 2024; a majority of the Public Utilities Board (“PUB”), a “Public Power Utility Governing Body” as defined by State law, convened in open and closed meetings as permitted by law, and discussed, considered, and deliberated the Transaction; and thereafter in its open meeting proceeded to take final action and recommend to the City Council that the Transaction by and between Denton and Yellow Viking be recommended by a vote of ____ () in favor to none (0) oppose, in substantially the form of the PPA presented to it; being a majority vote of all PUB members present; and

WHEREAS, in accordance with the provisions of §551.086 of the Texas Government Code, after due public notice being given, the City Council of Denton (the “City Council”), a “Public Power Utility Governing Body” as defined by State law, convened in open and closed meeting as permitted by law, and discussed, considered, and deliberated the Transaction, the subject of this ordinance, in closed and open meeting of the City Council on April 16, 2024, after receiving a legal opinion of counsel that the Transaction is a proper item for consideration in its open and closed meeting, which item involves competitive electric matters, including business and commercial information, which if disclosed, would give advantage to its competitors or prospective competitor; and

WHEREAS, the City Council has further determined and finds that several of those documents to be entered into by and between Denton and Yellow Viking specifically the PPA, and all other documents which are related thereto as from time to time may be executed by Denton and Yellow Viking, in connection therewith; should be excepted from public disclosure, as permitted by the provisions of §552.133 of the Texas Government Code, as documents that are reasonably related to a competitive electric matter, the disclosure of which documents would provide an advantage to the competitors or prospective competitors of Denton Municipal Electric (“DME”); and

WHEREAS, the City Council has further determined that it is in the public interest that it should exercise its right under Texas Government Code to lawfully safeguard and keep certain of these documents in the preceding paragraph sealed, as they are competitive documents which contain competitive electric and financial information; and

WHEREAS, the City Council finds that there is no divestiture, sale, or other disposition of the property of any utility of Denton, and therefore that no public election is required pursuant to the Charter of Denton; and

WHEREAS, the City Council finds that said Transaction involves DME purchasing from Yellow Viking replacement power and energy requirements for a contractual term of fifteen years from the Project’s Commercial Operation Date, as provided in the said PPA; and that such Transaction involves Denton’s acquisition of reliable, cost-effective replacement solar power and energy from Yellow Viking, and

WHEREAS, the City Council finds and concludes that a diversified portfolio of renewable energy resources is prudent considering the ever-changing present circumstances; and that Denton, through its electric utility, DME, provides 100% renewable energy to meet the demands of the customers of DME; and

WHEREAS, the City Council finds that the Transaction provided by this ordinance, will not impair the ability of Denton to comply with the provision of any of its utility revenue bonds, as amended, which are issued and outstanding; and

WHEREAS, Denton desires to enter into such other arrangements in support of the PPA with Yellow Viking, which are incident and related to the said PPA, and to take such additional actions as the City Manager, or their designee, shall determine to be necessary and advisable to consummate and effectuate the matters set forth herein; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

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

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS

SECTION 1. The recitations contained in the above preamble are incorporate herewith and are considered to be a part of this ordinance.

SECTION 2. The City Council hereby approves and authorizes the City Manager and the City Secretary, to execute and attest respectively, the PPA, by and between Denton and Yellow Viking, under the terms and condition set forth in Exhibit “A”, attendant with all Exhibits attached thereto, and made part hereof, with such ancillary instruments, changes and additions which are in substantial compliance with said PPA, as the City Manager, or their designee, may approve, and consummate the execution and delivery thereof on behalf of Denton, by or at the direction of the City Manager, or their designee.

SECTION 3. The City Council, as further security for Yellow Viking’s performance of this Transaction, hereby approves and authorizes the City Manager and the City Secretary, and their respective designees, to approve and accept the irrevocable non-transferable standby Letter(s) of Credit furnished to Denton by Yellow Viking, in accordance with the PPA, said Letter(s) being drawn upon a commercial bank within the United States, on behalf of Denton, as additional credit protection, under the terms and conditions being contained in substantially the form as set forth in said agreements, with such amendments, changes, and additions as the City Manager, or their designee, may approve, and approval and acceptance thereof on behalf of Denton by or at the direction of the City Manager, or their designee, shall constitute such approval.

SECTION 4. The City Council hereby approves and authorizes the City Manager and the City Secretary, and their respective designees, to execute and attest respectively, all other documents which are incident and related to the PPA referenced herein, and to take such additional actions as the City Manager, or their designee, shall determine to be necessary and advisable to effectuate the matters set forth above.

SECTION 5. The City Council, the Mayor, the City Manager, the City Attorney, or their designees, and each of them individually hereby, is authorized and empowered to perform all such acts and obligations as required with respect to the PPA described herein.

SECTION 6. The Mayor, the City Manager, the City Attorney, or their designees, and each of them individually hereby, is authorized, empowered, and directed to negotiate, deliver, and perform all such acts and things, and to sign all such documents, certificates, contracts, assignments, licenses, leases, agreements, directions, instruments, and statements, each together with such amendment, changes and additions thereto as Mayor, the City Manager, the City Attorney, or their respective designees, shall determine to be necessary or advisable to effectuate the matters set forth herein. Any such determination to be conclusively evidenced by the taking or causing to be taken of such action, or the execution and delivery of any such document, certificate,

agreement, license, lease, direction, instrument or statement by the Mayor, the City Manager, the City Attorney, or their designee is authorized.

SECTION 7. All prior action taken by the Mayor, the City Manager, the City Attorney, or their designees in furtherance of the foregoing matters, are hereby ratified, confirmed, approved and authorized in all respects as of the dates and times such actions were taken.

SECTION 8. Immediately following the execution and delivery of the documents described as the PPA and all Guaranties and Letter(s) of Credit which are incident to such PPA, as provide in this ordinance, the City Secretary is hereby directed to seal and maintain said documents in their custody and control, as documents excepted from public disclosure under the provision of §552.133 of the Texas Government Code (the “Public Power Exception”); unless otherwise lawfully ordered to disclose such documents.

SECTION 9. This ordinance shall be open for public inspection. However, all Exhibits and Attachments which are appended to this ordinance, including without limitation, the Power Purchase Agreement, and all Guaranties and Letter(s) of Credit incident to such PPA, shall not be produced for public inspection, but shall be sealed, as provided for in Section 8 above.

SECTION 10. The expenditure of funds as provided for in this ordinance is hereby authorized.

SECTION 11. 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:
LAUREN THODEN, 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@cityofdent
on.com
Date: 2024.04.03 14:23:25 -05'00'

REDACTED EXECUTION VERSION

POWER PURCHASE AGREEMENT

between

YELLOW VIKING DEVELOPMENT ONE, LLC

and

CITY OF DENTON, TEXAS

dated as of

April 17, 2024

This document and any attachments or exhibits thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

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EXHIBITS

<u>Exhibit A</u>	Description of the Facility
<u>Exhibit B</u>	Buyer Required Terms
<u>Exhibit C</u>	Insurance Requirements
<u>Exhibit D</u>	Notice Information
<u>Exhibit E</u>	Benchmark Quantity
<u>Exhibit F</u>	Form of Invoice
<u>Exhibit G</u>	GEP Damages Calculation
<u>Exhibit H</u>	Form of Letter of Credit

POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this “Agreement”), dated as of April 17, 2024 (the “Execution Date”), is between Yellow Viking Development One, LLC, a Texas limited liability company (“Seller”), and the City of Denton, Texas, a Texas Municipal Corporation and Home-Rule City, acting operationally through its Denton Municipal Electric Department (“Buyer”). Each of Seller and Buyer are referred to in this Agreement as a “Party”, and collectively as the “Parties”.

RECITALS

1. Seller intends to construct, own, and operate a photovoltaic-powered generating facility with an anticipated nameplate capacity rating of [REDACTED] (the “Anticipated Nameplate Capacity”) in Hood, Somervell and Johnson Counties, Texas (as more particularly described in Exhibit A, and together with all materials, systems, structures, features and improvements necessary to produce electricity at such facility, including the Site and land rights, the “Facility”), which is anticipated to achieve Commercial Operation on or before [REDACTED] (the “Anticipated COD”); and

2. Seller desires to sell, and Buyer desires to purchase, a portion of the electricity produced by the Facility, together with all corresponding Environmental Attributes (defined below) available from the Facility and Capacity Attributes associated with the Facility, in each case, pursuant to the terms and conditions of this Agreement.

AGREEMENT

In consideration of the foregoing, premises and the covenants contained in this Agreement, Buyer and Seller agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Defined Terms

Unless otherwise required by the context in which it appears, terms used in this Agreement have the meanings set forth in this Section 1.1.

“Abandonment” means (a) the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement, or (b) if after commencement of the construction, testing, and inspection of the Facility, and prior to the Commercial Operation Date, there is a complete or substantial cessation of the construction, testing, and inspection of the Facility for 90 consecutive days by Seller and Seller’s contractors, but, in either case, only if such relinquishment or cessation is not caused by or attributable to a Delay Condition.

“AC Capacity” and the subscript use of “AC” mean, with respect to a solar photovoltaic generating facility, the peak alternating current Energy that a facility is capable of delivering, expressed in kW or MW.

“Affiliate” means, with respect to a Person, any Person that (a) Controls, directly or indirectly, such Person; (b) is Controlled, directly or indirectly, by such Person; or (c) is under common Control with such Person.

“Agreement” has the meaning set forth in the introductory paragraph of this Agreement. This document and any attachments or exhibits thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

“Anticipated COD” has the meaning set forth in the first recital paragraph.

“Anticipated Nameplate Capacity” has the meaning set forth in the first recital paragraph.

“Applicable Law” means with respect to a Person, collectively, any federal, state, or local law, treaty, franchise, rule, regulation (including ERCOT Protocols), standard, order, writ, judgment, injunction, decree, award, or determination of a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its properties are subject.

“Applicable RPS” means each of (i) the Compliance Standard and (ii) (iii) any Renewable Portfolio Standard adopted subsequent to the Commencement Date by the agreement of the Parties in accordance with Section 3.3(f).

“Bankrupt” means, with respect to a Person, such Person: (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar law; (b) has any such petition filed, or any such proceeding or cause of action commenced, against it if such petition, proceeding, or action is not withdrawn, discharged, dismissed, stayed, or restrained within 60 days following the filing or commencement thereof; (c) makes a general assignment of this Agreement for the benefit of its creditors; (d) otherwise becomes bankrupt or insolvent (however evidenced); (e) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any substantial portion of its property or assets; or (f) admits in writing its general inability to pay its debts as they come due.

“Benchmark Quantity” means the quantity of Energy the Facility is capable of producing for each Contract Year, based upon 90% of the Buyer’s Share of the weather normalized production capability of the Facility, as more fully set out in Exhibit E attached hereto; *provided, however*, the Parties acknowledge and agree that Exhibit E is subject to being updated as of COD based upon the IE Report provided immediately prior to or at COD and as projected therein for each Contract Year of the Delivery Term.

“BOP/EPC Contract” means the engineering, procurement and construction agreement (whether styled as a balance of plant, balance of systems, engineering, procurement and construction, or other agreement) entered into by Seller for the engineering, procurement, and construction of the Facility.

“BOP/EPC Contractor” means the contractor retained by Seller under the BOP/EPC Contract.

“Business Day” means any day except a Saturday, Sunday or a Federal Reserve Bank holiday. With respect to each Party, a Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Central Prevailing Time.

“Buyer” has the meaning set forth in the introductory paragraph of this Agreement.

“Buyer Credit Support Amount” means (i) prior to the Commencement Date, [REDACTED] of Buyer’s Committed Share of the Anticipated Nameplate Capacity and (ii) subsequent to the Commencement Date, [REDACTED] of the Committed Capacity.

“Buyer Indemnitees” has the meaning set forth in Section 9.4(a).

“Buyer Operating Period Credit Support” has the meaning set forth in Section 6.2(b).

“ [REDACTED] ”.

“Commencement Date” means the first day of the first calendar month immediately following the Commercial Operation Date.

“Commercial Operation” means that Seller has satisfied the Commercial Operation Conditions set out in Section 7.4(c).

“Commercial Operation Conditions” has the meaning set forth in Section 7.4(c).

“Commercial Operation Date” or “COD” means the later of (a) the date specified by Seller in a written notice delivered to Buyer in accordance with Section 7.4(c) as the date on which the Facility has commenced Commercial Operation, and (b) the date on which Commercial Operation is actually achieved.

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any purchase, sale, decision, or other action made, attempted or taken by a Party, such efforts as a reasonably prudent business would undertake for the protection of its own interest under the conditions affecting such purchase, sale, decision or other action, consistent with Prudent Electrical Practices, including, without limitation, electric system reliability and stability, state or other regulatory mandates relating to renewable Energy portfolio requirements, the cost of such action (including whether such cost is reasonable), the amount of notice of the need to take a particular action, the duration and type of purchase or sale or other action, and the commercial environment in which such purchase, sale, decision or other action occurs. “Commercially Reasonable” or “Commercially Reasonable Efforts” shall be reviewed and determined based upon the facts and circumstances known, or which could have been known with the exercise of reasonable efforts, at the time that a sale, purchase, or other action is taken and shall not be based upon a retroactive review of what would have been optimal at such time.

“Committed Capacity” means [REDACTED].

“Committed Capacity Attributes” means the Capacity Attributes associated with the Committed Capacity.

“Committed Energy” means, with respect to an hour, Buyer’s Share of the Metered Output for such hour.

“Compliance Costs” [REDACTED]

“Compliance Costs Estimate” means Seller’s estimate of Compliance Costs for achieving compliance with an applicable Change in Law.

“Compliance Premium” has the meaning specified for such term in the Compliance Standard.

“Compliance Standard” means the renewable portfolio standard and related rules and regulations adopted by the Public Utility Commission of Texas (as amended from time to time) pursuant to which the Facility qualifies as a renewable energy resource able to create or have issued a credit or certificate based on the generation of Energy from such renewable source, which credit or certificate may be a solar

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renewable energy credit, renewable energy credit or any other type of credit or certificate so designated under such Compliance Standard.

“Condemnation Event” means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Facility, by any Governmental Authority or otherwise pursuant to Applicable Law.

“Condition Precedent” has the meaning set forth in Section Article 2(c).

“Confidential Information” means all non-public information of a Party related to this Agreement, including but not limited to financial information, pricing information, information regarding business activities and operations, business plans, information regarding employees, and other technical and business information, which Buyer or its Representatives and/or Seller or its Representatives furnishes to the other Party or its Representatives on or after the Execution Date, in whatever form or medium provided (including, without limitation, via oral communications), all of which shall be deemed to be the Confidential Information of the Party making such disclosure whether or not any such Confidential Information is clearly marked as such or that contains, reflects or is derived from the furnished information; *provided, however*, the term “Confidential Information” shall not include information which (i) is or becomes generally available to the public other than as a result of acts by the receiving Party or its Representatives to whom the receiving Party supplies the Confidential Information, (ii) was in the receiving Party’s or its Representative’s possession prior to the date it was disclosed to either Party by the other Party or its Representatives, (iii) is disclosed to the receiving Party by a third party which is not, to the receiving Party’s knowledge, prohibited from disclosing such information by a legal or fiduciary duty to the disclosing Party, or (iv) is independently developed by the receiving Party or any of its Representatives without the use of any Confidential Information. The Parties agree that the provisions of Item 9 of Exhibit B shall be applicable to all Confidential Information of the Seller.

“Contract Price” [REDACTED]

“Contract Quantity” has the meaning set forth in Section 7.5(b).

“Contract Year” means a period of one year, with the first such period commencing on and including the Commencement Date and continuing through but excluding the first anniversary of the Commencement Date, and with each successive period commencing immediately upon the conclusion of the prior period and continuing through but excluding the next anniversary of the Commencement Date.

“Control” means, when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. Instances of “Controls”, “Controlled by”, and “under common Control with” have meanings correlative thereto.

“Costs” has the meaning set forth in Section 9.2(b).

“Credit Rating” means, with respect to a Person, on any date of determination, the respective rating then assigned to such Person’s senior unsecured long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or Fitch, or if a rating is assigned by two or more of S&P, Moody’s and Fitch, the lower of all such assigned ratings.

“Credit Support” means Cash, a Letter of Credit, or a Guaranty.

“Credit Support Amount” means, (a) with respect to Seller, the Seller Pre-COD Credit Support or the Seller Operating Period Credit Support, whichever is then applicable, and (b) with respect to Buyer, Buyer Pre-COD Credit Support, the Buyer Operating Period Credit Support, or Buyer Credit Support Amount, whichever is then applicable.

“Day” or “day” means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Central Prevailing Time on any calendar day and ending at 24:00 hours Central Prevailing Time on the same calendar day.

“Day-Ahead” has the meaning set forth for such term in the ERCOT Protocols.

“Deemed Delivered Energy” means the amount of Energy (in MWh) that the Facility would have generated and delivered to the Delivery Point but did not generate or deliver to the Delivery Point during a Buyer Curtailment Period. The amount of Deemed Delivered Energy shall be determined using relevant Facility availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period.

“Defaulting Party” means the Party with respect to which an Event of Default has occurred and is continuing.

“Delay Condition” has the meaning set forth in Section 7.2(c).

“Delay Liquidated Damages” means the monthly liquidated damages due from Seller to Buyer for failure to meet the Guaranteed Commercial Operation Date not due to a Delay Condition, [REDACTED]



“Delivered Energy” means Metered Output associated with the Committed Capacity and delivered to Buyer at the Delivery Point.

“Delivery Point” means with respect to Energy, the ERCOT North Hub, and with respect to any other Product, the point at or method by which such Product is delivered to Buyer.

“Delivery Term” has the meaning set forth in Section Article 2(b).

“Early Termination Right” has the meaning set forth in Section 7.3(c)(ii).

“Economic Loss” has the meaning set forth in Section 9.2(b).

“Effective Date” has the meaning set forth in Section Article 2(b).

“Eligible Guarantor” means, with respect to a Party, (a) a Qualified Issuer or (b) an Affiliate of such Party that has an Investment Grade Credit Rating.

“Eligible Renewable Resource” means an eligible “renewable energy resource” (as defined in the Compliance Standard RPS) under the Compliance Standard.

“Emergency” means that an “Emergency Condition” has been declared as provided in the ERCOT Protocols. For the avoidance of doubt, each of SCED dispatch signals, curtailment flags, setpoints or manual dispatches by Seller’s or Buyer’s QSE, are not considered an Emergency.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Facility, as measured by EPS Meter at the Interconnection Point.

“Environmental Attributes” means an aspect, claim, characteristic or benefit, howsoever entitled, associated with the generation of a quantity of Energy by a renewable energy project, other than the electric energy produced, and that is capable of being measured, verified or calculated, including any fuel, emissions, air quality or other environmental characteristics, credits, benefits, reductions, offsets and allowances resulting from the purchase, generation or use of energy from such project or the avoidance of any emission of any gas, chemical or other substance to the air, soil or water attributable to such energy generation or arising out of any present or future requirements of Applicable Law. Without limiting the foregoing, Environmental Attributes include the following attributes associated with a particular megawatt hour of generation by a renewable energy project: such project’s use of a particular renewable energy source; avoided NOx, SOx, CO2 or other greenhouse gas emissions; avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of Applicable Law in order to site and develop the Facility itself); and such other attributes as may be defined under the Compliance Standard (including RECs), or as agreed by the Parties. Environmental Attributes do not include any Energy; Facility Attributes; Capacity Attributes or any production, investment or other Tax credits, Tax deductions, Tax exemptions, or other direct third-party subsidies; filed rates; or feed-in tariffs for generation of electricity by a renewable energy project.

“EPS Meter” means an “ERCOT-Polled Settlement Meter” as such term is defined in the ERCOT Protocols.

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“ERCOT” means the Electric Reliability Council of Texas, Inc.

“ERCOT Capacity Program” has the meaning set out in the definition of Capacity Attributes.

“ERCOT Protocols” means the rules, protocols, procedures and standards from time to time promulgated by ERCOT and with respect to which participants in the ERCOT market are required to comply, including the ERCOT Nodal Protocols and the associated “market guides”, “business practice manuals”, and “other binding documents”.

“Event of Default” has the meaning set forth in Section 9.1(a).

“Excused Condition” means any one or more of the following: (i) the occurrence of a Force Majeure Event, (ii) the Non-Claiming Party’s breach of its obligations under this Agreement, (iii) the issuance to and receipt by Seller or Seller’s QSE of a System Curtailment Order, (iv) if the Claiming Party is the Seller, a Buyer Curtailment Order, or if Buyer is the Claiming Party, a Seller Curtailment, (v) Planned Outages, (vi) Forced Outages, or (vii) Emergencies not otherwise the subject of any System Curtailment Order. For purposes of this definition, (A) the “Claiming Party” shall be the Party claiming the occurrence of an Excused Condition and (B) the “Non-Claiming Party” shall be the Party not claiming the occurrence of an Excused Condition in the event such Excused Condition is claimed.

“Execution Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Existing Change in Law” has the meaning set forth in Section 11.14(d).

“Extension Notice” has the meaning set forth in Section Article 2(b).

“Extension Term” has the meaning set forth in Section Article 2(b).

“Facility” has the meaning set forth in the first recital paragraph.

“Facility Attributes” means any of the services identified by either a Transmission Provider in its transmission tariff or by ERCOT in the ERCOT Protocols as “ancillary services”, including energy imbalance services, generation imbalance services, regulation and frequency response services, reactive supply services, voltage control services, inadvertent energy flow services, control area services, system integration services, operating spinning reserve services, and operating supplemental reserve services. For the avoidance of doubt, Facility Attributes does not include any Environmental Attributes or Capacity Attributes.

“Facility Lender” means any Person (including any trustee, arranger or agent on behalf of such Person) lending money or extending credit to Seller in connection with the development, construction, ownership, operation or maintenance of the Facility, including any refinancing thereof.

“FCPA” has the meaning set forth in Section 11.2(a).

“Fed Funds Rate” means with respect to any day, the rate for that day opposite the caption “Federal Funds (Effective)” in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System, but not less than 0%.

“Fitch” means Fitch Ratings, Inc. or its successor, or in the event that there is no such successor, a nationally recognized credit ratings agency.

“Force Majeure Event” has the meaning set forth in Section 8.1(b).

“Forced Outage” means any unplanned reduction or suspension of the electrical output from the Facility or unavailability of the Facility in an amount greater than [REDACTED] of the Committed Capacity in response to a mechanical, electrical or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction, or any other unavailability of the Facility for maintenance or repair that is not a Planned Outage, due to System Curtailment or a Buyer Curtailment Order, or a Force Majeure Event.

“Future Environmental Attributes” has the meaning set forth in Section 3.3(f)(i).

“Future RPS” has the meaning set forth in Section 3.3(f)(i).

“Future RPS Compliance Costs” has the meaning set forth in Section 3.3(f)(i).

“Future RPS Notice” has the meaning set forth in Section 3.3(f)(i).

“GEP Damages” has the meaning set forth in Exhibit G.

“GEP Failure” means Seller’s failure to produce Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, political subdivision thereof, or regulatory or quasi-regulatory authority, including ERCOT, NERC, TRE, and any municipality, township or county, or taxing authority, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any of the foregoing.

“Governmental Charges” has the meaning set forth in Section 5.4(a).

“Guaranteed Commercial Operation Date” means [REDACTED], as such date may be extended pursuant to Section 7.2(c).

“Guaranteed Energy Production” or “GEP” has the meaning set forth in Section 7.5(a).

“Guaranty” means a guaranty issued by an Eligible Guarantor substantially in such form as may be reasonably acceptable to the Party for whose benefit the guaranty is being issued.

“Guaranty Default” means, with respect to a Guaranty, (a) the issuer of such Guaranty no longer qualifies as an Eligible Guarantor, (b) the issuer of such Guaranty has failed to comply with any of its material covenants or obligations under such Guaranty and such failure has not been remedied within 10 days following Guarantor’s or Pledgor’s receipt of notice of such failure, (c) the issuer of such Guaranty has disaffirmed, disclaimed, rejected, or challenged the validity of such Guaranty, whether in whole or in part, (d) any representation or warranty made by the issuer under such Guaranty is false or misleading in any material respect when made or when deemed made or repeated and such failure, if capable of being remedied, is not remedied within 10 days following the Guarantor’s or Pledgor’s receipt of notice, (e) the

issuer of such Guaranty has become Bankrupt, or (f) such Guaranty terminates or otherwise ceases to be in full force and effect while such Guaranty is required to be maintained pursuant to the terms of this Agreement.

“IE Report” means a production analysis report as to the operation of the Facility and volume of Energy generated by the Facility estimated by the Independent Engineer projected for each Contract Year of the Term, which IE Report is to be provided by the Independent Engineer to each of Seller and Buyer no later than 15 Business Days following the Commercial Operation Date.

“Increased Contract Price Cap” has the meaning set forth in Section 11.14(a).

“Indemnifying Party” means the Party responsible for indemnifying and Indemnitee for its Losses under Section 9.4.

“Indemnitee” has the meaning set forth in Section 9.4(b).

“Independent Engineer” means [REDACTED] or any other independent engineering firm or individual under contract with Seller to verify (i) the performance of the Facility with the specification of the engineering, procurement and construction contractor of the Seller and any Facility Lender or (ii) as applicable, Compliance Costs associated with any Change in Law occurring during the Term.

“Installed Capacity” means the total nameplate AC Capacity of the Facility, as of a given moment, taking into account the operating condition of the Facility, the Facility’s auxiliary energy requirements, solar irradiance, temperature and relative humidity conditions, losses and other relevant factors at such time, without deduction for any capacity affected by a Loss Event, in each case as measured at the Interconnection Point.

“Interconnection Agreement” means that certain ERCOT Standard Interconnection Agreement dated as of [REDACTED] entered into between Seller and Transmission Provider pursuant to which Seller and the Transmission Provider set forth the terms and conditions for interconnection of the Facility to the Transmission System, as amended, restated, supplemented, or otherwise modified from time to time.

“Interconnection Point” means the Oncor Comanche Peak Switch – Timberview Switch 345 kV transmission line.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate published in [REDACTED] and (b) the maximum rate permitted by Texas Government Code Section 2251.025.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as the same may be amended from time to time or superseded.

“Investment Grade Credit Rating” means a Credit Rating equal to or better than BBB- from S&P, Baa3 from Moody’s, and/or BBB- from Fitch.

“Investment Tax Credits” and “ITC” mean investment tax credits under Section 48 of the Internal Revenue Code.

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“kW” means a kilowatt of electric capacity.

“kWh” means a kilowatt-hour of Energy.

“Letter of Credit” means a non-transferrable, irrevocable standby letter of credit issued by a Qualified Issuer in substantially in the form attached hereto as Exhibit H, with such modifications thereto as the Secured Party and/or Qualified Issuer may in its reasonable discretion require.

“Letter of Credit Default” means, with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (a) the issuer of the Letter of Credit ceases to be a Qualified Issuer; or (b) the issuer of the Letter of Credit becomes Bankrupt or any event analogous to an event specified in the definition of the term “Bankrupt” occurs with respect to the issuer of the Letter of Credit.

“Loss Event” means (a) any property casualty, loss, or other similar event that materially affects the Facility due to a Force Majeure Event or (b) any Condemnation Event.

“Losses” has the meaning set forth in Section 9.4.

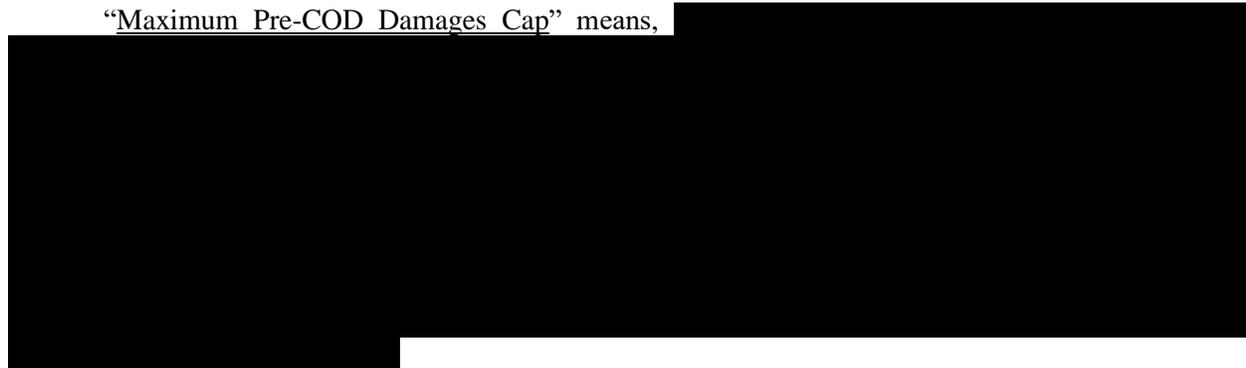
“LSE” has the meaning of such term in the ERCOT Protocols.

“Market Disruption Event” means (i) the permanent disappearance or discontinuance of the announcement or publication of the Settlement Point Price at the Settlement Hub, (ii) the occurrence of a material change in the formula for or method for determining the Settlement Point Price at the Settlement Hub, or (iii) a material change in the content or composition of the Settlement Point Price at the Settlement Hub. For purposes of the foregoing, a “Market Disruption Event” does not include changes made by ERCOT to the electrical busses included within the Settlement Hub in accordance with the ERCOT Protocols.

“Market Rate” means a value (expressed in \$/MWh) calculated as the simple average of the 15-minute RTSP for hours ending 10-17 in each such day, as published by ERCOT, for settlement pricing at the Settlement Hub.

“Maximum GEP Damages Cap” has the meaning set out in Exhibit G.

“Maximum Pre-COD Damages Cap” means,



“Meter” means a meter associated with the Facility’s Metering Facilities.

“Metered Output” means, with respect to an hour, the amount of Energy generated by the Facility, expressed in MWh, and delivered to the Interconnection Point, as measured by the Facility’s Metering Facilities.

“Metering Facilities” means the metering and data processing equipment needed for the registration, recording and transmission of information regarding Committed Energy installed and owned, operated and maintained in accordance with the terms of the Interconnection Agreement, the applicable rules of the Transmission Provider and the ERCOT Protocols, and shall include the EPS Meter.

“Moody’s” means Moody’s Investors Service, Inc. or its successor, or in the event that there is no such successor, a nationally recognized credit ratings agency.

“MW” means 1,000 kW of electric capacity.

“MWh” means 1,000 kWh of electric energy.

“NERC” means the North American Electric Reliability Corporation, or its successor.

“Non-Defaulting Party” has the meaning set forth in Section 9.2(a).

“Operating Procedures” has the meaning set forth in Section 7.6(b).

“Outside Commercial Operation Date” means [REDACTED] following the Guaranteed Commercial Operation Date, as such date may be extended on a day-for-day basis in the event the Guaranteed Commercial Operation Date is delayed in accordance with Section 7.2(c).

[REDACTED]

“Party” and “Parties” have the meanings set forth in the introductory paragraph of this Agreement.

“Performance Measurement Period” has the meaning set forth in Section 7.5(a).

“Permits” means, collectively, all federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Facility.

“Permitted Transferee” means a Person (a) that is a Facility Lender in connection with the exercise by such Person, or an agent acting on behalf of such Person, of remedies as a secured creditor of Seller, or (b) that (i) individually or together with its Affiliates owns or operates, or has engaged a Person to operate the Facility that owns or operates, in either case, utility-scale renewable electric generating facilities with an aggregate nameplate capacity of at least 100 MW_{AC} and (ii) either (A) is, Controls, is Controlled by or under common Control with, a Person with a consolidated net worth (including uncalled capital commitments) of at least \$100,000,000 or (B) is a financial sponsor, private equity fund, or other similar investor that owns and manages assets valued in excess of \$100,000,000 (including uncalled capital commitments).

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

“Planned Outage” means the removal of all or a portion of the Facility from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the period of the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Facility consistent with Prudent Electrical Practices, (b) cannot be reasonably conducted during the Facility’s operations, and (c) causes the generation level of the Facility to be reduced by at [REDACTED] of the Facility’s Installed Capacity.

“Pledgor” means Buyer or Seller, as applicable, in its capacity as the Party that has transferred or is required to transfer Credit Support to the other Party in its capacity as the Secured Party.

“Products” means the Committed Energy, Committed Capacity Attributes and the Environmental Attributes associated with such Committed Energy from time to time available from, or that may be generated by, the Facility; *provided, however*, “Products” shall not include any Facility Attributes, whether existing as of the Commencement Date or which may later be designated or implemented by a Transmission Provider in its transmission tariff or by ERCOT under the ERCOT Protocols.

“Prudent Electrical Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the ERCOT that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all Applicable Laws and regulations. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediately preceding sentence.

“Qualified Issuer” means a major U.S. commercial bank or a U.S. branch office of a foreign bank that has a Credit Rating of “A-” or better by S&P and “A3” or better by Moody’s and has assets of at least \$10,000,000,000 or a bank mutually agreed by both Parties.

“Qualified Scheduling Entity” or “QSE” has the meaning set forth in the ERCOT Protocols and means the entity that provides the Facility scheduling, bidding services and financial settlement with ERCOT for and on behalf of Seller.

“REC Transfer Deadline” has the meaning set forth in Section 3.3(d).

“Reliability Entity” may include, without limitation, NERC, ERCOT, the Transmission Provider, a balancing authority, a regional transmission organization, an independent system operator or any other entity that has, or that may have in the future, (a) responsibility over the reliability of the bulk power system and (b) by virtue of such responsibility, the legal authority to affect the operations of the Facility.

“Renewable Energy Credit” and “REC” have the meaning set forth for the term “renewable energy credit” in Section 25.173 of Title 16 of the Texas Administrative Code. RECs are accumulated on a MWh basis and one REC represents one MWh of Energy.

“Renewable Portfolio Standard” means any standard, program, model or guideline established (whether by any Governmental Authority or other Person) and enacted or implemented by a state or other Governmental Authority into an Applicable Law pursuant to which there is a stated policy, requirement or obligation to obtain electricity from clean or renewable resources, such as wind or solar, in order to meet emission reduction or clean energy thresholds.

“Representatives” means, as to any Person, such Person’s Affiliates and each of its and its Affiliates’ respective directors, officers, employees, agents, representatives, consultants, advisors (including financial advisors, attorneys and accounts or consultants) and investors.

“Reporting Month” has the meaning set forth in Section 7.4(d).

“S&P” means S&P Global Ratings, a division of S&P Global Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

“Secured Party” means Buyer or Seller, as applicable, in its capacity as the Party to which Credit Support has been transferred, or is required to be transferred, by the other Party in its capacity as the Pledgor.

“Security-Constrained Economic Dispatch” or “SCED” has the meaning set forth in the ERCOT Protocols.

“Seller” has the meaning set forth in the introductory paragraph of this Agreement.

“Seller Curtailment” means any curtailment of Energy from the Committed Capacity resulting from (a) a failure of Seller’s interconnection facilities that causes the Facility to be disconnected, suspended or interrupted, in whole or in part, or (b) Seller’s default under this Agreement or the Interconnection Agreement.

“Seller Indemnitees” has the meaning set forth in Section 9.4(b).

“Seller Operating Period Credit Support” has the meaning set forth in Section 6.1(b).

“Seller Pre-COD Credit Support” has the meaning set forth in Section 6.1(a).

“Seller’s Future RPS Compliance Costs Notice” has the meaning set forth in Section 3.3(f)(i).

“Settlement Hub” means ERCOT North Hub.

“Settlement Point Price” has the meaning set forth for such term in the ERCOT Protocols.

“Site” means the real property on which the Facility is to be built and located, as more particularly described in Exhibit A.

“Solar Panels” means the photovoltaic cell modules and associated inverters that are or are to be incorporated into the infrastructure of the Facility.

“System Curtailment” means any curtailment of delivery of Energy as the result of any of the following: (i) an Emergency, (ii) an action taken by the Reliability Entity to decrease the production of the Facility’s Energy output to resolve transmission constraints, and (iii) any other order or directive of ERCOT

or the Transmission Provider, which order or directive may be directly communicated to Seller or Seller's QSE by a Reliability Entity.

“System Curtailment Order” means the instruction from a Reliability Entity to the Seller or Seller's QSE to reduce generation from the Facility by the amount, and for the period of time set forth in such order, due to a System Curtailment.

“Tax Equity Investor” means a Person that acquires a direct or indirect interest in Seller as a part of a transaction to ensure that the Facility is owned, at least in part, by a Person able to utilize the tax benefits or grants in lieu of tax benefits associated with holding an ownership interest in the Facility (including any subsequent transferees of any such Persons).

“Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

“Term” has the meaning set forth in Section Article 2(b).

“Termination Amount” has the meaning set forth in Section 9.2(b).

“Tracking System” means, (i) as of the Commencement Date the Texas REC Tracking System maintained by ERCOT for the purpose of tracking the creation, trading, and retirement of RECs in connection with the Applicable RPS and (ii) any tracking system or registry associated with or approved for use by the Parties in relation to any Renewable Portfolio Standard adopted subsequent to the Commencement Date by the Parties in accordance with Section 3.3(f).

“Transmission Provider” means Oncor Electricity Delivery Company, LLC, or any successor entity.

“Transmission Provider Tariff” means the Open Access Transmission Tariff for the Transmission Provider, as in effect at such time, including any documents and protocol adopted by the Transmission Provider, including any exhibits or attachments referenced therein, that contain the scheduling, operating, planning, reliability and settlement policies, rules, guidelines (including the guidelines approved by the Transmission Provider describing the reliability standards for the Transmission Provider), procedures, standards and criteria of the Transmission Provider.

“Transmission System” means the facilities used for the transmission of electricity owned and operated by the Transmission Provider, including any modifications or upgrades made to such facilities.

“TRE” means the Texas Reliability Entity, Inc., or its successor entity.

1.2 **Standards of Interpretation**

For purposes of this Agreement: (a) terms defined in the singular include the plural and vice versa; (b) references to “Articles,” “Sections,” “Exhibits,” and “Attachments” are to articles or sections of, or exhibits or attachments to, this Agreement; (c) all references to a particular entity include that entity’s successors and permitted assigns; (d) the words “herein,” “hereof,” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection; (e) all accounting terms not specifically defined in this Agreement are to be construed in accordance with generally accepted accounting principles in the United States, consistently applied; (f) references to this Agreement include the appendices, Exhibits, Attachments, annexes, schedules, and other attachments to this Agreement, as the same may be amended, supplemented, replaced, restated, or otherwise modified from time to time; (g) terms used in the masculine include the feminine and neuter and vice versa; (h) the word “including,” when used in this Agreement, means including without limitation; (i) references to “Dollars” and the symbol “\$” mean U.S. Dollars; (j) references to any Governmental Authority include any successor to its applicable functions; and (k) references to any Applicable Law, including the Internal Revenue Code, or to ERCOT, or the TRE include any amendments, successor, or replacement thereto.

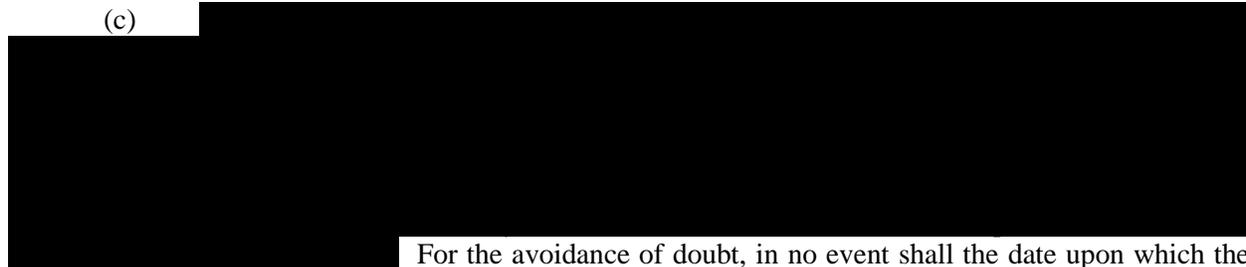
ARTICLE 2
TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

2.1 Term; Delivery Term; Condition Precedent

(a) This Agreement shall be effective on the Execution Date as to each of the provisions contained in this Article 2, Article 10 and Article 11 only.

(b) On the date upon which Seller has satisfied the Condition Precedent (the “Effective Date”), the balance of the terms and conditions of this Agreement shall become effective and, unless earlier terminated pursuant to the terms of this Agreement or by agreement of the Parties, will terminate at the end of the fifteenth (15th) Contract Year (the “Term”). The delivery term of this Agreement (the “Delivery Term”) includes the period from and including the Commencement Date to and continuing through the end of the Term. Buyer shall have the option to extend the Term up to a maximum of twelve (12) months (the “Extended Term”) by providing written notice of the exercise of such option to Seller not less than six (6) months prior to the end of the Term (the “Extension Notice”). If the Extension Notice is timely delivered to Seller, this Agreement shall be extended through the Extended Term and the Delivery Term continued until the last day of the Extension Term.

(c)



For the avoidance of doubt, in no event shall the date upon which the Condition Precedent is satisfied alter or otherwise affect the Anticipated COD, the Guaranteed Commercial Operation Date, or the Outside Commercial Operation Date. In the event Seller has not satisfied the Condition Precedent on or prior to the Outside CP Satisfaction Date, either Party may terminate this Agreement by providing the other Party with no less than ten (10) Business Days’ written notice of its

This document and any attachments or exhibits thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

intention to terminate this Agreement. Upon termination of this Agreement in accordance with the terms of this Section Article 2(c), neither Party shall have any obligations or liabilities to their other Party and this Agreement shall be deemed to have been terminated in all respects and to be null and void.

2.2 **Effect of Termination; Survival of Obligations**

(a) **Generally.** Except as set forth in Section 2.2(b) or as otherwise set forth in this Agreement, following termination of this Agreement neither Party will have future or further rights or obligations under this Agreement.

(b) **Survival of Obligations.** In addition to any other provisions of this Agreement that by their terms survive the termination of this Agreement, the following rights, obligations and provisions survive the termination of this Agreement:

- (i) the provisions of this Section 2.2(b);
- (ii) the obligations of a Party to the other Party to pay any amounts or to perform any duties or obligations that accrued or arose prior to, that directly resulted from, or that contemplate performance following, the termination of this Agreement;
- (iii) the payment related provisions set forth in Section 5.2;
- (iv) the limitation of liability provisions set forth in Section 9.3 and the warranty limitations set forth in Section 10.3;
- (v) the indemnity obligations set forth in Section 9.4 (which survive through the conclusion of the statute of limitations period applicable to any potential third party claim); and
- (vi) the provisions of Article 11.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product**

(a) **Generally.** In accordance with the terms and conditions of this Agreement, commencing on the Commencement Date and continuing throughout the Term, Seller shall sell, and Buyer shall purchase all of the Committed Energy, and Seller shall deliver at the Delivery Point, and Buyer shall accept from Seller at the Delivery Point, all of the Committed Energy less any transmission losses between the Interconnection Point and the Delivery Point. In addition to the foregoing, during the Delivery Term, Seller shall sell and deliver or otherwise make available to Buyer, and Buyer shall receive or otherwise have the rights to, all Environmental Attributes associated with the Committed Energy; *provided, however,* notwithstanding anything to the contrary in this Agreement, all Facility Attributes available from or associated with the Facility shall at all times be retained by Seller solely for Seller's account. Buyer shall pay to Seller an amount equal to the Contract Price multiplied by the Committed Energy. The Contract Price paid for the Committed Energy is the full compensation due to Seller for the Products, including the

Environmental Attributes associated with such Committed Energy and the Committed Capacity Attributes to which Buyer has rights to under this Agreement.

(b) Physical Delivery. Buyer hereby directs Seller to deliver the Committed Energy to the Buyer at the Delivery Point (less any transmission losses between the Interconnection Point and the Delivery Point). Buyer will reimburse Seller for any costs or charges incurred due to Buyer's failure to confirm or otherwise accept a schedule from Seller.

3.2 Delivery Point

(a) Allocation of Costs and Risks. Other than as expressly provided for in this Agreement, Seller is responsible for all costs and charges imposed on or associated with the Products or the delivery of the Products hereunder up to the Delivery Point. Buyer is responsible for all costs and charges imposed on or associated with the Products, or its receipt, at and after the Delivery Point.

(b) Title and Risk of Loss. Title to, and risk of loss related to, the Committed Energy delivered to Buyer transfers from Seller to Buyer at the Delivery Point. Title to all Environmental Attributes associated with the Committed Energy transfers to Buyer as soon as reasonably practicable following the transfer of such RECs to Seller's account in accordance with the Compliance Standard and the rules of the registry through which such RECs are to be transferred to Seller's account. Title transfer of RECs to Buyer will occur upon the transfer of RECs into the Tracking System account designated by Buyer in accordance with the rules established by the Tracking System. Title to the Committed Capacity Attributes transfers to the Buyer at the Commencement Date for the entirety of the Term of this Agreement and the Parties agree to undertake their respective obligations, if any, under the ERCOT Capacity Program to reflect the transfer of title from Seller to Buyer of all such Committed Capacity Attributes.

3.3 Environmental Attributes

(a) Generally. Throughout the Delivery Term, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all rights, titles and interest in and to the Environmental Attributes associated with the Committed Energy.

(b) No Assignment. Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of, whether on a spot or forward basis or otherwise, any portion of the Environmental Attributes associated with the Committed Energy generated during the Delivery Term to any Person other than Buyer.

(c) RPS Compliance. Prior to the Commercial Operation Date, or by the earliest date allowed under each Applicable RPS, Seller shall take all necessary steps, including making or supporting timely filings, including filings with ERCOT to certify the Facility in accordance with, or otherwise cause the Facility to qualify under, the requirements of the Applicable RPS. Seller shall (i) subject to Section 11.14, maintain the certification or registration of the Facility with ERCOT and otherwise cause the Facility and the RECs generated by the Facility to qualify under each Applicable RPS throughout the Delivery Term, and (ii) provide such certifications or attestations to Buyer as are reasonably necessary to verify that all RECs attributable to the Committed Energy have been transferred to Buyer. The failure of the Facility or the RECs generated by the Facility for any reason to qualify under an Applicable RPS, whether as a result of a breach by Seller of its obligations under this Agreement, the repeal or other termination of an Applicable RPS, the application of Section 11.14 or otherwise, does not excuse Seller's obligation to deliver

to Buyer, or limit Buyer's right to receive all of the RECs then associated with or available based on the Committed Energy generated during the Delivery Term.

(d) Amendments to Applicable RPS. For all purposes of this Agreement, any amendment or modification to any Applicable RPS occurring after the Commencement Date shall be deemed to be a Change in Law under Section 11.14 hereof and shall be subject to the provisions of that Section.

(e) REC Tracking System.

- (i) Prior to the Commercial Operation Date, Seller shall establish an account with the Tracking System for the purpose of receiving and transferring to Buyer the RECs associated with the Committed Energy. Seller shall in accordance with the rules and procedures of the Tracking System transfer from Seller's account to Buyer's designated account all RECs associated with the Committed Energy promptly, and in any event within 15 Business Days, following the creation date for such RECs (the "REC Transfer Deadline"). If either Party receives notice from the administrator of the Tracking System that a transfer of RECs will not be completed, the Parties shall promptly confer and take such actions as may be necessary to cure any defects in the proposed transfer so that the transfer can be completed. Seller and Buyer acknowledge that a transfer of RECs by Seller will be considered timely if properly initiated by Seller on or before the REC Transfer Deadline, but that the obligations of the Parties hereunder to consummate such transfer by Seller and acceptance of such transfer will not be satisfied until and unless such RECs are received into Buyer's designated account in accordance with the applicable requirements of the Tracking System. In the event that the Tracking System is not available for the transfer of RECs, the Parties may by mutual agreement designate a replacement tracking system (which, upon agreement of the Parties, will thereafter be the Tracking System for purposes of this Agreement) or, in the absence of such agreement, Seller shall execute and deliver to Buyer such attestations and other supporting documentation necessary or reasonably requested by Buyer to evidence the transfer to Buyer of, and Buyer's rights with respect to, all RECs associated with the Committed Energy.
- (ii) Prior to the Commencement Date, Buyer shall establish an account with the Tracking System for the purpose of receiving the RECs associated with the Committed Energy being transferred by Seller. Buyer will, at its own cost, take the actions necessary to receive and verify the transfer of RECs under the Tracking System, including the costs of any audit or other verification of such transfer. Buyer will be responsible for all fees and charges assessed against Buyer associated with receiving the RECs.

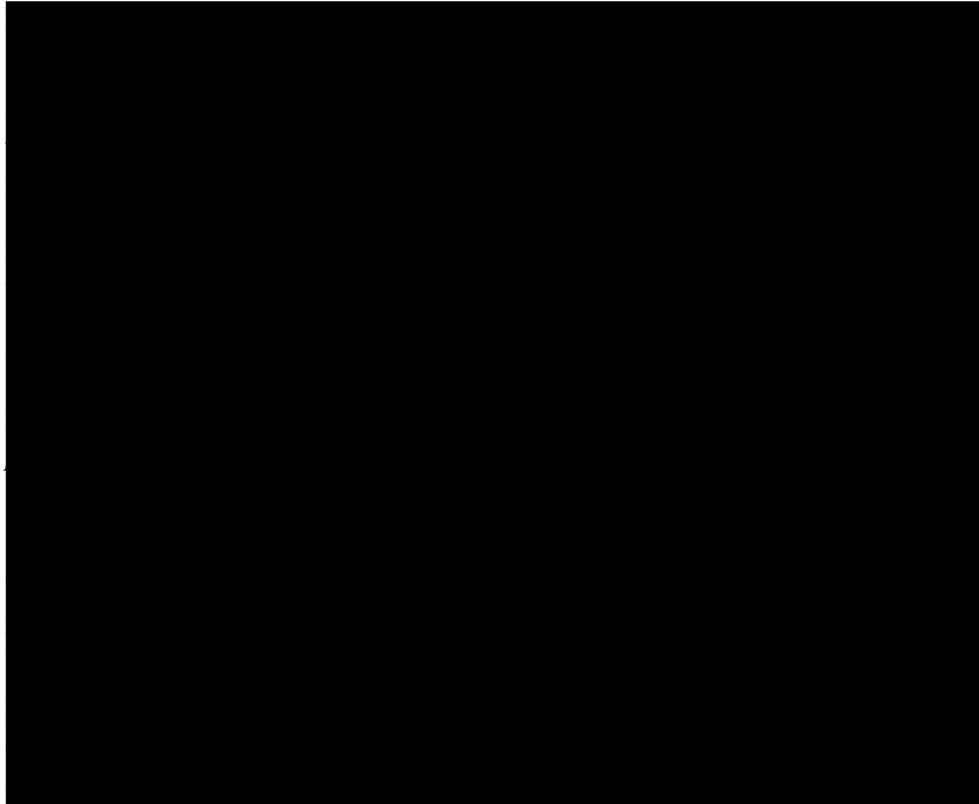
(f) Future Environmental Attributes.

- (i) To the extent Environmental Attributes other than RECs are available under the Applicable RPS, the provisions of Section 3.3(d) above will apply to such other Environmental Attributes with the same effect. If, however, at any time during the Delivery Term Environmental Attributes will or have become available in the market under a Renewable Portfolio Standard other than the then Applicable RPS (a

“Future RPS”), Buyer may notify Seller of Buyer’s intent to receive such Environmental Attributes (the “Future Environmental Attributes” and such notice being the “Future RPS Notice”), including in such Future RPS Notice the nature of the Future Environmental Attributes and the Future RPS under which the Facility is to qualify for the generation, monitoring and tracking of Future Environmental Attributes based upon the generation of the Committed Energy, as well as any tracking system applicable to the foregoing (a “Future Tracking System”) and Seller’s subsequent transfer of such Future Environmental Attributes from Seller to Buyer.



(ii)



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- (iii) It is agreed by the Parties that the process set out in this Section 3.3(f) shall be applied at any time during the Delivery Term Environmental Attributes will or have become available in the market under a Future RPS that is other than the then Applicable RPS. For the avoidance of doubt, a Future RPS shall not (a) be or qualify as a Change in Law under the provisions of Section 11.14 (except to the extent any such Future RPS is or becomes an Applicable RPS), and (b) be or qualify as an Applicable RPS, unless otherwise specifically agreed to in writing by and between Seller and, as applicable, Buyer and all other third-parties who are purchasing Environmental Attributes associated with the Energy generated from the Facility.

(g) Reporting Rights. Seller shall not report to any Person, or authorize any other Person to report, that the Environmental Attributes associated with the Committed Energy generated during the Delivery Term belong to anyone other than Buyer, and Buyer may report under any program that such attributes purchased hereunder belong to it. If Buyer determines that Seller or any other Person has made a written statement, written claim, or other written communication that could reasonably be expected to adversely affect Buyer's right to claim the exclusive ownership of or reporting rights associated with the Environmental Attributes purchased under this Agreement (unless such adverse effect results from any action or inaction of Buyer), Seller shall promptly following receipt of Buyer's written request take such Commercially Reasonable actions as may be necessary or that Buyer may reasonably request in order to retract or otherwise correct such written statement, written claim, or other written communication or to cause such written statement, written claim, or other written communication to be retracted or otherwise corrected, as applicable.

3.4 Facility Attributes

The Parties acknowledge and agree that all Facility Attributes, whether existing as of the Commencement Date or thereafter implemented, authorized or otherwise recognized in the Transmission Provider Tariff or under the ERCOT Protocols, are and shall at all times during the Term be retained by Seller and only Seller shall have the right to all of such Facility Attributes. For the avoidance of doubt, Facility Attributes shall not be deemed for any purposes to be part of the Environmental Attributes.

3.5 Tax Credits

All ITCs and any other current or future Tax credits, Tax deductions, or Tax benefits or other financial incentives applicable to the Facility are retained by Seller, the owners of the Site, or both, as applicable. For the avoidance of doubt, Tax credits, Tax deductions, or Tax benefits shall not be deemed for any purposes to be part of the Environmental Attributes.

ARTICLE 4 METERING

4.1 Metering Requirements

The amount of Energy to be transferred from Seller to Buyer at the Delivery Point will be determined based on measurements made by the Facility's Metering Facilities (including the EPS Meter) to determine the amount of Committed Energy at the Delivery Point. Seller shall ensure that the Metering Facilities are selected, provided, installed, owned, maintained, and operated in accordance with the requirements of the Interconnection Agreement and the Transmission Provider Tariff at Seller's or the Transmission Provider's sole cost and expense, as applicable, as well as in accordance with the ERCOT Protocols. Seller shall exercise Commercially Reasonable Efforts to ensure that the Meters are tested by the Transmission Provider at least annually. Seller shall provide reasonable prior notice to Buyer of the time and date of each test of the Meters, and shall permit Buyer to be present at such tests.

4.2 Meter Inaccuracies and Retroactive Adjustments

If a Meter fails to register, or if the measurement made by a Meter is found upon testing to be inaccurate by an amount exceeding any applicable tolerances, the Parties shall adjust all measurements made by the inaccurate or defective Meter during the affected period in order to account for such inaccuracy. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the applicable Meter was in service since last tested, but not exceeding 3 months, in the amount the applicable Meter shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the records associated with a Meter shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of applicable Metering Facilities.

4.3 Records and Audits

(a) Records. Seller shall keep complete and accurate records necessary for the purposes of proper administration of this Agreement, including all records necessary for billing and payments, records of the Metered Output and Committed Energy, and such other records as may be required by applicable Governmental Authorities or Prudent Electrical Practice. Seller shall retain all such records throughout the Term and for a period of not less than 2 years following the termination of this Agreement. Seller shall upon request provide Buyer with copies of such records and with such other information as Buyer may require in connection with the performance of its obligations under this Agreement, the Transmission Provider Tariff, the ERCOT Protocols or other Applicable Laws.

(b) Audit Rights. Buyer has the right, at any time during the Term and for a period of 2 years thereafter, to audit and to examine Seller's records and data kept by Seller relating to the performance of its obligations under, and the administration of, this Agreement during normal business hours and upon reasonable prior notice. Each Party is responsible for its own costs and expenses associated with any audit or examination.

4.4 Metering and Facility Status Telemetry

(a) ERCOT WAN. Seller shall comply will all telemetry requirements of ERCOT pursuant to the then applicable Protocols as they may be amended from time to time.

(b) SCADA Signals to Buyer. Seller's SCADA system shall provide to Buyer, real-time telemetry of the operation of the Facility including, but not limited to: KV, Megawatt, Mega Var, total Facility output (MW), Buyer's capacity output (MW), solar irradiance, inverter status, breaker status, and any other parameters reasonably requested by Buyer consistent with the information required by LSEs and QSEs (the "Buyer's SCADA Requirements").

(c) To accommodate Buyer's SCADA Requirements, Buyer requires a minimum of two (2) independent communication paths with one of the two communications being a dedicated circuit only one of which can be a VPN circuit. Within 30 days of the Effective Date, Buyer will provide Seller with all parameters, prerequisites and requirements Buyer's SCADA Requirements and the Parties will each cooperate in a Commercially Reasonable manner and use Prudent Electrical Practices to implement Buyer's SCADA Requirements as of COD, including all necessary operational testing and performance. The costs and expenses for all equipment, materials and support services related to or required for the implementation and continued operation of the Buyer's SCADA Requirements throughout the Delivery Term shall be the responsibility of the Party incurring any such costs and expenses.

ARTICLE 5 BILLING AND PAYMENT

5.1 Billing

(a) Except as otherwise specified in this Agreement, the calendar month is the standard period for all payments under this Agreement. On or before the 10th day following the end of each calendar month included in the Delivery Term, Seller shall provide to Buyer, or its designee, an invoice (substantially in the form attached hereto as Exhibit F) specifying (a) the amount due to Seller pursuant to Section 3.1 for the ended calendar month, and (b) any other amounts due between the Parties with respect to such ended calendar month.

(b) Each such invoice provided by Seller will be issued in duplicate and must be accompanied by supporting documentation sufficient to enable Buyer to verify the accuracy of the amounts specified in the invoice, and if applicable, a statement of all transfers of RECs or other Environmental Attributes made during the ended calendar month. Seller must deliver each invoice in accordance with the notice requirements of Section 11.1.

(c) All invoices will include a unique invoice number, the purchase order or delivery order number, if applicable, and the master agreement number if applicable, the name of the Seller's department responsible for this Agreement, and the name of the point of contact for such department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. Seller's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in Seller's registration with Buyer as a vendor to Buyer. Unless otherwise instructed in writing, Buyer may rely on the remittance address specified on the Seller's invoice.

(d) Federal excise Taxes, State Taxes, or City sales Taxes will not be included in the amount invoiced to Buyer.

5.2 Payments

(a) Generally. Subject to Section 5.2(c), Buyer shall remit payment on any invoice under this Agreement on or before the 30th day after receipt of such invoice or, if such day is not a Business Day, then on the next following day that is a Business Day. Subject to Section 5.2(c), Seller shall pay all amounts due to Buyer under this Agreement, including any Delay Liquidated Damages, GEP Damages, or otherwise in respect of any obligation of Seller to indemnify or reimburse Buyer, within 45 days following the end of the calendar month in which such amounts have become due. All payments under this Agreement will be made by the applicable Party by wire transfer of immediately available funds to the account designated in writing by the payee for receipt of such payments.

(b) Late Payments and Interest Rate. Any undisputed amounts not paid when due will accrue interest on a daily basis at the Interest Rate from and including the date due through but excluding the date paid. All calculations of interest will be computed on the basis of a 365-day year.

(c) Corrections to Invoices; Payment Disputes. Each Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice under this Agreement within 12 months following the date such invoice, or adjustment to an invoice, was rendered. Any dispute with respect to an invoice must be made in writing and include a reasonably detailed description of the basis for such dispute. If a Party provides written notice of a dispute with respect to an invoice prior to the applicable due date for such invoice, such Party shall pay the undisputed amount of such invoice when due. If in connection with the resolution of the dispute it is determined that (i) an additional payment is due by a Party, such Party shall make the required payment to the other Party within 10 Business Days following such resolution, together with interest accrued at the Interest Rate from and including the due date to but excluding the date paid or (ii) a Party is entitled to a refund of any amount previously paid, the other Party shall, at the entitled Party's election, either return the amount overpaid within 10 Business Days following such resolution or provide the entitled Party with a credit on the next invoice delivered following resolution of the dispute equal to the amount overpaid, in each case together with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid by the other Party or reflected as a credit in an invoice delivered by the other Party, as applicable. If the resolution of any disputed amount results in a payment due from a Party, such Party's payment obligations under this Agreement will not be deemed to have been satisfied until such dispute is resolved and the amount, if any, payable by such Party upon such resolution has been paid.

5.3 Netting of Payments

All undisputed mutual debts and payment obligations due and owing between the Parties on the same day pursuant to this Agreement, including any damages, interest, and payments or credits, will be automatically satisfied and discharged through netting, and if the aggregate amount payable by one Party exceeds the aggregate amount that otherwise would have been payable by the other Party, replaced by an obligation of the Party by which the larger aggregate amount would have been payable to pay to the other Party the excess of the larger aggregate amount over the smaller aggregate amount.

5.4 Governmental Charges

(a) Seller shall pay or cause to be paid all Taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Facility or the Products arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product at

and from the Delivery Point (other than ad valorem, franchise or income taxes related to the sale of the Product by Seller and are, therefore, the responsibility of Seller). In the event one Party remits or pays any Governmental Charges that are the other Party's responsibility hereunder, the amount of such payment shall be included in the calculation of the next monthly net payment amount calculated by Seller pursuant to this Article 5. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. Buyer shall furnish a Tax exemption certificate upon request by Seller.

(b) The Parties shall reasonably cooperate to minimize each Party's Taxes; *provided, however*, that neither Party is obligated to incur any financial burden to reduce Taxes for which the other Party is responsible hereunder. All Product delivered by Seller to Buyer hereunder are sales for resale.

ARTICLE 6 CREDIT REQUIREMENTS

6.1 Seller Credit Support

(a) Seller Pre-COD Credit Support. Within 10 Business Days following the Effective Date, Seller shall transfer Credit Support to Buyer having an aggregate value equal to [REDACTED] multiplied by (ii) the Committed Capacity, but in no event greater in amount than the amount of the Maximum Pre-COD Damages Cap (the "Seller Pre-COD Credit Support"). Seller shall maintain such Credit Support for the benefit of Buyer until the Commencement Date. Buyer shall be entitled to claim on the Credit Support in accordance with Section 6.3. Seller shall have no obligation to replace any Credit Support if, at any time prior to the Commencement Date, any portion of the Credit Support provided by Seller is applied by Buyer to satisfy any outstanding obligations of Seller under this Agreement.

(b) Seller Post-COD Credit Support. Within no more than 10 Business Days following the Commencement Date, Seller shall transfer Credit Support to Buyer having an aggregate value equal to [REDACTED] multiplied by (ii) the Committed Capacity (the "Seller Operating Period Credit Support"). Seller may apply outstanding Credit Support provided to Buyer in respect of the Seller Pre-COD Credit Support toward the satisfaction of its obligation to transfer to Buyer the Seller Operating Period Credit Support. Seller shall maintain Credit Support for the benefit of Buyer having an aggregate value at least equal to the Seller Operating Period Credit Support then applicable to Seller until the later of (x) the end of the Delivery Term and (y) the date on which all of Seller's payment obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Buyer has not made a claim). Buyer shall be entitled to claim on the Credit Support in accordance with Section 6.3. In the event any portion of the Credit Support provided by Seller following the Commencement Date is applied by Buyer to satisfy any outstanding obligations of Seller under this Agreement, Seller shall within 10 Business Days following Buyer's written demand, replace such Credit Support so that the amount of Credit Support outstanding in favor of Buyer is not less than the full value of the Seller Operating Period Credit Support.

6.2 Buyer Credit Support

As of the Effective Date, unless Buyer has a Credit Rating above an Investment Grade Credit Rating by both S&P and Fitch (in which case the provisions of Section 6.2(c) shall apply), the following provisions of Sections 6.2(a) and (b) shall apply to Buyer:

(a) Buyer Pre-COD Credit Support. Within 10 Business Days following the Effective Date, Buyer shall transfer Credit Support to Seller having an aggregate value equal to [REDACTED] multiplied

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by (ii) the Committed Capacity (the “Buyer Pre-COD Credit Support”). Buyer shall maintain such Credit Support for the benefit of Seller until the Commencement Date. Seller shall be entitled to claim on the Credit Support in accordance with Section 6.3. Buyer shall have no obligation to replace any Credit Support if, at any time prior to the Commencement Date, any portion of the Credit Support provided by Buyer is applied by Seller to satisfy any outstanding obligations of Buyer under this Agreement.

(b) Buyer Post-COD Credit Support. Within no more than 10 Business Days following the Commencement Date, Buyer shall transfer Credit Support to Seller having an aggregate value equal to ([REDACTED] multiplied by (ii) the Committed Capacity (the “Buyer Operating Period Credit Support”). Buyer may apply outstanding Credit Support provided to Buyer in respect of the Buyer Pre-COD Credit Support toward the satisfaction of its obligation to transfer to Seller the Buyer Operating Period Credit Support. Buyer shall maintain Credit Support for the benefit of Seller having an aggregate value at least equal to the Buyer Operating Period Credit Support then applicable to Buyer until the later of (x) the end of the Delivery Term and (y) the date on which all of Buyer’s payment obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Seller has not made a claim). Seller shall be entitled to claim on the Credit Support in accordance with Section 6.3. In the event any portion of the Credit Support provided by Buyer following the Commencement Date is applied by Seller to satisfy any outstanding obligations of Buyer under this Agreement, Buyer shall within 10 Business Days following Seller’s written demand replace such Credit Support so that the amount of Credit Support outstanding in favor of Seller is not less than the full value of the Buyer Operating Period Credit Support.

(c) If, at any time after the Effective Date, Buyer has a Credit Rating below the Investment Grade Credit Rating by either S&P or Fitch, then Buyer shall transfer Credit Support to Seller having an aggregate value equal the Buyer Credit Support Amount. Buyer shall maintain such Credit Support for the benefit of Seller until the date on which all of Buyer’s payment obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Seller has not made a claim). Seller shall be entitled to claim on the Credit Support in accordance with Section 6.3. In the event any portion of the Credit Support provided by Buyer following the Commencement Date is applied by Seller to satisfy any outstanding obligations of Buyer under this Agreement, Buyer shall within 3 Business Days following Seller’s written demand replace such Credit Support so that the amount of Credit Support outstanding in favor of Seller is not less than the full amount of the Buyer Credit Support Amount. In the event Buyer’s Credit Rating elevates to Investment Grade Credit Rating by both S&P and Fitch, the Buyer Credit Support will no longer be required, and Seller shall return to Buyer any Buyer Credit Support provided pursuant to this Section 6.2(c) within 10 Business Days of Buyer providing written notice of such change in Buyer’s Credit Rating to Seller.

6.3 General Provisions Applicable to Credit Support

(a) Credit Support in the form of Cash.

(i) The Pledgor pledges to the Secured Party, as security for its obligations under this Agreement, and grants to the Secured Party a first priority continuing security interest in, lien on and right of set-off against all Credit Support in the form of Cash transferred to or received by the Secured Party under this Agreement. Upon the transfer by the Secured Party to the Pledgor of Cash held by the Secured Party as Credit Support, the security interest and lien granted hereunder on that Cash will be released immediately, and to the extent possible, without any further action by either Party.

- (ii) Buyer, as the Secured Party, shall maintain all Credit Support in the form of Cash transferred to or received by Buyer in a segregated deposit account maintained by Buyer with a Qualified Issuer for the purpose of holding credit support provided to Buyer by its trading counterparties, which account must include a designation clarifying that amounts on deposit in such account are held by Buyer as credit support to secure the obligations of its trading counterparties.
 - (iii) Seller, as the Secured Party, shall maintain all Credit Support in the form of Cash transferred to or received by Seller in a segregated deposit account maintained by Seller with a Qualified Issuer for the purpose of holding such Credit Support and that bears a designation clarifying that amounts on deposit in such account are held by Seller as credit support to secure the obligations of Buyer under this Agreement.
 - (iv) In lieu of any interest paid or deemed to have been paid with respect to Credit Support in the form of Cash (all of which may be retained by the Secured Party), Credit Support in the form of Cash will accrue interest on a daily basis at the Fed Funds Rate for the actual number of days elapsed based on a year of 365 days. Seller shall include the amount of the accrued interest, if any, payable by the Secured Party with respect to a month in the invoice provided with respect to such month pursuant to Section 5.1. Any accrued interest will constitute Credit Support in the form of Cash and will be subject to the security interest granted under Section 6.3(a)(i).
 - (v) For purposes of this Agreement, the value of Credit Support in the form of Cash is equal to the amount of such Cash.
- (b) Credit Support in the form of a Letter of Credit.
- (i) Each Letter of Credit must provide that the Secured Party may, and the Secured Party has the right to, in the following situations and upon presentation to the issuer of such Letter of Credit of the certificates or other documentation required by the terms of the Letter of Credit, draw upon the Letter of Credit in an amount up to the amount due and unpaid by the Pledgor (including any amounts due in connection with the termination of this Agreement) in the case of clause (A), or up to the entire amount available to be drawn thereunder in the case of clause (B):
 - (A) either (x) an Event of Default has occurred and is continuing with respect to the Pledgor or (y) this Agreement has terminated or an early termination date in respect of this Agreement has been designated in connection with the occurrence of an Event of Default with respect to the Pledgor; or
 - (B) a Letter of Credit Default has occurred with respect to the Letter of Credit or 30 or fewer days remain until the expiration date of the Letter of Credit and the Pledgor has failed to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), establish one or more additional Letters of Credit, or otherwise transfer sufficient Credit Support (in any other acceptable form) to the Secured Party as required by this Agreement.

- (ii) With respect to each outstanding Letter of Credit, the Pledgor shall either cause the Letter of Credit to be renewed or provide substitute Credit Support, in each case at least 30 days prior to the expiration date of the Letter of Credit. If a Letter of Credit Default occurs with respect to an outstanding Letter of Credit, the Pledgor shall within 10 Business Days following the Secured Party's notice of the Letter of Credit Default transfer to the Secured Party substitute Credit Support. For purposes of this clause (ii), the aggregate value of substitute Credit Support that the Pledgor is required to transfer to the Secured Party must be at least equal to the amount required to cause the total value of all outstanding Credit Support, calculated following the lapse of the 30th day prior to the expiration date of the Letter of Credit or the occurrence of the Letter of Credit Default, to be at least equal to the Credit Support Amount then applicable to the Pledgor.
- (iii) Upon the occurrence of a Letter of Credit Default of the type described in clause (b) of the definition thereof, the issuer of the affected Letter of Credit will no longer be a Qualified Issuer for purposes of the definition of the term "Letter of Credit" unless otherwise agreed by the Secured Party.
- (iv) Proceeds received by the Secured Party from any draw on a Letter of Credit will, to the extent not applied to the outstanding obligations of the Pledgor under this Agreement, constitute Credit Support in the form of Cash.
- (v) For purposes of this Agreement, the value of Credit Support in the form of Letter of Credit is equal to the amount available to be drawn by the Secured Party under such Letter of Credit unless (x) a Letter of Credit Default has occurred with respect to such Letter of Credit or (y) 30 or fewer days remain until the expiration date of such Letter of Credit, in either of which case, the value of such Letter of Credit is equal to \$0.
- (vi) All costs and expenses associated with establishing, maintaining, renewing, substituting, cancelling, increasing, or reducing the amount of (as the case may be) one or more Letters of Credit are the responsibility of the Pledgor.

(c) Credit Support in the Form of a Guaranty. For purposes of this Agreement, the value of Credit Support in the form of a Guaranty is equal to the undrawn portion of the maximum guaranteed amount specified in such Guaranty, if any, unless a Guaranty Default has occurred with respect to such Guaranty, in which case the value of such Guaranty is equal to \$0. If a Guaranty Default occurs with respect to an outstanding Guaranty, the Pledgor shall within 10 Business Days following the Secured Party's notice of the occurrence of the Guaranty Default transfer to the Secured Party substitute Credit Support. For purposes of this Section 6.3(c), the aggregate value of substitute Credit Support that the Pledgor is required to transfer to the Secured Party must be at least equal to the amount required to cause the total value of all outstanding Credit Support, calculated following the occurrence of the Guaranty Default, to be at least equal to the Credit Support Amount then applicable to the Pledgor.

(d) Substitution and Return.

- (i) Upon notice to the Secured Party specifying the items of Credit Support to be exchanged, the Pledgor may on any Business Day transfer to the Secured Party

substitute Credit Support, and so long as no Event of Default with respect to the Pledgor has occurred and is continuing, the Secured Party shall return to the Pledgor the items of Credit Support identified by the Pledgor in its notice by not later than the third Business Day following the date on which the Secured Party receives the substitute Credit Support, except that the Secured Party will only be required to return Credit Support with a value as the date of transfer equal to the value of the substitute Credit Support as of the same date.

- (ii) Upon (A) the reduction of the Credit Support Amount applicable to the Pledgor and (B) the later to occur of (x) the end of the Delivery Term and (y) the satisfaction in full of all of the Pledgor's obligations under this Agreement (other than contingent obligations with respect to which the Secured Party has not made a claim), the Secured Party shall, within 10 Business Days following receipt of the Pledgor's demand, return to the Pledgor, in the case of clause (A), the applicable portion of the Credit Support of the Pledgor then outstanding in favor of the Secured Party, and, in the case of clause (B), all Credit Support of the Pledgor then outstanding in favor of the Secured Party. In connection with any such return, the Secured Party shall at the Pledgor's expense take such actions as may be reasonably requested by the Pledgor to evidence the release and termination of the applicable Credit Support.

(e) Secured Party's Rights and Remedies. If at any time a default or Event of Default with respect to the Pledgor has occurred or if an early termination date in respect of this Agreement has occurred or been designated as a result of an Event of Default with respect to the Pledgor, then, and in addition to the other rights and remedies set forth in the Agreement, the Secured Party may exercise one or more of the following rights and remedies: (i) all rights and remedies available to a secured party under Applicable Law with respect to Credit Support in the form of Cash held by the Secured Party; (ii) all rights and remedies available to the Secured Party under the terms of any Letter of Credit or Guaranty provided for its benefit, if any; and (iii) the right to setoff any present or future amounts payable by the Pledgor under this Agreement against any Credit Support held by the Secured Party (or any obligation of the Secured Party to transfer that Credit Support to the Pledgor).

6.4 Security is Not a Limit on Post-COD Liabilities

The Credit Support being provided under Section 6.1 or Section 6.2 by either one or both of the Parties (a) constitutes security for, but is not a limitation of, such Party's obligations under this Agreement from and after the Commencement Date and (b) shall not be a Party's exclusive remedy for the other Party's failure to perform in accordance with this Agreement from and after the Commencement Date.

6.5 UCC Waiver

This Article 6 sets forth the entirety of the agreement of the Parties regarding credit, collateral, and adequate assurances. Except as expressly set forth in this Article 6, neither Party has, or will have, any obligation to post margin, pay deposits, make prepayments or otherwise provide any other financial or performance assurances, in any form whatsoever, on the basis of reasonable grounds for insecurity with respect to the creditworthiness of a Party. Each Party waives all other express or implied rights relating to financial assurances, whether arising from Section 2.609 of the Texas Business and Commerce Code or similar common law doctrines.

ARTICLE 7
ADDITIONAL OBLIGATIONS

7.1 Construction, Operation and Maintenance of the Facility

(a) Generally. Seller shall design, develop, finance, construct, own, operate, and maintain the Facility in accordance with this Agreement, the Interconnection Agreement, all Applicable Laws, all Permits, and Prudent Electrical Practice.

(b) Design and Location. Exhibit A includes (i) a detailed preliminary description of the Facility as of the date hereof, including the anticipated number, manufacturer, and power rating of the Solar Panels, and (ii) a scaled map of the Site and surrounding area that depicts the location of the Facility and important ancillary facilities, including the Delivery Point. Seller may from time to time modify the design of the Facility as set forth in Exhibit A on the condition that such modifications could not reasonably be expected to have a material and adverse impact on Seller's ability to perform its obligations under this Agreement, including by causing the Facility to not qualify as an Eligible Renewable Resource.

(c) Compliance. Seller shall, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Applicable Law or Governmental Authority in order to enable Seller to perform its obligations under this Agreement.

(d) Disclosure. Seller shall provide to Buyer such information regarding the permitting, engineering, construction, maintenance, and operations of the Facility as Buyer may from time to time reasonably request, subject to licensing or other restrictions applicable to Seller with respect to confidentiality, disclosure, or use that would prevent Seller from providing such information to Buyer.

(e) Insurance. Seller shall at all times during the Term maintain at its sole expense, policies of insurance in amounts and with coverage as set forth in Exhibit C.

7.2 Construction

(a) Generally. Seller shall use Commercially Reasonable Efforts to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date.

(b) Quarterly Reports. Until the Commercial Operation Date is achieved, Seller shall deliver to Buyer a quarterly progress report by no later than the 10th Business Day after the end of each calendar quarter. Such reports shall address, in reasonable detail:

- (i) progress toward the achievement of the Commercial Operation Date,
- (ii) status of permitting and other required approvals,
- (iii) financing for construction and operation of the Facility,
- (iv) interconnection matters,
- (v) labor and contracting matters, and

(vi) environment, health, and safety matters.

(c) Commercial Operation Date Extensions. In the event that Seller's achievement of the Commercial Operation Date by the Anticipated COD is prevented due to (i) the occurrence of a Force Majeure Event, (ii) Buyer's breach of its obligations under this Agreement, (iii) the Transmission Provider's delay in completing construction, testing, or commissioning of its interconnection facilities related to the Facility, (iv) issuance to and receipt by Seller or Seller's QSE of a System Curtailment Order, (v) delays related to the commissioning and testing of the Facility required to achieve the Commercial Operation Date, but only to the extent such commissioning or testing delay is not caused by or attributable to Seller's breach of the Interconnection Agreement, transmission interconnection equipment delivery or transmission interconnection labor shortages (which are not otherwise a Force Majeure Event) or its obligations under the ERCOT Protocols or (vi) Emergencies not otherwise the subject of any System Curtailment Order (each, a "Delay Condition"), each of the Anticipated COD and Guaranteed Commercial Operation Date will be extended on a day-for-day basis by the number of days by which the occurrence or continuance of the Delay Condition prevented Seller from achieving the Commercial Operation Date. The Outside Commercial Operation Date shall also be extended due to a Delay Condition for the same period as each of the Anticipated COD and the Guaranteed Commercial Operation Date are extended. Other than with respect to a Delay Condition described in clause (ii) of this Section 7.2(c), in no event, except subject to the agreement of the Parties, will the Anticipated COD, and concurrently, each of the Guaranteed Commercial Operation Date and the Outside Commercial Operation Date, each be extended, in the aggregate, by [REDACTED] pursuant to this Section 7.2(c).

(d) Buyer's Access and Inspection Rights. Buyer has the right, upon reasonable prior written notice to Seller, and subject to any restrictions contained in the Interconnection Agreement or the BOP/EPC Contract, to have its Representatives present at the Facility in order to monitor the construction, commissioning, and testing of the Facility and its systems. The presence of Buyer and/or its Representatives at the Facility shall be at the sole cost and expense of Buyer and Seller shall not be required to incur any costs and expenses to accommodate any such presence by Buyer and/or its Representatives at the Facility. Seller shall, however, cooperate in such physical inspections of the Facility as may be reasonably requested by Buyer, either or both during and after completion of construction. Buyer shall ensure that all persons visiting the Facility on behalf of Buyer comply with all of the applicable safety and health rules and requirements of Seller, its Affiliates or the BOP/EPC Contractor, that are provided to such Persons and that all such Persons do not disrupt or otherwise impede (i) the progress of work being performed by the BOP/EPC Contractor (or any of its contractors or subcontractors) if any such access is granted during construction of the Facility, or (ii) operations of the Facility if any such access is granted following the Commencement Date.

7.3 Delay Damages

(a) Commercial Operation Date Notices. If Seller determines that it is unlikely to achieve the Commercial Operation Date by the Anticipated COD, or if it becomes aware of any Delay Condition that could reasonably be expected result in the extension of the Anticipated COD and, concurrently, the Guaranteed Commercial Operation Date and Outside Commercial Operation Date as described in Section 7.2(c), then Seller shall (A) promptly provide written notice thereof to Buyer, which notice must be accompanied by a reasonably detailed explanation of the basis for such determination or the Delay Condition, as applicable, and the actions Seller is taking and will take in order to address any resulting delay in the achievement of the Commercial Operation Date and (B) thereafter upon request of Buyer provide updates to such notice.

(b) Failure to Timely Achieve Commercial Operation. If Seller fails to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date (as extended under Section 7.2(c)), Seller shall pay to Buyer as liquidated damages an amount (expressed in \$'s) equal to the Delay Liquidated Damages calculated for each day from and after the Guaranteed Commercial Operation Date through the earlier to occur of (x) the Commercial Operation Date and (y) [REDACTED] day after the Guaranteed Commercial Operation Date. All Delay Liquidated Damages will be paid to Buyer in accordance with the provisions of Article 5. For the avoidance of doubt, the payment of any Delay Liquidated Damages by Seller to Buyer hereunder shall not reduce the value of the Seller Operating Period Credit Support.

(c) Exclusive Remedy.

- (i) Receipt of Delay Liquidated Damages is Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.
- (ii) If Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date (as extended in accordance with Section 7.2(c)), then either Party will thereafter have the right to terminate this Agreement by providing written notice of termination to the other Party (the "Early Termination Right"); provided that (A) Buyer's exercise of the Early Termination Right shall begin on the Day following the Outside Commercial Operation Date and expire, if not previously exercised, upon the occurrence of the Commercial Operation Date, and (B) Seller's exercise of the Early Termination Right shall begin on the Day [REDACTED] after the Outside Commercial Operation Date and expire, if not previously exercised, upon the occurrence of the Commercial Operation Date. If this Agreement is terminated by either Party in accordance with the foregoing, Seller shall be obligated to pay all Delay Liquidated Damages then due and owing to Buyer within no less than ten (10) Business Days of the date of any such termination, failing Seller's payment of which, Buyer may draw on and retain all remaining Credit Support provided by Seller, up to the amount of such Delay Liquidated Damages, in satisfaction of such Delay Liquidated Damages. Payment of such Delay Liquidated Damages is Seller's sole and exclusive liability, and Buyer's sole and exclusive remedy, in connection with the termination of this Agreement by either Party due to Seller's failure to achieve the Commercial Operation Date by the Outside Commercial Operation Date. To the extent Buyer receives any Delay Liquidated Damages from Seller, Buyer agrees to Seller amending Seller's Credit Support (if a Letter of Credit) to reduce such Credit Support by an equivalent amount.

7.4 Commercial Operation Procedure

(a) Agreement with Transmission Provider. Seller shall, at its own cost and expense, negotiate, enter into, and perform its obligations under, an Interconnection Agreement and such other agreements, including system upgrade agreements, with the Transmission Provider as may be needed to enable Seller to transmit Energy to the Delivery Point.

(b) Anticipated Nameplate Capacity. Seller shall use Commercially Reasonable Efforts to cause the Installed Capacity to be equal to the Anticipated Nameplate Capacity on the Commercial Operation Date.

(c) Commercial Operation Conditions. Commercial Operation will be deemed to have occurred on the date on which Seller has provided written notice to Buyer that all of the following conditions (the “Commercial Operation Conditions”) have been satisfied:

- (i) Seller is qualified and registered as a “Resource Entity” in accordance with the ERCOT Protocols, and Seller has provided written notification to Buyer that ERCOT has approved Seller’s request to commence commercial operation in accordance with Part 3 of ERCOT’s New Generator Commissioning Checklist.
- (ii) The Facility has been registered with ERCOT and the PUCT to receive RECs and Compliance Premiums for the Energy it produces.
- (iii) An officer of Seller or of an Affiliate of Seller, as applicable, that is familiar with the Facility has certified in writing to Buyer that (A) Exhibit A, as updated pursuant to Section 7.1(b), accurately describes the equipment and characteristics of the Facility, (B) Seller is not in breach of its obligations under the Interconnection Agreement, (C) Seller has obtained all Permits required to be obtained by Seller to construct and operate the Facility in compliance with applicable requirements of Applicable Law, this Agreement, and Prudent Electrical Practice, and all such Permits are in full force and effect, and (D) Seller is in compliance with the terms and conditions of this Agreement in all material respects.
- (iv) The interconnection of the Facility to the Transmission System has been completed and commissioned in accordance with the Interconnection Agreement.
- (v) Seller has provided to Buyer certificates of insurance evidencing the coverages required by Section 7.1(e).
- (vi) Seller has transferred Credit Support to Buyer having an aggregate value then outstanding equal to the Seller Operating Period Credit Support.

(d) Reports. Commencing on the Commercial Operation Date, within 30 days after the end of each calendar month during the Delivery Term (each, a “Reporting Month”), Seller shall provide to Buyer a report in electronic format, which report shall include (i) summaries of the actual solar insolation for the Facility and the predicted electrical output based on such data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility’s computer monitoring system, (ii) the Metered Output for such Reporting Month, (iii) summaries of any other significant events related to the operation of the Facility for the Reporting Month, and (iv) any supporting information that Buyer may from time to time reasonably request (including historical solar insolation data for the Facility).

7.5 Performance Guaranties

(a) IE Report. Seller shall deliver the IE Report pursuant to which will be established the Benchmark Quantity for all Contract Years of the Delivery Term, including the methodology and all calculations used to determine such Benchmark Quantity. The Benchmark Quantity will be reflected for each Contract Year in Exhibit E.

(b) The quantity of Delivered Energy that Seller expects to be able to deliver to Buyer each Contract Year shall be the Benchmark Quantity (in MWh) reduced by [REDACTED] for each Contract Year subsequent the first (1st) Contract Year and (ii) any quantity of Energy (in MWh) not generated at the Facility or, if capable of being generated, was not capable of being delivered to the Delivery Point, due to an applicable Excused Condition (the "Contract Quantity"). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) for each Contract Year during the Delivery Term ("Performance Measurement Period"), commencing at the end of the first (1st) Contract Year, subject, in all cases, to reduction due to any one or more applicable Excuse Conditions. "Guaranteed Energy Production" or "GEP" means an amount of Energy, as measured in MWh for each Performance Measurement Period, as described by the following formula:

Guaranteed Energy Production [REDACTED]

(c) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Seller shall promptly notify Buyer of such failure.

(d) Seller shall pay to Buyer, as Buyer's sole and exclusive remedy in connection with a GEP Failure, GEP Damages calculated pursuant to Exhibit G, subject in all cases to the Maximum GEP Damages Cap.

(e) The Parties agree that the damages sustained by Buyer associated with Seller's failure to achieve the Guaranteed Energy Production requirement may be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages or, in the alternative, Seller shall provide compensation in a manner as agreed to by both Buyer and Seller. In no event shall Buyer be obligated to pay GEP Damages.

(f) Within no less than sixty (60) days after the end of the applicable Performance Measurement Period, Buyer shall provide notice to Seller in writing of the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the notice. Disputes with respect to the existence of a GEP Failure or the calculation of GEP Damages shall be resolved in accordance with Article 11.

7.6 Obligation to Schedule and Deliver

(a) Sharing of Operating Data and Generation Forecasts. During the Delivery Term, Seller shall share with Buyer real-time operating data from the Facility. If Seller delivers forecasts of generation to any entity (e.g., the Transmission Provider), then Seller shall also deliver such forecasts to Buyer.

(b) Operating Procedures. The Parties shall use Commercially Reasonable Efforts to agree to scheduling and operating procedures for the Facility encompassing the general operating parameters of the

Facility, applicable requirements of the ERCOT Protocols and processes and procedures for the scheduling and delivery of the Products (the “Operating Procedures”) no later than sixty (60) days prior to the Anticipated COD, which Operating Procedures will apply during entirety of the Delivery Term, subject to any subsequent mutual modification by the Parties. For the avoidance of doubt, the failure of the Parties to agree to and implement such Operating Procedures with the foregoing sixty (60) day-period shall not be or give rise to an Event of Default by either Party.

(c) Planned Outages. Within a Commercially Reasonable time prior to the Commercial Operation Date, Seller shall provide Buyer with a schedule of all Planned Outages at the Facility for the period running from the Commercial Operation Date through and including the first Contract Year. Thereafter, a schedule of all Planned Outages for each subsequent Contract Year will be provided by Seller to Buyer within a Commercially Reasonable time prior to the beginning of each such subsequent Contract Year. Seller shall not schedule any Planned Outages unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties, (iii) such outage is required in accordance with Prudent Electrical Practices, or (iv) the Parties agree otherwise in writing. Seller shall use Commercially Reasonable Efforts to schedule Planned Outages to maximize the productive output of the Facility and no Planned Outages will be permitted between May 15th and September 31st of each Contract Year, subject only to the provisos (i) and (iv) above. Seller shall give Buyer immediate notice (within one hour or as soon as otherwise reasonably practicable) of any Forced Outage or any other applicable Excused Condition at the Facility if such events will curtail or adversely affect scheduled Energy deliveries to Buyer or any Energy forecasts previously provided to Buyer. Such notice must include a reasonable description of the Forced Outage or other applicable Excused Condition and an estimate of the duration of the outage due to such Forced Outage or other applicable Excused Condition. Seller shall provide Buyer updates regarding any material changes that impact the status of any Planned Outage set forth in the initial notice. Seller shall use Commercially Reasonable Efforts to avoid or mitigate outages due to any Excused Condition that may be within its control during the Delivery Term.

(d) Curtailement.

- (i) Subject to clause (iv) below, neither Party shall be liable to the other Party for any losses or damages due to the issuance of a System Curtailment Order. In such case, the System Curtailment will be treated by the Parties as a Force Majeure Event.
- (ii) Except as set forth in this Section 7.6(d), Seller shall not curtail or interrupt deliveries of Energy from the Facility as required by this Agreement for economic reasons of any type whatsoever; provided Seller’s obligation to generate, deliver and sell to Buyer the Energy from the Committed Capacity shall be excused during the hours of any Excused Condition. Buyer shall have no obligation to purchase the Energy from the Facility during any applicable Excused Condition.
- (iii) Subject to the provisions of clause (v) below, Seller shall reduce generation from the Facility as required pursuant to a Buyer Curtailment Order, provided that Buyer shall pay Seller the Contract Price for Deemed Delivered Energy associated with a Buyer Curtailment Period. Buyer shall notify Seller, by telephonic communication or other method as may be set forth in the Operating Procedures, of a Buyer Curtailment Order, but in no event later than thirty (30) minutes prior to the effectiveness of such Buyer Curtailment Order. In all cases involving a Buyer Curtailment, Seller shall reduce the Energy delivered by Seller to Buyer at the Delivery Point to the level

stated by Buyer in such Buyer Curtailment Order. During any such period Buyer Curtailment Periods, Seller shall have the right (but shall have no obligation) to make available, for sale, for resale or any other purpose, any rights and commercial benefits associated with Products, including Environmental Attributes, Capacity Attributes, and Ancillary Services, to the extent permitted under Applicable Law or ERCOT Protocols.

- (iv) Seller shall at all times during the Term comply with the directives of the Transmission Provider and the Reliability Entities given pursuant to the Interconnection Agreement. Seller will notify Buyer, as soon as reasonably practicable, but in no event later than thirty (30) minutes, by telephonic communication or other method as may be set forth in the Operating Procedures, of a System Curtailment Order, upon receipt of such direction by Seller (or Seller's QSE) as the market participant registered by Transmission Provider for the Facility. In all cases involving a System Curtailment, Seller shall reduce the Energy output delivered by Seller to Buyer and any co-offtaker at the Delivery Point(s) on a non-discriminatory, pro-rata basis to the level stated in the System Curtailment Order. The Buyer shall have no obligation to purchase the Energy from the Facility during a System Curtailment event save and except to the extent that the foregoing pro-rata basis reduction in the output of the Facility results in Seller's ability to generate and deliver to the Delivery Point any quantity of Energy, in which event Buyer will be obligated to purchase that portion of the Energy so generated and delivered.
- (v) In its compliance with Applicable Law or ERCOT Protocols, Seller shall have the right to disregard a Buyer Curtailment Order if, in the Commercially Reasonable opinion of Seller, Seller's compliance with any such Buyer Curtailment Order would subject Seller to being liable for any penalties or fines imposed on Seller by any Governmental Authority and or the potential for any actual direct damages to be suffered by Seller as a result of complying with a Buyer Curtailment Order. Seller's failure to comply with a Buyer Curtailment Order in accordance with the provisions of this clause (v) shall not result in an Event of Default hereunder by Seller.
- (vi) If Seller fails to comply with the curtailment directives and instructions of a System Curtailment Order, the result of which is the imposition on Buyer of any penalties or fines by any Governmental Authority or Buyer suffering any actual direct damages, Seller shall be liable to Buyer for the reimbursement of any and all of the foregoing. Seller's failure to comply with a System Curtailment Order shall not be an Event of Default by Seller; provided, Seller's failure to reimburse Buyer for any such actual direct damages, including any fines or penalties incurred by Buyer as a result of Seller's failure to comply shall be considered a default by Seller under this Agreement in accordance with Section 9.1(a).

(e) Operation of the Facility. Seller shall operate and maintain the Facility in accordance with Prudent Electrical Practice and Applicable Laws.

7.7 **Publicity**

The Parties shall not, and shall cause its respective Affiliates to not, issue or make any public announcement, press release, or statement regarding this Agreement unless the public announcement, press release, or statement is either (a) issued jointly by the Parties or (b) before the release of the public announcement, press release, or statement, the releasing Party furnishes the other Party with a copy of such announcement, press release or statement, and obtains such other Party's approval with respect thereto. Notwithstanding the foregoing, no Party is prohibited from issuing or making any such public announcement, press release or statement, without obtaining approval from the other Party, if it is necessary to do so to comply with Applicable Laws (including in connection with the issuance of any Permit), legal proceedings or rules and regulations of any Governmental Authority or stock exchange having jurisdiction over such Party or any of its Affiliates, or if it is necessary to do so in connection with such Party's or its Affiliates' financial statements. The Parties agree that the Buyer must strictly comply with the obligations of the Texas Public Information Act as set forth in Chapter 552 of the Texas Government Code as such may be amended from time to time or its successor statute.

ARTICLE 8 FORCE MAJEURE EVENTS

8.1 **Force Majeure Events**

(a) **Excuse.** Subject to Section 8.2, and except as expressly set forth herein, neither Party will be considered to have breached its obligations under this Agreement if performance of its obligations is prevented due to a Force Majeure Event. For the avoidance of doubt, Buyer obligations under Section 5.2 will not be excused by any Force Majeure Event.

(b) **Definition.** For purposes of this Agreement, "Force Majeure Event" means, subject to Section 8.1(c), any System Curtailment pursuant to Section 7.6(d) and any event or circumstance that wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent that: (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligations excused; (ii) the Party seeking to have its performance obligations excused has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement, and which by the exercise of reasonable diligence such Party could not reasonably have been expected to avoid or overcome; and (iii) such event is not the direct or indirect result of the negligence or the failure of, or is caused by, the Party seeking to have its performance obligations excused. Force Majeure Events may include, to the extent consistent with the foregoing requirements, but are not limited to:

- (i) acts of a public enemy, war (whether declared or not), insurrection, riot, civil disturbance, rebellion, violent demonstrations, revolution, sabotage, or terrorist action;
- (ii) acts of God, including any effect of unusually severe natural elements, including earthquakes, floods, hurricanes, pandemics, epidemics, or similar cataclysmic occurrences;
- (iii) emergencies (including transmission load relief events and minimum generation emergencies) declared by the Transmission Provider or any other authorized

This document and any attachments or exhibits thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Facility or making it impossible for the Transmission Provider to transmit energy, including Energy to be delivered pursuant to this Agreement;

- (iv) strikes, work stoppages or labor disputes limited to any one or more of Seller, Seller's Affiliates or any other third party employed by Seller to work on the Facility or contracted by Seller to provide supplies or equipment for the Facility; and
- (v) breakage or failure of equipment, including a serial defect, insofar as such events actually do qualify as Force Majeure Events hereunder.

(c) **Exclusion.** Notwithstanding the definition set forth in Section 8.1(b), a Force Majeure Event does not include, and may not be based on, the following events or conditions:

- (i) Seller's ability to sell any or all of the Products at a price greater than the price set forth in this Agreement;
- (ii) Buyer's ability to purchase any or all of the Products at a price lower than the price set forth in this Agreement;
- (iii) The economic hardship of a Party;
- (iv) loss of Buyer's markets or reduction of Buyer's electricity usage; and
- (v) Seller's inability to obtain sufficient labor, equipment, materials or other resources necessary to build and operate the Facility (including the timely availability or delivery of any one or all of the foregoing) is caused by a Force Majeure Event of the specific type described in Section 8.1(b) above or as may be claimed by the relevant supplier pursuant to the force majeure provisions and/or related concepts of any of Seller's material equipment purchase contracts or the BOP/EPC Contract.

8.2 **Conditions; Resolution**

(a) **Claims of Force Majeure.** In addition to the conditions set forth in Section 8.1(a) and in the definition of Force Majeure Event, a Party may rely on a claim of a Force Majeure Event for purposes of this Agreement only to the extent that such Party:

- (i) provides prompt notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement and, if applicable, the construction and operation of the Facility; and
- (ii) provides timely updates during the continuance of the Force Majeure Event or its consequences that (A) summarize the measures taken by the affected Party and that the affected Party plans to take in order to mitigate the impact of such Force Majeure Event and (B) provide an estimate of the expected duration of the period during which the performance by the affected Party of its material obligations under this

Agreement will be prevented or the construction or operation of the Facility, as applicable, will be adversely affected due to the Force Majeure Event.

(b) Effect of Force Majeure Event. Upon making a proper claim pursuant to Section 8.2(a), such Party's obligations of performance, only to the extent such performance is excused by the Force Majeure Event, shall be suspended for the duration of the Force Majeure Event, subject to the termination rights under Section 8.3. To the extent that a third-party to whom a Party's performance under this Agreement is reliant upon claims excused performance due to an event that would otherwise qualify as a Force Majeure Event under this Agreement, the affected Party shall be considered to have suffered a Force Majeure Event under this Agreement, provided that the other Party is promptly notified of such event in accordance with Section 8.2(a).

(c) Resumption of Performance. The affected Party shall provide prompt notice to the other Party once it is able to resume performance of its obligations following the occurrence of a Force Majeure Event or the impact on the construction or operation of the Facility resulting from such Force Majeure Event is resolved, as applicable.

8.3 Termination Due To Force Majeure Event

(a) Pre-Commercial Operation Date. If, prior to the Commercial Operation Date, Seller is prevented from performing its material obligations under this Agreement in order to achieve Commercial Operation [REDACTED] or more due to a Force Majeure Event, Seller may terminate this Agreement, without liability of either Party to the other Party (other than for obligations that arose prior to termination), with immediate effect.

(b) Post-Commercial Operation Date. In addition to and without limiting any other provisions of this Agreement, if, following the occurrence of the Commercial Operation Date, a Party is prevented from performing its material obligations under this Agreement for a [REDACTED] days or more due to a Force Majeure Event, the unaffected Party may terminate this Agreement, without liability of either Party to the other Party (other than for obligations that arose prior to termination), upon no less than 30 days' written notice given at any time while such performance continues to be prevented following the end of the 365-day period, except that (i) if prior to the expiration of such 365-day period, the affected Party has delivered to the unaffected Party a certificate of an independent engineer certifying that any remaining repairs or other remediation efforts necessary for the affected Party to resume performance of its obligations under this Agreement can be completed within an additional 180-day period following the expiration of the initial 365-day period, then the unaffected Party may not exercise its right to terminate this Agreement under this Section 8.3(b) unless the affected Party's performance remains prevented following the expiration of such [REDACTED], and (ii) if the affected Party has provided notice that it is able to resume performance of its obligations, and thereafter resumes such performance, as required by Section 8.2(c) prior to the early termination date designated in such notice, then this Agreement will not terminate.

ARTICLE 9
DEFAULT, REMEDIES, AND TERMINATION

9.1 Events of Default Generally

(a) Mutual Events of Default. The occurrence with respect to a Party of any of the following events or conditions constitutes an event of default with respect to such Party (the events and conditions set forth in this Section 9.1(a) and Section 9.1(b), each an “Event of Default”):

- (i) such Party fails to make when due any payment (other than amounts disputed in good faith) due and owing under this Agreement, and such failure is not cured by such Party within 10 days of the other Party notifying such Party of such failure;
- (ii) any representation or warranty made by such Party in this Agreement is not true in all material respects as of the date made and such inaccuracy is not cured within 30 days after the other Party notifying such Party of such inaccuracy, which notice sets forth in reasonable detail the nature of the inaccuracy (provided, that if such default is not reasonably capable of being cured within such 30-day cure period but is reasonably capable of being cured within a 90-day cure period, the defaulting Party will have such additional time (not exceeding an additional 60 days) as is reasonably necessary to cure such default, if, prior to the end of the 30-day cure period the defaulting Party promptly commences and diligently pursues the cure of any such inaccurate representation or warranty;
- (iii) such Party is in material breach of its obligations under this Agreement (other than an obligation to make payment or an obligation that is otherwise specifically set forth as a separate Event of Default or for which there is an exclusive remedy) and such material breach is not remedied within 30 days after the other Party notifies such Party of such material breach, which notice sets forth in reasonable detail the nature of such material breach (provided, that if such default is not reasonably capable of being cured within the 30-day cure period but is reasonably capable of being cured within a 90-day cure period, the defaulting Party will have such additional time (not exceeding an additional 60 days) as is reasonably necessary to cure such default, if, prior to the end of the 30-day cure period the defaulting Party promptly commences and diligently pursues the cure of any such material breach of the obligations identified by the other Party;
- (iv) such Party becomes Bankrupt;
- (v) such Party fails to timely perform any of its obligations under Article 6; or
- (vi) such Party assigns or otherwise transfers this Agreement other than in accordance with Section 11.4.

(b) Seller Events of Default. In addition to the foregoing, the occurrence with respect to Seller of any of the following events or conditions constitutes an Event of Default with respect to such Seller:

- (i) Seller's Abandonment of construction or operation of the Facility and such failure continues for 30 days after Seller's receipt of written notice thereof from Buyer; and
- (ii) Seller fails to maintain insurance coverages required by Section 7.1(e) and such failure continues for 10 Business Days after Seller's receipt of written notice thereof from Buyer.

9.2 **Remedies; Termination for Default**

(a) **Termination for Default.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party ("Non-Defaulting Party") may, subject to Section 9.3: (i) suspend performance of its obligations under this Agreement; (ii) withhold to the extent of its damages under this Agreement the payment of any amounts due to the Defaulting Party; (iii) by delivery of written notice to the Defaulting Party, designate a date no earlier than 30 days after the notice is deemed delivered as the early termination date in respect of this Agreement; (iv) exercise any other remedies as may be available to the Non-Defaulting Party under this Agreement or Applicable Law; or (v) exercise any combination of the foregoing.

(b) **Remedies.** Subject to Section 7.3(c), upon termination of this Agreement in connection with an Event of Default, the Non-Defaulting Party shall calculate its Economic Loss and Costs, if any, in respect of this Agreement. The Non-Defaulting Party shall aggregate all amounts owing between the Parties under this Agreement into a single amount by netting (i) all amounts due to the Defaulting Party under this Agreement, including, at the option of the Non-Defaulting Party, any Credit Support available to the Non-Defaulting Party against (ii) all amounts due to the Non-Defaulting Party under this Agreement, including the Non-Defaulting Party's Economic Loss and Costs, if any, such that all amounts due between the Parties are netted into a single amount (the "Termination Amount") payable by one Party to the other Party. As soon as practicable following termination, but not later than 30 days thereafter, the Non-Defaulting Party shall provide an invoice to the Defaulting Party specifying the Termination Amount due to or from the Defaulting Party and a written statement explaining in reasonable detail the calculation of the Termination Amount. If the Defaulting Party owes the Termination Amount to the Non-Defaulting Party, the Defaulting Party shall pay the Termination Amount within 10 Business Days following the Defaulting Party's receipt of the Non-Defaulting Party's invoice. If the Non-Defaulting Party owes the Termination Amount to the Defaulting Party, the Non-Defaulting Party shall pay the Termination Amount within 10 Business Days following the Defaulting Party's receipt of the Non-Defaulting Party's invoice. For purposes of the foregoing:

"Costs" means, with respect to the Non-Defaulting Party, the Commercially Reasonable brokerage fees, commissions, and other similar transaction costs and expenses incurred by the Non-Defaulting Party to a Person other than a Party or an Affiliate of such Party in connection with terminating any arrangement pursuant to which it has hedged its obligations under this Agreement or in entering into new arrangements to replace this Agreement, and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement. For the avoidance of doubt, Buyer is entering into this Agreement as a hedge against its obligation to serve Buyer's customers as an LSE.

"Economic Loss" means, with respect to the Non-Defaulting Party, the amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the early termination of this Agreement. If Seller is the Non-Defaulting Party, its economic loss will be the

positive amount, if any, equal to (x) the present value of the payments it would receive under this Agreement for Product *minus* (y) the present value of the payments it would receive for Product under transactions replacing this Agreement, in each case for the period from the early termination date through the scheduled end of the Delivery Term and determined by Seller in a Commercially Reasonable manner. If Buyer is the Non-Defaulting Party, its economic loss will be the positive amount, if any, equal to (x) the present value of the payments it would be required to make under transactions replacing this Agreement *minus* (y) the present value of the payments it would be required to make for Product under this Agreement, in each case for the period from the early termination date through the scheduled end of the Delivery Term and determined by Buyer in a Commercially Reasonable manner. The Non-Defaulting Party is not required to enter into any replacement transaction in order to determine its Economic Loss; *provided; however*, for the avoidance of doubt, in calculating Economic Loss hereunder, only the value of the payments associated with any transactions replacing this Agreement, whether entered into by Buyer or Seller hereunder, shall be included in any such calculation and neither Party shall be entitled to include any Costs associated with any such transactions in the calculation of Economic Loss.

9.3 Limitations

(a) GENERAL LIMITATION. TO THE EXTENT ALLOWED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY APPLICABLE IMMUNITY, THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED FOR IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO THE NON-DEFAULTING PARTY, WITH THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED AND DISCLAIMED. UNLESS EXPRESSLY HEREIN PROVIDED AND EXCEPT WITH RESPECT TO CLAIMS FOR INDEMNIFICATION UNDER SECTION 9.4, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES A PARTY IS REQUIRED TO PAY HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS AND ARE NOT AND NOT INTENDED TO BE A PENALTY.

(b) PRE-COMMERCIAL OPERATION DATE LIMITATION. PRIOR TO THE OCCURRENCE OF THE COMMERCIAL OPERATION DATE, SELLER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT OR ANY CLAIMS ARISING HEREUNDER REGARDLESS OF THE

NATURE OF SUCH CLAIMS FOR DAMAGES IS LIMITED TO AND SHALL NOT EXCEED THE MAXIMUM PRE-COD DAMAGES CAP, NOTWITHSTANDING THE CREDIT SUPPORT AMOUNT THEN APPLICABLE TO SELLER.

9.4 **Indemnification**

(a) **Indemnification by Seller.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER, AND EACH OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES (COLLECTIVELY, THE “**BUYER INDEMNITEES**”), FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, ACTIONS, SUITS, DEMANDS, LOSSES, LIABILITIES, DAMAGES, FINES, PENALTIES, EXPENSES, LIENS, SECURITY INTERESTS, ENCUMBRANCES, OR OTHER ADVERSE CLAIMS (INCLUDING REASONABLE LEGAL COSTS AND ATTORNEYS’ FEES, BOTH AT TRIAL AND ON APPEAL) (COLLECTIVELY, “**LOSSES**”), ACTUALLY OR ALLEGEDLY RESULTING FROM, OR ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, (I) THE PERFORMANCE BY SELLER OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR (II) FOR OR ON ACCOUNT OF INJURY, BODILY OR OTHERWISE, TO, OR DEATH OF ANY PERSON WITHIN OR BEING A PART OF THE BUYER INDEMNITEES, EXCEPTING ONLY TO THE EXTENT SUCH LOSSES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY PERSON WITHIN OR CONSTITUTING ANY ONE OF THE BUYER INDEMNITEES.

(b) **INDEMNIFICATION BY BUYER.** TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS OF THE STATE OF TEXAS AND WITHOUT WAIVING ANY APPLICABLE IMMUNITIES, BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER, ITS AFFILIATES, AND EACH OF ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES (COLLECTIVELY, THE “**SELLER INDEMNITEES**” TOGETHER WITH BUYER INDEMNITEES, WHETHER ONE OR MORE, THE “**INDEMNITEE**”) FROM AND AGAINST ANY AND ALL LOSSES ACTUALLY OR ALLEGEDLY RESULTING FROM, OR ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, (I) THE PERFORMANCE BY BUYER OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR (II) FOR OR ON ACCOUNT OF INJURY, BODILY OR OTHERWISE, TO, OR DEATH OF, ANY PERSON WITHIN OR BEING A PART OF THE SELLER INDEMNITEES, EXCEPTING ONLY TO THE EXTENT SUCH LOSSES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY PERSON WITHIN OR CONSTITUTING ANY ONE OF THE SELLER INDEMNITEES.

(c) **ADDITIONAL CROSS INDEMNITY.** WITHOUT LIMITING **SECTIONS 9.4(A)** AND **9.4(B)**, SELLER SHALL RELEASE, INDEMNIFY AND HOLD HARMLESS THE BUYER INDEMNITEES FROM AND AGAINST ALL LOSSES RELATED TO PRODUCT PRIOR TO ITS DELIVERY BY SELLER AT THE APPLICABLE DELIVERY POINT, AND BUYER, SUBJECT TO THE LAWS OF THE STATE OF TEXAS AND WITHOUT WAIVING ANY APPLICABLE IMMUNITIES SHALL RELEASE, INDEMNIFY AND HOLD HARMLESS THE SELLER INDEMNITEES FROM AND AGAINST ALL LOSSES RELATED TO PRODUCT DELIVERED TO BUYER AT AND AFTER THE APPLICABLE DELIVERY POINT, EXCEPT IN EACH CASE TO THE EXTENT SUCH LOSSES ARE ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR A BREACH OF THIS AGREEMENT BY ANY MEMBER OF THE BUYER INDEMNITEES OR THE SELLER INDEMNITEES, RESPECTIVELY, SEEKING INDEMNIFICATION.

(d) **Procedure.** An Indemnitee that becomes entitled to indemnification or defense under this **Section 9.4** must notify the Indemnifying Party of any claim or proceeding in respect of which it is to be indemnified or defended as soon as reasonably practicable after the Indemnitee obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice shall not excuse the obligation of

the Indemnifying Party to indemnify or defend the Indemnitee except to the extent failure to provide notice adversely affects the Indemnifying Party's interests in a material respect. The Indemnifying Party shall, within 30 days after the date the Indemnifying Party is notified of any such claim, assume the defense thereof with counsel designated by the Indemnifying Party but reasonably acceptable to the Indemnitee; except that if the defendants in any such action include both the Indemnitee and the Indemnifying Party or if the claim seeks an order of injunctive relief or other equitable remedies, involves criminal liability, or involves any Governmental Authority, then the Indemnitee shall have the right to select and be represented by separate counsel designated by the Indemnitee, at the expense of the Indemnitee. If the Indemnifying Party fails to assume the defense of a claim as required under this Agreement, the Indemnitee may, at the expense of the Indemnifying Party, contest, settle, or pay such claim, subject, in all cases, to the Indemnitee providing its consent to any such action and that any such action does not adversely or materially disadvantage the Indemnifying Party. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

ARTICLE 10 REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller Representations, Warranties and Covenants

(a) General Representations. Seller represents and warrants to Buyer as of the Execution Date and throughout the Term that:

- (i) Seller is duly organized and validly existing as a limited liability company under the laws of the State of Texas, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (ii) Subject to the satisfaction of the Condition Precedent set out in Section 2.1(c), Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and, all such actions have been duly authorized by all necessary proceedings on its part;
- (iii) this Agreement has been duly and validly executed and delivered by Seller and, as of the Execution Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, subject only to the satisfaction of the Condition Precedent set out in Section 2.1(c) and except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (iv) there are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;

This document and any attachments or exhibits thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

- (v) the execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;
- (vi) there is no proceeding under applicable bankruptcy or insolvency laws contemplated by Seller or, to Seller's knowledge, threatened against it;
- (vii) neither it nor any of its employees, agents, or other Representatives have offered or given, or will offer or give, any gratuities to Buyer's employees, agents or other Representatives for the purpose of securing the Agreement or securing favorable treatment under this Agreement;
- (viii) Seller has or will have all legal rights necessary for the Seller to enter upon and occupy the Site for the purpose of constructing, operating and maintaining the Facility for the Term;
- (ix) Seller shall maintain all leases or other land grants necessary for the construction, operation and maintenance of the Facility as valid for the Term;
- (x) Seller has previously entered into the Interconnection Agreement for the Facility and shall maintain the Interconnection Agreement as valid for the Term; and
- (xi) Seller warrants that the Committed Capacity will be made exclusively available to Buyer at all times during the Term.

(b) Additional Seller Representations, Warranties and Covenants. Seller further represents and warrants to Buyer as of each delivery of any Product under this Agreement that:

- (i) Seller has (or will have prior to the Commercial Operation Date), to the extent required under Applicable Law, all required regulatory authority to make wholesale sales of Energy from the Facility;
- (ii) the Products are being delivered to Buyer free and clear of any liens, other encumbrances, or defects in title;
- (iii) the Facility satisfies the definition of a "renewable resource" under the Applicable RPS and the requirements for eligibility to produce RECs under the Applicable RPS, in each case, as of the date of such delivery; *provided, however*, unless otherwise adopted in accordance with the provisions of Section 3.3(f), Seller makes no representation, warranty or covenant as to the eligibility of the Facility to satisfy or otherwise be in compliance with any Future RPS or the Facility's eligibility to produce, generate or have issued Future Environmental Attributes under any such Future RPS;
- (iv) the RECs and other Environmental Attributes delivered to Buyer meet the requirements of the Applicable RPS as of the date of such delivery;

- (v) the Environmental Attributes delivered to Buyer have not been sold, retired, claimed, or represented as a part of any electric product or sales, or used to satisfy any renewable energy, greenhouse gas, or other environmental attributes obligation under any applicable voluntary program in any jurisdiction or any Applicable Laws; and
- (vi) Seller, and any guarantor of its obligations under this Agreement, if any, is an “eligible contract participant” as that term is defined in the United States Commodity Exchange Act, as modified and amended from time to time.

10.2 **Buyer Representations and Warranties**

Buyer represents and warrants to Seller as of the Execution Date and throughout the Term that:

- (i) Buyer is duly organized and validly existing as a municipal corporation under the laws of the State of Texas, and has the lawful power to engage in the business it presently conducts and contemplates conducting for all purposes of this Agreement and is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (ii) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part and as required by it under Applicable Laws, including, but not limited to, its receipt of all authorizations required to be obtained from the City Council of Buyer;
- (iii) this Agreement has been duly and validly executed and delivered by Buyer and, as of the Execution Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent (A) that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity or (B) of certain constitutional limitations to which Buyer is subject requiring the City Council of Buyer to approve a budget for each fiscal year during the Term, in which budget Buyer reflects its payment obligations hereunder as operating expenses associated with its continuing obligations to purchase the Products and Buyer (through its staff and other applicable Representatives) uses its Commercially Reasonable Efforts to obtain such budgetary approval by the City Council;
- (iv) there are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer’s ability to perform its obligations under this Agreement;
- (v) the execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any Applicable Laws to which it is subject,

or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;

- (vi) there is no proceeding under applicable bankruptcy or insolvency laws contemplated by Buyer or, to Buyer's knowledge, threatened against it;
- (vii) Buyer is an "eligible contract participant" as that term is defined in the United States Commodity Exchange Act, as modified and amended from time to time; and
- (viii) Buyer's obligations under this Agreement are and shall qualify as operating expenses of Buyer in relation to the purchase of the Products by Buyer which enjoy first priority payment at all times under any and all bond or other ordinances and indentures to which Buyer is a party.

10.3 **Limitation on Representations**

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE MADE BY SELLER AS TO THE PRODUCTS, AND ANY AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED AND WAIVED IN ALL RESPECTS.

ARTICLE 11 MISCELLANEOUS

11.1 **Notices**

All written notices, requests, statements, demands, and other communications under this Agreement must, unless otherwise specified herein, be delivered in person, sent by reliable overnight courier, registered or certified mail, postage prepaid, or electronic mail to the address of the Party specified in Exhibit D. Notice by hand delivery is effective at the close of business on the day actually received by the recipient, if received during a Business Day, and otherwise shall be effective at the beginning of the next Business Day. Notice by overnight United States mail or courier is effective on the next Business Day after it was sent. Notice by registered or certified mail, postage prepaid, shall be effective on the third Business Day after it was sent. Notice sent by facsimile transmission or electronic mail will be recognized and shall be deemed effective at the close of business on the day actually received by the recipient, if received during a Business Day, and otherwise shall be effective at the beginning of the next Business Day. A Party may change its addresses by providing written notice of such change of address to the other Party in accordance herewith, but not less than 30 days prior to the effective date of any such change of address.

11.2 **Business Conduct Clauses**

(a) **Compliance with Laws**. Each Party shall at all times comply with all Applicable Laws, except to the extent such non-compliance is unrelated to or would not have a material adverse effect on such Party's ability to perform its obligations under this Agreement.

(b) **Anti-Bribery/Anti-Corruption/FCPA**. In furtherance of the foregoing, each Party shall comply with: (i) all Applicable Laws relating to anti-corruption or anti-bribery, including legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating

This document and any attachments or exhibits thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

Bribery of Foreign Public Officials in International Business Transactions” or other anti-corruption/anti-bribery convention; and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, (“FCPA”) (15 U.S.C. §§78dd-1, et. seq.). Each Party covenants not to directly or indirectly pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from the other Party to a non-U.S. public official or any person in violation of the FCPA or in violation of any Applicable Laws relating to anti-corruption or anti-bribery. As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

(c) Buyer Required Terms. In addition to the foregoing, Seller acknowledges and accepts the terms more fully set out in Exhibit B as additional business conduct clauses required by Buyer to be agreed to as part of this Agreement.

11.3 Confidentiality

(a) Obligation of Confidentiality. Each Party shall hold in confidence all Confidential Information of the other Party. The obligation of confidentiality extends to all Confidential Information, whether exchanged orally or in written or electronic form.

(b) Permitted Disclosure. Each Party has the right to disclose Confidential Information of the other Party to: (i) a Governmental Authority to the extent legally required by the Governmental Authority or under Applicable Law on the condition that, if appropriate, Commercially Reasonable Efforts are undertaken to receive confidential treatment by such Governmental Authority, (ii) its advisors, auditors, legal counsel and insurers, (iii) its Affiliates and its and their respective officers, directors, members, managers, employees and agents that have a need to know such information, (iv) its service providers to the extent required in connection with the performance of its obligations hereunder, (v) its partners, investors, lenders and bona fide potential investors and lenders; and (vi) bona fide potential purchasers (and their representatives) of a direct or indirect interest in receiving Party or, with respect to Seller, the Facility. The right of the receiving Party to disclose Confidential Information pursuant to clauses (ii) through (vi) hereof is subject to the condition that the recipient must agree, or otherwise have an obligation, to maintain the confidentiality of the Confidential Information consistent with the terms hereof.

(c) Liability for Breach. Each Party, as the receiving Party, is liable for any failure by a recipient of Confidential Information disclosed by the receiving Party (other than a Governmental Authority) to maintain the confidentiality of such Confidential Information in accordance with the requirements of this Section 11.3.

(d) Remedies. The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations contained in this Section 11.3.

(e) Prior Agreements. To the extent that the Parties are party to or otherwise bound by the terms of any agreement regarding confidentiality regarding the subject matter of this Agreement, any such agreement between the Parties is replaced and superseded by the confidentiality provisions of this Section 11.3 and in the event that the Parties are otherwise bound by the terms of an agreement regarding confidentiality, as between the Parties, such other agreement will no longer apply to this Agreement (save for any breach or default thereunder by a Party arising prior to the Execution Date, which breach or default shall remain subject to the terms of such prior agreement), and the obligations of the Parties regarding confidentiality will instead be replaced and superseded by the obligations under this Section 11.3.

11.4 Assignment

(a) Consent Required. Except as provided in this Section 11.4, neither Party may assign or otherwise transfer this Agreement without the other Party's prior written consent, which consent may not be unreasonably delayed, conditioned or withheld. During the development phase of the Facility and at all times prior to the Commercial Operation Date, Seller may not assign this Agreement to a Permitted Transferee without consent of Buyer, such consent not to be unreasonably withheld. Any assignment or other transfer in violation of this provision is null and void.

(b) Permitted Assignment. Notwithstanding the foregoing:

- (i) Buyer's consent is not required for Seller to assign this Agreement (A) at any time during the Term for collateral purposes to a Facility Lender (including the assignment of the right of Seller to the payments to be made hereunder by Buyer for the Products), and (B) at any time after the Commercial Operation Date (1) to a Permitted Transferee generally or in connection with a sale of the Facility to such Permitted Transferee, or (2) to an Affiliate of Seller that has the ability to perform Seller's obligations under this Agreement, in each case (other than pursuant to a collateral assignment) subject to the condition that such assignee has assumed in writing all of the obligations of Seller under this Agreement (including Seller's obligations under Section 6.1) and agreed to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment. Seller shall notify Buyer of any such assignment by no later than 30 days after the assignment.
- (ii) Seller's consent is not required for Buyer to assign this Agreement to an Affiliate of Buyer, so long as such assignee has assumed in writing all of the obligations of Buyer under this Agreement (including Buyer's obligations under Section 6.2) and agreed to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment. Buyer shall notify Seller of any such assignment by no later than 30 days after the assignment.
- (iii) Following a permitted assignment under this Section 11.4(b), the assignee shall be fully released from all obligations and liabilities under this Agreement, save to the extent of any breach or Event of Default arising prior to the effective date of any such permitted assignment.

(c) Accommodation of Facility Lenders and Tax Equity Investors. To facilitate Seller's efforts to obtain financing to construct and operate the Facility, Buyer will make reasonable, good faith efforts to provide such consents to assignments, certifications, representations, estoppels, information or other documents as may be reasonably requested by Seller, a Facility Lender or Tax Equity Investor in connection with the financing of the Facility. Seller shall reimburse Buyer for the reasonable, out-of-pocket costs and expenses (including the fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution or delivery of any documents requested by Seller, a Facility Lender or Tax Equity Investor pursuant to this Section 11.4(c).

11.5 **Market Disruption Event**

If a Market Disruption Event occurs, the Parties shall negotiate in good faith with the objective of reaching agreement on a replacement Settlement Hub or other solution that, to the extent practicable, most closely reflects the intended allocation of market price risk (including the basis differential between the existing Settlement Hub and the Facility's pricing node) as is contemplated by the specified Settlement Hub under this Agreement. If after 30 days of negotiating in good faith, the Parties are unable to determine a replacement Settlement Hub or other solution, the Parties may pursue such other methods of dispute resolution to resolve the dispute as may be available. Until such time as the Parties have, following the occurrence of the Market Disruption Event, reached agreement regarding, and executed such amendment to this Agreement as is necessary to implement, the agreed replacement Settlement Hub or other solution, the Parties will not be required to schedule the delivery of the Committed Energy. Upon execution of such amendment to this Agreement as is necessary to implement the agreed replacement Settlement Hub or other solution, the Parties will in the next invoice issued pursuant to Section 5.1 make such payments as are required to settle retroactively to the occurrence of the Market Disruption Event based on the agreed replacement Settlement Hub or other solution.

11.6 **Waiver of Rights**

Failure by a Party to exercise any of its rights or remedies under this Agreement does not constitute a waiver of such rights or remedies. Neither Party will be deemed to have waived any right or remedy to which it may be entitled, any provision of this Agreement, or any failure of default of the other Party unless it has made such waiver specifically in writing or unless such waiver is specifically provided for under the terms of this Agreement.

11.7 **Section Headings**

The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein and are to be ignored for the purposes of construction.

11.8 **No Third Party Beneficiary**

This Agreement is for the sole and exclusive benefit of the Parties and is not intended to create a contractual relationship with, or cause of action or other rights in favor of, any Person other than the Parties.

11.9 **Forward Contract**

Each Party acknowledges, intends, and to the extent applicable agrees that: (a) this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" and each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; (b) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of Credit Support to any amounts due and owing to such Party, constitute "settlement payments" within the meaning of the United States Bankruptcy Code and all transfers of Credit Support by a Party or on its behalf under this Agreement constitute "margin payments" within the meaning of the United States Bankruptcy Code; and (c) its rights under Section 9.2 of this Agreement constitute a "contractual right to liquidate, terminate or accelerate" or "contractual right to liquidate, terminate, accelerate, or offset under a master netting agreement and across contracts" within the meaning of the United States Bankruptcy Code.

11.10 **Governing Law; Jury Waiver**

(a) **Governing Law.** THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION) GOVERN ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ITS INTERPRETATION, CONSTRUCTION, PERFORMANCE, AND ENFORCEMENT.

(b) **Jury Waiver.** EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE IMPLEMENTATION OF THIS AGREEMENT.

11.11 **Venue**

The Parties submit to the exclusive jurisdiction of the United States District Court for the Northern District of Texas, unless such court refuses jurisdiction, in which case the Parties submit to the exclusive jurisdiction of the courts of the State of Texas sitting in Denton County, Texas. Each Party waives (i) any objection it may have at any time to the laying of any suit, action, or other proceedings brought in any such court; (ii) any claim that such suit, action, or other proceeding has been brought in an inconvenient forum; and (iii) any right to object, with respect to such suit, action, or other proceeding, that the court does not have any jurisdiction over the Party. This **Section 11.11** does not prohibit a Party from bringing an action to enforce a money judgment in any other jurisdiction.

11.12 **Nature of Relationship**

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement will not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Neither Party has any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

11.13 **Severability**

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement will not be affected and will continue in full force and effect. The Parties shall, however, in good faith attempt to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

11.14 **Change in Law**

██████████ The Parties agree that the Contract Price will not be affected by any Change in Law, including any amendment, supplement or modification to an Applicable RPS (including a Future RPS that has been adopted by the Parties in accordance with **Section 3.3(f)**, that alters either Buyer's or Seller's costs in connection with this Agreement, Seller's operation of the Facility, or the value of the Product, including any Committed Capacity Attributes or Environmental Attributes delivered or transferred under this

Agreement, or affects in any other material way the purpose or economics of this Agreement (a “Change in Law”).

[REDACTED]

[REDACTED]

(c)

[REDACTED]

(d) For the avoidance of doubt,

[REDACTED]

[REDACTED]

11.15 **Counterparts**

This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original and all of which when taken together constitute but a single agreement. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually executed counterpart. This Agreement may be stored by the Parties electronically and the reproduction in tangible form of an electronically stored version of this Agreement will be deemed to be an “original” for all purposes.

11.16 **Dispute Resolution**

Any dispute under this Agreement between Seller and Buyer must, at the request of any Party, be referred to a senior representative of each of the Parties for resolution on an informal basis as promptly as practicable, with each such senior representative having the appropriate level of authority to resolve any such dispute. The negotiation between the Parties and any documents exchanged in connection with the negotiation are confidential and considered statements made in compromise and settlement negotiations within the meaning of the Federal Rule of Evidence 408 and any applicable state law evidentiary rules or doctrines. In the event the Parties are unable to satisfactorily resolve the dispute within 30 Business Days of such referral or such other period as the Parties may mutually agree, subject to any extensions of time as may be mutually agreed upon in writing, either Party may pursue such remedies as may be available to it under Applicable Law or in equity in order to resolve such dispute. Notwithstanding the foregoing, a

This document and any attachments or exhibits thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.

request to resolve a dispute on an informal basis does not restrict a Party's right to bring an action seeking injunctive relief in respect of this Agreement.

11.17 **Further Assurances**

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 11.17.

11.18 **Construction**

This Agreement was jointly prepared by the Parties by and through their respective legal counsel, and any uncertainty or ambiguity existing herein will not be interpreted against either Party on the basis that such Party drafted the language.

11.19 **Entire Agreement; Integration; Amendment and Restatement**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof is binding upon the Parties, unless such amendment, addition, or modification is in writing and signed by a duly authorized officer or representative of each Party.

[signature page follows]

The Parties have caused this Power Purchase Agreement to be executed by their duly authorized Representatives as of the Execution Date.

SELLER:

**YELLOW VIKING DEVELOPMENT ONE,
LLC**

By: _____
Name: _____
Title: _____

BUYER:

CITY OF DENTON, TEXAS

By: _____
Name: _____
Title: _____

Exhibit A

DESCRIPTION OF THE FACILITY

Facility Name: Yellow Viking Development One

Anticipated Nameplate Capacity: [REDACTED]

Owner: Yellow Viking Development One, LLC

Location: [REDACTED]

Technology: Single axis bifacial PV. Subject to the terms and conditions of this Agreement, the Facility design, equipment selection, and planned operations are decisions made at Seller's sole discretion.

Description of the Site: The Site consist of approximately [REDACTED] located approximately at the coordinates [REDACTED]

Map:

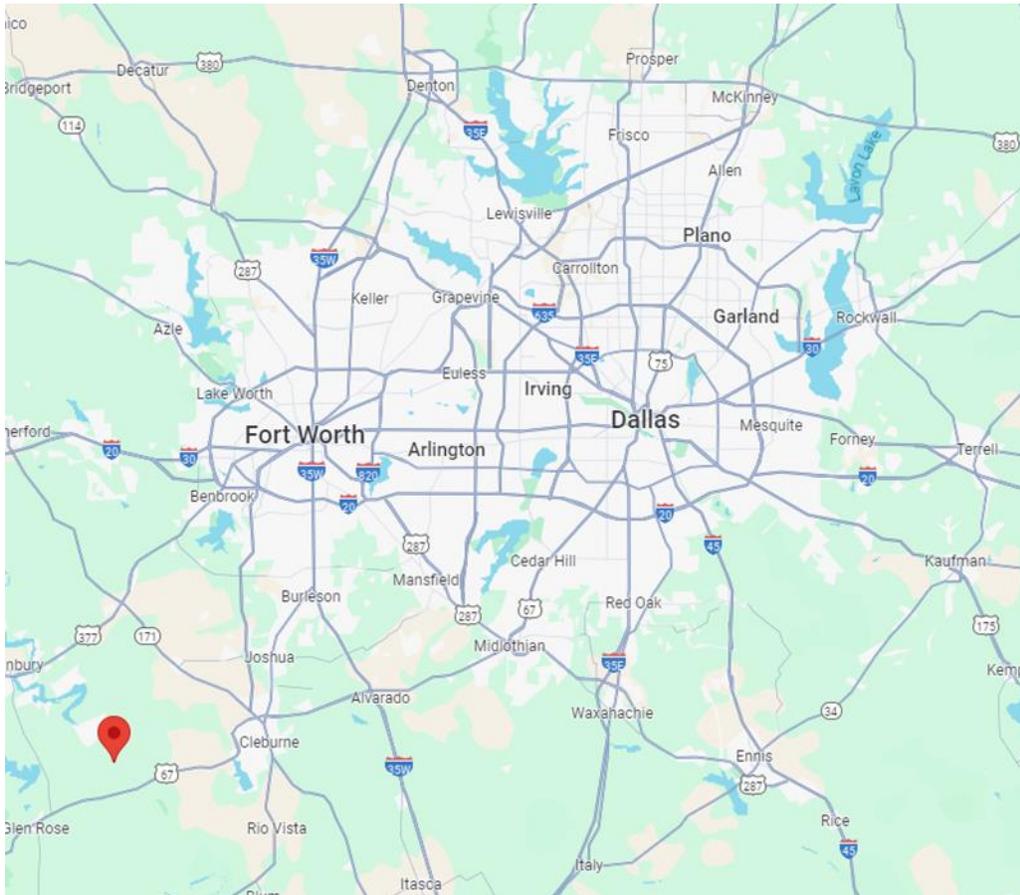


Exhibit B

BUYER REQUIRED TERMS

The following provisions are hereby made a part of this Agreement as if incorporated therein and are acknowledged and agreed to by Seller:

1. Prohibition on Contracts with Companies Boycotting Israel

Seller acknowledges that in accordance with Chapter 2271 of the Texas Government Code, Buyer 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, Seller certifies that Seller’s signature provides written verification to the Buyer that Seller: (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.

2. Prohibition on Contracts with Companies Boycotting Certain Energy Companies

Seller acknowledges that in accordance with Chapter 2274 of the Texas Government Code, Buyer 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, Seller certifies that Seller’s signature provides written verification to the Buyer that Seller: (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.

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

Seller acknowledges that in accordance with Chapter 2274 of the Texas Government Code, Buyer 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, Seller certifies that Seller’s signature provides written verification to the Buyer that Seller: (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 Agreement against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

4. 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 Buyer from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this Agreement, Seller certifies that Seller’s signature provides written verification to the Buyer that Seller, 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.

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

The Buyer may terminate this Agreement immediately without any further liability if the Buyer determines, in its sole judgment, that this Agreement meets the requirements under Chapter 2274, and Seller 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.

6. Transact Electronically

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.

7. No Waiver of Sovereign Immunity

The Parties expressly agree that no provision of the Agreement is in any way intended to constitute a waiver by the Buyer of any immunities from suit or from liability that the Buyer may have by operation of Applicable Law.

8. Drug Free Workplace

The Seller 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 Seller shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

9. Texas Public Information Act

Notwithstanding any other provision of Section 11.3 of this Agreement, the Parties understand that Buyer is a governmental entity and is required to comply, and Buyer does hereby agree to comply, with the Texas Public Information Act (Chapter 552 of the Texas Government Code) when responding to requests for records in its possession except where the information is considered public power utility competitive information protected by the provisions of the Texas Government Code, Sections 552.101, 552.104, 552.110 and/or 552.133. Disclosure of information required by the Texas Public Information Act shall not constitute a breach of any provision contained herein if so ordered by the State of Texas Attorney General. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement is confidential, commercially sensitive information protected from disclosure pursuant to the Texas Public Information Act. In the event that Buyer is requested or required by legal or regulatory authority to disclose this any Confidential Information, Buyer shall promptly notify Seller of such request or requirement prior to disclosure, if permitted by Applicable Law, so that Seller may seek an appropriate protective order. In the event that a protective order or other remedy is not obtained, Buyer agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

10. Prevailing Wage Rates

The Seller 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).

11. 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.

12. 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.

Exhibit C

INSURANCE REQUIREMENTS

Within 10 days of the Commercial Operation Date, Seller shall procure and maintain the following minimum insurance, with insurers rated “A-” VII or higher by A.M. Best’s Key Rating Guide, that are licensed to do business in Texas:

- (a) Workers’ Compensation Insurance for statutory obligations imposed by applicable laws, including, where applicable, the Alternate Employer Endorsement, the United States Longshoremen’s and Harbor Workers’ Act, the Maritime Coverage and the Jones Act;
- (b) Employers’ Liability Insurance, including Occupational Disease, shall be provided with a limit of (i) One Million Dollars (\$1,000,000) for bodily injury per accident, (ii) One Million Dollars (\$1,000,000) for bodily injury by disease per policy, and (iii) One Million Dollars (\$1,000,000) for bodily injury by disease per employee;
- (c) Business Automobile Liability Insurance which shall apply to all owned, non-owned, leased, and hired automobiles with a limit of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage;
- (d) General Liability Insurance which shall apply to liability arising out of premises, operations, bodily injury, property damage, products and completed operations and liability insured under and insured contract (contractual liability), with a limit of One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate. The products and completed operations coverage insurance shall be provided for the duration of any applicable warranty period;
- (e) Excess Liability Insurance which shall apply to Employers Liability, Commercial General Liability and Business Automobile Liability Insurance, required in (b), (c), and (d) above, with a limit of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate;
- (f) Broad Form Property Insurance with limits of insurance written on a probable maximum loss basis, including sublimits for wind, earthquake, and flood exposures.

Except for Workers’ Compensation Insurance, Buyer shall be endorsed as an additional insured on Seller’s insurance policies required to be maintained under the Agreement and such policies shall provide for a waiver of subrogation in favor of Buyer. All policies of insurance required to be maintained by Seller hereunder shall provide for a severability of interests clause and include a provision that Sellers’s insurance policies are to be primary and non-contributory to any insurance that may be maintained by or on behalf of Buyer.

In the event that any policy furnished by Seller provides for coverage on a “claims made” basis, the retroactive date of the policy shall be the same as the effective date of the Agreement, or such other date, as to protect the interest of Buyer. Furthermore, for all policies furnished on a “claims made” basis, Seller’s providing of such coverage shall survive the termination of the Agreement and the expiration of any applicable warranty period, until the expiration of the maximum statutory period of limitations in the State of Texas for actions based in contract or in tort. If coverage is on “occurrence” basis, Seller shall maintain such insurance during the entire term of the Agreement.

Seller shall promptly provide evidence of the minimum insurance coverage required under the Agreement in the form of an ACORD certificate or other certificate of insurance. If any of the required insurance is cancelled or non-renewed, Seller shall within thirty (30) days provide written notice to Buyer and file a new certificate of insurance with Buyer, demonstrating that the required insurance coverage to be maintained hereunder has been extended or replaced. Neither Seller's failure to provide evidence of minimum coverage of insurance following Buyer's request, nor Buyer's decision to not make such request, shall release Seller from its obligation to maintain the minimum coverage provided for in this Exhibit C.

Seller shall be responsible for covering all deductibles associated with the foregoing insurance coverage.

Exhibit D

NOTICE INFORMATION

If to Buyer:

Address: Denton Municipal Electric
1659 Spencer Rd.
Denton, TX 76205
Attn: General Manager
Email: dmecompliance@cityofdenton.com

With a copy to:

Address: City of Denton
601 East Hickory St.
Denton, TX 76205
Attn: City Attorney
Email: legal@cityofdenton.com

If to Seller:

Address: Yellow Viking Development One, LLC
c/o Osaka Gas USA Corporation
1 North Lexington Ave., Suite 1400
White Plains, NY 10601
Attn: Renewables & Grid Solutions Team
Email: renewables-grid-solutions@osakagasusa.com

With a copy to:

Address: Yellow Viking Development One, LLC
c/o Osaka Gas USA Corporation
1330 Post Oak Blvd., Suite 1900
Houston, Texas 77056
Attn: Legal & Compliance Office
Email: LCO@osakagasusa.com

Exhibit E

BENCHMARK QUANTITY

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

Exhibit F
FORM OF INVOICE

Yellow Viking Development One, LLC
 1330 Post Oak Blvd
 Suite 1900
 Houston, TX 77056
 Attn:
 Email:

INVOICE

INVOICE #
 DATE:

To:
City of Denton
 Address
 Attn:

WIRE INSTRUCTIONS FOR YELLOW VIKING
 DEVELOPMENT ONE, LLC:

[Bank Name]
[Bank Address]
:
ACCT #:
SWIFT #:

DEPARTMENT	CONTACT	P.O. NUMBER	TAX ID	Beginning	Ending

GENERATION

Energy	On Peak MWh	Off Peak MWh	Total MWh
Total			

CHARGES

Energy	MWh	Rate	\$
Total			

Administrative			\$
Administrative Costs			
Total			

Subtotal	
Sales Tax	
Total Due (USD)	

Exhibit G

GEP Damages Calculation

In accordance with the provisions in Section 7.5(d), GEP Damages means the liquidated damages payment due by Seller to Buyer for a particular Performance Measurement Period, calculated as follows:

$$[(A - B) \times (C - D)]$$

Where:

A = the Guaranteed Energy Production for the Performance Measurement Period, in MWh

B = Sum of Delivered Energy plus Deemed Delivered Energy, if any, over the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the simple average of the RTSPP for all (15) minute settlement periods [REDACTED] in the Performance Measurement Period, as published by ERCOT, for pricing at the Settlement Hub

D = the Contract Price

If the difference between C and D is negative, no GEP Damages shall be payable from Seller to Buyer for the applicable Performance Measurement Period.

In the event that GEP Damages for each of two (2) consecutive Performance Measurement Periods exceeds [REDACTED] (“Maximum GEP Damages Cap”), Seller may terminate the Agreement consistent with the notice and cure provisions in Section 9.2, in which event Seller will pay to Buyer the full value of the Maximum GEP Damages Cap, less any amount of GEP Damages already received by Buyer, if any, for the first of the applicable two (2) consecutive Performance Measurement Periods. If Seller fails to make timely payment of the foregoing amount of GEP Damages to Buyer, Seller may draw on the Seller Operating Period Credit Support for payment of the full value of the of the GEP Damages then owing to Buyer (which value will not exceed the Maximum GEP Damages Cap).

For the avoidance of doubt, the provision “each of two (2) consecutive Performance Measurement Periods” set out above is intended by the Parties to mean that each two (2) consecutive Performance Measurement Periods following the first Contract Year of the Term (e.g., Contract Years 2 and 3, Contract Years 4 and 5, etc.) are to be used when determining the application of the Maximum GEP Damages Cap and not intended to mean a rolling period of “any” two consecutive Performance Measurement Periods (e.g., Contract Years 2 and 3, Contract Years 3 and 4, etc.).

Exhibit H

FORM OF LETTER OF CREDIT

[ISSUING BANK] NON-TRANSFERRABLE, IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:

[Date of issuance]

[BENEFICIARY] (“Beneficiary”)

[Address]

Attention: [Contact Person]

Re: [ISSUING BANK] Non-Transferrable Irrevocable Standby Letter of Credit No. _____

Messrs./Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Non-Transferrable Irrevocable Standby Letter of Credit No. _____ (the “Letter of Credit”) for the account of [--- Party A---] [--- Address ---] and [---Party B---, (--- Address ---)] (“Account Parties”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain [*describe the underlying agreement which requires this LC*].

1. Stated Amount. The maximum amount available for drawing by you under this Letter of Credit is [*written dollar amount*] United States Dollars (US\$[*dollar amount*]) (such maximum amount referred to as the “Stated Amount”).

2. Drawings. A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [*ISSUING BANK*], at any time during its business hours on such Business Day, at [*bank address*] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered *paragraph 9* hereof), the original of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of *Attachment A* hereto (the “Draw Certificate”), duly completed and signed by your authorized officer (signing as such) and (ii) your draft in the form of *Attachment B* hereto (the “Draft”), duly completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile to [] with confirmation by telephone at [] or original documents sent by overnight delivery or courier to [*ISSUING BANK*] at our address set forth above, Attention: [] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered *paragraph 9* below). In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us. However, the original of this Letter of Credit must be sent by overnight courier to [*ISSUING BANK*] at our address set forth above, Attn: [], for endorsement along with all amendments, if any on the same day of such facsimile transmission.

3. Time and Method for Payment. We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, New York time on any Business Day, payment will be made not later than our close

of business on the third succeeding Business Day and if such Draw Certificate is so presented to us after 12:00 noon, New York time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you a prompt notice following our receipt of the Draw Certificate that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand and re-presented for drawing on or before the date this Letter of Credit expires.

5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of Attachment C hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year period(s) from the Initial Expiration Date or any future expiration date, unless at least sixty (60) calendar days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered paragraph 9) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** This letter of credit is governed by, and construed in accordance with the laws of the state of Texas.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein.

* * *

SINCERELY,
[ISSUING BANK]

By: _____

Title: _____

Address:

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to ISSUING BANK (“**Issuer**”), with reference to Non-Transferrable Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of _____ U.S. dollars (US\$_____), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) The conditions for a drawing by Beneficiary pursuant to [*describe the draw conditions from the underlying agreement*].
- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: _____
Title: _____
Date: _____

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____
Title: _____
Date: _____

ATTACHMENT B

DRAWING UNDER NON-TRANSFERRABLE IRREVOCABLE LETTER OF CREDIT NO. _____

Date:

PAY TO: *[BENEFICIARY]*

U.S.\$ _____

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.
_____.

[BENEFICIARY]

By: _____

Title: _____

Date: _____

ATTACHMENT C

CANCELLATION CERTIFICATE

Non-Transferrable Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to [*ISSUING BANK*] (“**Issuer**”), with reference to Non-Transferrable Irrevocable Letter of Credit No. _____ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of the Account Parties, under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____

Title: _____

Date: _____

Yellow Viking Solar Power Purchase Agreement



Energizing tomorrow's community today!

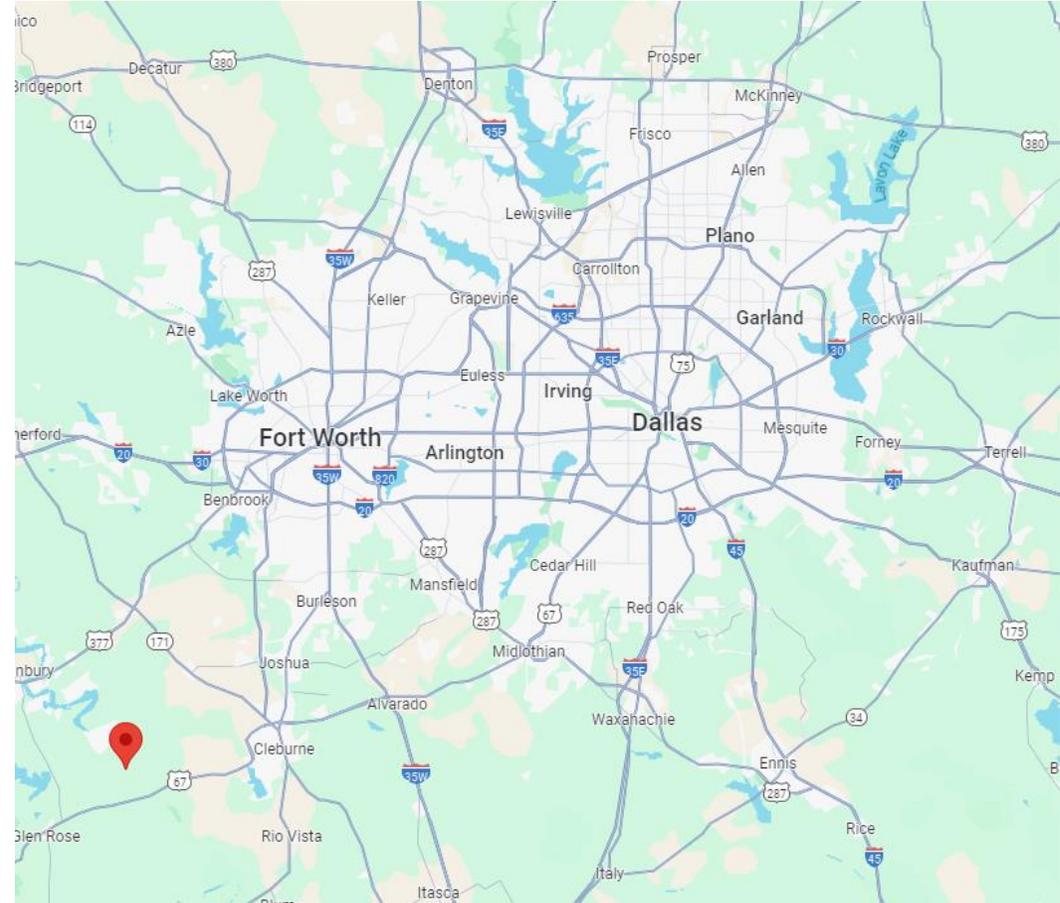
Public Utility Board
Presentation

4/8/24



Yellow Viking Development One, LLC

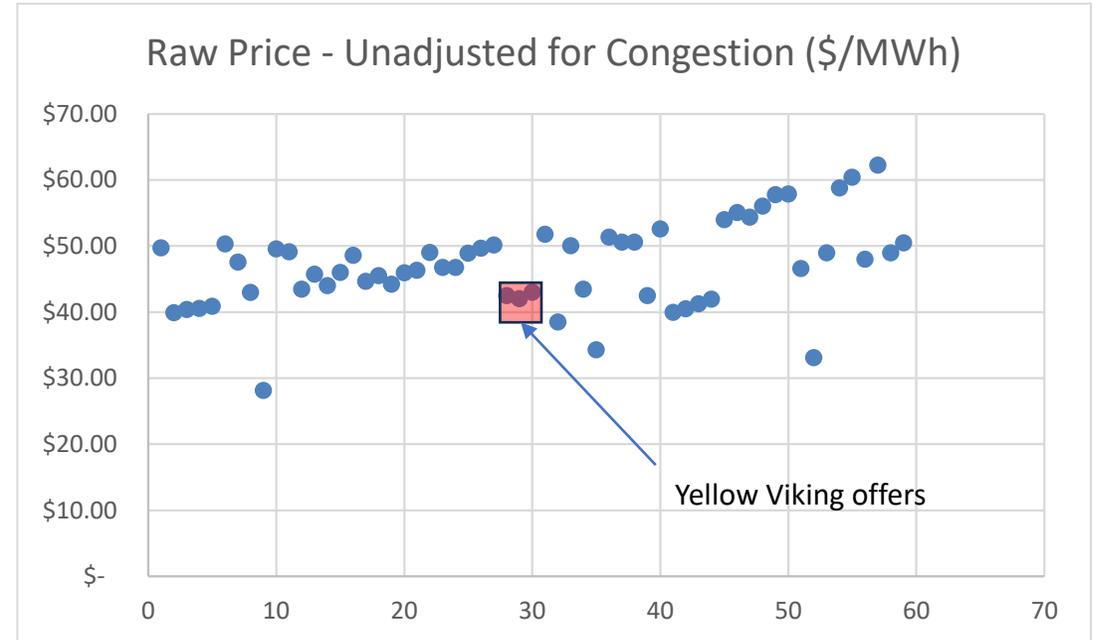
- Initial project for Osaka Gas USA in Texas
- 204 MWac Project Capacity
- Interconnected to the Oncor transmission system
- Guaranteed Commercial Operations Date – 1/1/2027
- Evaluated lowest cost from RFP No. 8271
 - 17 offers received
 - 6 Best and Final offers



Price Evaluation Criteria

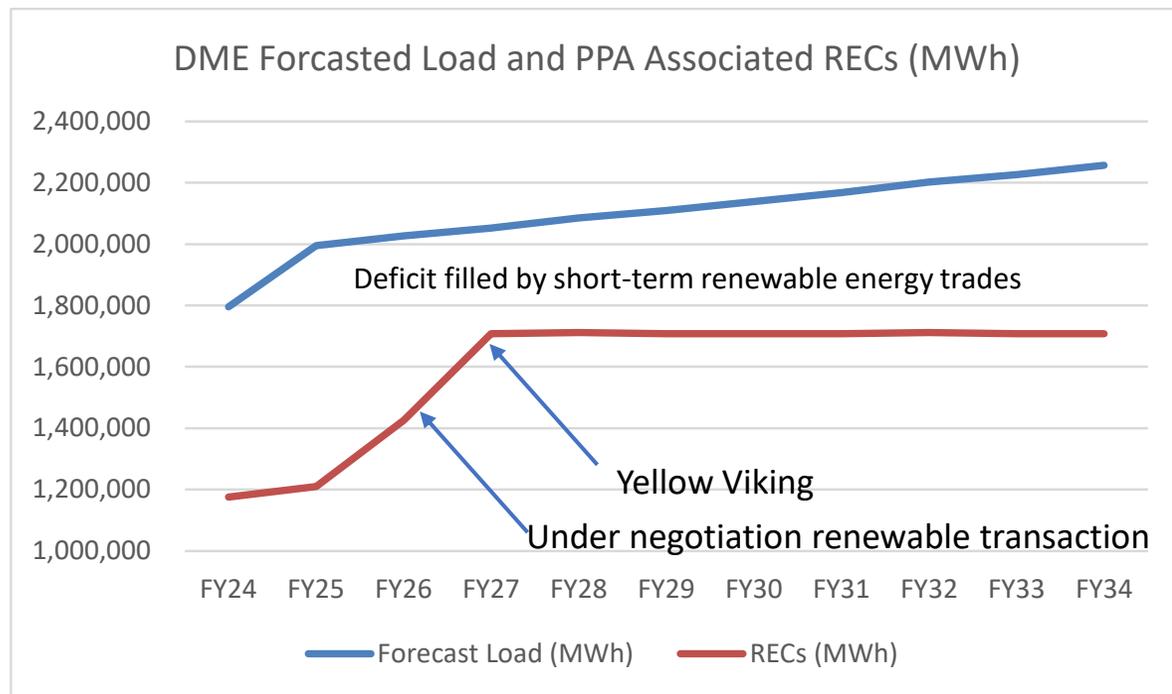
- Proposed Price
- Congestion costs (moving power from project to Denton)
- Experience of developer
- Status of Development
 - Likelihood of completion
- Fit with DME portfolio

LOWEST EVALUATED DELIVERED COST WAS YELLOW VIKING



- 59 distinct offers from 17 respondents
- Lowest absolute prices eliminated

Yellow Viking Fit into DRRP



- Significant increase in load forecast in 2023/2024 attributed to local development and “latent” demand
- Expiration of Whitetail 12/31/23 (30 MW ATC and 30 MWs of RECs) replaced with short term transaction to arbitrage energy vs PPA market
- Default of Samson solar (\$75 MW)
- Concentration of solar energy continues to expose DME to post sundown price spikes
- 2024 DRRP to address comprehensive long-term power supply portfolio

Transaction Major Terms & Recommendation

- Term – 15 years (2027 start date)
- Fixed price for entire term
- “Market” mechanical guarantees and liquidated damages
- Pre-COD Performance guarantee – 2x operating period guarantee
- Post-COD Performance guarantee
- Tight Force Majeure definitions
- Change in Law Provisions – 3 Tiers
 - Tier 1 – Yellow Viking responsible for all costs
 - Tier 2 – 50/50 split
 - Tier 3 – Termination option for DME

Recommend to the City Council Approval and Authorization for the City Manager to Execute the PPA and all Associated Actions

Questions





City of Denton

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

Legislation Text

File #: PUB24-075, **Version:** 1

AGENDA CAPTION

Management Reports

1. Future Agenda Items
2. New Business Action Items

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
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



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Legislation Text

File #: PUB24-072, **Version:** 1

AGENDA CAPTION

Deliberations Regarding Certain Public Power Utilities Competitive Matters - Under Texas Government Code Section 551.086; Consultation with Attorneys - Under Texas Government Code Section 551.071. Receive information from staff regarding a proposed Power Purchase Agreement with Yellow Viking Development One, LLC that includes data stemming from public power utility competitive data; discuss, deliberate, and provide direction to staff regarding same. Consultation with City's attorney regarding issues associated with the above matter where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative or potential litigation.