



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Meeting Agenda Public Utilities Board

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Monday, August 12, 2024

9:00 AM

Council Work Session Room

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### **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, August 12 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 – E). 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. [PUB24-151](#) Consider recommending adoption of an Ordinance of the City of Denton, Texas,

amending the expenditure of funds to authorize an increase of \$858,593.15 for the payment of wholesale transmission charges to American Electric Power, City of Bryan, Electric Transmission Texas, Garland Power & Light, and Lower Colorado River Authority; declaring a public purpose; and providing an effective date.

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Ordinance](#)

- B. [PUB24-159](#) 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 Quorum Architects, Inc., for the design of the renovation to the Service Center for multiple departments as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8454 - Professional Services Agreement for design services awarded to Quorum Architects, Inc., in the not-to-exceed amount of \$5,906,100.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Evaluation Sheet](#)

[Exhibit 3 - Ordinance and Contract](#)

- C. [PUB24-160](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to approve a pre-qualified professional services list of state certified engineers for professional engineering services for the Solid Waste and Recycling Department; and providing an effective date (RFQ 8525 - for a three (3) year term).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Evaluation Sheet](#)

[Exhibit 3 - Ordinance](#)

- D. [PUB24-161](#) 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 Titan Utility Services, LLC, for testing, repair, replacement, and disposal of dielectric protected tools for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8547 - awarded to Titan Utility Services, LLC, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,000,000.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Pricing Evaluation](#)

[Exhibit 3 - Ordinance and Contract](#)

- E. [PUB24-162](#) 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 Texas Excavation Safety System, Inc., for the continuation of the services for utility line locates for the Water Distribution, Wastewater Collections, Water Metering, and Denton Municipal Electric Departments provided by Texas811, 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 8605 - awarded to Texas Excavation Safety System, Inc., in the five (5) year not-to-exceed amount of \$750,000.00).

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

### 3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A.    [PUB24-154](#)    Consider approval of the July 22, 2024 minutes.

**Attachments:**      [7.22.24 PUB Minutes](#)

- B.    [PUB24-129](#)    Consider recommending adoption of an Ordinance of the City of Denton, Texas, approving the execution and delivery of a financing agreement with the Texas Water Development Board regarding the issuance of utility system revenue bonds by the City for waterworks system improvements and related issuance costs, and approving the obligations of the City with respect to such agreement; authorizing the City Manager, City Secretary, and Chief Financial Officer to take the actions necessary to accomplish the purposes of the ordinance and resolving other matters related to the subject; and providing an effective date.

**Attachments:**      [Exhibit 1 - Agenda Information Sheet](#)  
                                 [Exhibit 2 - Ordinance](#)  
                                 [Exhibit 3 - Draft Financing Agreement](#)

- C.    [PUB24-127](#)    Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation (the “City”), authorizing the City Manager to execute Amendment Number Three (3) to the Power Purchase Agreement between the City and Core Scientific, Inc., a Delaware corporation; providing for an effective date.

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

- D.    [PUB24-128](#)    Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager, to execute Amendment Number Two (2) to the Lease Agreement between the City and Core Scientific, Inc., a Delaware corporation; providing for an effective date.

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

- E.    [PUB24-158](#)    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 salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

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. [PUB24-164](#) 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 containing public power information related to a proposed amendment to the Power Purchase Agreement between the City of Denton, as the seller, and Core Scientific, Inc.; 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 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 August 8, 2024, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

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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.



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## Legislation Text

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**File #:** PUB24-151, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an Ordinance of the City of Denton, Texas, amending the expenditure of funds to authorize an increase of \$858,593.15 for the payment of wholesale transmission charges to American Electric Power, City of Bryan, Electric Transmission Texas, Garland Power & Light, and Lower Colorado River Authority; declaring a public purpose; and providing an effective date.



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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Denton Municipal Electric

**ACM:** Cassandra Ogden

**DATE:** August 12, 2024

### **SUBJECT**

Consider recommending adoption of an Ordinance of the City of Denton, Texas, amending the expenditure of funds to authorize an increase of \$858,593.15 for the payment of wholesale transmission charges to American Electric Power, City of Bryan, Electric Transmission Texas, Garland Power & Light, and Lower Colorado River Authority; declaring a public purpose; and providing an effective date.

### **BACKGROUND**

Each year, the Public Utilities Board (PUB) and City Council approve an ordinance authorizing payment to Transmission Service Providers (TSP) with net payments exceeding \$50,000 each. In October 2023 and December 2023, both the PUB and City Council approved ordinances authorizing a total of \$7,991,437.91 in payments to these TSPs. Actual payments to American Electric Power, City of Bryan, Electric Transmission Texas, Garland Power & Light, and Lower Colorado River Authority will exceed the authorized amount by \$858,593.15 due to an adjustment in their transmission cost of service. It is important to note that there are a number of smaller net TCOS bills (i.e. less than \$50,000) that are being concurrently paid under standard City payment authority.

The Texas Public Utility Regulatory Act requires that each Transmission Service Provider (TSP) file a tariff for transmission service with the Public Utility Commission of Texas (PUCT) in order to get such tariff approved. The tariff applies to all Distribution Service Providers (DSP). As a DSP under 16 TAC § 25.5(33), Denton Municipal Electric (DME) is obligated to compensate TSPs for their transmission cost of service based on DME's pro-rata share of the total ERCOT electric load. Other Distribution Service Providers are similarly obligated to compensate DME for their respective share of DME's transmission costs as a Transmission Service Provider.

	Approved-Oct 2023	Approved-Dec 2023	Revised Amount
American Electric Power	\$ -	\$ 861,223.02	\$ 1,122,489.09
* City of Bryan	\$ -	\$ -	\$ 65,983.63
Cross Texas Transmission	\$ 392,595.80	\$ 392,595.80	\$ 392,595.80
Electric Transmission Texas, LLC.	\$ 1,772,667.74	\$ 1,772,667.74	\$ 1,921,385.26
Garland Power & Light	\$ 96,184.68	\$ 161,801.84	\$ 195,219.09
Lone Star Transmission	\$ 541,052.77	\$ 541,052.77	\$ 541,052.77
Lower Colorado River Authority	\$ 3,295,284.33	\$ 3,295,284.33	\$ 3,644,493.01
Sharyland Utilities	\$ 224,363.90	\$ 224,363.90	\$ 224,363.90
Texas Municipal Power Agency	\$ 173,407.00	\$ 173,407.00	\$ 173,407.00
Wind Energy Transmission Texas	\$ 569,041.51	\$ 569,041.51	\$ 569,041.51
<b>TOTAL</b>	<b>\$ 7,064,597.73</b>	<b>\$ 7,991,437.91</b>	<b>\$ 8,850,031.06</b>

Increase from Approved-Dec 2023 to Revised Amount equal to \$858,593.15.

\* There was no spending authority approved in December 2023 because the original purchase order for this entity was under \$50,000.00.

These payments are mandated by the Texas Public Utility Regulatory Act and the Public Utility Commission of Texas.

### **RECOMMENDATION**

Finance recommends approval of the ordinance authorizing an increase of \$858,593.15 for payment of wholesale transmission charges to American Electric Power, City of Bryan, Electric Transmission Texas, Garland Power & Light, and Lower Colorado River Authority.

### **FISCAL INFORMATION**

Funds to meet these regulatory fee obligations were budgeted in 2023-2024 budget account 600100.6072.5650A.

### **EXHIBITS**

1. Agenda Information Sheet
2. Ordinance

Respectfully submitted:  
Jessica Williams  
940-349-8244  
Chief Financial Officer

Prepared by:  
Vis Bouaphanthavong  
940-349-7743  
Assistant Director of Finance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AMENDING THE EXPENDITURE OF FUNDS TO AUTHORIZE AN INCREASE OF \$858,593.15 FOR THE PAYMENT OF WHOLESALE TRANSMISSION CHARGES TO AMERICAN ELECTRIC POWER, CITY OF BRYAN, ELECTRIC TRANSMISSION TEXAS, GARLAND POWER & LIGHT, AND LOWER COLORADO RIVER AUTHORITY; DECLARING A PUBLIC PURPOSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, all Distribution Service Providers ("DSP") in the Electric Reliability Council of Texas ("ERCOT") are required under the Texas Public Utility Regulatory Act ("PURA") to compensate Transmission Service Providers for wholesale transmission charges, commonly referred to as Transmission Cost of Service ("TCOS"), after the same have been filed with and approved by the Public Utility Commission of Texas ("PUCT"); and

WHEREAS, City of Denton Ordinance No. 23-2262 authorized the expenditure of funds for the payment of wholesale transmission charges in the amount of \$7,991,437.91 to American Electric Power, Cross Texas Transmission, Electric Transmission of Texas, Garland Power & Light, Lone Star Transmission, Lower Colorado River Authority, Sharyland Utilities, Texas Municipal Power Agency, and Wind Energy Transmission Texas, Transmission Service Providers, for its TCOS; and

WHEREAS, Ordinance No. 23-2262 indicated the PUCT would perform a true up on the amount of wholesale transmission charges for the TSPs listed in the ordinance and that additional payment could be required; and

WHEREAS, the City of Denton desires to increase the payments to American Electric Power, City of Bryan, Electric Transmission Texas, Garland Power & Light, and Lower Colorado River Authority for wholesale transmission charges in accordance with PURA and the true up performed by the PUCT; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth in the above preamble to this Ordinance are true and correct and are hereby adopted.

SECTION 2. Ordinance No. 23-2262 is hereby amended to allow for an increase in payment by \$858,593.15 for the transmission charges to American Electric Power, City of Bryan, Electric Transmission Texas, Garland Power & Light, and Lower Colorado River Authority which will increase the total payment from \$7,991,437.91 to \$8,850,031.06.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_,  
seconded by \_\_\_\_\_, and was passed and approved by the following  
vote [\_\_\_\_\_ - \_\_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, 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: Susan Keller



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## Legislation Text

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**File #: PUB24-159, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Quorum Architects, Inc., for the design of the renovation to the Service Center for multiple departments as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8454 - Professional Services Agreement for design services awarded to Quorum Architects, Inc., in the not-to-exceed amount of \$5,906,100.00).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** August 12, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Quorum Architects, Inc., for the design of the renovation to the Service Center for multiple departments as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 8454 – Professional Services Agreement for design services awarded to Quorum Architects, Inc., in the not-to-exceed amount of \$5,906,100.00).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Strengthen Community and Quality of Life.

### **INFORMATION/BACKGROUND**

Construction for the existing Service Center was completed in 1980. The recently completed Facilities Conditions Assessment (FCA) identified this building as being in poor condition and recommended a renovation. The proposed renovation was approved in the City's FY 2024 Capital Improvement Plan budget.

The Service Center is located in central Denton south of University Drive (US 380). The proposed project includes renovation and expansion of the Service Center and the surrounding site. Field operations are the primary occupants in the Service Center. Operational staff from Water, Wastewater, Streets, Drainage, Traffic, and Park maintenance are housed in the Service Center. The Service Center also houses the City's central warehouse.

Request for Qualifications (RFQ) for professional design services was sent to 759 prospective firms for these services, including 24 Denton firms. In addition, the RFQ was placed on the Procurement website for prospective respondents to download, and advertised in the local newspaper. Twelve (12) statements of qualifications (SOQ) were received. The SOQs were evaluated based on published criteria including Project Approach, Qualifications of Organization and Project Teams, and Probable Performance and Past Experience on Similar Projects. Based upon this evaluation, the recommended award is to Quorum Architects, Inc., and is determined to be the most qualified firm for the City.

NIGP Code Used for Solicitation:	<b>906</b> -(Service Only)-Architectural Services, Professional & <b>925</b> -(Service Only)-Engineering Services, Professional
Notifications sent for Solicitation sent in IonWave:	759
Number of Suppliers that viewed Solicitation in IonWave:	16
HUB-Historically Underutilized Business Invitations sent out:	109
SBE-Small Business Enterprise Invitations sent out:	243
Responses from Solicitation:	12

### **RECOMMENDATION**

Award a contract with Quorum Architects, Inc., for the design of the renovation to the Service Center for multiple departments, in the not-to-exceed amount of \$5,906,100.

### **PRINCIPAL PLACE OF BUSINESS**

Quorum Architects, Inc.  
Fort Worth, TX

### **ESTIMATED SCHEDULE OF PROJECT**

To meet the desired construction deadlines, Quorum Architects will begin the construction documents as soon as the contract is approved. The construction will likely take place from 2026-2027

### **FISCAL INFORMATION**

These services will be funded from City Facilities Projects CO account 300179409. Requisition #165552 has been entered into the Purchasing software system in the amount of \$5,906,100. The budgeted amount for this item is \$5,906,100.

### **EXHIBITS**

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

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

For information concerning this acquisition, contact: Aaron Skinner, (940) 465-8167.

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

Exhibit 2  
RFQ 8454 - Evaluation Sheet for Service Center Design

Respondent's Business Name:		Quorum Architects, Inc.	Hoefel Welker	Nelson + Morgan Architects, Inc.	Brown Reynolds Watford Architects	GSBS Architects	Parkhill, Smith & Cooper, Inc.	Bennett Benner Partners	Harrison Kornberg Architects	Huit-Zollars, Inc.	BRAVE_architecture	Kirksey Architecture	R.E. Warner & Associates, Inc.
Principal Place of Business (City and State):		Fort Worth, TX	Dallas, TX	Denton, TX	Dallas, TX	Fort Worth, TX	Lubbock, TX	Fort Worth, TX	Dallas, TX	Dallas, TX	Houston, TX	Dallas, TX	Westlake, OH
Item #	Standard Criteria												
1	Project Approach - 30%	24.00	24.00	22.50	22.50	24.00	10.50	22.50	21.00	18.00	22.50	19.50	19.50
2	Qualifications of Organization and Project Team - 30%	25.50	24.00	24.00	24.00	22.50	25.50	22.50	22.50	25.50	19.50	21.00	16.50
3	Probable Performance and Past Experience on Similar Projects - 40%	36.00	34.00	32.00	26.00	26.00	36.00	26.00	26.00	26.00	22.00	16.00	18.00
Total Score:		85.50	82.00	78.50	72.50	72.50	72.00	71.00	69.50	69.50	64.00	56.50	54.00

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH QUORUM ARCHITECTS, INC., FOR THE DESIGN OF THE RENOVATION TO THE SERVICE CENTER FOR MULTIPLE DEPARTMENTS AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8454 – PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES AWARDED TO QUORUM ARCHITECTS, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$5,906,100.00).

WHEREAS, Quorum Architects, Inc., the professional services provider (the “Provider”) set forth 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 authorized to enter into the service contract attached hereto with Quorum Architects, Inc., for the design of the renovation to the Service Center for multiple departments.

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, Texas 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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

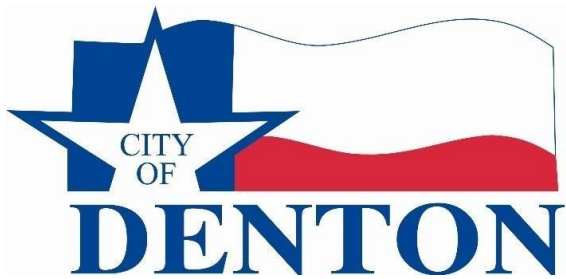
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: *Marcella Lunn*  
\_\_\_\_\_



Docusign City Council Transmittal Coversheet

FILE	8454
File Name	Service Center Design
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

## **STANDARD AGREEMENT FOR ARCHITECTURAL RELATED PROFESSIONAL SERVICES**

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Quorum Architects, Inc. with its corporate office at 825 W. Vickery Blvd Ste 100 Fort Worth TX 76104 and authorized to do business in Texas, ("ARCHITECT"), for a PROJECT generally described as: Service Center Architectural Design (the "PROJECT").

### **SECTION 1** **Scope of Services**

- A.** The CITY hereby agrees to retain the ARCHITECT, and the ARCHITECT hereby agrees to perform, professional architectural 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 ARCHITECT or its consultants, subcontractors and/or suppliers that has not been ordered in advance and in writing. It is specifically agreed that ARCHITECT shall not be compensated for any additional work resulting from oral orders of any person.

### **SECTION 2** **Compensation and Term of Agreement**

- A.** The ARCHITECT shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$5,906,100 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. ARCHITECT 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 ARCHITECT will be made as follows:

## **A. Invoice and Payment**

- (1) The Architect 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 ARCHITECT 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 ARCHITECT for billings contested in good faith within 60 days of the amount due, the ARCHITECT 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 ARCHITECT shall have no liability to CITY for delays or damages caused the CITY because of such suspension of services.

## **SECTION 4 Obligations of the ARCHITECT**

### **A. General**

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

### **B. Standard of Care**

The ARCHITECT shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent architects 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 architect.

### **C. Subsurface Investigations**

- (1) The ARCHITECT 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 architectural work to be performed hereunder. The ARCHITECT 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 ARCHITECT.

### **D. Preparation of Architectural Drawings**

The ARCHITECT 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 ARCHITECT shall not be liable for the use of such drawings for any project other than the PROJECT described herein.

### **E. Architect's Personnel at Construction Site**

- (1) The presence or duties of the ARCHITECT 's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 ARCHITECT be construed as requiring ARCHITECT 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 ARCHITECT makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 ARCHITECT makes no warranty that the CITY's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from the ARCHITECT 's opinions, analyses, projections, or estimates.

## **G. Construction Progress Payments**

Recommendations by the ARCHITECT to the CITY for periodic construction progress payments to the construction contractor will be based on the ARCHITECT '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 ARCHITECT 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 ARCHITECT 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 ARCHITECT 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) ARCHITECT 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 ARCHITECT involving transactions relating to this AGREEMENT. ARCHITECT agrees that the CITY shall have access during normal working hours to all necessary ARCHITECT 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 ARCHITECT reasonable advance notice of intended audits.
- (2) ARCHITECT 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) ARCHITECT and subconsultant agree to photocopy such documents as may be requested by the CITY. The CITY agrees to reimburse ARCHITECT 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) ARCHITECT'S INSURANCE

- a. Commercial General Liability – the ARCHITECT 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. ARCHITECT 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 ARCHITECT 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 architect owns no vehicles, coverage for hired or non-owned is acceptable.
  - i. ARCHITECT 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 ARCHITECT pursuant to this AGREEMENT or under any applicable auto physical damage coverage.
- c. Workers' Compensation – ARCHITECT 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. ARCHITECT 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 ARCHITECT pursuant to this AGREEMENT.
- d. Professional Liability – ARCHITECT 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. If commercially available 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 ARCHITECT 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 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 ARCHITECT's insurance policies including endorsements thereto and, at the CITY's discretion; the ARCHITECT 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 ARCHITECT shall be required by the ARCHITECT to maintain the same or reasonably equivalent insurance coverage as required for the ARCHITECT. When sub consultants/subcontractors maintain insurance coverage, ARCHITECT shall provide CITY with documentation thereof on a certificate of insurance.

## **K. Independent Consultant**

The ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 ARCHITECT 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 architectural practice standards which the ARCHITECT should have been aware of at the time this AGREEMENT was executed, the ARCHITECT 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 ARCHITECT could not have been reasonably aware of, the ARCHITECT shall notify the CITY of such changes and an adjustment in compensation will be made through an amendment to this AGREEMENT.

#### **O. Schedule**

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

#### **P. Equal Opportunity**

- (1) **Equal Employment Opportunity:** ARCHITECT and ARCHITECT'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:** ARCHITECT and ARCHITECT'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**

ARCHITECT 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 ARCHITECT as required for the ARCHITECT 's performance of its services. The CITY will perform, at no cost to the ARCHITECT, such tests of equipment, machinery, pipelines, and other components of the CITY's facilities as may be required in connection with the ARCHITECT '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 ARCHITECT 's services or PROJECT construction.

#### **D. Timely Review**

The CITY will examine the ARCHITECT '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 ARCHITECT whenever CITY observes or

becomes aware of any development that affects the scope or timing of the ARCHITECT 's services or of any defect in the work of the ARCHITECT or construction contractors.

#### **F. Asbestos or Hazardous Substances Release.**

- (1) CITY acknowledges ARCHITECT will perform part of the work at CITY's facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ARCHITECT 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 ARCHITECT 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 ARCHITECT's negligence or if ARCHITECT 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 ARCHITECT 's Personnel at Construction Site, and provisions providing for contractor indemnification of the CITY and the ARCHITECT 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 ARCHITECT, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the architectural services performed. Only the CITY will be the beneficiary of any undertaking by the ARCHITECT."
- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ARCHITECT 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 ARCHITECT.

## **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 ARCHITECT 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 ARCHITECT 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 ARCHITECT, 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 ARCHITECT '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**

ARCHITECT 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 ARCHITECT, 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 ARCHITECT will be at the CITY's sole risk. The CITY shall own the final designs, drawings, specifications and documents.

### **C. Force Majeure**

The ARCHITECT 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 ARCHITECT that prevent ARCHITECT'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 ARCHITECT.
- b. by either the CITY or the ARCHITECT 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 ARCHITECT will be paid for termination expenses as follows:

- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ARCHITECT '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 ARCHITECT '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 ARCHITECT 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 ARCHITECT 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 ARCHITECT s personnel and subcontractors, and ARCHITECT 's compensation will be made.

### **F. Indemnification**

**IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE SECTION 271.904, THE ARCHITECT SHALL INDEMNIFY OR HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ANY DAMAGE COMMITTED BY THE ARCHITECT OR ARCHITECT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT 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 ARCHITECT'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**

ARCHITECT 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. **ARCHITECT 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**

ARCHITECT 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, ARCHITECT shall provide CITY with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this AGREEMENT. ARCHITECT 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 ARCHITECT employee who is not legally eligible to perform such services. **ARCHITECT SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY ARCHITECT, ARCHITECT'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** CITY, upon written notice to ARCHITECT, shall have the right to immediately terminate this AGREEMENT for violations of this provision by ARCHITECT.

#### **L. Prohibition On Contracts With Companies Boycotting Israel**

Architect 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, Architect certifies that Architect's signature provides written verification to the City that Architect: (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, Architect certifies that Architect's signature provides written verification to the City that Architect, 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**

Architect 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, Architect certifies that Architect’s signature provides written verification to the City that Architect: (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**

Architect 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, Architect certifies that Architect’s signature provides written verification to the City that Architect: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

#### **Q. Prohibition Against Personal Interest in Contracts**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance

of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethics Ordinance 23-1165 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

## **R. 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](mailto:purchasing@cityofdenton.com) with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

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

## **S. 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:

City of Denton, Texas  
Professional Services Agreement  
Revised Date: 3/22/22  
Page 17 of 19

## Attachment A - Scope of Project, Compensation, Project Schedule, and Location Map

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

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

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

BY:  
CITY OF DENTON, TEXAS

Sara Hensley, City Manager

BY:  
ARCHITECT  
Quorum Architects, Inc.

David Duman

David Duman  
Vice President

Date: \_\_\_\_\_

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

Signature

Signature

Director of Capital Projects

Title

Capital Projects

Department

Date Signed: \_\_\_\_\_

2024-1181980

TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
By: Marcella Lunn  
4B070831B4AA438...

ATTEST:  
LAUREN THODEN, CITY SECRETARY

By: \_\_\_\_\_



May 21, 2024 (Revision 2)

Erica Garcia  
Senior Buyer  
City of Denton  
Procurement Department  
901 Texas St.  
Denton, Texas 76209

RE: Denton Service Center - Proposal  
Quorum No: 24022

Erica,

We are pleased to respond to your request for a proposal for Professional Design Services for the Denton Service Center. This proposal will be integrated into or become Attachment A to the City's Professional Services Agreement. We anticipate developing a design in a collaborative effort, working closely with the City's leadership and guidance. For the general basis of this proposal, we have made some assumptions, as listed below. As discussed in our scope development meeting we have assumed that the City will have a CMaR on board before Schematic Design or very early in Schematic Design to guide the entire team through constructability reviews and to provide cost and budget input. We anticipate regular meetings, workshops, and charrettes, with the CMaR, Denton's Service Center leadership, and Denton's Development Services team in order to maintain the schedule and create a truly collaborative effort on this approach. With all these groups involved we believe that communication will be integral to the success of this project especially as we will be relying on other ongoing City projects, multiple teams and timely decisions such as the new roadway alignment and construction which will need to be developed concurrent with this design and construction activity.

We will generally use the Programming information in the 2024 Project Charter but review it with the City and modify it accordingly to meet the current plan for approximately 70,000 sf of building and approximately 300 employees. Of those 300 employees, it is understood that about half would be on site at all times.

For the purpose of this proposal, we anticipate development to occur in two phases. We anticipate developing a master concept plan and then developing a detailed Phase 1. The master plan is to be utilized in the required zoning compliance plan reviews, and it will become a living document throughout the project. While Phase 1 is being constructed, the design team will complete detailing Phase 2. This will allow the users to move out of the existing building into the new building before demolition of the existing building around the Warehouse can occur, which will be in Phase 2. We understand that Phase 2 will have some internal phasing during construction resulting in phases 2A, 2B and possibly 2C. Without even a concept plan at this point we are not able to fully understand the extent of Phase 2 and have tried to capture as much as possible in this scope definition. We have summarized our understanding of the scope below followed by a description of the tasks.



**Phase 1** – Development of the NE section of the property with a 2-story administration building with conventional steel framing, and a 1-story equipment/vehicle storage building (bays) with tilt-wall or load-bearing CMU supporting a steel roof. The design team shall utilize owner provided space allocation standards for offices, touchdown spaces, and ancillary spaces. If Owner’s budget allows, a rainwater collection system is expected to be designed and utilized for irrigation purposes for this phase in an effort to include some of the OSCAR elements requested by the City. Generally, this phase will include the following elements and departments:

- 1) Parks and Recreation – up to 20 to 25 offices or work spaces, touchdown spaces for field works, staging and ancillary spaces.
- 2) Purchasing was removed in first revision as directed by the City.
- 3) Water and Wastewater – Based on previous city documentation, Up to 15 offices, 30-35 touchdown spaces, 8 bays for equipment and ancillary spaces. These quantities may change through programming.
- 4) Streets, Drainage, and Traffic – Minimum of 6 offices, 12 workstations, and ancillary spaces. These quantities may change through programming.
- 5) Traffic Management Center – Up to 6 workstations, video wall of 6-8 traffic monitors and ancillary spaces.
- 6) Sustainability / Environmental – Up to 40 workstations, 10 offices, and lab (as indicated below)
- 7) Tech Services – Up to 4 offices, 6 workstations, fiber workshop, front counter, 2 bays long and tall enough for a fire truck and tall enough for DME bucket trucks with Fiber connections and ancillary spaces. Fiber Ring and IDF rooms as indicated below.
- 8) Shared spaces – Fitness area, break rooms, crew meeting rooms, locker rooms, conference and Training spaces, etc.
- 9) Water Lab(s) - likely two water testing labs, one for the use of public water testing and the other for the Pecan Creek testing lab. Labs will run independently of each other, with a common sample receiving area.
- 10) Fiber Ring & IDF Room(s) – Includes relocation of Fiber Ring and incorporation of appropriate IT Rooms in both buildings. QAI to utilize owner provide diagrams of required layout and sizing of IT rooms and fiber ring. The Fiber Ring Room may require raised flooring, anti-static flooring, and rated wall design and will and be back fed for a transition from existing to new before the existing can be demolished in Phase 2.
- 11) Water Meter Shop & Testing – This space shall be equipped with compressed air and required water connections for the City’s Meter Testing benches and equipment along with backflow test bench and equipment. The assumption is that the City’s existing equipment is to be relocated to new facilities
- 12) CNC Sign Fabrication Shop and Signal Controller test lab – The assumption is that the CNC machine to be relocated from existing facility. QAI to coordinate with users on the requirements of the controller test lab for the existing and new equipment. This may also include a printing center.



- 13) Storage and Shops Building (bays) will likely be pull in or drive through. For the purpose of this proposal these bays are to be used for general maintenance, storage, shops, or for vehicle / material storage, and not full fleet maintenance facilities (no overhead traveling crane, petroleum distribution, fluid management systems, lube pit, lifts, etc., just routine maintenance items such as compressed air drops).
- 14) For the purpose of this proposal we anticipate the Storage / Shops Buildings (bays) and / or the covered structures on site to incorporate solar elements or photovoltaic panels.
- 15) POV parking requirements as found in the Denton Development Code, TAS requirements, and programming. We anticipate 4-8 spaces will have electrical charging abilities; the exact number will be determined in programming.
- 16) Exterior site improvements including dumpster enclosures, screening requirements, exterior gates, exterior employee plaza.

**Phase 2 – Demolition, Renovation, and expansion to the existing warehouse buildings:** This will include partial demolition and modifications to the remaining Warehouse structure of existing service center (tilt-wall construction assumed). Without existing structural drawings, this scope is not clear at this point and may need further scope and fee clarification. It appears the Warehouse that is remaining may have been the first structure on site with the rest of the building constructed adjacent to it since there are large steel columns supporting areas adjacent to the Tilt wall of the warehouse. We assume demolition around the Warehouse will be possible, and that a new elevator (meeting current codes and accessibility requirements) will be required, in addition to accessible restrooms and new additions to the warehouse structures. Our assumption for scope and fee basis will be structural modifications or renovations at the Warehouse are limited to RTU supports, new openings in roof deck or infill of existing openings. Facilities will be represented as an alternate that the city can decide to pursue following CMAR input and pricing following Schematic Design.

- a. Warehouse - For the purpose of this proposal we assume the renovations are limited to the following items. If the perimeter walls are modified, there may be very significant and costly IECC-required modifications. Therefore, we are not including adding new perimeter openings in this space.
  - Re-paint exterior walls, canopy, doors, stairs & handrails
  - Provide new dock-bumpers at Loading Dock
  - Replace exterior lights at canopy with LED
  - Re-stripping of parking spaces at Loading Dock – Provide (20) parking spaces near entrance
  - Replace all interior light fixtures with LED lights.
  - Replace the air-handler unit serving the 1<sup>st</sup> floor Offices, Unisex Toilet, and Enclosed Storage in the Warehouse if needed.
  - Replace the existing gas fired unit heaters as required.
  - Replace the existing polycarbonate/plexi skylights if required.
  - Replace existing overhead bay doors with insulated doors. (This could trigger insulating the entire building envelope)



- Provide Bathroom/Toilet to meet ADA/TAS requirements, including new Shower and Locker Area
  - Provide (1) secured office on 1<sup>st</sup> Floor for handling of confidential documents & privacy.
  - Provide Resource / Storage Room with office supplies, copier, shredder, file cabinets, etc.
  - Provide new Parts Service Counter
  - Provide Breakroom on 1<sup>st</sup> Floor.
  - Provide column protectors & pallet rack shelving protectors
- b. As requested during the second revision of this proposal (05.16.24) Facilities was added back into the this phase as a possibility, including approximately 8 offices, 12 workspaces, and support ancillary spaces, which may be included in the final design. This scope is somewhat undefined at this point and may be refined later. Following Schematic Design and initial CMAR pricing, the City can decide what direction is required regarding Facilities.
- c. Site Elements
- Covered vehicular storage spaces, possibly integrating Photo voltaic panels. The number and amount of covered and required spaces will be determined in programming.
  - Required screenings and landscaping as required by the Denton Development Code.
  - Size and number of laydown yards and wash out areas to be determined in programming.

We have summarized our proposed tasks for both Basic Services and Supplemental Services below:

## **BASIC DESIGN SERVICES**

- A. **Programming / Master Plan** - The Architect shall review previous program documents found in the RFQ, including the City's growth projection documents, and then develop current updated program documents through multiple meetings with the users and management. This phase will include Concept design and preliminary planning for the overall site.
- B. **Schematic Design** – Based on the mutually agreed upon program, Concept Plan, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. During Schematic Design, the Architect will have a topographic survey of the area developed and coordinate the services of the Geotechnical Engineer. The Architect will coordinate boring locations with the Geotechnical Engineer. Up to three renderings of the Facilities showing the proposed design will be developed but only be



schematic at this point and be very conceptual to be refined in later design phases. Work during this phase will include initiating discussions with the City's planning and development department as well as IT, Fire Marshall, and Facilities and possibly a preliminary Zoning Compliance Plan meeting. Architect will utilize the services of the Client selected CMaR for cost estimates, budgeting, and construction planning. As part of Schematic Design, a high-level analysis and evaluation of the OSCAR and CLARA systems will be provided. Following the decision and direction from the City, additional services can be provided to design the OSCAR and CLARA systems that best fit the City's budget and operations. Please note that portions of these systems would require TCEQ permitting and coordination, and we believe we may mostly be cost-prohibitive. We are planning to include a rainwater collection system in our Basic Services to be utilized for irrigation purposes in an effort to include some of the OSCAR elements requested by the City.

- C. **Design Development** – Based on the approved Schematic Design Document and any adjustments authorized by the City in the program, schedule or construction budget, the Architect shall prepare, for approval by the Client, 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, site civil layouts, materials and such other elements as may be appropriate. Generally, most of the drawing sheets will be started as well as most specification sections, although the details of each will be completed during Construction Document development. Architect shall update the renderings from Schematic Design. Work during this phase will continue to be coordinated with the City's planning and development department as well as IT, Fire Marshall, and Facilities culminating in another Preliminary Development meeting. Architect will utilize the services of the Client selected CMaR for cost estimates, budgeting, and construction planning. It is anticipated that Civil Engineer Plan reviews will begin at the end of this phase.
- D. **Construction Documents** – 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 Client, the Architect shall prepare, for approval by the City, Construction Documents consisting of Drawings and Specifications setting forth the requirements for the construction of the project as required to obtain building permit approvals. The architect will assist in the permit application and submission, with the final permit being obtained in the name of the selected contractor. Security, access control and IT device design will be included using information provided by Client's IT department based off recent projects. The architect will coordinate TDLR plan reviews and inspection with the local TDLR RAS or the client's preferred RAS. This will be done separately for Phase 1 and for Phase 2 since each will require a plan review, registration with TDLR, and final site inspection.
- E. **Bidding** – The Architect will assist the City (or CMaR) in bidding, including attending Pre-proposal meeting, development of addenda as necessary and answering bidder's RFI's, questions of clarifications on the Documents, and other concerns. The Architect will provide electronic versions of conformed Documents and coordinate with the Contractor to execute



contracts. Since there will be two design and construction sets, there will also be two bidding periods for this project along with multiple pricing sets developed and an early release bid package for long lead items.

- F. **Construction Contract Administration (CCA)** – The Architect shall provide administration of the Contract for Construction as set forth below including submittal review, RFIs, ASIs, and Pay App reviews, unless otherwise provided in this proposal. The Architect, as a representative of the City, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the City and the Architect, (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine, in general, if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences nor procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

The Architect shall report to the City known deviations from the Contract Documents. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. For the purpose of this proposal, and as stated in the project RFQ we have assumed two site visits a month for a maximum of fifty (50) site visits over a twenty-two (22) month construction period (for all phases of construction), including one (1) pre-construction meeting, two (2) substantial completion inspections and two (2) final review site visits. It is assumed that each phase will have a substantial completion and final review site visit. Additional visits or an extended CCA time period may become necessary depending on the contractor's construction schedule and management of the project and will be performed as Additional Services if required. At the completion of construction, the Architect shall coordinate with the Contractor and use their provided as-built drawings, along with the architect's changes during construction, to produce electronic Record Documents, mostly developed by the Contractor supplemented with the architect's notes. Printing hard copy versions of construction sets is not included and should be part of the CMaR's responsibility.

#### **SUPPLEMENTAL SERVICES**

- A. **Geotech and ESA** - As directed by the City, the Architect shall procure the services of Geotechnical engineer to provide a geotechnical report and a Phase 1 Environmental Site Assessment (ESA) in accordance with terms and provisions of the "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," ASTM



Standard 1527-21 (the ASTM Standard) published by the American Society of Testing and Materials (ASTM) International. The ESA is intended to identify recognized environmental conditions (RECs) historical recognized environmental conditions (HRECs), and/or controlled recognized environmental conditions (CRECs) on the subject property. The scope of services does not include soil or groundwater sampling, or an evaluation of asbestos containing building materials, lead based paint, lead in drinking water, regulatory compliance, cultural and historical resources, industrial hygiene, health and safety, ecological resources, indoor air quality, mold, radon, geotechnical exploration (soils, foundations, site retention, etc.), wetlands, endangered species, ecological resources, methane, geotechnical exploration, or construction materials testing. Geotech and ESA provided as requested during project scoping meeting and Project Charter. Per City's first proposal comments, ESA scope to be confirmed.

- B. **Survey** - Provide a boundary, topographic, and tree survey using the services of a professional surveyor. Quorum's consultant will prepare a boundary and topographic survey for the site to be used for site planning and civil engineering design purposes, including observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, and franchised utility facility appurtenances; Dig Tess markings of subsurface utilities that are in place at the time that field work is being done; and two benchmarks established with the survey. The tree inventory will include tree locations, an aerial photo, approximate ROW limits, and handheld GPS-collected tree data. The collected data will include 6" and larger trees, GPS coordinates, diameter of trunk, species name, tag number, and general health assessment. While we will endeavor to tag and locate trees, as described above, it may not be practicable to do so in certain areas and some trees may be excluded in areas of heavy tree coverage or limited access.
- C. **Traffic Impact Analysis** – Quorum's consultant will conduct a City-required scoping meeting to confirm the study area (data collection), trip generation, trip distribution, and analysis scenarios. They will conduct weekday AM (7-9) and PM (4-6) peak period turning movement counts at up to three (3) locations. These three (3) locations are anticipated to be the proposed site access locations serving the development and two (2) 24-hour machine recording tube counts adjacent to the proposed development. Trip generation estimates for this development will be based on the ITE Trip Generation Manual – 11<sup>th</sup> Edition. An electronic (.pdf) draft report that documents the study methodology, traffic volumes, analysis results, and recommendations for ingress/egress improvements (if necessary) will be prepared and submitted to the Client for review and comment.
- D. **Subsurface Utility Exploration** – Quorum's subconsultant, will expose utilities using SUE methods and collect survey data on their exposed location. This task includes researching available existing utility records and performing in-field utility designating (Quality Level B) to find and map the horizontal location of existing utilities within the property boundary.



- E. **Civil Engineering and Landscape Design** – The Architect, through the services of a civil engineering consultant, shall include, on-site work such as Civil Engineering, Landscape and Irrigation Design, Tree Preservation Plans, and a Minor Replat. This task will include as grading, paving, and utility plans, as well as erosion control, hydrology and drainage plans with calculations if required, for the area disturbed and affected by development. At this point we have not included any off-site utility design or coordination with FEMA, Army Corps of Engineers, or other third-party entity. This task will also include the Zoning Compliance Plan (ZCP) and preparation of on-site preliminary civil engineering plans consisting of the information required on the Zoning Compliance Plan Checklist. That will be followed by final on-site civil engineering plans separated into three phases, Landscape and Hardscape Construction Documents and an irrigation plan for the development impact area included in the Landscape Construction Documents. This task also includes the preparation of a Tree Preservation Plan, and submittal of a Minor Replat, Checklist, and Application to the local jurisdiction for review. The consultant will attend one meeting with review staff and, if required, one public hearing at which the item is considered for approval. coordinate filing of the Replat with the County. Note that we assume the SWPPP Book and documentation will be prepared by the contractor and is excluded from this scope.
- F. **Downstream Assessment & Drainage Study** – Includes a Drainage Study submittal to the City and will respond to two rounds of City comments as part of this task. Responding to additional rounds of comments will be considered additional services. This task does not include any submittals to the FEMA. This task will also include, preparation of two drainage improvement options to convey the 100-Year flow through the subject property without causing adverse impacted on neighboring properties. The two options will be an open channel option and an enclosed storm sewer option. Consultant will prepare a schematic level exhibit for each option including drainage structure alignment, existing and proposed utility conflicts, existing and proposed easements, and an Opinion of Probable Construction Cost (OPCC) for each option.
- G. **Equipment Coordination** – Quorum will coordinate existing equipment (new items as well as that which is to be relocated) including necessary utility requirements as part of the construction contract, including lab equipment, shop equipment and testing equipment. Small portable equipment will be Owner provided / relocated, and is only included for basic space needs and general power locations and is not included in basic design or construction.
- H. **Interior Design** – Architect will utilize the services of an Interior Designer from Quorum to propose materials and finishes during Design Development and Construction Documents, as well as to review certain submittals during Construction Administration.
- I. **Furniture Fixtures & Equipment (FF&E)** – FF&E will include furniture programming, furniture specification, artwork specification, and contract administration. FFE selection and specifications will be developed utilizing Client-approved Group Purchasing Orders or Purchasing Cooperatives. For this proposal, We anticipate the project will go out to bid to dealerships to provide product cost and installation for city review. Upon dealership bids



received, a review process will take place between the architect and designer for dealership selection. The Client is responsible for paying the deposit and invoices as noted per client's agreement with the furniture dealer. This task also includes Artwork selection including an artwork and accessory's location floor plan for reference. Quorum will recommend locations for custom artwork, poster prints, and the desired design intent. Upon review and approval from the Client, Quorum will facilitate a bidding process to select art consultants. Upon bids and concepts received, a review process will take place between the architect and designer for art consultant selection. Once an art consultant is awarded the project, Quorum will coordinate with an art consultant who supplies the art to assemble a document showing the conceptual design of the custom artwork, poster print, frame selection, etc. Artwork, accessories, and pricing will be presented to the client for review and approval. Upon approval, an invoice will be given to the client for the agreed upon amount for Artwork costs. Production of the artwork and purchase of the accessories will begin at that time.

- J. **IT and Security** – The MEP consultant for both phases and 3 buildings will provide a needs assessment, and design and specifications for the following: Entrance facility and equipment room (EF/ER i.e. MDF), Telecommunications rooms, (TR i.e. IDF), Structured cabling, Network connections, Audio-visual systems, Public address, Relocation of fiber loop, and Relocation of existing IT server. The Security design will include the following: Threat/needs assessment, Access control, Security structured cabling, Video surveillance, Intrusion detection, and Emergency, duress and panic signalization
- K. **Building Envelope** – The Building Envelope consultant will provide an independent review of design and construction documents and make recommendations in order to meet required building envelope performance requirements for enclosures and systems including openings, glazing systems, roofing, and waterproofing. This may investigation and analysis of the existing structure to remain as well as observations at critical points during construction.
- L. **Additional Services Allowance** – \$50,000 Allowance allocated for additional service requested throughout design and approved by the Owner, including but not limited to additional site observations beyond those listed herein, or other items listed under additional services. Invoiced only if used by the Design team and approved by the Owner
- M. **Direct Expense Fee** – Architect shall invoice lump sum against the Direct Expense Fee based on using approximately 25% of the allocated fee during design and 75% of the allocated fee during bidding and construction mostly for printing, meals, and travel (mileage and tolls) expenses.



## COMPENSATION

**Compensation for Basic and Supplemental Services as described herein is proposed to be a combination of lump sum and hourly, Not to Exceed fee of \$5,906,100 as summarized below. Note that for Basic Services and applicable Supplemental Services, we anticipate our work will be developed in two phases as described herein at roughly 65% for Phase 1 and 35% for Phase 2.**

### 1. BASIC SERVICES

A.	Programming / Master plan	\$ 172,400	
B.	Schematic Design	\$ 610,600	
C.	Design Development	\$1,062,800	
D.	Construction Documents	\$1,456,500	
E.	Bidding	\$ 97,900	(Hourly, not to exceed)
F.	Construction Contract Admin	\$1,022,300	(Hourly, not to exceed)
<u>Total Basic Service</u>		<u>\$4,422,500</u>	

This is approximately 7.75% of the assumed \$57 mil Construction cost for two separate design, bid and construction packages.

### 2. SUPPLEMENTAL SERVICES

A.	Geotech & ESA	\$ 55,000	
B.	Survey	\$ 55,000	
C.	Traffic Impact Analysis	\$ 28,000	
D.	Subsurface Utility Exploration	\$ 50,000	
E.	Civil Engineering and Landscape	\$ 780,000	
F.	Downstream Assessment & Drainage	\$ 60,000	
G.	Equipment Coordination	\$ 80,000	
H.	Interior Design	\$ 65,000	
I.	Furniture Fixtures & Equipment	\$ 72,000	
J.	IT, Security and Fiber	\$ 142,600	
K.	Building Envelope	\$ 28,000	
L.	Additional Services allowance	\$ 50,000	
M.	<u>Direct Expenses fee</u>	<u>\$ 18,000</u>	
<u>Total Supplemental Services</u>		<u>\$1,483,600</u>	

This is approximately 2.60% of the assumed \$57 mil Construction cost.

**Total of Basic and Supplemental Services \$5,906,100**



The following 2024 Quorum hourly rate schedule will be utilized for additional services associated with this project in 2024. Rates are subject to change each calendar year.

Principal	\$	240
Associate	\$	210
Project Manager	\$	190
Project Architect	\$	190
Architect/Interior Designer	\$	165
Intern Architect/Designer	\$	155
Technical Staff	\$	150
Project Clerical	\$	90
Administration	\$	90
Student Intern	\$	75

Additional Services (Optional) – If there is a request to expand the scope of Basic Services, or to include Additional Services in the future, the fee will be negotiated based on the specific scope. This may include, but not be limited to, additional renderings or videos, cost projections (currently excluded since a CMaR will be on board early), fees paid for approvals of authorities having jurisdiction, detailed audio / visual, access control or security design beyond the City provided standards provided by Client’s IT department based off recent projects, Storm Shelter design, Special Inspections during construction, Fast track design, or more than two construction packages, \*Commissioning, LEED Compliance, OSCAR and CLARA design, revisions to previously approved work, off-site utility design or other off-site work, Franchise utility work, Left turn or deceleration lanes, TX DOT driveway coordination, LOMR and CLOMR studies, water quality analysis, easement abandonments, environmental or wetland studies, coordination or permitting with USACE, TCEQ, or other local agencies outside of the normal municipal process, flood studies/floodplain development, Drainage and detention beyond the specific defined area of this project, etc. \*As part of basic services, the design team shall provide documentation/requirements for either the owner or contractor to hire a third-party Commissioning agent. Additional Services work shall not be completed unless and until approved by the Client.

**SCHEDULE**

See Attachment “A” for our proposed schedule which may be affected or extended, based on the actual Notice to Proceed, scheduling of various meetings and response times, changes in Design after approval, delays in returning review comments or delays in the Client scheduling interim review meetings within each phase.



## CLIENT RESPONSIBILITIES

The City shall provide copies of any pertinent information that affects the property, including, but not limited to, a recent title commitment for each site or parcel, information on hazardous materials, flood information, Zoning and Development Ordinances, etc. The City will also provide a list of all equipment to be stored at this site. The Client shall provide services for the discovery, presence, handling, removal, or disposal of hazardous materials in any form at the Project site, including Hazardous material studies or abatement made necessary due to the demolition of existing structures. For Geotechnical work, the client is responsible for accurately identifying the existence and location of all subterranean structures and utilities on or affecting the Site (including the type and location of utility lines). The geotechnical company will take reasonable precautions to avoid affecting subterranean structures and utilities disclosed to it in writing by the Client.

In order to prepare the Phase I ESA the Client should provide the consultant with the following:

- Copies of available site plans, plots, and/or surveys;
- Current chain of ownership for the site (preferably dating back to 1940);
- Site contact information for site access;
- Owner contact information for interview and questionnaire; and,
- Completed User Questionnaire

The Client will provide appropriate Special Inspections and Construction Material Testing during construction, as well as Building Commissioning if required.

## ADDITIONAL INFORMATION

1. Quorum Architects, Inc. will provide the Client with architectural services as required and agreed upon for satisfactory and normal completion of this project. The Architect shall exercise usual and customary professional care in his efforts to comply with those laws, codes, ordinances, and regulations, which are in effect as of the date of this agreement.
2. The Architect and its Consultants shall have no responsibility for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials in any form at the Project site, including Hazardous material studies or abatement necessitated by the demolition of existing structures.
3. In performing Architectural Services, the Architect shall use that degree of care and skill ordinarily exercised under similar circumstances by competent members of the architecture profession. Notwithstanding compliance with this standard of care, the Client can normally anticipate that some changes and adjustments in the project will be required either during or after construction. The Client agrees to establish a construction contingency fund of no less than 5% of the estimated construction cost to cover the reasonably anticipated costs of these changes and adjustments as well as, changes due to code revisions and field conditions. The



Client agrees not to seek any costs from the design team for changes or additions during construction unless contingency funds are exhausted by non-Client initiated changes.

4. The Architect has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs that may be provided are based on the information known to Architect at the current time and represent only the Architect's judgment as a design professional familiar with the construction industry. The Architect cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
5. Texas law requires registrants to provide all clients with the following written statement: "The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, (512) 305-9000, has jurisdiction over individuals licensed under the Architect's Registration Law, Texas Civil Statutes, and Article 249a".

Thank you for trusting Quorum Architects, Inc. to assist you in this endeavor.

Sincerely,

Quorum Architects, Inc.

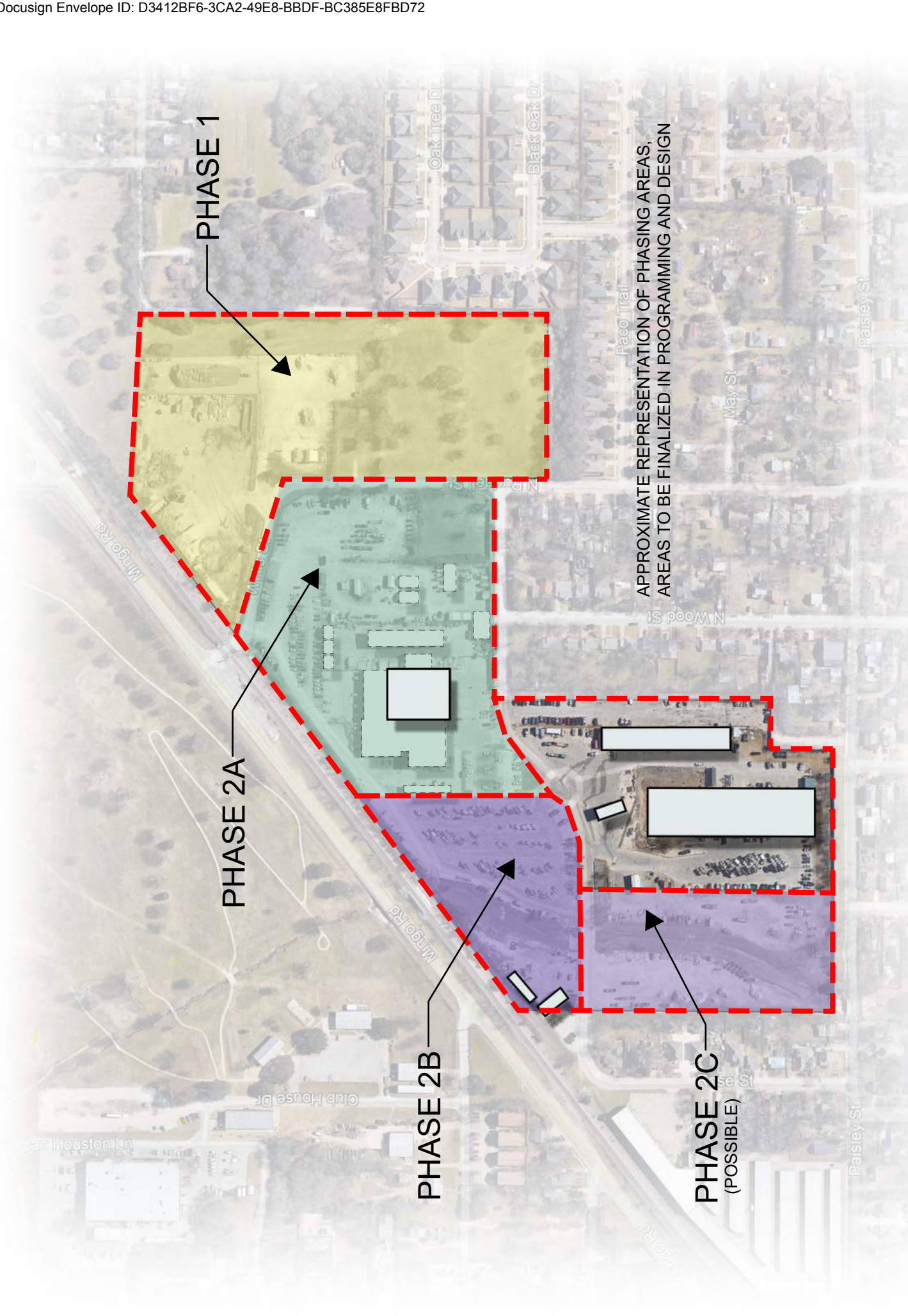
A handwritten signature in blue ink, appearing to read "David G. Duman".

David G. Duman, AIA

Texas registration #14305

Quorum Architects, Inc





PHASE 1

PHASE 2A

PHASE 2B

PHASE 2C  
(POSSIBLE)

APPROXIMATE REPRESENTATION OF PHASING AREAS,  
AREAS TO BE FINALIZED IN PROGRAMMING AND DESIGN

## City of Denton Service Center

Scoping and Proposals

QAI# 24022

Tue 4/23/24

to be updated upon  
contract award

ID	Task Name	Duration	Start	Finish
1	Scoping, Proposals & Council	27 days?	Tue 4/9/24	Wed 5/15/24
2	<b>Phase 1 - Program &amp; Survey</b>	<b>72 days</b>	<b>Thu 5/16/24</b>	<b>Fri 8/23/24</b>
3	Programming	27 days	Thu 5/16/24	Fri 6/21/24
4	Survey	20 days	Thu 5/16/24	Wed 6/12/24
5	Concept Development	29 days	Mon 6/24/24	Thu 8/1/24
6	Owner Review	16 days	Fri 8/2/24	Fri 8/23/24
7	CMAR SELECTION	0 days	Fri 8/23/24	Fri 8/23/24
8	<b>Phase 1 - Schematic Design</b>	<b>86 days</b>	<b>Mon 8/26/24</b>	<b>Mon 12/23/24</b>
9	Architectural Design, materials, outline specs (Additional Days for Holidays)	70 days	Mon 8/26/24	Fri 11/29/24
10	Geotech Investigation	30 days	Mon 8/26/24	Fri 10/4/24
11	ZCP Meeting	0 days	Tue 10/1/24	Tue 10/1/24
12	Owner & CMAR Review and Comment	16 days	Mon 12/2/24	Mon 12/23/24
13	Roadway Design (BY OTHERS)	175 days	Tue 4/9/24	Mon 12/9/24
14	<b>Phase 1 - Design Development</b>	<b>124 days</b>	<b>Wed 1/1/25</b>	<b>Mon 6/23/25</b>
15	Architectural Design, Materials, outline Specs (Additional Days for Holidays)	98 days	Wed 1/1/25	Fri 5/16/25
16	Interim consultant DD submittal	0 days	Mon 3/3/25	Mon 3/3/25
17	Coordinate Owner Equipment - OF / CI	7 days	Mon 2/3/25	Tue 2/11/25
18	CEP V.1 Submittals	7 days	Tue 4/1/25	Wed 4/9/25
19	Owner & CMAR Review and Comment	26 days	Mon 5/19/25	Mon 6/23/25
20	<b>Phase 1 - Construction Documents</b>	<b>139 days</b>	<b>Tue 7/1/25</b>	<b>Fri 1/9/26</b>
21	Architectural Design, Materials, Outline Specs	139 days	Tue 7/1/25	Fri 1/9/26
22	<b>CMAR EARLY RELEASE PACKAGE</b>	<b>45 days</b>	<b>Mon 8/25/25</b>	<b>Fri 10/24/25</b>
24	Interim Consultant CD Submittal	7 days	Mon 11/3/25	Tue 11/11/25
25	Owner & CMAR Review (50 %)	16 days	Wed 11/12/25	Wed 12/3/25
26	CEP V.2 Submmital (?)	7 days	Wed 11/12/25	Thu 11/20/25
27	<b>Phase 1 - Permitting</b>	<b>30 days</b>	<b>Mon 1/12/26</b>	<b>Fri 2/20/26</b>
28	<b>Phase 1 - Pricing</b>	<b>30 days</b>	<b>Mon 2/23/26</b>	<b>Fri 4/3/26</b>
29	<b>Phase 1 - Construction</b>	<b>306 days</b>	<b>Mon 4/6/26</b>	<b>Mon 6/7/27</b>
30	Phase 2 - Schematic Design	66 days	Mon 1/5/26	Mon 4/6/26
32	Phase 2 - Design Development	120 days	Tue 4/7/26	Mon 9/21/26
34	Phase 2 - Construction Documents	120 days	Tue 9/22/26	Mon 3/8/27
36	Phase 2 - Construction	239 days	Tue 6/8/27	Fri 5/5/28

**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.**

Quorum Architects, Inc.

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> 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.**

David Duman

Name of Officer

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

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

☐

Yes

☒

No

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

☐

Yes

☒

No

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

☐

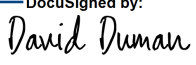
Yes

☒

No

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

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

DocuSigned by:  
  
 Signature of vendor doing business with the governmental entity

7/16/2024

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/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

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

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

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

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

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

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

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> 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: D3412BF63CA249E8BBD FBC385E8FBD72

Status: Sent

Subject: Please DocuSign: City Council Contract 8454 Service Center Design

Source Envelope:

Document Pages: 38

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Erica Garcia

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

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

erica.garcia@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Erica Garcia

Location: DocuSign

7/16/2024 10:09:54 AM

erica.garcia@cityofdenton.com

**Signer Events****Signature****Timestamp**

Erica Garcia

**Completed**

Sent: 7/16/2024 10:16:07 AM

erica.garcia@cityofdenton.com

Viewed: 7/16/2024 10:16:37 AM

Senior Buyer

Signed: 7/16/2024 10:18:14 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 7/16/2024 10:18:17 AM

lori.hewell@cityofdenton.com

Viewed: 7/16/2024 1:21:53 PM

Purchasing Manager

Signed: 7/16/2024 1:22:13 PM

City of Denton

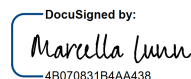
Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

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

Marcella Lunn



Sent: 7/16/2024 1:22:16 PM

marcella.lunn@cityofdenton.com

Viewed: 7/16/2024 3:44:23 PM

Senior Deputy City Attorney

Signed: 7/16/2024 3:50:51 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

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

David Duman



Sent: 7/16/2024 3:50:53 PM

davidd@qarch.com

Viewed: 7/16/2024 3:57:20 PM

Principal, Vice President

Signed: 7/16/2024 4:29:25 PM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 74.112.121.69

**Electronic Record and Signature Disclosure:**

Accepted: 7/16/2024 3:57:20 PM

ID: c7c51269-a0ec-4076-a869-150b754e174b

Signer Events	Signature	Timestamp
Trevor Crain Trevor.Crain@cityofdenton.com Director of Capital Projects City of Denton Security Level: Email, Account Authentication (None)	DocuSigned by:  7B46EEAB11BC4F2...  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/16/2024 4:29:28 PM Viewed: 7/16/2024 4:31:27 PM Signed: 7/16/2024 4:31:54 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 7/16/2024 4:31:27 PM  
ID: 89273487-4ce3-4d23-b5f7-843e04daf3a3

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	Sent: 7/16/2024 4:31:56 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

Lauren Thoden  
lauren.thoden@cityofdenton.com  
Security Level: Email, Account Authentication (None)

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

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

Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 7/16/2024 10:18:17 AM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 7/16/2024 4:31:57 PM Viewed: 7/17/2024 9:18:28 AM
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Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Aaron Skinner aaron.skinner@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 7/15/2024 2:10:03 PM ID: ad56a413-9246-4dd8-91db-787b839dea51		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/16/2024 10:16:07 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US 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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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

**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](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-160, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to approve a pre-qualified professional services list of state certified engineers for professional engineering services for the Solid Waste and Recycling Department; and providing an effective date (RFQ 8525 - for a three (3) year term).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** August 12, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to approve a pre-qualified professional services list of state certified engineers for professional engineering services for the Solid Waste and Recycling Department; and providing an effective date (RFQ 8525 – for a three (3) year term).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

Operations at the City of Denton Solid Waste facilities are highly regulated and engineered. The purpose of this activity is to prequalify multiple firms to complete specialized planning and compliance tasks at the Solid Waste and Recycling facilities, including the landfill and proposed transfer station. The list of professional service providers will help reduce the time required to procure those professional services. an RFQ was advertised for professional services in six (6) categories including

- Planning, Engineering Design, and Facility Permitting
- Construction Documents, Technical Specifications, and Construction Management
- Environmental Services
- Landfill Planning and Engineering Services
- Landfill Gas Services
- Innovative Drone and Surveying Services

This list of prequalified firms will be accessed when the need arises to complete certain design, regulatory, consulting, and construction contracts at the City of Denton Solid Waste facilities. A ranking of the pre-qualified vendors in the project category will be performed for every project using the list. The City will then negotiate scope and price with the highest-ranked firm. If the City and the firm cannot agree on the overall amount, the City moves on to the next firm to gain the best possible contract for the City and the project.

Any firm that was pre-qualified under this RFQ is eligible to receive contracts for professional services that would go through the normal negotiation and award process, including City Council and Public Utilities Board consideration. It is intended that this method of qualifying Professional and Engineering Services

for a wide range of services required to deliver current and future project delivery will be repeated every three (3) years.

Request for Qualifications (RFQ) for professional engineering services was sent to 604 prospective firms for these services, including 18 Denton firms. In addition, the RFQ was placed on the Procurement website for prospective respondents to download and advertised in the local newspaper. Eight (8) statements of qualifications (SOQ) were received. The SOQs were evaluated based on published criteria including identification and understanding of the City's requirements, past performance and experience, qualifications of key personnel, and schedule to complete tasks. All firms scoring 80 or higher were placed on the list. The evaluation team is recommending approval of the list with eight (8) qualified firms.

NIGP Code Used for Solicitation:	925 - (Service Only) - Engineering Services, Professional
Notifications sent for Solicitation sent in IonWave:	640
Number of Suppliers that viewed Solicitation in IonWave:	14
HUB-Historically Underutilized Business Invitations sent out:	94
SBE-Small Business Enterprise Invitations sent out:	208
Responses from Solicitation:	8

### **RECOMMENDATION**

Recommend approval of pre-qualified professional services list of state certified engineers for professional engineering services for the Solid Waste and Recycling Department as reviewed and qualified by City staff.

### **ESTIMATED SCHEDULE OF PROJECT**

This is a three (3) year contract.

### **FISCAL INFORMATION**

No funds are requested or required to be spent as part of this approval. Individual contracts will be negotiated with each firm and purchasing orders will be issued as needed.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Evaluation Sheet

Exhibit 3: Ordinance

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

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

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

Exhibit 2  
RFQ 8525 - Evaluation Sheet for Pre-Qualified List for Solid Waste and Recycling

Construction Docs, Technical Specs and Construction MGMT						
Scoring Criteria	Parkhill, Smith & Cooper Inc.	Burns & McDonnell Engineering	Biggs & Mathews Environmental	SCS Engineers	Weaver Consultants Group	Coleman & Assoc. Land Surveying
Identification and Understanding of the City's Requirements for this project - 20%	20.00	20.00	18.67	18.67	18.67	18.67
Experience and Qualifications of the Responding Firm - 30%	30.00	28.00	28.00	28.00	28.00	26.00
Past Performance and Experience on Projects - 30%	30.00	28.00	28.00	28.00	28.00	28.00
Schedule presented for this service and defined in the scope of work - 20%	20.00	20.00	20.00	20.00	20.00	20.00
Total Score:	100.00	96.00	94.67	94.67	94.67	92.67

Environmental Services							
Scoring Criteria	Biggs & Mathews Environmental	Parkhill, Smith & Cooper Inc.	Solutient GeoSciences, Inc.	SCS Engineers	Weaver Consultants Group	Coleman & Assoc. Land Surveying	Burns & McDonnell Engineering
Identification and Understanding of the City's Requirements for this project - 20%	20.00	20.00	20.00	18.67	20.00	18.67	20.00
Experience and Qualifications of the Responding Firm - 30%	30.00	30.00	30.00	30.00	28.00	30.00	30.00
Past Performance and Experience on Projects - 30%	30.00	30.00	30.00	30.00	30.00	28.00	26.00
Schedule presented for this service and defined in the scope of work - 20%	20.00	20.00	20.00	20.00	20.00	20.00	20.00
Total Score:	100.00	100.00	100.00	98.67	98.00	96.67	96.00

Innovative and Surveying Services						
Scoring Criteria	Coleman & Assoc. Land Surveying	SCS Engineers	Weaver Consultants Group	Biggs & Mathews Environmental	Burns & McDonnell Engineering	Parkhill, Smith & Cooper Inc.
Identification and Understanding of the City's Requirements for this project - 20%	20.00	20.00	20.00	18.67	20.00	18.67
Experience and Qualifications of the Responding Firm - 30%	30.00	30.00	30.00	30.00	30.00	30.00
Past Performance and Experience on Projects - 30%	30.00	30.00	30.00	30.00	28.00	28.00
Schedule presented for this service and defined in the scope of work - 20%	20.00	20.00	20.00	20.00	20.00	20.00
Total Score:	100.00	100.00	100.00	98.67	98.00	96.67

Landfill Gas Services							
Scoring Criteria	SCS Engineers	Solutient GeoSciences, Inc.	Weaver Consultants Group	Burns & McDonnell Engineering	Biggs & Mathews Environmental	Coleman & Assoc. Land Surveying	Parkhill, Smith & Cooper Inc.
Identification and Understanding of the City's Requirements for this project - 20%	20.00	20.00	20.00	20.00	18.67	18.67	18.67
Experience and Qualifications of the Responding Firm - 30%	30.00	30.00	30.00	30.00	30.00	30.00	30.00
Past Performance and Experience on Projects - 30%	30.00	30.00	30.00	28.00	28.00	28.00	28.00
Schedule presented for this service and defined in the scope of work - 20%	20.00	20.00	20.00	20.00	20.00	20.00	20.00
Total Score:	100.00	100.00	100.00	98.00	96.67	96.67	96.67

Landfill Planning and Engineering Services								
Scoring Criteria	Parkhill, Smith & Cooper Inc.	Risa Weinberger & Associates,	Solutient GeoSciences, Inc.	Weaver Consultants Group	Coleman & Assoc. Land Surveying	Biggs & Mathews Environmental	SCS Engineers	Burns & McDonnell Engineering
Identification and Understanding of the City's Requirements for this project - 20%	20.00	20.00	20.00	20.00	20.00	18.67	20.00	18.67
Experience and Qualifications of the Responding Firm - 30%	30.00	30.00	30.00	30.00	28.00	28.00	28.00	28.00
Past Performance and Experience on Projects - 30%	30.00	30.00	30.00	30.00	30.00	30.00	28.00	28.00
Schedule presented for this service and defined in the scope of work - 20%	20.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00
Total Score:	100.00	100.00	100.00	100.00	98.00	96.67	96.00	94.67

Planning Engineering Design and Facility Permitting								
Scoring Criteria	Parkhill, Smith & Cooper Inc.	Burns & McDonnell Engineering	SCS Engineers	Solutient GeoSciences, Inc.	Weaver Consultants Group	Coleman & Assoc. Land Surveying	Biggs & Mathews Environmental	Risa Weinberger & Associates,
Identification and Understanding of the City's Requirements for this project - 20%	20.00	18.67	18.67	20.00	18.67	20.00	17.33	18.67
Experience and Qualifications of the Responding Firm - 30%	30.00	30.00	30.00	28.00	28.00	26.00	28.00	26.00
Past Performance and Experience on Projects - 30%	30.00	30.00	28.00	28.00	28.00	26.00	26.00	26.00
Schedule presented for this service and defined in the scope of work - 20%	20.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00
Total Score:	100.00	98.67	96.67	96.00	94.67	92.00	91.33	90.67

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO APPROVE A PRE-QUALIFIED PROFESSIONAL SERVICES LIST OF STATE CERTIFIED ENGINEERS FOR PROFESSIONAL ENGINEERING SERVICES FOR THE SOLID WASTE AND RECYCLING DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE (RFQ 8525 – FOR A THREE (3) YEAR TERM).

WHEREAS, the City of Denton, Texas (the “City”) desires to have a pool of professional firms ready to serve as contractors to provide the City with project management services on a continuing contract basis; and

WHEREAS, on March 15, 2024, the City issued a *Request for Qualifications No. 8525, Prequalification for Solid Waste and Recycling* (“RFQ”) for a pre-qualified professional services list of state certified engineers for professional engineering services for the Solid Waste and Recycling Department, as detailed in the RFQ; and

WHEREAS, in response to the RFQ, which was in accordance with the provisions of Texas Government Code, Chapter 2254, the City evaluated each submission in accordance with selection criteria in order to determine the most qualified firms to provide the services; and

WHEREAS, the City staff has prepared a list attached as Exhibit “A” representing those firms whose qualifications and references demonstrated to be the most advantageous to the City; and

WHEREAS, awards to a professional firm on the list, which exceed the City Manager’s delegation authority, will be brought to the City Council in compliance with all procurement statutes and local ordinances, considering the importance of price and other evaluation factors in the RFQ; and

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

WHEREAS, the City Council finds that the selection of firms for the provision of services, pursuant to the terms, conditions, and specifications contained in the RFQ, should be approved and is in the best interest of the citizens of the City of Denton; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council of the City of Denton, Texas, hereby approves the selection of professional contractors, which pre-qualified list is attached hereto as Exhibit “A” and incorporated by reference herein, for the provision of social services on a continuing contract basis with the City of Denton, and pursuant to the *Request for Qualifications No. 8525, Prequalification for Solid Waste and Recycling*.

**SECTION 2.** Any formal written agreement as a result of the acceptance, approval, and awarding of the proposals from the RFQ must be done in accordance with the procurement statutes and local ordinances; provided that, the City Manager, or their designee, may take any actions that may be required or permitted to be performed within their previously delegated authority.

**SECTION 3.** 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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, 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

## **EXHIBIT A**

### **RFQ 8525 – Prequalification for Professional Engineering Services**

#### **Planning, Engineering Design, and Facility Permitting**

Parkhill, Smith & Cooper Inc.	1	100.00
Burns & McDonnell Engineering	2	98.67
SCS Engineers	3	96.67
Solutient GeoSciences, Inc.	4	96.00
Weaver Consultants Group	5	94.67
Coleman & Assoc. Land Surveying	6	92.00
Biggs & Mathews Environmental	7	91.33
Risa Weinberger & Associates,	8	90.67

#### **Construction Documents, Technical Specifications, and Construction Management**

Parkhill, Smith & Cooper Inc.	1	100.00
Burns & McDonnell Engineering	2	96.00
Biggs & Mathews Environmental	3	94.67
SCS Engineers	4	94.67
Weaver Consultants Group	5	94.67
Coleman & Assoc. Land Surveying	6	92.67

#### **Environmental Services**

Biggs & Mathews Environmental	1	100.00
Parkhill, Smith & Cooper Inc.	2	100.00
Solutient GeoSciences, Inc.	3	100.00
SCS Engineers	4	98.67
Weaver Consultants Group	5	98.00
Coleman & Assoc. Land Surveying	6	96.67
Burns & McDonnell Engineering	7	96.00

#### **Landfill Planning and Engineering Services**

Parkhill, Smith & Cooper Inc.	1	100.00
Risa Weinberger & Associates,	2	100.00
Solutient GeoSciences, Inc.	3	100.00
Weaver Consultants Group	4	100.00
Coleman & Assoc. Land Surveying	5	98.00
Biggs & Mathews Environmental	6	96.67
SCS Engineers	7	96.00
Burns & McDonnell Engineering	8	94.67

**Landfill Gas Services**

SCS Engineers	1	100.00
Solutient GeoSciences, Inc.	2	100.00
Weaver Consultants Group	3	100.00
Burns & McDonnell Engineering	4	98.00
Biggs & Mathews Environmental	5	96.67
Coleman & Assoc. Land Surveying	6	96.67
Parkhill, Smith & Cooper Inc.	7	96.67

**Innovative Drone and Surveying Services**

Coleman & Assoc. Land Surveying	1	100.00
SCS Engineers	2	100.00
Weaver Consultants Group	3	100.00
Biggs & Mathews Environmental	4	98.67
Burns & McDonnell Engineering	5	98.00
Parkhill, Smith & Cooper Inc.	6	96.67



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-161, Version: 1**

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### **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 Titan Utility Services, LLC, for testing, repair, replacement, and disposal of dielectric protected tools for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8547 - awarded to Titan Utility Services, LLC, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,000,000.00).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement

**ACM:** Cassey Ogden

**DATE:** August 12, 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 Titan Utility Services, LLC, for testing, repair, replacement, and disposal of dielectric protected tools for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8547 – awarded to Titan Utility Services, LLC, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,000,000.00).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

In an effort to expedite project delivery, and to comply with the City's Procurement Policy, Denton Municipal Electric conducted a solicitation via a Request for Proposal (RFP) for testing, repair, replacement, and disposal of dielectric protected tools.

Once approved, DME will have a vendor to facilitate testing and repair of equipment used to work on the electric grid. The forty-four (44) categories of equipment (e.g. hot sticks, grounding cables, phase testers) being tested/repared all contact energized power lines and equipment such as transformers and fuses. This equipment must be tested and/or calibrated annually to ensure that it does not conduct electricity (dielectric testing). This regulatory and manufacturer's requirement ensures the safety of our employees. DME will be able to quickly, and more efficiently, test and repair equipment needed to facilitate the repair and maintenance of the electric grid.

Requests for Proposals were sent to 823 prospective suppliers of this item, including 29 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Four (4) proposals were received and evaluated based upon published criteria including delivery, compliance with specifications, probable performance, and price. Based upon this evaluation, Titan Utility Services, LLC was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	280, 285, 287, 691, 936, 941, 992
Notifications sent for Solicitation sent in IonWave:	823
Number of Suppliers that Viewed Solicitation in IonWave:	24

HUB-Historically Underutilized Business Invitations sent out:	85
SBE-Small Business Enterprise Invitations sent out:	298
Responses from Solicitation:	4

## **RECOMMENDATION**

Award a contract with Titan Utility Services, LLC, for testing, repair, replacement, and disposal of dielectric protected tools for Denton Municipal Electric, in a one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,000,000.

## **PRINCIPAL PLACE OF BUSINESS**

Titan Utility Services, LLC  
Tickfaw, LA

## **ESTIMATED SCHEDULE OF PROJECT**

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

## **FISCAL INFORMATION**

These services will be funded from Electric Safety & Training account 600110.6332. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$1,000,000. The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

## **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: Jeff Brown, 940-349-7189.

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

**Exhibit 2****RFP 8547 - Pricing Evaluation for DiElectric Protected Tools/Equipment Testing, Repair, Replacement, and Disposal**

Respondent's Business Name:		<b>Titan Utility Services, LLC</b>	Stuart C. Irby	Texas Electric Cooperative	CTE, LLC
Principal Place of Business (City and State):		<b>Tickfaw, LA</b>	Ft. Worth, TX	Georgetown, TX	Kansas City, MO
<b>Line #</b>	<b>Description</b>	<b>Unit</b>	<b>Unit</b>	<b>Unit</b>	<b>Unit</b>
1	Hourly labor cost for repairs	<b>\$50.00</b>	\$100.00	\$100.00	\$80.00
2	Standard Telescoping Pole	<b>\$36.00</b>	\$54.25	\$25.00	\$8.00
3	Heavy Duty Telescoping Pole	<b>\$36.00</b>	\$54.25	\$25.00	\$8.00
4	No Twist Telescoping Pole	<b>\$36.00</b>	\$54.25	\$25.00	\$8.00
5	Bucket Pole/Stick	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
6	Measuring Telescoping Pole	<b>\$36.00</b>	\$54.25	\$25.00	\$8.00
7	Compact Telescoping Pole	<b>\$36.00</b>	\$54.25	\$25.00	\$8.00
8	Switch Sticks	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
9	2 part Switch Sticks	<b>\$36.00</b>	\$33.75	\$25.00	\$8.00
10	Universal Hot sticks	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
11	Universal Tie Sticks	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
12	Severe Weather Sticks	<b>\$36.00</b>	\$54.25	\$25.00	\$27.50
13	Body Sticks	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
14	Cable Handling Sticks	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
15	Shot Gun Sticks	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
16	Telescoping Shot Gun Sticks	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
17	Tree Trimming/Pruner Pole/ Sticks	<b>\$36.00</b>	\$33.75	\$25.00	\$80.00
18	Rathet Cutters	<b>\$36.00</b>	\$33.75	\$15.00	\$80.00
19	Bolt/cable Cutters	<b>\$36.00</b>	\$33.75	\$15.00	\$80.00
20	Link Sticks	<b>\$36.00</b>	\$33.75	\$15.00	\$27.50
21	Conductor Tension Tools	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
22	U-arm Extensions	<b>\$36.00</b>	\$33.75	\$50.00	\$27.50
23	Extension Arms	<b>\$36.00</b>	\$33.75	\$50.00	\$27.50
24	Temporary Cross Arms	<b>\$36.00</b>	\$33.75	\$50.00	\$27.50
25	Temporary Dead End Arms	<b>\$36.00</b>	\$33.75	\$50.00	\$27.50
26	Transformer Grounds	<b>\$15.00</b>	\$16.75	\$20.00	\$25.00
27	Grounded Parking Stands	<b>\$15.00</b>	\$16.75	\$20.00	\$25.00
28	Elbow Pullers	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
29	Padmount Switch Stick	<b>\$36.00</b>	\$33.75	\$25.00	\$27.50
30	Jumpers	<b>\$22.00</b>	\$16.75	\$40.00	\$30.00
31	Grounds	<b>\$15.00</b>	\$16.75	\$20.00	\$25.00
32	Grounds - Multiple Parts/Legs	<b>\$15.00</b>	\$19.25	\$25.00	\$25.00
33	Load Bread/Load Pick Up Tools	<b>\$80.00</b>	\$33.75	\$80.00	\$80.00
34	Hi-pot Detector	<b>\$160.00</b>	\$160.00	\$160.00	\$160.00

**Exhibit 2****RFP 8547 - Pricing Evaluation for DiElectric Protected Tools/Equipment Testing, Repair, Replacement, and Disposal**

Respondent's Business Name:		<b>Titan Utility Services, LLC</b>	Stuart C. Irby	Texas Electric Cooperative	CTE, LLC
Principal Place of Business (City and State):		<b>Tickfaw, LA</b>	Ft. Worth, TX	Georgetown, TX	Kansas City, MO
<b>Line #</b>	<b>Description</b>	<b>Unit</b>	<b>Unit</b>	<b>Unit</b>	<b>Unit</b>
35	Voltage Phasing Meters - Analog	<b>\$125.00</b>	\$125.00	\$80.00	\$125.00
36	Voltage Phasing Meters - Digital	<b>\$125.00</b>	\$125.00	\$80.00	\$125.00
37	Voltage Detector	<b>\$125.00</b>	\$125.00	\$80.00	\$125.00
38	Range Voltage Tester/Indicator	<b>\$80.00</b>	\$80.00	\$80.00	\$80.00
39	Transformer/Copacitor Tester	<b>\$80.00</b>	\$80.00	\$80.00	\$80.00
40	Ammeter	<b>\$80.00</b>	\$80.00	\$80.00	\$80.00
41	Volt Meters (High Voltage, Low Voltage)	<b>\$125.00</b>	\$125.00	\$80.00	\$125.00
42	Analog Phasing Sticks	<b>\$125.00</b>	\$125.00	\$80.00	\$125.00
43	Nuetral Detector	<b>\$80.00</b>	\$80.00	\$80.00	\$80.00
<b>Total:</b>		<b>\$2,253.00</b>	\$2,325.50	\$1,905.00	\$2,150.50

<b>Evaluation</b>					
<b>Item #</b>	<b>Scoring Criteria</b>	<b>Titan Utility Services, LLC</b>	Stuart C. Irby	Texas Electric Cooperative	CTE, LLC
1	Ability to meet schedule - 20%	<b>14.00</b>	5.00	7.00	6.00
2	Compliance with Specifications - 30%	<b>30.00</b>	18.00	13.50	6.00
3	Probable Performance - 20%	<b>18.00</b>	13.00	5.00	5.00
4	Price, Total Cost of Ownership - 30%	<b>25.37</b>	24.58	30.00	26.58
<b>Total Score:</b>		<b>87.37</b>	60.58	55.50	43.58

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH TITAN UTILITY SERVICES, LLC, FOR TESTING, REPAIR, REPLACEMENT, AND DISPOSAL OF DIELECTRIC PROTECTED TOOLS FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8547 – AWARDED TO TITAN UTILITY SERVICES, LLC, FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$1,000,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for testing, repair, replacement, and disposal of dielectric protected tools 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 NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8547	Titan Utility Services, LLC	\$1,000,000.00

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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

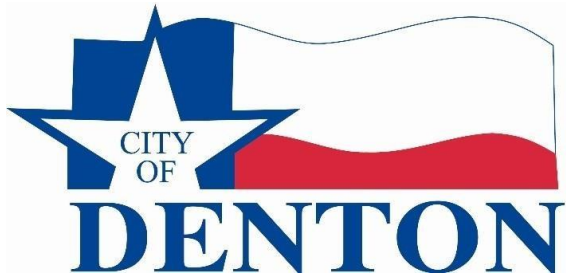
ATTEST:  
LAUREN THODEN, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

*Marcella Lunn*

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



Docusign City Council Transmittal Coversheet

RFP	8547
File Name	DiElectric Protected Tools/Equipment Testing, Repair, Replacement, and Disposal
Purchasing Contact	Christa Christian
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND TITAN UTILITY SERVICES, LLC  
(CONTRACT 8547)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between **Titan Utility Services, LLC** a Louisiana Limited Liability Company, whose address is 14146 HWY 1064, Tickfaw, LA 70466 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 8547- DiElectric Protected Tools and Equipment Testing and Repair**, 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 8547 (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Certificate of Interested Parties Electronic Filing (**Exhibit "D"**);
- (e) Insurance Requirements (**Exhibit "E"**);
- (f) Contractor's Proposal (**Exhibit "F"**);
- (g) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "G"**);

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

**Prohibition on Contracts with Companies Boycotting Israel**

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

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Contract # 8547

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

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

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

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

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

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

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

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

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

Contract # 8547

the year and day first above written.

CONTRACTOR

DocuSigned by:  
BY: Cody Trout  
D7C812B3483045C...  
AUTHORIZED SIGNATURE

Printed Name: Cody Trout

Title: COO

9855073306

PHONE NUMBER

codytrout@titanutility.net

EMAIL ADDRESS

2024- 1183442

TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER

ATTEST:  
LAUREN THODEN, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
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 Antonio Puente  
E3760944C2BE4B5...  
SIGNATURE PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

## **Exhibit A**

### **Special Terms and Conditions**

#### **1. Total Contract Amount**

The contract total for services shall not exceed \$1,000,000. Pricing shall be per Exhibit F attached.

#### **2. The Quantities**

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

#### **3. Contract Terms**

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

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

#### **4. Price Escalation and De-escalation**

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

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

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal Contract # 8547

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](mailto:purchasing@cityofdenton.com) noting the solicitation number.

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

## **5. Performance Liquidated Damages**

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

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

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

## **Exhibit C**

### **Standard Purchase Terms and Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

## **10. WORKFORCE**

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

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

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

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

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, Contract # 8547

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

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

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

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

**12. INVOICES:**

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

**13. PAYMENT:**

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within Contract # 8547

thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

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

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

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

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

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

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

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

**14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

Contract # 8547

**15. FINAL PAYMENT AND CLOSE-OUT:**

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

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

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

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

**17. RIGHT TO AUDIT:**

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

**18. SUBCONTRACTORS:**

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan

Contract # 8547

has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

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

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

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

#### **19. WARRANTY-PRICE:**

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

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

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

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

**21. WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or

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manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the

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Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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

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

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

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

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

**28. TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work

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pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

**30. DELAYS:**

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

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

**31. INDEMNITY:**

**A. Definitions:**

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

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE**

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**PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

**A. General Requirements:**

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:  
City of Denton  
Materials Management Department  
901B Texas Street  
Denton, Texas 76209
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without

expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

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

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

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

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

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

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

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

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

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

Act, Chapter 552, and Texas Government Code.

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

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**38. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute,

acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

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

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

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

**42. GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or

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any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

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

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

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

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

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

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

**48. INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**49. DISPUTE RESOLUTION:**

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

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

**50. JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the Contract # 8547

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

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

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

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

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

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

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

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

## 55. EQUAL OPPORTUNITY

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

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

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

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

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or  
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

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

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

**60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

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

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

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

**64. FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so

affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

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

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

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

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

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

**Exhibit D**  
**Certificate of Interested Parties Electronic Filing**

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

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

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: Contract 8547 – Form 1295)

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

## **Exhibit E**

### **INSURANCE REQUIREMENTS**

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

#### **STANDARD PROVISIONS:**

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

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

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees, and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
  - Name as Additional Insured the City of Denton, its Officials, Agents, Employees, and volunteers.

- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***
- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

**SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

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

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

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

**B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE**

**Workers' Compensation** within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: \$100,000.00 Each Accident  
Bodily Injury by Disease: \$100,000.00 Each Employee  
Bodily Injury by Disease: \$500,000.00 Policy Limit

**NOTES:**

- a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.
- b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

**SUBCONTRACTING LIABILITY**

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

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

**EXHIBIT F**

<b>Description</b>	<b>QTY</b>	<b>UOM</b>	
Hourly labor cost for repairs	1	HR	\$ 50.00
Percent Markup for Parts and Materials for Repairs.	1	Percent	20%
Discounted Rate for Replacement Tool	1	Percent	0%
Disposal Costs	1	EA	\$ -

<b>Equipment Name</b>	<b>Dielectric Testing Price</b>	<b>Mechanical Testing</b>	<b>On-Site Testing</b>	<b>Repair Available</b>	<b>Notes</b>
Standard Telescoping Pole	\$ 36.00				
Heavy Duty Telescoping Pole	\$ 36.00				
No Twist Telescoping Pole	\$ 36.00				
Bucket Pole/Stick	\$ 36.00				
Measuring Telescoping Pole	\$ 36.00				
Compact Telescoping Pole	\$ 36.00				
Switch Sticks	\$ 36.00				
2 part Switch Sticks	\$ 36.00				
Universal Hot sticks	\$ 36.00				
Universal Tie Sticks	\$ 36.00				
Severe Weather Sticks	\$ 36.00				
Body Sticks	\$ 36.00				
Cable Handling Sticks	\$ 36.00				
Shot Gun Sticks	\$ 36.00				
Telescoping Shot Gun Sticks	\$ 36.00				
Tree Trimming/Pruner Pole/ Sticks	\$ 36.00				
Ratchet Cutters	\$ 36.00				
Bolt/cable Cutters	\$ 36.00				
Link Sticks	\$ 36.00				
Conductor Tension Tools	\$ 36.00				
U-arm Extensions	\$ 36.00				

Extension Arms	\$	36.00				
Temporary Cross Arms	\$	36.00	Y	Y	Y	Repairs made onsite. If we do not have all parts we will bring back to our shop for repair/replacement and it will be a four week turnaround
Temporary Dead End Arms	\$	36.00	Y	Y	Y	
Transformer Grounds	\$	15.00	Y	Y	Y	
Grounded Parking Stands	\$	15.00	Y	Y	Y	
Elbow Pullers	\$	36.00	Y	Y	Y	
Padmount Switch Stick	\$	36.00	Y	Y	Y	
Jumpers	\$	22.00	Y	Y	Y	
Grounds	\$	15.00	Y	Y	Y	
Grounds - Multiple Parts/Legs	\$	15.00	Y	Y	Y	
Load Bread/Load Pick Up Tools		N/A	N/A	N	N/A	
Hi-pot Detector		N/A	N/A	N	N/A	
Voltage Phasing Meters - Analog	\$	125.00	Y	Y	N	
Voltage Phasing Meters - Digital	\$	125.00	Y	Y	N	
Voltage Detector	\$	125.00	Y	Y	N	
Range Voltage Tester/Indicator		N/A	N/A	N	N/A	
Transformer/Copacitor Tester		N/A	N/A	N	N/A	
Ammeter		N/A	N/A	N	N/A	
Volt Meters (High Voltage, Low Voltage)	\$	125.00	Y	Y	N	
Analog Phasing Sticks	\$	125.00	Y	Y	N	
Nuetral Detector		N/A	N/A	N	N/A	

**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.**

Titan Utility Services, 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 7<sup>th</sup> 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?

☐

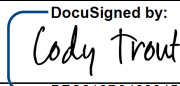
Yes

☒

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:  
  
Signature of Vendor doing business with the governmental entity

7/11/2024

\_\_\_\_\_  
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/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

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

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

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

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

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

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

### **City of Denton Ethics Code Ordinance Number 18-757**

**Definitions:**

**Relative:** a family member related to a City Official within the third 3<sup>rd</sup> 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: 8F0C48E4F97D401EBA80BDA49AE1DF51

Status: Sent

Subject: Please DocuSign: City Council Contract 8547 Dielectric Tools

Source Envelope:

Document Pages: 33

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

7/9/2024 9:59:21 AM

Christa.Christian@cityofdenton.com

**Signer Events****Signature****Timestamp**

Christa Christian

**Completed**

Sent: 7/9/2024 10:36:38 AM

christa.christian@cityofdenton.com

Viewed: 7/9/2024 10:36:51 AM

Purchasing Supervisor

Signed: 7/9/2024 10:36:55 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 7/9/2024 10:36:58 AM

lori.hewell@cityofdenton.com

Viewed: 7/9/2024 12:54:54 PM

Purchasing Manager

Signed: 7/9/2024 12:56:01 PM

City of Denton

Signature Adoption: Pre-selected Style

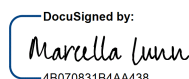
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(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 7/9/2024 12:56:03 PM

marcella.lunn@cityofdenton.com

Viewed: 7/10/2024 2:44:09 PM

Senior Deputy City Attorney

Signed: 7/10/2024 2:48:13 PM

City of Denton

Signature Adoption: Pre-selected Style

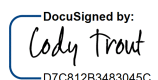
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(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Cody Trout



Sent: 7/10/2024 2:48:17 PM

codytrout@titanutility.net

Viewed: 7/11/2024 4:02:07 AM

COO

Signed: 7/11/2024 4:06:42 AM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Pre-selected Style

Using IP Address: 68.186.208.100

Signed using mobile

**Electronic Record and Signature Disclosure:**

Accepted: 7/11/2024 4:02:07 AM

ID: 906e20ee-6d36-46b0-91ec-f12b1ea35ec4

Signer Events	Signature	Timestamp
<p>Antonio Puente</p> <p>Antonio.Puente@cityofdenton.com</p> <p>DME General Manager</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p> <p><i>Antonio Puente</i></p> <p>E3760944C2BF4B5...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 174.244.17.11</p> <p>Signed using mobile</p>	<p>Sent: 7/11/2024 4:06:45 AM</p> <p>Viewed: 7/11/2024 8:13:19 AM</p> <p>Signed: 7/11/2024 8:13:43 AM</p>

**Electronic Record and Signature Disclosure:**  
Accepted: 7/11/2024 8:13:19 AM  
ID: defd3251-524a-4796-bcb6-8f4977b25455

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

Sent: 7/11/2024 8:13:47 AM

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

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

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

Lauren Thoden  
lauren.thoden@cityofdenton.com  
Security Level: Email, Account Authentication (None)

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

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

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

**COPIED**

Sent: 7/9/2024 10:36:58 AM

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

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

**COPIED**

Sent: 7/11/2024 8:13:47 AM  
Viewed: 7/11/2024 10:56:28 AM

Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Jeff Brown jeffrey.brown@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 5/31/2024 1:44:38 PM ID: 47d67345-2930-4016-8f44-0903e660e239  Ashley Root ashleyroot@titanutility.net Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	7/9/2024 10:36:39 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, US 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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

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

**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](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-162, Version: 1**

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### **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 Texas Excavation Safety System, Inc., for the continuation of the services for utility line locates for the Water Distribution, Wastewater Collections, Water Metering, and Denton Municipal Electric Departments provided by Texas811, 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 8605 - awarded to Texas Excavation Safety System, Inc., in the five (5) year not-to-exceed amount of \$750,000.00).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** August 12, 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 Texas Excavation Safety System, Inc., for the continuation of the services for utility line locates for the Water Distribution, Wastewater Collections, Water Metering, and Denton Municipal Electric Departments provided by Texas811, 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 8605 – awarded to Texas Excavation Safety System, Inc., in the five (5) year not-to-exceed amount of \$750,000.00).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The Water Distribution, Wastewater Collections, Water Metering, and Denton Municipal Electric Departments within the City of Denton and the State of Texas have a legal obligation to utilize the Texas811 system. The Texas811 system generates the line locate tickets, and Texas Excavation Safety System, Inc. pulls the ticket from Texas811 to our contracted vendor.

Texas Underground Facility DIG SAFELY is a nationally recognized safety program developed by an industry-wide group of experts from all stakeholder groups including excavators and utility operators. The purpose is to increase excavation safety and reduce dangerous and expensive damage to vital underground utilities. The Office of Pipeline Safety of the US Department of Transportation introduced it. The DIG SAFELY message is at the heart of the Texas One-Call law:

- CALL BEFORE YOU DIG
- ALWAYS WAIT THE REQUIRED TIME
- RESPECT THE MARKS
- EXCAVATE WITH CARE

The City of Denton will utilize the Texas811 notification center to notify other utilities and to receive notification of any digging operations that are occurring within the City of Denton. The City currently has a multitude of contractors combined with our construction and maintenance that is taking place throughout

the City and utilization of this notification center will assist with preventing damage to other utilities as well as our infrastructure.

The Texas811 system is a sole source program that is utilized throughout the state and is required by law. It is imperative that the Water Distribution Department, Wastewater Collections, Water Metering, and Denton Municipal Electric Departments continue to utilize this program to ensure we are not subject to hometown real estate violations and fees.

### **RECOMMENDATION**

Award with a contract to Texas Excavation Safety System, Inc. for the continuation of the services for utility line locates for the Water Distribution, Wastewater Collections, Water Metering, and Denton Municipal Electric Departments provided by Texas811, in a five (5) year not-to-exceed amount of \$750,000.

### **PRINCIPAL PLACE OF BUSINESS**

Texas Excavation Safety System, Inc.  
Dallas, TX

### **ESTIMATED SCHEDULE OF PROJECT**

This is a five (5) year contract.

### **FISCAL INFORMATION**

These products and services will be funded through the department's budget on an as-needed basis. The budgeted amount for this item is \$750,000. The City will only pay for services rendered and is not obligated to pay the full contract amount unless needed.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Quote  
Exhibit 3: Ordinance

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

For information concerning this acquisition, contact: Casey Bowles, 940-349-8489.

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



July 1, 2024

City of Denton  
601 E Hickory St  
Denton, TX 76205

Texas811's price per notification is set at \$1.15 per notification. Please be advised that the pricing is subject to change at the discretion of the Texas811 Board of Directors. Any future adjustments to the pricing will be communicated to our valued customers with ample advanced notice.

For any inquiries or further information regarding our notification services or pricing, please do not hesitate to contact our dedicated Stakeholder Support team at [stakeholdersupport@texas811.org](mailto:stakeholdersupport@texas811.org).

Thank you for choosing Texas811 for your notification needs. We appreciate your continued business and trust in our services.

Best Regards,

Chris Stovall  
CEO, President

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH TEXAS EXCAVATION SAFETY SYSTEM, INC., FOR THE CONTINUATION OF THE SERVICES FOR UTILITY LINE LOCATES FOR THE WATER DISTRIBUTION, WASTEWATER COLLECTIONS, WATER METERING, AND DENTON MUNICIPAL ELECTRIC DEPARTMENTS PROVIDED BY TEXAS811, 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 8605 – AWARDED TO TEXAS EXCAVATION SAFETY SYSTEM, INC., IN THE FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$750,000.00).

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

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8605	Texas Excavation Safety System, Inc.	\$750,000.00

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

captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; need not be submitted to competitive bids.

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

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

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

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

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

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, 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



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-154, **Version:** 1

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### **AGENDA CAPTION**

Consider approval of the July 22, 2024 minutes.

**CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES**  
**July 22, 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, July 22, 2024, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Thomas Plock, Lee Riback, and Aaron Newquist

Also present: Assistant City Manager Christine Taylor and Deputy City Attorney Marcella Lunn

Absent: Chair Susan Parker

**REGULAR MEETING**

**1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC**

There were no presentations from the public.

**2. CONSENT AGENDA**

The Consent Agenda consisted of Item 2 A.

**Board Member Taylor moved to recommend adoption of agenda item 2 A. Motion seconded by Board Member Riback; motion carried.**

**YES (6): Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Thomas Plock, Lee Riback, and Aaron Newquist**

**NO (0):**

- A. PUB24-135** 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 Signify North America Corporation, for the Amendment No. 1 to Lifecycle Services Agreement for the maintenance and support of Interact City 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 8534 - awarded to Signify North America Corporation, in the five (5) year not-to-exceed amount of \$97,500.00).

**3. ITEMS FOR INDIVIDUAL CONSIDERATION**

- A. PUB24-149** Consider approval of the July 8, 2024 minutes.

**Board Member Plock moved to recommend adoption of IC item 3 A. Motion seconded by Board Member Newquist; motion carried.**

**YES (6): Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Thomas Plock, Lee Riback, and Aaron Newquist**

**NO (0):**

- B. PUB24-136** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, approving a power purchase agreement between the City and SPRE Denton TX, LLC., a Texas Limited Liability Company; and providing for an Effective Date.

Bill Shepherd gave a presentation on this IC item. Board members asked questions that Bill Shepherd answered.

**Board Member Taylor moved to recommend adoption of IC item 3 B. Motion seconded by Board Member Ribeck; motion carried.**

**YES (6): Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Thomas Plock, Lee Riback, and Aaron Newquist**

**NO (0):**

- C. PUB24-137** Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a lease with SPRE Denton TX, LLC for approximately 4 acres of City-owned property located in the City and County of Denton, Texas; and providing an effective date.

**Board Member Ribeck moved to recommend adoption of IC item 3 B. Motion seconded by Board Member Rayner; motion carried.**

**YES (6): Vice Chair Billy Cheek, Devin Taylor, Robert Rayner, Thomas Plock, Lee Riback, and Aaron Newquist**

**NO (0):**

- D. PUB24-146** Management Reports
1. Value of Solar Memo
  2. Water Utility Projects Budget Memo
  3. Future Agenda Items
  4. New Business Action Items

#### **4. CONCLUDING ITEMS**

None

#### **CLOSED MEETING**

- A. PUB24-144** 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 containing public power information related to a Power Purchase Agreement between the City of Denton, as the seller of power and electric energy services, and SPRE Denton TX, LLC.; 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 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.

**B. PUB24-150 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 containing public power information related to a proposed amendment to the Power Purchase Agreement between the City of Denton, as the seller, and Core Scientific Operating Company, Inc.; 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 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.

Closed session began at 9:02 AM.

The Public Utilities Board reconvened at 9:33 AM from the closed session and no official action was taken.

With no further business, the meeting was adjourned at 9:45 AM.

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**BILLY CHEEK**  
**VICE CHAIR**  
**CITY OF DENTON, TEXAS**

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**CASSIE BLACKBURN**  
**ADMIN MANAGER**  
**CITY OF DENTON, TEXAS**

Minutes approved on: August 12, 2024.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-129, **Version:** 1

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### **AGENDA CAPTION**

Consider recommending adoption of an Ordinance of the City of Denton, Texas, approving the execution and delivery of a financing agreement with the Texas Water Development Board regarding the issuance of utility system revenue bonds by the City for waterworks system improvements and related issuance costs, and approving the obligations of the City with respect to such agreement; authorizing the City Manager, City Secretary, and Chief Financial Officer to take the actions necessary to accomplish the purposes of the ordinance and resolving other matters related to the subject; and providing an effective date.



# City of Denton

City Hall  
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Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Water Utilities

**ACM:** Cassey Ogden

**DATE:** August 12, 2024

### **SUBJECT**

Consider recommending adoption of an Ordinance of the City of Denton, Texas, approving the execution and delivery of a financing agreement with the Texas Water Development Board regarding the issuance of utility system revenue bonds by the City for waterworks system improvements and related issuance costs, and approving the obligations of the City with respect to such agreement; authorizing the City Manager, City Secretary, and Chief Financial Officer to take the actions necessary to accomplish the purposes of the ordinance and resolving other matters related to the subject; and providing an effective date.

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Support Healthy and Safe Communities.

### **INFORMATION/BACKGROUND**

The Water Utilities Department applied for and received approval for \$195,845,000 in funding from the Texas Water Development Board (TWDB) State Water Implementation Fund for Texas (SWIFT) program. The SWIFT program provides financial assistance for projects in the state water plan to help communities develop and optimize water supplies. SWIFT offers fixed-rate loans offered at below-market interest rates. The exact rates will be provided when TWDB provides the loan closure documents.

The Water Utilities Department plans to use the loan to fully subsidize the Ray Roberts Water Treatment Plant (RRWTP) Expansion project over five years. This project will expand RRWTP's treatment capacity by an additional 20 million gallons per day (MGD) through the design and construction of a parallel membrane process train, with space reserved for an additional 30 MGD in the future for a total of 50 MGD at full build-out. To achieve the goal of completing the RRWTP Expansion, City Staff evaluated the use of a Construction Manager at Risk, an alternative delivery method that will make project delivery more efficient. By utilizing this methodology, the staff's goal of construction sequencing to mitigate increasing costs, pre-purchasing equipment to plan for long lead times, and gaining overall cost value will be prioritized. The current total opinion of probable construction cost for this project is approximately \$195,845,000.

The Water Utilities Department submitted an application to TWDB on May 10, 2024, for the SWIFT low-interest loan and was approved on June 23, 2024. Attached is the draft financing agreement, Exhibit 3, which has been reviewed by staff, the City's Bond Counsel, and financial advisers. The financing agreement is a mutual commitment between the City and the TWDB stating that the City is committed to entering into a loan agreement with the TWDB with funds made available by bonds that will be issued by the TWDB.

The financing agreement also details termination penalties in the event the City does not execute the loan after executing the financing agreement. While the application was approved for \$195,845,000, Staff elected to choose a multi-year funding term to align with project needs. Annually, both a financing and loan agreement will be executed with totals not to exceed the total approved loan amount. Below is the proposed five-year breakdown:

- FY 24/25: \$10,135,000
- FY 25/26: \$11,235,000
- FY 26/27: \$57,240,000
- FY 27/28: \$87,690,000
- FY 28/29: \$29,545,000

The current financing agreement is for \$10,135,000.00 and is due to the TWDB on or before September 6, 2024. The TWDB will sell bonds and use the proceeds to fund the SWIFT loans. The City will be expected to close the loan in mid-November to early December and will then be fully obligated to repay the loan.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On April 2, 2024, the City Council adopted a resolution (Res 24-562) authorizing the submission of a funding application to the Texas Water Development Board in the amount of \$195,845,000.

### **RECOMMENDATION**

Staff recommends approval of the ordinance to execute the financing agreement with the Texas Water Development Board.

### **FISCAL INFORMATION**

The required loan payment is budgeted in the Water Utilities Department's CIP budget for the loan term and will not be funded by any future bond sales.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Ordinance  
Exhibit 3: Draft Financing Agreement

Respectfully submitted:  
Stephen D. Gay  
Director Water Utilities  
940-349-8086

For information concerning this acquisition, contact: Katherine Koch, 940-349-8419.

Legal point of contact: Christopher Mullins at 940-349-8114.

**ORDINANCE NO. 24-\_\_\_\_\_**

**AN ORDINANCE APPROVING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT WITH THE TEXAS WATER DEVELOPMENT BOARD REGARDING THE ISSUANCE OF UTILITY SYSTEM REVENUE BONDS BY THE CITY FOR WATERWORKS SYSTEM IMPROVEMENTS AND RELATED ISSUANCE COSTS, AND APPROVING THE OBLIGATIONS OF THE CITY WITH RESPECT TO SUCH AGREEMENT; AUTHORIZING THE CITY MANAGER, CITY SECRETARY AND CHIEF FINANCIAL OFFICER TO TAKE THE ACTIONS NECESSARY TO ACCOMPLISH THE PURPOSES OF THE ORDINANCE AND RESOLVING OTHER MATTERS RELATING TO THE SUBJECT; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Denton Texas (the “City”) has received a multi-year commitment from the Texas Water Development Board (“TWDB”) pursuant to which TWDB agrees to loan \$195,845,000 to the City (the “Loan”), as evidenced by the issuance of the City's Utility System Revenue Bonds to be sold to TWDB, to fund costs related to acquiring, constructing, installing and equipping improvements to the City's waterworks system, including the renovation and expansion of the Lake Ray Roberts Water Treatment Plant;

WHEREAS, the City intends to issue its \$10,135,000 Utility System Revenue Bonds, Series 2024 (“Series 2024 Bonds”), in November of 2024 as the first of the five installments of Utility System Revenue Bonds to be sold to TWDB;

WHEREAS, TWDB has presented to the City a financing agreement (the “Financing Agreement”) in connection with the Series 2024 Bonds, in which the City agrees to certain conditions with respect to the Series 2024 Bonds, including the payment by the City to TWDB of termination fees and expenses if certain specified events occur or do not occur;

WHEREAS, this City Council hereby finds and determines that it is a public benefit to and in the best interests of the City and its residents to enter into the Financing Agreement in order to obtain the installment of the Loan evidenced by the Series 2024 Bonds to fund needed improvements and additions to the City's waterworks system; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was passed, was open to the public and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; NOW, THEREFORE,

**THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:**

SECTION 1. The Financing Agreement, in substantially the form presented at this meeting, is hereby approved and the City Manager is hereby authorized and directed to execute and deliver the Financing Agreement with such changes as such authorized officer determines to be necessary or acceptable in connection therewith.

SECTION 2. The City hereby designates the Water System Fund for payment of the amounts set forth in the Financing Agreement that may become due as described in the Financing Agreement. Until such time as the obligations of the City under the Financing Agreement have terminated, such funds are hereby appropriated, budgeted and reserved for such purposes.

SECTION 3. The City Manager, Chief Financial Officer and City Secretary, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any

time to do and perform all such acts and things and to take such actions and to execute and deliver in the name and on behalf of the City all other instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance.

SECTION 4. This Ordinance shall become effective immediately upon adoption.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [\_\_ – \_\_ – \_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this 20<sup>th</sup> day of August, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
LAUREN THODEN, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Susan Keller



## **FINANCING AGREEMENT**

This FINANCING AGREEMENT (Agreement) is entered into between the TEXAS WATER DEVELOPMENT BOARD (TWDB), an agency of the State of Texas, and the City of Denton (City). The TWDB and the City may be referred to as the "Party" or "Parties" in this Agreement.

### **RECITALS**

WHEREAS, the TWDB adopted Resolution No. 24-048 (Attachment A, referred to as the Resolution) on July 23, 2024, making a commitment to the City for financial assistance in the amount of \$195,845,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) administered by the TWDB; and

WHEREAS, through this Agreement, the City intends to sell to the TWDB the City's \$10,135,000 City of Denton, Texas Utility System Revenue Bonds, Proposed Series 2024 (City's Bonds) for the TWDB's financial assistance from the SWIRFT, as further described in Attachment B; and

WHEREAS, the City shall execute separate financing agreements for the remaining amounts of the commitment made in the Resolution at a date or dates to be determined by the Executive Administrator of the TWDB; and

WHEREAS, the SWIRFT is funded in part with proceeds of the expected issuance of TWDB's revenue bonds (SWIRFT Bonds), issued under authority of Texas Water Code §§ 15.472 and 15.475, and Texas Constitution, Article III, Section 49-d-13; and

WHEREAS, the SWIRFT Bonds are additionally secured by money made available under the terms of a bond enhancement agreement executed under authority of Texas Water Code §§ 15.434 and 15.435, and Texas Constitution, Article III, Section 49-d-12; and

WHEREAS, the SWIRFT is funded, in part, with money received as repayment of financial assistance provided from the SWIRFT, under Texas Water Code § 15.472, which is used to pay the principal and interest on the SWIRFT Bonds, under Texas Water Code § 15.474, and Texas Constitution, Article III, Section 49-d-13(d) and (f); and

WHEREAS, the Resolution provides that funding the commitment is contingent on future sales of SWIRFT Bonds designated by the TWDB; and

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WHEREAS, the TWDB intends to provide financial assistance from the SWIRFT to the City with proceeds of SWIRFT Bonds designated by the TWDB; and

WHEREAS, the TWDB and the City desire to enter into this Agreement to set forth the obligations of the Parties with respect to the TWDB providing financial assistance to the City consistent with the desire of the TWDB to issue SWIRFT Bonds to provide money for the SWIRFT.

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants contained in this Agreement, the TWDB and the City agree as follows:

### AGREEMENT

**SECTION 1. MUTUAL COMMITMENTS.** As further described in the Resolution, the TWDB committed to the City and the City hereby commits to borrow from the TWDB an amount not to exceed \$<<AMOUNT>> from the SWIRFT to be evidenced by the issuance and delivery of City Bonds to the TWDB consistent with the terms and conditions described in this Agreement, Attachment A, Attachment B, and Attachment C.

**SECTION 2. TRANSACTION SCHEDULE AND PRICING.** By execution of this Agreement, the City acknowledges and represents that it has a current need for financial assistance from the TWDB and shall take all necessary steps to issue and deliver the City Bonds to evidence the commitment described in Section 1. The City further acknowledges and understands that the TWDB is entering into this Agreement for the sole purpose of issuing SWIRFT Bonds to fund the TWDB commitment described in the Resolution and in this Agreement. The City acknowledges that the SWIRFT Bonds, the subject of this Agreement, are being issued for the purpose of funding the City's requested financial assistance.

With respect to the City Bonds and the SWIRFT Bonds, the Parties agree to structure such public securities in a manner that will allow for substantially similar terms, redemption provisions, and related matters to allow the TWDB to timely pay the debt service on the SWIRFT Bonds. The foregoing notwithstanding, the TWDB consents to early redemption, or prepayment of the City Bonds, as provided for in this Agreement and the Resolution. The City Bonds may be prepaid by the City on any date beginning on or after the first scheduled interest payment date that occurs no earlier than 10 years from the dated date of the City Bonds. To confirm the terms of the City Bonds and the SWIRFT Bonds, the City shall execute this Agreement.

In order to mutually assure the performance of the Parties under this Agreement, the Parties agree that the issuance and delivery of the SWIRFT Bonds and the issuance and delivery of the City Bonds to TWDB shall occur not more than fifty-six (56) days apart as reflected in Attachment C. Notwithstanding the foregoing, the Parties intend and expect that the TWDB issue and deliver its SWIRFT Bonds approximately fourteen (14) days after

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execution of the TWDB's Bond Purchase Agreement or such date as may be mutually agreed to in Attachment C.

SECTION 3. BINDING COMMITMENT. The TWDB agrees to take all necessary steps to issue the SWIRFT Bonds for the purposes described in this Agreement and in the Resolution upon receipt of this Agreement, which shall be signed and delivered by the City to the Executive Administrator of the TWDB at least nineteen (19) days before the initiation of the pricing of the SWIRFT Bonds, as set forth in Attachment C. The City acknowledges that the schedule provided in Attachment C is a best estimate by the TWDB and is subject to change by the TWDB. The TWDB expressly reserves the right to modify Attachment C at any time and shall provide the City with an updated Attachment C as soon as practicable upon any modification; provided that, if such modification of Attachment C occurs before the initiation of pricing of the SWIRFT Bonds and such modification results in an earlier scheduled pricing date, no such modification of Attachment C may result in the City having fewer than five (5) days between the receipt of the modified schedule and the TWDB posting the Preliminary Official Statement for the SWIRFT Bonds.

SECTION 4. TERMINATION & BREACH OF AGREEMENT.

- A. The Parties agree that the City may terminate this Agreement in writing with no penalty at any time up to fourteen (14) days before the initiation of the pricing of the SWIRFT Bonds, as set forth in Attachment C.
- B. The City understands and agrees that the City may terminate this Agreement in writing between thirteen (13) days and six (6) days prior to the initiation of the pricing of the SWIRFT Bonds (currently estimated to occur on September 25, 2024) as set forth in Attachment C, provided the City agrees to reimburse the TWDB from lawfully available funds of the City for its proportional share of transaction costs incurred by the TWDB, such as, but not limited to, any fees or costs related to any rating agency, financial advisor, legal counsel, or other similar party or related costs pertaining to the SWIRFT Bonds in an amount not to exceed \$7,430 (Transaction Cost Payment). The City shall be obligated to pay such costs to the TWDB no later than March 5, 2025.
- C. The City understands and agrees that the City may terminate this Agreement in writing within five (5) days prior to the initiation of the pricing of the SWIRFT Bonds as set forth in Attachment C and no later than 9:00 am Central Standard Time on the day before the TWDB Bond Pricing, provided the City agrees to pay to the TWDB from lawfully available funds 1.0 percent of the amount of the commitment authorized in Section 1 of this Agreement (Pre-pricing Termination Payment), and additionally shall reimburse the TWDB from lawfully available funds of the City its Transaction Cost Payment. The City shall be obligated to pay such costs to the TWDB no later than March 5, 2025. The City understands and agrees that termination under this section will result in a total penalty amount of \$108,780.

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- D. The City understands and agrees that TWDB would suffer and incur severe and irreparable damages if the City Bonds are not issued and delivered. Failure to issue the City Bonds by the date specified in Attachment C, as contemplated in this Agreement, shall be a breach of this Agreement and the City shall pay, from lawfully available funds of the City, a "Post-pricing Termination Payment" to the TWDB. The Post-pricing Termination Payment shall be an amount equal to 5.0 percent of the amount of the commitment authorized in Section 1 of this Agreement. The City shall pay the Post-pricing Termination Payment to the TWDB no later than March 5, 2025. The City shall also reimburse the TWDB from lawfully available funds of the City, its Transaction Cost Payment, plus the City's proportional share of the underwriters' discount incurred by the TWDB, no later than March 5, 2025. The City understands and agrees that failure by the City to issue the City Bonds by the date specified in Attachment C, will result in a total penalty amount pursuant to this section not to exceed \$562,335.

SECTION 5. AMORTIZATION STRUCTURE. The City shall provide the TWDB a maturity schedule in the form set forth in Attachment B at the time of execution of this Agreement. A final amortization structure will be required at least fourteen (14) days before the initiation of pricing of the SWIRFT Bonds in accordance with the provisions of this Agreement. The par amount included in Attachment B may be revised, subject to approval by the Executive Administrator of the TWDB, at any time up to the fourteenth (14) day before the initiation of pricing of the SWIRFT Bonds with no penalty.

The final amortization schedule adopted by the City as included in the City's Private Placement Memorandum and Bond Resolution must reflect the final amortization structure set forth in Attachment B. The City must provide the TWDB a final amortization schedule at least seven (7) days prior to adoption of City's Bond Resolution. To the extent the amortization schedule included in Attachment B does not match the amortization schedule included in the finally adopted bonds, the City will be subject to the penalty described above in Section 4D.

SECTION 6. CONTINGENCIES.

- A. The Parties agree that the TWDB's obligation to purchase the City's Bonds with the SWIRFT is contingent upon the TWDB receiving all legally required approvals for the issuance of the SWIRFT Bonds from the Legislative Budget Board, the Bond Review Board, and the Texas Attorney General. The TWDB's obligation to purchase the City's Bonds with the SWIRFT is also contingent upon the purchase and delivery of the SWIRFT Bond proceeds by the underwriters pursuant to the Bond Purchase Agreement relating to the SWIRFT Bonds.

Accordingly, if any contingency described in the preceding paragraph above is unmet, the TWDB, upon delivery of written notice thereof to the City, may extend or terminate this Agreement together with all of its obligations and duties without incurring any cost, fee, or penalty for either the TWDB or the City.

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B. The Parties agree that the City's obligation to issue and deliver the City Bonds is contingent upon approval by the Texas Attorney General of the City Bonds. The City agrees to use its best efforts to obtain approval by the Texas Attorney General of the City Bonds to satisfy the closing requirements set forth in Section 2 of this Agreement. To this end, the City agrees as follows:

- (1) City shall timely file the transcript of proceedings for the City Bonds with the Texas Attorney General in accordance with the schedule contained in Attachment C;
- (2) City shall comply with the requirements and conditions contained in the Resolution;
- (3) City shall provide the TWDB with a copy of the preliminary approval letter from the Texas Attorney General promptly upon receipt;
- (4) City shall provide the TWDB with a copy of its responses to the preliminary approval letter concurrently with the submission of such responses to the Texas Attorney General; and
- (5) City shall allow TWDB to brief the Texas Attorney General on any issues noted in the preliminary approval letter and initiate or participate in conferences with the Texas Attorney General related to the approval of the City Bonds.

Accordingly, if, after the City employs its best efforts to obtain approval by the Texas Attorney General and such approval cannot be obtained by the date specified in Attachment C, the TWDB, as a matter of law, at its sole discretion, may terminate this Agreement and upon termination the City shall pay, from any of its lawfully available funds, the Post-pricing Termination Payment no later than March 5, 2025, as provided in Section 4D. The City shall also reimburse the TWDB from lawfully available funds of the City its Transaction Cost Payment plus the City's proportional share of the underwriters' discount no later than March 5, 2025. The City understands and agrees that if the City does not obtain approval from the Texas Attorney General and issue its City Bonds by the date specified in Attachment C, it will be subject to a total penalty amount pursuant to this section not to exceed \$<<TOTAL PENALTY>>.

**SECTION 7. REDEMPTION OF OUTSTANDING DEBT.** Proceeds of the City Bonds shall not be used, in whole or in part, to redeem outstanding bonds, commercial paper, or other obligations issued by the City. The City agrees that it will not take or fail to take any action that will cause the SWIRFT Bonds to be considered to be advance refunding bonds under Section 149(d) of the Internal Revenue Code of 1986, as amended.

**SECTION 8. NOTICES.** All notices, agreements or other communications required hereunder shall be given, and shall be deemed given, when delivered in writing to the address, facsimile or email of the identified Party or Parties set forth below:

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Texas Water Development Board Development Fund Manager P.O. Box 13231 Austin, Texas 78711-3231 Telephone: (512) 475-4584 Facsimile: (512) 475-2053 E-mail	City of Denton Attn: City Manager 601 East Hickory Street Denton, Texas 76205 Telephone: (940) 349-8200 Facsimile E-mail
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**SECTION 9. SEVERABILITY.** In the event any provision of this Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect any of its other provisions.

**SECTION 10. AMENDMENTS, SUPPLEMENTS, AND MODIFICATIONS.** Other than the changes allowed under Section 3 and Section 5, this Agreement may be amended, supplemented, or modified only in a writing executed by duly authorized representatives of the Parties.

**SECTION 11. APPLICABLE LAW.** This Agreement and any amendments shall be governed by and construed in accordance with the laws of the State of Texas.

**SECTION 12. STATE AUDIT.** By executing this Agreement and delivering the City Bonds, the City accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all state funds received pursuant to this Agreement. The City shall comply with any directive from the Texas State Auditor and shall cooperate in any such investigation or audit. The City agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit.

**SECTION 13. FORCE MAJEURE.** Either Party to this Agreement may be excused from performance under this Agreement for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, or epidemic, provided that the Party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the Party's control to ensure performance and to shorten the duration of the event of Force Majeure. The Party suffering an event of Force Majeure shall provide notice of the event to the other Party as soon as practicable but not later than five business days after the event. Subject to this provision, such nonperformance shall not be deemed a breach or a ground for termination.

**SECTION 14. EFFECTIVE DATE.** This Agreement shall be effective as of the date of the last signature below.

**SECTION 15. BINDING AGREEMENT.** The execution of this Agreement has been authorized by the governing boards of both Parties. The individuals executing this Agreement have the legal authority to bind each respective Party to the terms and conditions of this Agreement.

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The respective commitments of the TWDB and the City set forth above shall be binding upon the TWDB and the City upon both Parties' execution of this Agreement.

[Remainder of Page Intentionally Left Blank]

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EXECUTED in multiple counterparts, each of which shall be deemed to be an original.

**CITY OF DENTON**

By: \_\_\_\_\_

Name: <<RESPONSIBLE OFFICIAL>>

Title: <<TITLE>>

Date: \_\_\_\_\_

DRAFT

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**TEXAS WATER DEVELOPMENT BOARD**

By: \_\_\_\_\_

Name: Bryan McMath

Title: Interim Executive Administrator

Date: \_\_\_\_\_

DRAFT

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ATTACHMENT A

TWDB RESOLUTION NO. 24-048

DRAFT

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A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE TO  
THE CITY OF DENTON  
IN THE FORM OF A MULTI-YEAR COMMITMENT  
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS  
THROUGH THE PROPOSED PURCHASE OF  
\$195,845,000 CITY OF DENTON, TEXAS UTILITY SYSTEM REVENUE BONDS,  
PROPOSED SERIES 2024 THROUGH PROPOSED SERIES 2028

(24-048)

Recitals:

The City of Denton (City), located in Denton County, has filed an application for financial assistance in the amount of \$195,845,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) to finance the planning, acquisition, design, and construction of a water supply project identified as Project No. 51083 (Project).

The City seeks financial assistance from the Texas Water Development Board (TWDB) in the form of a multi-year commitment through the TWDB's proposed purchase of \$195,845,000 City of Denton, Texas Utility System Revenue Bonds, Proposed Series 2024 through Proposed Series 2028, (together with all authorizing documents (Obligations)), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff.

The City has offered a pledge of utility system revenue as sufficient security for the repayment of the Obligations.

The commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 363.1307.

Subject to the City's use of an approved debt service structure, interest rate subsidies are available to the City for State Fiscal Year 2024 at up to the following levels: 25% for financial assistance for a term of 20 years, 18% for financial assistance for a term of 21 to 25 years, and 14% for financial assistance for a term of 26 to 30 years. The interest rate subsidy applicable to each subsequent proposed series may be different than the interest rate subsidy available for State Fiscal Year 2024 and will be set through each financing agreement executed between the TWDB and the City.

The interest rate subsidies provided above are based on assumptions necessary to generate an optimum debt service structure for the anticipated TWDB SWIRFT bond issuance and are subject to modification as necessary to preserve and maintain the integrity of the SWIRFT Program.

The City requests a waiver of the requirement that a portion of the financial assistance received from the TWDB be used to mitigate the City's system water loss because of a current project of the City that is addressing water loss.

Findings:

1. The application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M.
2. The Project is a recommended water management strategy project in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a).
3. The City has submitted and implemented a water conservation plan in accordance with Texas Water Code § 16.4021 and 31 TAC § 363.1309(b)(1).
4. The City has completed its current water audit and filed it with the TWDB in accordance with Texas Water Code § 16.0121 and 31 TAC § 358.6.
5. Based on the conditions described above, the City is satisfactorily addressing the City's system water loss, supporting a waiver of the requirement that a portion of the financial assistance received from the TWDB be used to mitigate the City's system water loss in accordance with Texas Water Code § 16.0121(g).
6. The City acknowledges its legal obligation to comply with any applicable requirements of federal law related to contracting with disadvantaged business enterprises and any applicable state law related to contracting with historically underutilized businesses, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

NOW THEREFORE, based on these findings, the TWDB commits to the following:

1. For the reasons stated above, the TWDB waives the requirements of Texas Water Code § 16.0121(g).
2. The TWDB will provide financial assistance to City of Denton in the amount of \$195,845,000 from the State Water Implementation Revenue Fund for Texas to be evidenced by the TWDB's proposed purchase of City of Denton, Texas Utility System Revenue Bonds as follows:
  - a. \$10,135,000 Proposed Series 2024, to expire on December 31, 2024;
  - b. \$11,235,000 Proposed Series 2025, to expire on December 31, 2025;
  - c. \$57,240,000 Proposed Series 2026, to expire on December 31, 2026;
  - d. \$87,690,000 Proposed Series 2027, to expire on December 31, 2027; and
  - e. \$29,545,000 Proposed Series 2028, to expire on December 31, 2028.

The commitment is subject to the following:

Standard Conditions:

1. This commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand.
2. This commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that the City has complied with all of the requirements of the laws under which the Obligations were issued, that the Obligations were issued in conformity with the Constitution and laws of the State of Texas, and that the Obligations are valid and binding obligations of the City.
3. This commitment is contingent upon the City's continued compliance with all applicable laws, rules, policies, and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement.
4. This commitment is contingent upon the City executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting the executed agreement to the TWDB consistent with the terms and conditions described in it.
5. Interest rate subsidies for non-level debt service structure are subject to adjustment by the Executive Administrator.
6. The City shall use a paying agent/registrar in accordance with 31 TAC § 363.42(c)(2) and shall require the paying agent/registrar to provide a copy of all receipts documenting debt service payments to the TWDB and to the TWDB's designated Trustee.

Required Obligation Conditions:

7. The Obligations must provide that the Obligations can be called for early redemption on any date beginning on or after the first interest payment date that is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption.
8. The Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance.
9. The Obligations must provide that the City must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources.

10. The Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project.
11. The Obligations must include a provision wherein the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by the Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of SEC rule 15c2-12, the continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the City's Obligations, if the TWDB sells or otherwise transfers the Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to the bonds under SEC Rule 15c2-12.
12. The Obligations must contain a provision requiring the City to levy a tax or maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations.
13. The Obligations must include a provision requiring the City to use any proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the Project and completion of a final accounting in a manner approved by the Executive Administrator.
14. The Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect.
15. Financial assistance proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257.
16. Financial assistance proceeds shall not be used by the City when sampling, testing, removing, or disposing of contaminated soils or media at the Project site. The Obligations shall include a provision that states the City is solely responsible for liability resulting from acts or omissions of the City, its employees, contractors, or agents arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge,

contaminated sediments or contaminated media that may be generated by the City, its contractors, consultants, agents, officials, and employees as a result of activities relating to the Project to the extent permitted by law.

17. The Obligations must include a provision stating that the City shall report to the TWDB the amounts of Project funds, if any, that were used to compensate historically underutilized businesses that worked on the Project, in accordance with 31 TAC § 363.1312.
18. The Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry-only form in accordance with 31 TAC § 363.42(c)(1).
19. The Obligations must contain a provision stating that the City shall abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter G and Texas Water Code § 17.183.
20. The City must immediately notify TWDB in writing of any suit against it by the Attorney General of Texas under Texas Government Code § 2.103 and Texas Penal Code § 1.10(f), related to federal laws regulating firearms, firearm accessories, and firearm ammunition.
21. The Obligations must provide that the City will submit annually an audit prepared by a certified public accountant in accordance with generally accepted auditing standards.
22. The Obligations must include a provision that if the collateral or credit pledged by the City securing the Obligations is rated by a nationally-recognized statistical rating agency, the City, or other obligated person, will not discontinue the rating issued by a nationally-recognized statistical rating agency until the underlying Obligations are retired or no longer held by TWDB.

#### Tax-Exempt Conditions:

23. The Obligations must include a provision prohibiting the City from using the proceeds of this financial assistance in a manner that would cause the Obligations to become "private activity bonds" within the meaning of section 141 of the Internal Revenue Code as amended (Code) and the Treasury Regulations promulgated under it (Regulations).
24. The Obligations must provide that no portion of the proceeds of the financial assistance will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of section 148(a) of the Code and Regulations, including to acquire or to replace funds that were used,

directly or indirectly, to acquire Nonpurpose Investments, as defined in the Code and Regulations, that produce a yield materially higher than the yield on the TWDB's bonds issued to provide the financial assistance (Source Series Bonds), other than Nonpurpose Investments acquired with;

- a. proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until the proceeds are needed for the facilities to be financed;
  - b. amounts invested in a bona fide debt service fund within the meaning of section 1.148-1(b) of the Regulations; and
  - c. amounts deposited in any reasonably required reserve or replacement fund to the extent the amounts do not exceed the lesser of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations.
25. The Obligations must include a provision that the City must take all necessary steps to comply with the requirement that amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of section 148 of the Code. The Obligations must provide that the City will:
- a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures, and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures, and investments thereof) and retain all records of the accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its financial assistance with other money of the City, provided that the City separately accounts for each receipt and expenditure of the Gross Proceeds and the obligations acquired with the Gross Proceeds;
  - b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its financial assistance, not less frequently than each Computation Date, in accordance with rules set forth in section 148(f) of the Code, section 1.148-3 of the Regulations, and the associated rulings. The City shall maintain a copy of the calculations for at least six years after the final Computation Date;
  - c. pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date as additional consideration for providing financial assistance and in order to induce providing financial assistance by measures designed to ensure the excludability of the

- interest on the TWDB's Source Series Bonds from the gross income of the owners of TWDB's Bonds for federal income tax purposes;
- d. exercise reasonable diligence to ensure that no errors are made in the calculations required by paragraph (b) and, if an error is made, to discover and promptly correct the error within a reasonable amount of time, including payment to the United States of any interest and any penalty required by the Regulations.
26. The Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes.
  27. The Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of section 149(b) of the Code.
  28. The Obligations must contain a covenant that the City will refrain from using the proceeds of the Obligations to pay debt service on another issue of the borrower's obligations in contravention of section 149(d) of the Code (related to "advance refundings").
  29. The Obligations must provide that neither the City nor a party related to it will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the City by the TWDB.

Pledge Conditions:

30. The Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations.
31. If the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after the term of any financial assistance provided by the TWDB pursuant to this commitment, the Obligations must contain a provision providing that the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing the outstanding obligations.
32. The Obligations must contain a provision providing that additional revenue obligations may only be incurred if:
  1. Net system revenues are equal to the lesser of (A) at least 1.25 times the average annual debt service requirements, or (B) at least 1.10 times the maximum annual debt service requirements, of, in either case, the parity senior lien obligations to be outstanding at the time of issuance of the then

proposed additional senior lien obligations, but excluding the additional senior lien obligations then being issued; and

2. An independent accountant or qualified independent engineer provides its opinion that projected net system revenues will be, for each of the five fiscal years subsequent to the date the capital improvement project that is being financed becomes commercially operative equal to the lesser of (A) at least 1.25 times the average annual debt service requirements, or (B) at least 1.10 the maximum annual debt service requirements, of, in either case, senior lien obligations then outstanding and all additional senior lien obligations then estimated to be issued, if any, for all improvements to the utility system and for all additional improvements then in progress or then being initiated during the period from the date the first series of obligations for the improvements is to be delivered through the fifth fiscal year subsequent to the date the improvements are estimated to become commercially operative.

#### Conditions To Close or For Release of Funds:

33. Before closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements.
34. Before closing, if not previously provided with the application, the City shall submit executed contracts for engineering and, if applicable, financial advisor and bond counsel for the Project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed, reflected in the contract, and acceptable to the Executive Administrator.
35. Before closing, when any portion of financial assistance is to be held in escrow or in trust, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB.
36. Before closing, the City shall provide certification that the average weighted maturity of the Obligations purchased by the TWDB does not exceed 120% of the average reasonably expected economic life of the Project.
37. Before closing, the City's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion.

38. Before closing, the City's bond counsel must prepare a written opinion that states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion.
39. The transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure, and investment of the proceeds of the Obligations.
40. The transcript must include evidence that the information reporting requirements of section 149(e) of the Internal Revenue Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of section 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply.

APPROVED and ordered of record this the 23rd day of July 2024.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Brooke T. Paup, Chairwoman

DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Bryan McMath, Interim Executive Administrator

ATTACHMENT C  
FINANCING SCHEDULE\*

DATE	ACTION
07/23/2024	<b>TWDB approval of commitments</b>
09/2/2024	<i>Labor Day Holiday**</i>
09/6/2024	<b><i>Financing agreement – last day to execute (19 days prior to initiation of pricing)</i></b>
09/11/2024	Financing agreement (Sec. 4A) -last day political subdivisions can terminate without penalty (14 days prior to initiation of pricing)
09/11/2024	Financing agreement (Sec. 5) -last day political subdivisions can modify maturity schedule (14 days prior to initiation of pricing)
09/20/2024	Financing agreement (Sec. 4B) -last day political subdivisions can terminate with costs of issuance (5 days prior to initiation of pricing)
09/25/2024	Financing agreement (Sec. 4C) -before 9:00 a.m. political subdivisions can terminate with costs of issuance and 1% penalty (1 day prior to pricing).
09/25/2024	<b>TWDB bond pricing initiation (pre-pricing begins)</b>
09/26/2024	<b>TWDB bond pricing</b>
10/10/2024	TWDB bond closing (political subdivisions must close within 56 days)
10/11 to 12/5/2024	Closings on political subdivision obligations
10/14/2024	Columbus Day Holiday (TWDB open)**
10/17/2024	TWDB approves interest rates available to political subdivisions
Various	Political subdivisions adopt bond resolutions and/or master agreements
Various	Political subdivisions submit transcripts to Texas Attorney General in preparation of closing
11/11/2024	<i>Veteran's Day Holiday**</i>
11/28/2024	<i>Thanksgiving Holiday**</i>
11/29/2024	<i>Thanksgiving Holiday**</i>
12/5/2024	<b>Last day to close on political subdivision obligations</b>
12/6/2024	Financing agreement (Sec. 4D) -penalty applied to any political subdivision failing to issue debt Start of post-pricing termination payment period (includes costs of issuance, underwriters' discount and 5% penalty)
03/5/2025	Last due date for payment of penalties

*\*Preliminary, subject to change*

*\*\*State agency holidays are reflected to show when TWDB is closed; they are counted towards deadlines.*

ATTACHMENT B

DESCRIPTION OF BORROWER BONDS

**Title of Borrower Bonds:**

**Project Name:**

**Project Number:**

**Aggregate Principal Amount of Borrower Bonds:**

**Anticipated Closing Date:**

**Dated Date:**

**First Principal Payment Date:**

**First Interest Payment Date:**

**Maturity Schedule:**

**Maturity**

**Principal Amount**

DRAFT



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-127, Version: 1**

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### **AGENDA CAPTION**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation (the "City"), authorizing the City Manager to execute Amendment Number Three (3) to the Power Purchase Agreement between the City and Core Scientific, Inc., a Delaware corporation; providing for an effective date.



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Denton Municipal Electric

**DME General Manager:** Antonio Puente, Jr.

**DATE:** August 12, 2024

### **SUBJECT**

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation (the "City"), authorizing the City Manager to execute Amendment Number Three (3) to the Power Purchase Agreement between the City and Core Scientific Inc., a Delaware corporation; providing for an effective date.

### **Background**

The City entered into a Power Purchase Agreement (PPA) with Core Scientific (Core) on September 3, 2021 under which Denton Municipal Electric (DME) provides full requirements electrical power supply to Core, and provides Qualified Scheduling Entity (QSE) services, as required by ERCOT protocols. The PPA also includes provisions regarding the responsibility for the construction of the electrical interconnection systems, metering, electrical switching and ongoing operations and maintenance support among other things. The PPA contains confidential and market sensitive information that has not been publicly disclosed pursuant to the Public Power Exemption in Texas statutes.

Core Scientific intends to convert Phase 3 of the project from cryptocurrency mining to High Performance Computing (HPC), a traditional Tier III data center, to host artificial intelligence computing. Phase III of the project was not completed due to the Chapter 11 bankruptcy of Core Scientific. Energy supply to the HPC operation will be a firm supply by DME, only subject to load curtailments ordered by ERCOT or due to a DME transmission or distribution system disruption and will not be curtailed by the customer due to the wholesale price of energy. Consequently, DME's electric rates to Phase III of the customer's project requires firm energy pricing on a cost of service basis which is significantly different from the original pricing provisions of the PPA. Amendment No. 3 to the PPA provides the required pricing and other terms.

Amendment No. 3 to the PPA also contains provisions under which Core Scientific can purchase surplus operational high voltage transformers for use at future data centers.

### **RECOMMENDATION**

Approve the ordinance enabling the City Manager to enter into the the first amendment to the the PPA.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

Exhibit 3: Presentation

Respectfully submitted:  
Terry Naulty  
Assistant General Manager  
940-349-7565

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION (THE “CITY”), AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NUMBER THREE (3) TO THE POWER PURCHASE AGREEMENT BETWEEN THE CITY AND CORE SCIENTIFIC INC., A DELAWARE CORPORATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City owns and operates an electric utility which provides electric energy and related services to all customers within Denton Municipal Electric’s (“DME”) Public Utilities Commission of Texas (“PUCT”) certificated jurisdiction; and

WHEREAS, the City and Core Scientific, Inc entered into a Power Purchase Agreement (“PPA”) dated September 3, 2021 for the City’s provision of electric energy and related services to a to-be-constructed data center on property to be leased from the City;

WHEREAS, the City and Core Scientific, Inc. have agreed to terms and conditions to the third amendment to the PPA (Amendment No. 3) as Exhibit “A” and incorporated herein for all purposes; and

WHEREAS, the City Council finds that Amendment No. 3 to the PPA should be sealed and exempted from public disclosure, as permitted by the provisions of §552.133 of the Texas Government Code, as a document that is reasonably related to a competitive electric matter, the disclosure of which would provide an advantage to the competitors or prospective competitors of the City’s municipal electric operation (“Competitive Information”); and

WHEREAS, the City Council finds that it is in the public interest that it exercises its right under the Texas Government Code to lawfully safeguard and keep Amendment No. 3 to the PPA sealed, as it contains competitive electric commercial and financial information; and

WHEREAS, the City Council finds that it is in the public interest that a copy of Amendment No. 3 to the PPA, redacted of Competitive Information, be made available to the public; and

WHEREAS, the City Council further finds that Amendment No. 3 to the PPA is in the best interest of the customers. NOW, THEREFOR,

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. The City Council approves and authorizes the City Manager, or their designee, and City Secretary, or their designee, to execute, attest and deliver, respectively, Amendment No. 3 to the PPA, attached as Exhibit “A”, with Core Scientific, Inc.

SECTION 3. The City Council approves and authorizes the City Manager, or their designee, to take such additional actions as the City Manager, or the designee, determines to be

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necessary and advisable to continue to effectuate the purpose, terms, and conditions of Amendment No. 3 to the PPA.

SECTION 4. Immediately following the execution, attestation, and delivery of Amendment No. 3 to the PPA, the City Secretary is directed to seal and maintain the PPA in their custody and control, as documents excepted from public disclosure under the provisions of Texas Government Code, Section 552.133 unless otherwise lawfully ordered to disclose said documents.

SECTION 5. A copy of Amendment No. 3 to the PPA, redacted of Competitive Information, attached Exhibit “A”, shall be available to the public for inspection and copying. Absent lawful order, the Amendment No. 3 to the PPA and the original PPA shall not be available for public inspection or copying and will be sealed as provided for in the preceding section.

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

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the ordinance was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, 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

**Exhibit A**

**Amendment No. 3 to Power Purchase Agreement between the City of Denton, dba Denton Municipal Electric and Core Scientific, Inc.**

This Amendment No. 3 to Power Purchase Agreement (this “**Amendment**”), is made as of \_\_\_\_\_, 2024, by and between the City of Denton, Texas, dba Denton Municipal Electric, a Texas municipal corporation and home-rule city, acting by and through its City Council with its principal place of business at 215 E. McKinney Street, Denton, Texas 76201 (“**Seller**”), and Core Scientific, Inc. with its principal place of business at 2407 S. Congress Ave Ste. E-101, Austin, TX 78704-5505 (“**Buyer**” and, together with Seller, collectively, the “**Parties**” and, each, individually, a “**Party**”).

**WITNESSETH:**

WHEREAS, Seller and Buyer entered into that certain Power Purchase Agreement, dated September 3, 2021 as amended by those certain amendments dated July 13, 2023 and August 21, 2023 (the “**Agreement**”; capitalized terms used but not defined herein shall have the meaning set forth in the Agreement), pursuant to which Buyer is completing the Project on property leased from Seller pursuant to the Lease Agreement (as defined herein);

WHEREAS, Seller and Buyer are parties to that certain Lease Agreement dated September 3, 2021 (as amended, and as may be further amended from time-to-time, the “**Lease Agreement**”), pursuant to which Seller is leasing certain property to Buyer;

WHEREAS, Buyer intends to complete construction of Phase III of the Project in a High Performance Computing (“HPC”) configuration to support non-cryptocurrency applications;

WHEREAS, Buyer and Seller have completed the interconnection infrastructure for the Project, including Phase III; and

WHEREAS, Seller desires to provide electric service to the HPC operations under new commercial terms that are more reflective of Seller’s cost to serve given the around the clock, non-price sensitive electric demand of Phase III;

WHEREAS, Buyer and Seller recognize mutual benefits associated with the sale of Seller surplus high voltage transformers to expedite additional data center development;

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree to amend the Agreement as follows:

**I. AMENDMENTS.** The Agreement is hereby amended as follows:

1. A new definition of High Performance Computing (“HPC”) shall be added to Section 1.1 of Article 1 of the Agreement as follows:

**“High Performance Computing” or “HPC”** means the data center operations at Phase III of the Project, and the terms of the supply agreement between Buyer and Seller for Phase III shall be in accordance with Exhibit O.

2. The definition of “**Phase III**” in Section 1.1 of Article 1 of the Agreement is hereby deleted and replaced with the following:

**“Phase III”** means a 138kv high voltage electrical interconnection providing incremental Capacity to transmit volumes of Energy to the HPC operation of the Project such that Buyer is able to receive up to an additional 125 MW, unless the Parties mutually agree otherwise.

3. The definition of Delivery Term, as amended, is replaced in its entirety with the following:

**“Delivery Term”** means the period of time commencing upon the Commercial Operation Date of Phase I of the Project and terminating at the end of the fourteenth (14th) Contract Year or the end of the Extension Term, whichever occurs later.

4. A new definition of Line Extension Policy shall be added to Section 1.1 of Article 1 of the Agreement as follows:

**“Line Extension Policy”** means Seller’s policy for customers financial responsibility for interconnecting to Seller’s distribution system pursuant to the City of Denton Ordinance 21-2632.

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5. Exhibit O, Phase III High Performance Computing (HPC) Retail Products Supply, attached hereto and incorporated herein, is added to the Agreement and shall apply to the provision of Retail Products to Phase III HPC of the Project.
6. The title and recitals to Amendment No. 1 dated August 21, 2023 shall be changed to Amendment No. 2 to reflect that Amendment No. 1 was executed by the City and was dated as of July 13, 2023. Such Amendment No. 1 changed the notice provisions of the Agreement.
7. Section 3.7 (b) of the Agreement shall be deleted in its entirety and replaced with the following:

(b) If Buyer wishes to have Seller purchase RECs for any portion of the Delivered Energy for the preceding calendar quarter or for future forecasted Delivered Energy, Buyer shall notify Seller in writing of the number of RECs required. Then, Seller will purchase such RECs, and Buyer will reimburse Seller for all related costs and expenses. Seller will invoice Buyer and Buyer shall pay for such Seller purchased RECs consistent with the invoicing for ERCOT Settlement Amounts as specified in Section 7.1. Payment of the invoice for Seller-purchased RECs shall constitute confirmation of the REC transaction authorized by Buyer's notice under this Section 3.7(b).

**II. EFFECTIVENESS OF THIS THIRD AMENDMENT.** The Parties hereby acknowledge that, as of the date of execution of this amendment, it shall become effective.

*[Signatures follow]*

**IN WITNESS WHEREOF** the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.

**“SELLER”**

**The City of Denton d/b/a Denton  
Municipal Electric**

THIS AMENDMENT HAS BEEN BOTH  
REVIEWED AND APPROVED

As all terms, including all financial and operational  
obligations and business terms.

By: \_\_\_\_\_

Name: Sara Hensley  
Title: City Manager

\_\_\_\_\_  
Signature

ATTEST: LAUREN THODEN  
CITY SECRETARY

Terrance Naulty  
Asst. General Manager  
Denton Municipal Electric  
\_\_\_\_\_

By: \_\_\_\_\_

Date Signed: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND  
CITY ATTORNEY

By: \_\_\_\_\_

**“BUYER”**

**Core Scientific, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

.

Title: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_

ATTORNEY

## **EXHIBIT O**

### **Phase III High Performance Computing (HPC) Retail Products Supply**

#### **1. Definitions; Interpretation.**

Capitalized terms used in this Agreement are defined herein or in the Power Purchase Agreement (“PPA”) to which this Agreement is appended, and the rules of interpretation relating to such terms and this Agreement set forth herein. Other terms used but not defined in this Agreement shall have meanings as commonly used in the English language. In the event of a contradiction between this Exhibit O and the PPA, this Exhibit O shall control.

#### **2. ERCOT Registration**

Buyer shall amend the Project’s ERCOT registration to remove Phase III from the current Controllable Load Resources to load only prior to Seller providing service under this Exhibit O. Seller is not obligated to provide the Retail Products to Buyer for Phase III until ERCOT confirms Buyer’s amended resource registration.

#### **3. Interruption and Curtailment.**

- 3.1. For the purposes of this Exhibit O, Seller shall not curtail or interrupt deliveries of the Retail products except for (a) a failure of Seller’s Interconnection Facilities that causes the Project to be disconnected, suspended or interrupted, in whole or in part, (b) Buyer’s default under this Agreement or other inability or failure to accept delivery of any Retail Products or (c) a dispatch order by ERCOT through the Project QSE.
- 3.2. Buyer shall at all times during the Term comply with the directives of the Seller given pursuant to the Switching Agreement (Exhibit E).
- 3.3. If Buyer fails to comply with the curtailment directives and instructions set forth in any Seller Curtailment or System Curtailment Order, Seller will have the right to suspend performance during the duration of the Seller Curtailment or System Curtailment Order.
  - 3.3.1. Seller will have the right to set under frequency protective relays on Buyer’s electrical equipment as required by Seller in its role as Transmission Distribution Service Provider for Buyer’s load.
- 3.4. Seller will provide notice to Buyer as soon as practical of any Seller Curtailment and System Curtailment Orders.

#### **4. Price of Retail Products for Phase III HPC**

- 4.1. Prior to the passage of any Seller tariff applicable to the firm load data centers by the

Denton City Council, Buyer shall pay to Seller the following amounts:

- 4.1.1. Facility Charge equal to [REDACTED].
- 4.1.2. Demand Charge equal to [REDACTED] (Buyer to maintain a power factor of 90% or greater). The Phase III Demand Charge for the billing period shall be the greater of: (1) the kVA actual demand supplied during the fifteen (15) minute period of maximum use each month as recorded by Seller's demand meter; or (2) one hundred (100) percent of the actual maximum peak demand similarly determined during the billing months of June through September in the twelve (12 ) months immediately preceding the current month (the "Demand Ratchet"). The Demand Charge will be applied to each billing period.
- 4.1.3. The then current Seller Energy Cost Adjustment (ECA) = \$0.0515/kWh. (subject to quarterly adjustment as approved by the Denton City Council) which includes the cost of Renewable Energy Credits and the Return on Investment and Franchise Fees.
- 4.1.4. The then current Transmission Cost Recovery Factor = \$5.43/kVA, including the Return on Investment and Franchise Fees, which shall be subject to the Demand Ratchet.
- 4.2. After adoption and approval of a rate tariff applicable to the Phase III HPC operation of the Project by the Denton City Council and each subsequent tariff change or modification, those adopted rates will become applicable to Buyer's Phase III HPC operation.

[REDACTED]

## 5. Invoicing and Payment

Invoicing and payment provisions for Retail Service to Phase III HPC will be based upon meter readings provided consistent with the provision set forth in the PPA. No netting of payments with Phases I and II of the Project will be permitted. Seller will invoice Buyer for Retail products provided during the prior two-week period.

- 5.1. On or about the 7th day following the prior two-week delivery period beginning with the two-week period following the Commercial Operation Date of Phase III HPC and every two week period thereafter, and continuing through and including the two week period following the end of the Delivery Term, Seller shall provide to Buyer an invoice setting forth the applicable total charges for the Retail Products, as specified in Exhibit O.
- 5.2. Buyer shall pay the full amount of the bi-weekly invoices amounts on or before five (5) Business Days after date of the invoice.

5.3. For any Phase III HPC services provided pursuant to Exhibit M of the PPA in the preceding month, Buyer shall be invoiced by Seller and payments will be due to Seller in accordance with the applicable provisions of the PPA associated with Non ERCOT Amounts.

5.4. With respect to all invoices or statements, if either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

5.5. Article 7.2 of the PPA shall dictate the treatment of any disputes or adjustments of invoices for Phase III HPC.

## **6. Buyer's Performance Assurance**

The Delivery Term Security provisions of the PPA relative to the Phase III HPC portion of the Project will apply. The 4CP Performance Security requirements of Section 8.1(b) of the PPA will not apply to the Phase III HPC operations. All other provisions of Section 8 of the PPA shall apply.

## **7. Termination Payment**

In the event that Buyer's Phase III HPC operation ceases or reduces its purchase of the Retail Products the following termination payment(s) will be due to Seller from Buyer within ten (10) days or such determination.

[REDACTED]

[REDACTED]

7.2.1. [REDACTED]

## 8. Sale of Transformers

Seller offers to Buyer certain high voltage transformers that Seller has determined are surplus, but which could be used by Buyer to meet Buyer's obligations to pay for interconnection cost pursuant to Seller's Line Extension Policy (City of Denton Ordinance No. 21-2632)

8.1. Price of Transformers. The price of transformers are as shown below:

Station	MFG	MFG Date	Primary Voltage	Secondary Voltage	Rating OA/FA/FA/F O	Weight	Liquid Gal	Oil Status	Serial Number	Price (\$)

8.2. Purchase Option. Buyer has the option to purchase all or any individual transformer in Section 8.1. The option period will be for 18 months from the date of execution of Exhibit O. Buyer shall notify Seller consistent with the notice provisions of the PPA of its intent to exercise the purchase option for all or any of the transformer. Such purchase notice must be made to Seller no later than 30 calendar days before Buyer intends to remove the transformer(s) from Seller's storage area. In addition to the notice provisions in the PPA, Buyer shall provide a copy of the purchase notice to:

Denton Municipal Electric, Attention:

Engineering Division Manager

1659 Spencer Rd.

Denton, TX 76209

Each transformer purchased by Buyer will be subject to the provisions of the Bill of Sale as specified in Attachment 1 to this Exhibit O.

8.3. Payment for Transformers. Upon receipt of the notice of intent to exercise Buyer's purchase option, Seller will prepare an invoice and Bill of Sale (Attachment 1) and payment will be due to Seller prior to removal of the transformer(s). Execution of the Bill of Sale by Buyer and Seller will be required prior to the change of ownership and the removal of the transformer(s).

## Attachment 1 to Exhibit O

### BILL OF SALE

This BILL OF SALE (this “**Bill of Sale**”) is made, executed and delivered as of \_\_\_\_, 2024, by and between the City of Denton, Texas, dba Denton Municipal Electric, a Texas Municipal Corporation and Home-Rule City, acting by and through its City Council (“**Transferor**”), and Core Scientific, Inc., a Delaware corporation (“**Transferee**”). Transferor and Transferee may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, this Bill of Sale is being delivered in connection with the transactions contemplated by that certain Power Purchase Agreement, dated as of September 3, 2021 and amendments thereto, by and between Transferor, as seller, and Transferee, as buyer (the “**PPA**”);

WHEREAS, Section \_\_\_\_ of Amendment No. 3 to the PPA contemplates the transfer of certain transformer equipment and materials by Transferor to Transferee; and

WHEREAS, Transferor and Transferee wish to implement the transfer of the Transferred Assets (defined below) as contemplated under Amendment No. 3 the PPA.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements herein contained and intending to be legally bound hereby, Transferee and Transferor hereby agree as follows:

1. **Transfer.** In accordance with the terms of the PPA, Transferor hereby transfers, conveys, assigns and delivers to Transferee all of Transferor’s right, title and interest in, to and under the equipment and materials listed on Exhibit A hereto (the “**Transferred Assets**”).

2. **No Warranty.** TRANSFEEE ACKNOWLEDGES AND AGREES THAT THE TRANSFERRED ASSETS ARE CONVEYED “AS IS, WHERE IS” AND IN THEIR PRESENT CONDITION WITH ALL FAULTS AND WITHOUT RECOURSE AGAINST TRANSFEROR, AND THAT TRANSFEROR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO THE NATURE, QUALITY OR CONDITION OF THE TRANSFERRED ASSETS.

3. **Title; Risk of Loss.** Title to and risk of loss related to the Transferred Assets shall pass from Transferor to Transferee immediately upon the Transferred Assets being picked up by or on behalf of Transferee at Transferor’s storage facilities. Transferee shall be solely responsible for and shall pay all costs and expenses associated with preparation, shipping, transporting and delivering the Transferred Assets from Transferor’s storage facilities to Transferee’s designated location, and shall indemnify and hold Transferor harmless from and against any and all liabilities arising in connection therewith.

4. ***Further Assurances.*** Promptly upon request of the other Party, Transferor and Transferee shall each execute and deliver to the other such further assurances and take such further actions as may be reasonably required or appropriate to perfect the transfer of the Transferred Assets and otherwise carry out the intent and purpose of this Bill of Sale.

5. ***Binding Effect and Assignment.*** This Bill of Sale shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

6. ***Conveyance Subject to PPA.*** This Bill of Sale is made pursuant to the PPA. In the event of any inconsistency or conflict between any provision of this Bill of Sale, on the one hand, and any provision of the PPA, on the other hand, the provisions of the PPA shall govern.

7. ***Governing Law.*** This Bill of Sale shall be interpreted in accordance with and governed by the laws of the State of Texas without giving effect to the principles of conflicts of law thereof.

8. ***Counterparts and PDF.*** This Bill of Sale may be executed in multiple counterparts, any one of which need not contain the signature of more than one Party, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a facsimile machine, .PDF or other electronic transmission, will be treated in all manners and respects as an original contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Bill of Sale to be duly executed as of the date first written above.

**TRANSFEROR:**

**The City of Denton d/b/a Denton Municipal  
Electric**

By: \_\_\_\_\_

Name:

Title:

**TRANSFeree:**

**Core Scientific, Inc.**

By: \_\_\_\_\_

Name:

Title:

# Core Scientific Power Purchase Agreement



*Energizing tomorrow's community today!*

Public Utilities Board  
Presentation



# Current Project Status

Phase I Complete

Phase II ~ 80% complete

Phase III - 0% complete

Two largest buildings in  
Phase III are not  
complete and are  
proposed for  
conversion to High  
Performance  
Computing



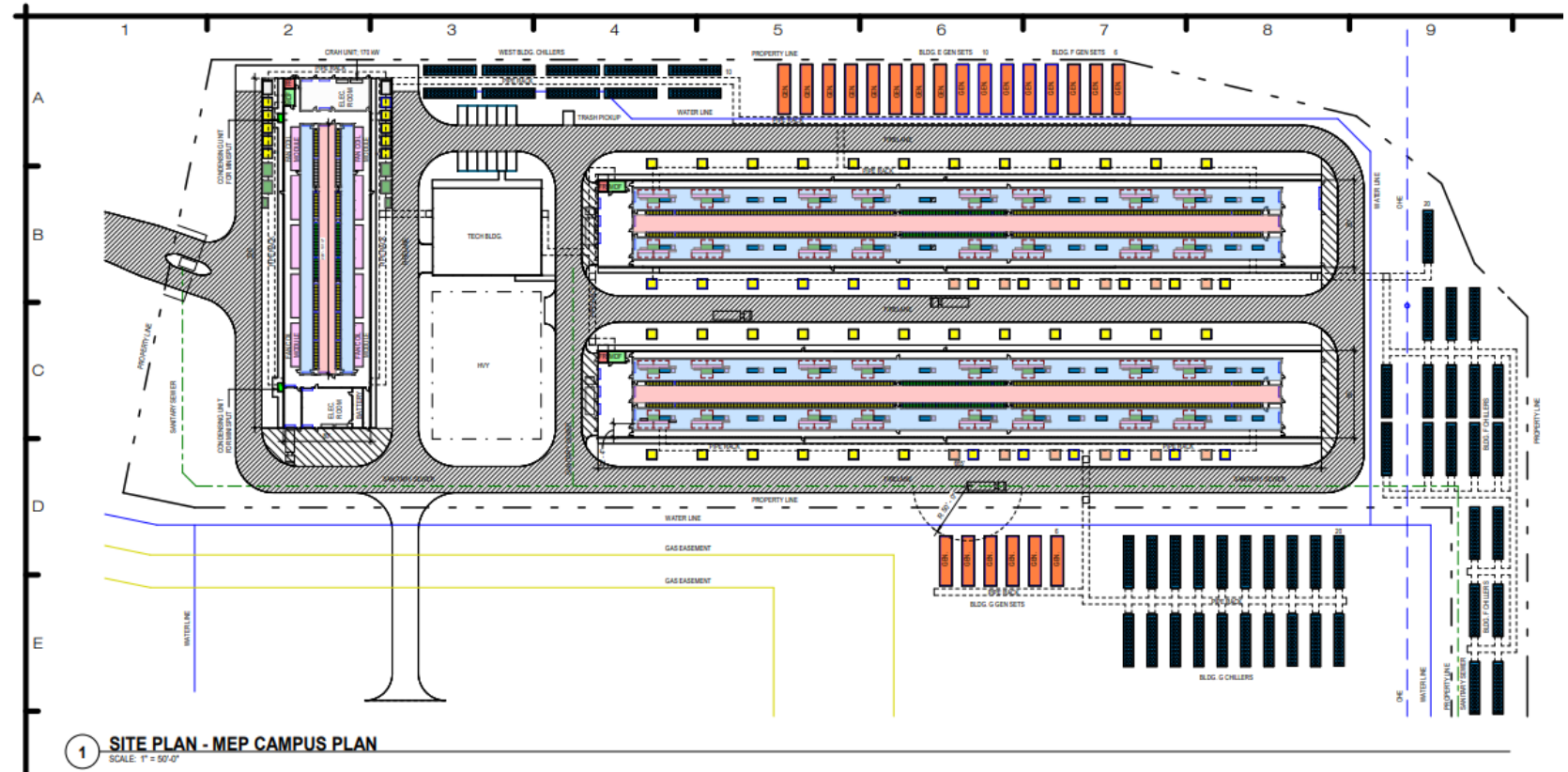
# High Performance Computing Considerations

## HPC Changes to Site Plan

- Core has indicated their intent is to convert Phase III to High Performance Computing (HPC) for artificial intelligence applications
- Targeting April – July of 2025
- 22 back-up generators
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## Level 3 Data Center

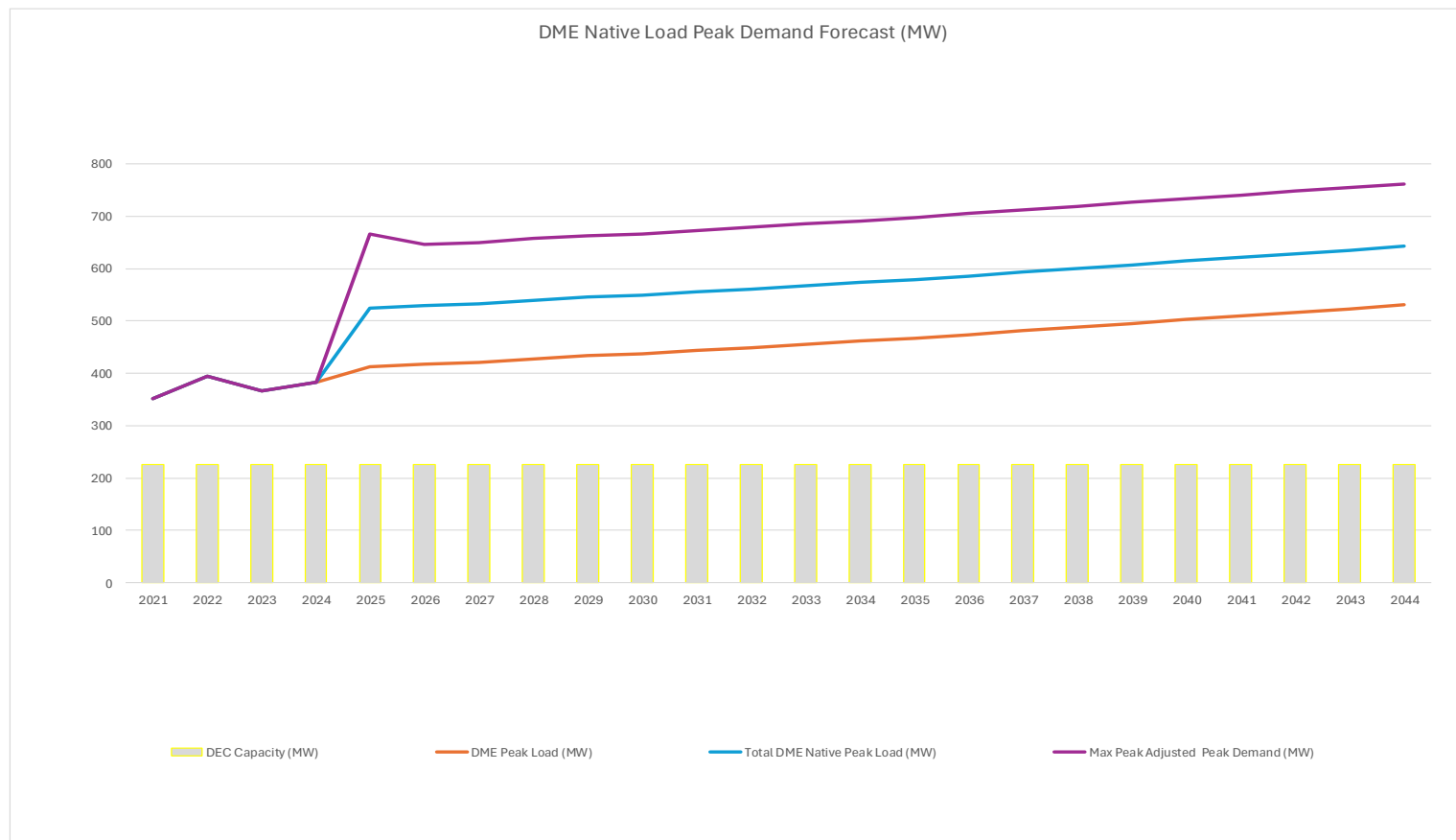
- 24 hr/day baseload demand
- Operation not price sensitive to wholesale market



# DME Implications – Jurisdictional Monopoly Must Serve

1. Modify Power Purchase Agreement to convert HPC to a firm tariff price
  - 24/7 load profile with contribution to DME's 4 coincident peak
  - Firm load subject only to ERCOT mandated load shed or DME outages
  - Tariff price must recover a portion of DME's fixed operating costs (excluding Distribution System)
2. Renewable Energy supply by DME will require immediate delivery
  - Not sufficient time to procure additional long-term renewable PPAs with immediate delivery
  - Purchase of energy futures contracts with Renewable Energy Credit (REC) purchases will be made to support Phase III HPC operations.

# Forecasted DME Peak Demand (MW)



## Peak Demand Growth to Continue

- Forecasted known peak demand to increase by over 56% by 2044
  - Additional large loads are very likely
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# PPA and Lease Changes

- Power Purchase Agreement
  - Establish new demand-based rate for the HPC operation
  - Add early termination fee to protect other DME customers from responsibility for costs directly apportioned to serving Core's HPC load.
  - Add monitoring and telemetry requirements for on-site back-up generation
  - Amend load shed language to be consistent with ERCOT protocols
- Lease
  - Amend to add additional property (5.566 Acres) required for back-up generation and heat exchangers

# Questions and Discussion





# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-128, **Version:** 1

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### **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 Amendment Number Two (2) to the Lease Agreement between the City and Core Scientific, Inc., a Delaware corporation; providing for an effective date.



# City of Denton

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

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Denton Municipal Electric

**DME General Manager:** Antonio Puente, Jr.

**DATE:** August 12, 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 Amendment Number Two (2) to the Lease Agreement between the City and Core Scientific, Inc., a Delaware corporation; providing for an effective date.

### **Background**

The City entered into a seven (7) year Lease Agreement (Lease) with Core Scientific (Core) on September 3, 2021 under which Denton Municipal Electric (DME) leases approximately 31 acres adjacent to the Denton Energy Center for the development of the data center.

Core Scientific intends to convert Phase 3 of the project from cryptocurrency mining to High Performance Computing (HPC), a traditional Tier III data center, to host artificial intelligence computing. Phase III of the project was not completed due to the Chapter 11 bankruptcy of Core Scientific. The equipment required to support the HPC operation includes back-up generators and closed loop cooling equipment which require approximately 5.5 additional acres of leased property. DME has no future use for the requested additional leased property and leasing the property will not impact any Denton Energy Center Operations.

### **RECOMMENDATION**

Approve the ordinance enabling the City Manager to enter into the second amendment to the Lease Agreement.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

Exhibit 3: Presentation

Respectfully submitted:  
Terry Naulty  
Assistant General Manager  
Denton Municipal Electric  
940-349-7565

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION (THE "CITY"), AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NUMBER TWO (2) TO THE LEASE AGREEMENT BETWEEN THE CITY AND CORE SCIENTIFIC, INC., A DELAWARE CORPORATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City and Core Scientific, Inc. ("Lessee") entered into that certain Lease Agreement, effective as of September 3, 2021 (the "Initial Lease") pursuant to which Lessee currently leases the Leased Premises (as defined in the Initial Lease) from the City; and

WHEREAS, the City and Core Scientific, Inc. have agreed to terms and conditions to the second amendment to the Initial Lease (Amendment No. 2) as Exhibit "A" and incorporated herein for all purposes; and

WHEREAS, Lessee requested additional leased property to accommodate Lessee's intent to construct a High Performance Computing center on the Leased Premises; and

WHEREAS, the City Council further finds that Amendment No. 2 to the Lease is in the best interest of the customers of Denton Municipal Electric,

NOW, THEREFOR, 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. The City Council approves and authorizes the City Manager, or their designee, and City Secretary, or their designee, to execute, attest and deliver, respectively, Amendment No. 2 to the Lease, attached as Exhibit "A", with Core Scientific, Inc.

SECTION 3. The City Council approves and authorizes the City Manager, or their designee, to take such additional actions as the City Manager, or the designee, determines to be necessary and advisable to continue to effectuate the purpose, terms, and conditions of Amendment No. 2 to the Lease.

SECTION 4. 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 [\_\_\_\_ - \_\_\_\_]:

\_\_\_\_\_ CITY

\_\_\_\_\_ LESSEE

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____
Jill Jester, 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: \_\_\_\_\_

\_\_\_\_\_ CITY

\_\_\_\_\_ LESSEE

## **SECOND AMENDMENT TO LEASE AGREEMENT**

This second Amendment to Lease Agreement (this “Amendment”), is made as of August \_\_, 2024, by and between the CITY OF DENTON, a Texas home-rule municipal corporation (the “City”), and CORE SCIENTIFIC INC, a Delaware corporation (“Lessee” and, together with City, collectively, the “Parties” and, each, individually, a “Party”), with reference to the following facts:

### **RECITALS**

WHEREAS, the City and Lessee entered into that certain Lease Agreement, effective as of September 3, 2021 (the “Initial Lease”; the Initial Lease as amended by this Amendment is referred to herein as the “Lease”), pursuant to which Lessee currently leases the Leased Premises (as defined in the Initial Lease) from the City; and

WHEREAS, The City and Lessee entered into Amendment No. 1 to the Lease Agreement on August 1, 2023 which extended the Initial Term to 14 years with one seven (7) year extension; and

WHEREAS, The City and Lessee are party to a Power Purchase Agreement (“PPA”) dated September 3, 2021 and certain amendments to the PPA the Term of which was intended to be mirrored in the Lease Agreement; and

WHEREAS, within the Denton Energy Center Property (“DEC Property”), City owns that certain real property described in Exhibit 1 to this Amendment, attached hereto and made part hereof, consisting of approximately 5.56 acres more or less (such real property, together with all rights privileges, easements and appurtenances benefitting or encumbering such real property and all Preexisting Improvements, as hereafter defined, are collectively referred to herein as the “Leased Premises”);

WHEREAS, The PPA Term is for an Initial Term of 14 years with two (2) seven (7) year extension options;

WHEREAS, Lessee has requested additional property on the North section of the lease to accommodate conversion of Phase III of the Project to High Performance Computing (“Phase III HPC Project”); and

WHEREAS, The City intends to provide electric service to the Phase III HPC Project under terms and conditions of an amendment to the PPA.

\_\_\_\_\_ CITY

\_\_\_\_\_ LESSEE

## AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants and the foregoing Recitals which are hereby incorporated into this Agreement, and for other good and valuable consideration, the receipt the City and Lessee hereby agree to amend the Initial Lease as follows:

1. Defined Terms; References. Unless otherwise specifically defined herein, each capitalized term used herein that is defined in the Initial Lease shall have the meaning assigned to such term in the Initial Lease. As used herein, the term “Effective Date” shall mean the date on which the conditions set forth in **Section 4** hereof shall have been satisfied.

2. Lease. All references in the Initial Lease to the “Agreement” shall mean the Initial Lease between the City of Denton and Core Scientific Inc. dated September 3, 2021 as amended August 1, 2023 and by this Amendment.

3. Amendments. The Initial Lease is hereby amended as follows:

- a) Exhibit A to the Initial Lease shall be amended and replaced with Exhibit A attached hereto and made a part hereof.
- b) Exhibit B to the Initial Lease shall be amended to reflect the addition of “Site Three” attached hereto as Exhibit B and made a part hereof.
- c) Section 2.1 of the Initial Lease is hereby deleted in its entirety and replaced with:

“Section 2.1 Rent.

- A. In consideration for the use of the Lease Premises herein granted, Lessee shall pay to the City the following rental amounts (the “Rent”). The monthly Rent shall be in the sum of TWELVE THOUSAND, FOUR HUNDRED AND TEN AND NO/100 DOLLARS. (\$12,410.00) per month (sales tax included). On or prior to the Commencement Date, Lessee shall pay City a sum equal to the first month’s Rent, which shall be applied to the first month’s Rent due under this Agreement. All other Rent payments will be due in advance on or before the first day of the month to which the Rent payment relates. As a courtesy, City will include the amount of the monthly Rent for the subsequent month the monthly invoice provided by City to Lessee pursuant to the PPA. Failure to receive an invoice reflecting Rent in a timely manner does not absolve Lessee from its obligation to pay the monthly Rent on or before the first day of the month to which the Rent payment relates. If the Commencement Date or a termination date occurs on a day other than the first day of a calendar month, Rent for the first and last partial months will be prorated on the basis of the number of actual days in such month.

\_\_\_\_\_ CITY

\_\_\_\_\_ LESSEE

- B. The Rent for the Leased Premises shall be increased, but on decreased, at the end of each two (2) year period during the Lease Term, with the first adjustment occurring on the first day of January 2025, consistent with adjustment for the leased property in the Initial Lease, and future adjustments occurring every other January 1<sup>st</sup> thereafter, by a percentage amount equal to the percentage change in the United States Consumer Price Index for all urban consumers ("CPI-U") for the Dallas-Fort Worth Bureau of Labor Statistics which occurred during the previous two year period based upon the then current and available month's data compared to the data for the same month two-years prior. "
- d) Lessee's notice address as set forth in Section 9.2 of the Initial Lease is hereby deleted in its entirety and replaced with:

Name	Core Scientific, Inc. Attn: General Counsel
Address	2407 S. Congress Avenue Suite, E-101 Austin, TX <b>78704-5505</b>
E-mail address	legal@corescientific.com

4. Effectiveness of this Amendment. The Parties hereby acknowledge that, as of the Petition Date, the Cure Amounts remain unpaid and owing to the City under the Lease Agreement. As conditions precedent to the effectiveness of this Amendment, (i) the Bankruptcy Court shall approve the assumption of the Lease, the cure of the Lease by payment of the Cure Amounts and the entry into this Amendment, to the extent such approval is required, and (ii) Lessee shall cure the Lease Agreement by paying the Cure Amounts to the City in cash.

5. Conflicts. In the event of a conflict or ambiguity between the Initial Lease and this Amendment, the terms of this Amendment shall control.

6. No Further Amendments. Except as amended hereby, the Initial Lease remains unchanged and all provisions shall remain fully effective between the Parties.

7. Binding Effect; No Partnership. The provisions of this Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Nothing herein contained shall be deemed to create a partnership or joint venture between any of the Parties.

8. Governing Law. This Amendment shall be governed by the laws of the State of Texas, without giving effect to its conflicts of law rules which would result in the application of laws of another jurisdiction.

\_\_\_\_\_ CITY

\_\_\_\_\_ LESSEE

9. Headings. The headings contained in this Amendment are intended solely for convenience and shall not affect the rights of the Parties to this Amendment.

10. Counterparts. This Amendment may be (i) executed in any number of separate counterparts, each of which when executed and delivered shall be deemed an original and all of which together shall constitute one instrument; and (ii) delivered by executed counterpart of a signature page in original, portable document format (PDF), facsimile, email, or other electronic means and any Party delivering in such a manner shall be legally bound.

11. Severability. The provisions of this Amendment are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Amendment.

12. No Third Party Beneficiary. Nothing contained herein is intended to be for, or to inure to, the benefit of any person other than the undersigned and their respective successors and permitted assigns, except as otherwise expressly provided in this Amendment.

*[Signatures to follow]*

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first written above.

CITY OF DENTON

By: \_\_\_\_\_  
Sara Hensley, City Manager

ATTEST:  
Lauren Thoden, City Secretary

By: \_\_\_\_\_

THIS AMENDMENT HAS BEEN BOTH  
REVIEWED AND APPROVED  
As all terms, including all financial and  
operational obligations and business terms.

APPROVED AS TO LEGAL FORM:  
Mack Reinwand City Attorney

By: \_\_\_\_\_

\_\_\_\_\_  
Signature

Terrance Naulty  
Asst. General Manager  
Denton Municipal Electric

\_\_\_\_\_  
Department  
Date Signed: \_\_\_\_\_

ACKNOWLEDGMENT

THE STATE OF TEXAS     §

COUNTY OF DENTON     §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023,  
by Sara Hensley, Interim City Manager of the City of Denton, on behalf of said municipality.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

\_\_\_\_\_ CITY

\_\_\_\_\_ LESSEE

CORE SCIENTIFIC, INC., LESSEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LESSEE NOTARY

THE STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, on behalf of said company.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

\_\_\_\_\_ CITY

\_\_\_\_\_ LESSEE

# CITY OF OKMONTON

## Exhibit A DEC Property

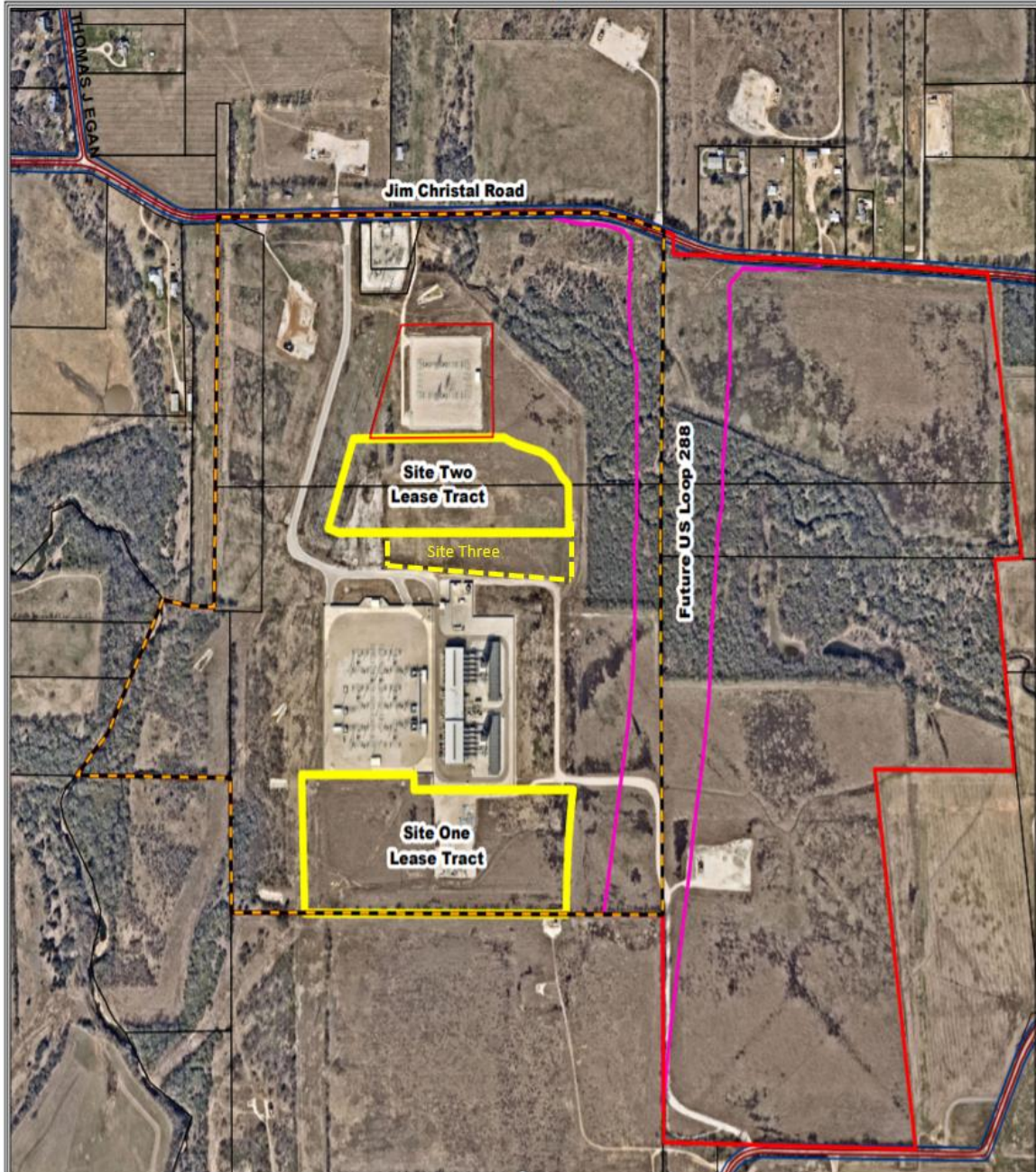


EXHIBIT B  
LEASED PREMISES

**Site Three**

**LEGAL DESCRIPTION**

**BEING** a 5.566 acre tract of land situated in the Moses H. Davis Survey, Abstract No. 377, City of Denton, Denton County, Texas, and being a part of Lot 1, Block A per the Minor Plat of Denton Energy Center Addition, as recorded in Document No. 2021-367 of the Plat Records of Denton County, Texas, and also being a part of that certain 340.469 acre tract of land described in a Deed to the City of Denton, as recorded in Document No. 2016-143882 of the Official Records of Denton County, Texas and being more particularly described as follows:

**COMMENCING** at a 5/8 inch iron rod found for the Southwest corner of Lot 1, Block 1 of Krum Tap Electrical Switch Station, per Plat recorded in Document No. 2010-3 of the Plat Records of Denton County, Texas;

**THENCE** North 89°39'01" East along the South line of said Lot 1, for a distance of 21.24 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Northwest corner of an 11.256 acre tract previously surveyed by Todd B. Turner, RPLS No. 4859, per Boundary Survey dated July 7, 2021;

**THENCE** South 19°22'19" West along the West line of said 11.256 acre tract, for a distance of 417.32 to a 5/8 inch iron rod with cap stamped "TNP" found for the Southwest corner of said 11.256 acre tract, same being the **POINT OF BEGINNING** for the herein described tract:

**THENCE** South 70°47'23" East along the South line of said 11.256 acre tract, for a distance of 60.77 feet to a 5/8 inch iron rod with cap stamped "TNP" found for an angle point in the South line of said 11.256 acre tract;

**THENCE** North 90°00'00" East continuing along the South line of said 11.256 acre tract, for a distance of 1259.39 feet to a 5/8 inch iron rod with cap stamped "TNP" found for the Southeast corner of said 11.256 acre tract;

**THENCE** South 00°24'23" East departing the South line of said 11.256 acre tract, for a distance of 210.45 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

**THENCE** North 87°26'09" West for a distance of 832.04 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

**THENCE** North 64°22'02" West for a distance of 35.11 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

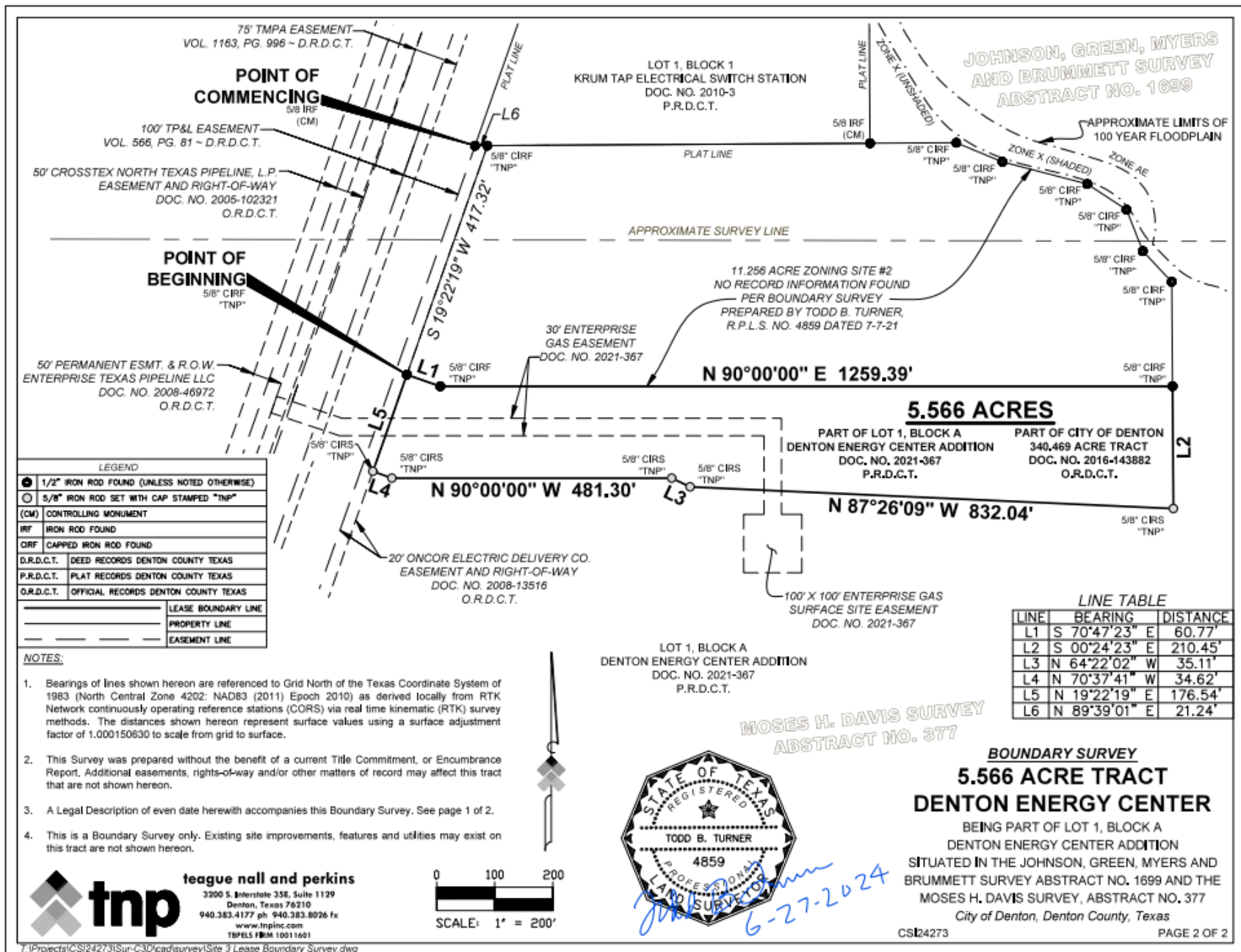
**THENCE** North 90°00'00" West for a distance of 481.30 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

**THENCE** North 70°37'41" West for a distance of 34.62 feet to a 5/8 inch iron rod with cap stamped "TNP" set;

**THENCE** North 19°22'19" East for a distance of 176.54 feet to the **POINT OF BEGINNING**, and containing 5.566 acres of land, more or less.

\_\_\_\_\_ CITY

\_\_\_\_\_ LESSEE



CITY

LESSEE

# Core Scientific Power Purchase Agreement



*Energizing tomorrow's community today!*

Public Utilities Board  
Presentation



# Current Project Status

Phase I Complete

Phase II ~ 80% complete

Phase III - 0% complete

Two largest buildings in  
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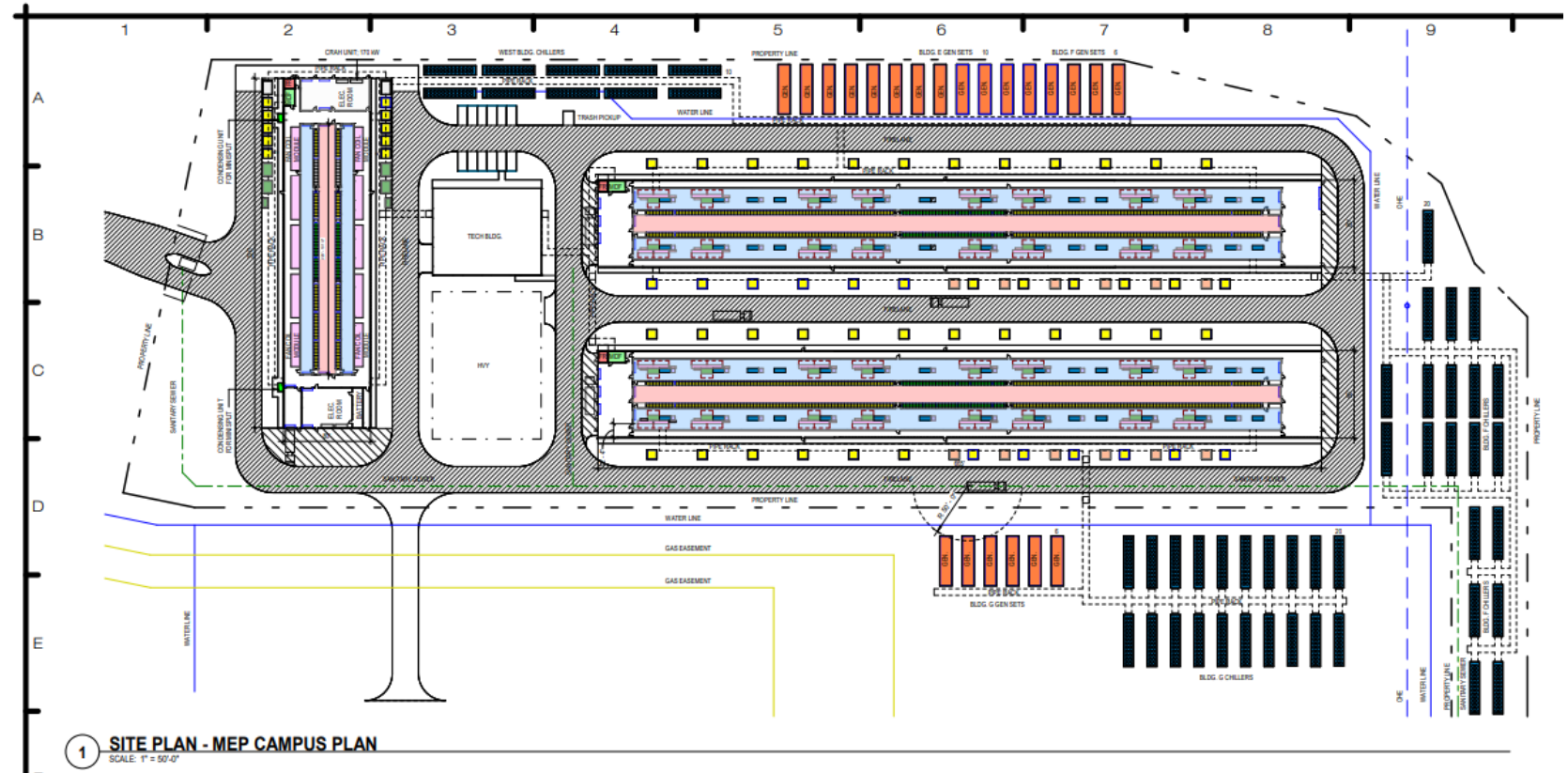
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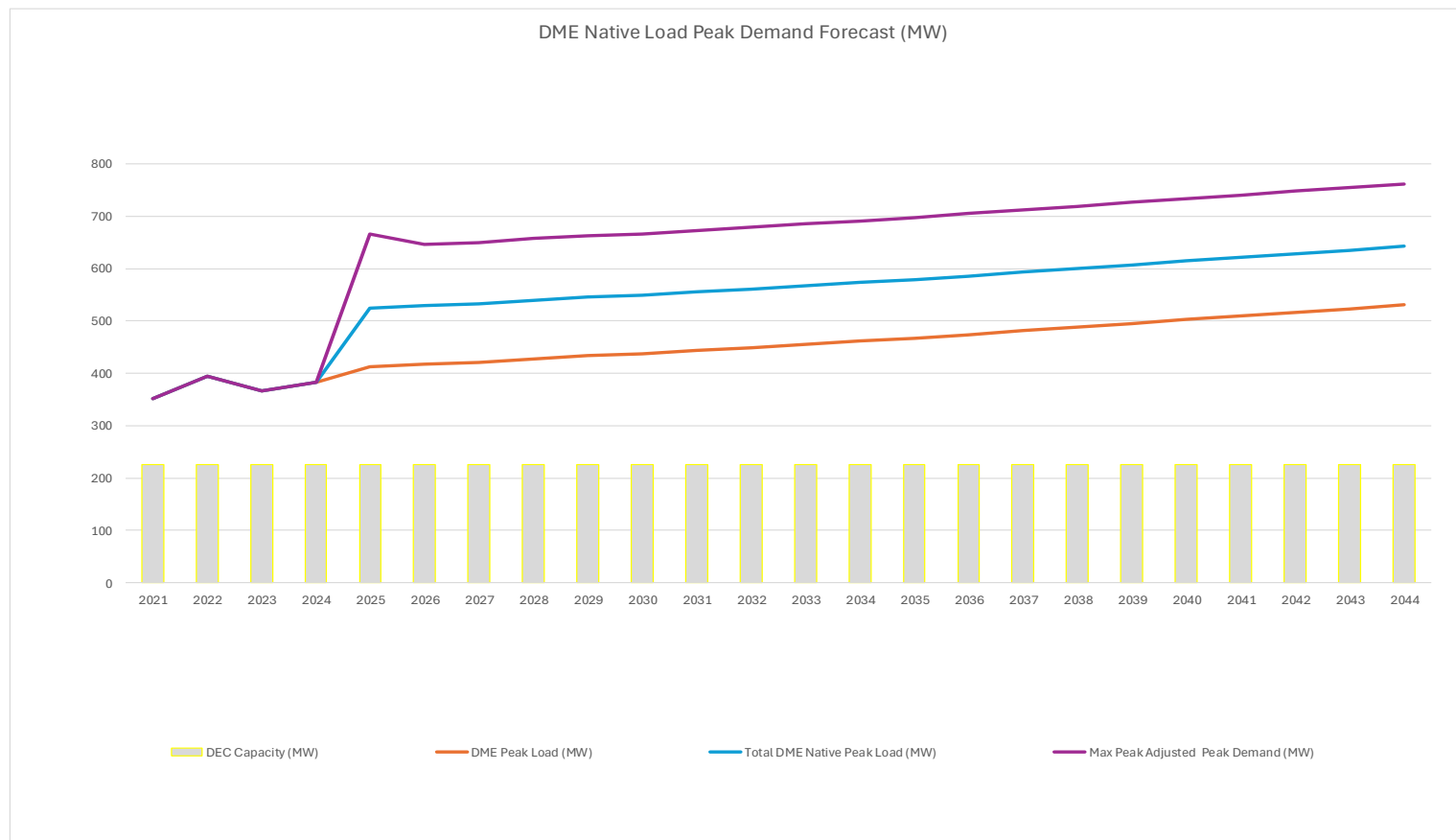
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# Questions and Discussion





# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** PUB24-158, **Version:** 1

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### 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
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



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #: PUB24-164, Version: 1**

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### **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 containing public power information related to a proposed amendment to the Power Purchase Agreement between the City of Denton, as the seller, and Core Scientific, Inc.; 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 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.