

DocuSign City Council Transmittal Coversheet

PSA	6590-084
File Name	Mayhill I35E Utility Location
Purchasing Contact	Jane Rogers
City Council Target Date	January 14, 2020
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	20-040

CITY OF DENTON, TEXAS

STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES #6590-084

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and Kimley-Horn and Associates, Inc., with its corporate office at 801 Cherry Street, Unit 11 Suite 950, Fort Worth, Texas 76102 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: engineering services for the design and construction phase services for the IH-35E-MAYHILL – UTILTIY-RELOCATIONS (the "PROJECT").

SECTION 1 **Scope of Services**

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

SECTION 2 **Compensation and Term of Agreement**

- A.** The ENGINEER shall be compensated for all services provided pursuant to this AGREEMENT in an amount not to exceed \$922,800 in the manner and in accordance with the fee schedule as set forth in Attachment B. Payment shall be considered full compensation for all labor, materials, supplies, and equipment necessary to complete the services described in Attachment A.
- B.** Unless otherwise terminated pursuant to Section 6. D. herein, this AGREEMENT shall be for a term beginning upon the effective date, as described below, and shall continue for a period which may reasonably be required for the completion of the PROJECT, until the expiration of the funds, or completion of the PROJECT and acceptance by the CITY, whichever occurs first. ENGINEER shall proceed diligently with the PROJECT to completion as described in the PROJECT schedule as set forth in Attachment A.

SECTION 3 **Terms of Payment**

Payments to the ENGINEER will be made as follows:

A. Invoice and Payment

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

SECTION 4 **Obligations of the Engineer**

A. General

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

B. Standard of Care

The ENGINEER shall perform its services:

- (1) with the professional skill and care ordinarily provided by competent engineers

practicing in the same or similar locality and under the same or similar circumstances and professional license; and

- (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer.

C. Subsurface Investigations

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

D. Preparation of Engineering Drawings

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

E. Engineer's Personnel at Construction Site

- (1) The presence or duties of the ENGINEER's personnel at a construction site, whether as on-site representatives or otherwise, do not make the ENGINEER or its personnel in any way responsible for those duties that belong to the CITY and/or the CITY's construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the AGREEMENT Documents and any health or safety precautions required by such construction work. The ENGINEER and its personnel have no authority to exercise any control over any construction contractor or other entity or their

employees in connection with their work or any health or safety precautions.

- (2) Except to the extent of specific site visits expressly detailed and set forth in Attachment A, the ENGINEER or its personnel shall have no obligation or responsibility to visit the construction site to become familiar with the progress or quality of the completed work on the PROJECT or to determine, in general, if the work on the PROJECT is being performed in a manner indicating that the PROJECT, when completed, will be in accordance with the AGREEMENT Documents, nor shall anything in the AGREEMENT Documents or this AGREEMENT between CITY and ENGINEER be construed as requiring ENGINEER to make exhaustive or continuous on-site inspections to discover latent defects in the work or otherwise check the quality or quantity of the work on the PROJECT. If the ENGINEER makes on-site observation(s) of a deviation from the AGREEMENT Documents, the ENGINEER shall inform the CITY.
- (3) When professional certification of performance or characteristics of materials, systems or equipment is reasonably required to perform the services set forth in the Scope of Services, the ENGINEER shall be entitled to rely upon such certification to establish materials, systems or equipment and performance criteria to be required in the AGREEMENT Documents.

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

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

G. Construction Progress Payments

Recommendations by the ENGINEER to the CITY for periodic construction progress payments to the construction contractor will be based on the ENGINEER's knowledge, information, and belief from selective sampling and observation that the work has

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

H. Record Drawings

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

I. Right to Audit

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

the time copying is performed.

J. INSURANCE

(1) ENGINEER'S INSURANCE

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

- c. Workers' Compensation – ENGINEER shall maintain workers compensation and employers liability insurance and, if necessary, commercial umbrella liability insurance with a limit of not less than \$100,000.00 each accident for bodily injury by accident or \$100,000.00 each employee for bodily injury by disease, with \$500,000.00 policy limit.
 - i. ENGINEER waives all rights against the CITY and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by workers compensation and employer's liability or commercial umbrella insurance obtained by ENGINEER pursuant to this AGREEMENT.
- d. Professional Liability – ENGINEER shall maintain professional liability, a claims-made policy, with a minimum of \$1,000,000.00 per claim and aggregate. The policy shall contain a retroactive date prior to the date of the AGREEMENT or the first date of services to be performed, whichever is earlier. Coverage shall be maintained for a period of 5 years following the completion of the AGREEMENT. An annual certificate of insurance specifically referencing this PROJECT shall be submitted to the CITY for each year following completion of the AGREEMENT.

(2) GENERAL INSURANCE REQUIREMENTS

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

to the respective Department Director (by name), City of Denton, 901 Texas Street, Denton, Texas 76209.

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

K. Independent Consultant

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

L. Disclosure

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

M. Asbestos or Hazardous Substances

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

N. Permitting Authorities - Design Changes

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

O. Schedule

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

P. Equal Opportunity

- (1) **Equal Employment Opportunity:** ENGINEER and ENGINEER's agents

shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this AGREEMENT.

- (2) **Americans with Disabilities Act (ADA) Compliance:** ENGINEER and ENGINEER's agents shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

SECTION 5 **Obligations of the City**

A. City-Furnished Data

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

B. Access to Facilities and Property

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

C. Advertisements, Permits, and Access

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

D. Timely Review

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

E. Prompt Notice

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

F. Asbestos or Hazardous Substances Release.

- (1) CITY acknowledges ENGINEER will perform part of the work at CITY's facilities that may contain hazardous materials, including asbestos containing materials, or conditions, and that ENGINEER had no prior role in the generation, treatment, storage, or disposition of such materials. In consideration of the associated risks that may give rise to claims by third parties or employees of City, City hereby releases ENGINEER from any damage or liability related to the presence of such materials.
- (2) The release required above shall not apply in the event the discharge, release or escape of hazardous substances, contaminants, or asbestos is a result of ENGINEER's negligence or if ENGINEER brings such hazardous substance, contaminant or asbestos onto the PROJECT.

G. Contractor Indemnification and Claims

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

H. Contractor Claims and Third-Party Beneficiaries

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

"Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the CITY will be the beneficiary of any undertaking by the ENGINEER."
- (2) This AGREEMENT gives no rights or benefits to anyone other than the CITY and the ENGINEER and there are no third-party beneficiaries.
- (3) The CITY will include in each agreement it enters into with any other entity or person regarding the PROJECT a provision that such entity or person shall have no third-party beneficiary rights under this AGREEMENT.

- (4) Nothing contained in this Section H. shall be construed as a waiver of any right the CITY has to bring a claim against ENGINEER.

I. CITY's Insurance

- (1) The CITY may maintain property insurance on certain pre-existing structures associated with the PROJECT.
- (2) The CITY may secure Builders Risk/Installation insurance at the replacement cost value of the PROJECT. The CITY may provide ENGINEER a copy of the policy or documentation of such on a certificate of insurance.

J. Litigation Assistance

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

K. Changes

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

SECTION 6 **General Legal Provisions**

A. Authorization to Proceed

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

B. Reuse of Project Documents

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

C. Force Majeure

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

D. Termination

(1) This AGREEMENT may be terminated:

- a. by the City for its convenience upon 30 days' written notice to ENGINEER.
- b. by either the CITY or the ENGINEER for cause if either party fails substantially to perform through no fault of the other and the nonperforming party does not commence correction of such nonperformance within 5 days' written notice or thereafter fails to diligently complete the correction.

(2) If this AGREEMENT is terminated for the convenience of the City, the ENGINEER will be paid for termination expenses as follows:

- a. Cost of reproduction of partial or complete studies, plans, specifications or other forms of ENGINEER'S work product;
- b. Out-of-pocket expenses for purchasing electronic data files and other data storage supplies or services;
- c. The time requirements for the ENGINEER'S personnel to document the work underway at the time of the CITY'S termination for convenience so that the work effort is suitable for long time storage.

(3) Prior to proceeding with termination services, the ENGINEER will submit to the CITY an itemized statement of all termination expenses. The CITY'S approval will be obtained in writing prior to proceeding with termination services.

E. Suspension, Delay, or Interruption to Work

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

F. Indemnification

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

G. Assignment

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

H. Jurisdiction

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

I. Severability and Survival

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

J. Observe and Comply

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

K. Immigration Nationality Act

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

L. Prohibition On Contracts With Companies Boycotting Israel

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

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

Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this AGREEMENT, ENGINEER certifies that ENGINEER'S signature provides written verification to the CITY that ENGINEER, pursuant to Chapter 2252, 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. 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/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

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

O. Agreement Documents

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

- Attachment A - Scope of Services
- Attachment B – Compensation
- Attachment C – Changes and Amendments to Standard Agreement
- Attachment D – Project Schedule
- Attachment E – Project 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.

Duly executed by each party's designated representative to be effective on the date subscribed by the City Manager.

BY:
CITY OF DENTON, TEXAS

DocuSigned by:
Todd Hileman
B776C711BA0D454...
TODD HILEMAN, CITY MANAGER

Date: 1/15/2020

BY:
ENGINEER
KIMLEY-HORN AND ASSOCIATES, INC.

DocuSigned by:
Glenn C. ...
EDB15720A1C8421...
GLENN C. ...
SR. VICE PRESIDENT

Date: 12/10/2019

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

DocuSigned by:
Frank Pugley
22943FE13318483...
Signature

Water and Wastewater Utilities Director

Title

Water Utilities

Department

Date Signed: 12/10/2019

2019-565945
TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

By: *Mack Reinward*
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ATTEST:
ROSA RIOS, CITY SECRETARY

By: *Rosa Rios*
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ATTACHMENT "A"

Scope for Engineering Design Related Services for:

IH-35E-MAYHILL - UTILITY-RELOCATIONS

The ENGINEER will perform its services pursuant to the requirements delineated below. Services under this attachment include engineering services for the design and construction phase services for the IH-35E-MAYHILL - UTILITY-RELOCATIONS.

Project Understanding

ENGINEER will provide engineering design services for the following tasks:

The relocations of approximately 14,000 linear feet of 20-inch through 8-inch water main, 1,500 linear feet of 18-inch reclaimed water line, and 500 feet of gravity sewer line from Loop 288 to Post Oak Road along the north and south frontage roads of IH-35E. The relocations are necessary due to the CSJ 0196-01-109 Mayhill Bridge and frontage road expansion planned by TxDOT. All proposed relocations will be placed back in easement, except for lines that cross IH-35E or Mayhill Road. There are approximately 1,000 linear feet of proposed trenchless bores/tunneling.

ENGINEER's scope of services is as follows:

IH-35E-MAYHILL - UTILITY-RELOCATIONS

- Task 1 – Design Management
- Task 2 – Alignment Study
- Task 3 – Preliminary Design
- Task 4 – Final Design
- Task 5 – Construction Contract Documents
- Task 6 – Bid Phase Services
- Task 7 – Construction Phase Services
- Task 8 – Record Drawings Preparation
- Task 9 – Permitting
- Task 10 – Survey and Easements
- Task 11 – Easement Acquisition Services

IH-35 - UTILITY-RELOCATIONS

- Task 12 – Conflict Analysis

Task 1 DESIGN MANAGEMENT

A. Project Management

1. Develop project communication plan.
 - a. Develop project contact list.
 - b. Prepare and e-mail progress reports to the project team once a month to be included with invoices. 24 months is assumed.
 - c. Prepare project schedule and provide schedule updates if the schedule changes.
2. Meetings
 - a. Prepare for and attend kickoff meeting.
 - b. Prepare meeting notes and distribute to the City.
3. Sub-consultant Agreement Preparation
 - a. Prepare and execute up to five (5) subconsultant agreements.

Task 2 – ALIGNMENT STUDY

A. Preliminary Investigation

1. Data Collection and Record Research
 - b. Gather existing survey and topographic data
 - c. Gather existing aerial photographs.
 - d. Gather existing water, sanitary sewer, and storm sewer record drawings.
 - e. Gather existing paving plans.
 - f. Gather existing development plans.
 - g. Gather existing plat information.
 - h. Collect property owner and record information
 - i. Gather existing right-of-way and easement information.
 - j. Gather existing franchise utility record information.
2. Site Investigation
 - a. Walk general alignment.
 - b. Document alignment corridor with photographs.
 - c. Identify potential alignment, conflicts and issues.
3. Data Review with City
 - a. Meet with City to review accuracy of record information.
 - b. Interview City staff concerning historical, existing and future City plans along the alignment.

B. Prepare Alternate Alignment Technical Memorandum.

1. Analysis of alternate alignments indicating merits and challenges for each, and including the following considerations:
 - a. Easement acquisition schedule and cost impacts.
 - b. Existing development impacts.
 - c. Existing potential horizontal and vertical conflicts.
 - d. Accessibility for maintenance.
 - e. Prepare opinions of probable construction cost for each alignment. The ENGINEER 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 provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

C. Deliverables

1. Digital .PDF copy of draft and final technical memorandum.

D. Meetings

1. Conduct one (1) review meeting with City.
2. Revise memorandum based on City comments.

Task 3 – PRELIMINARY DESIGN**A. Design Survey**

1. Utility and Property Owner Coordination
 - a. Coordinate with DIG TESS and City of Denton to locate and mark existing franchise and public utilities prior to performing the field survey.
2. Design Survey
 - a. The limits of the survey shall be a 100-foot wide alignment generally along IH-35E, and along Mayhill Road as shown on the Project Location Map. There are two location of offsite alignment that will require easement along the backside of properties adjacent to IH-35E. The topographic survey will be approximately 15,000 linear feet.
 - b. Establish up to ten (10) horizontal control points based on the City of Denton Coordinate System using ½-inch rebar with identifiable plastic cap, specific for this project.
 - c. Establish a vertical control benchmark circuit tied to the City of Denton benchmark system, specific for this project, as well as tie into the TxDOT control.

- d. Perform a field survey to identify and locate all existing topographic elements within the alignment corridor including, but not limited to, the following:
 - i. Property pins
 - ii. Existing pavement, curbs, sidewalks, barrier free ramps, etc.
 - iii. Lane Striping (where applicable)
 - iv. Driveways
 - v. Existing storm sewer inlets, manholes, junction boxes, outfalls, and erosion control
 - vi. Culverts and bridges
 - vii. Guardrail
 - viii. Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities
 - ix. Traffic signal poles, cabinets, and other signal equipment
 - x. Signs (excluding temporary signs)
 - xi. Trees, 6-inch caliper and up (center of trunk as well as dripline)
 - xii. Buildings
 - xiii. Retaining walls
 - xiv. Fence limits and material types
 - xv. Other applicable physical features that could impact design:
 - a) Field ties to the existing edge of pavement on Mayhill Road and Interstate Hwy 35.
 - b) Field sketches of utility manholes and structures.
 - c) Prepare a final topographic drawings in a digital format (including one-foot contours and breaklines) showing the features located in the field as well as right-of-way strip map information, an ASCII coordinate file of the points located in the field, and a hard copy of the coordinates and feature descriptions.

B. Geotechnical Engineering

1. Perform a geotechnical analysis of the alignment utilizing a qualified geotechnical laboratory to determine subsurface conditions and make recommendations regarding design parameters. The analysis shall include the following:
 - a. Subsurface exploration including up to ten (10) sample bores varying 30 feet depending upon location.
 - b. Laboratory tests for classification purposes and strength characteristics.
 - c. Engineering services that address the following:

- i. soil and groundwater conditions
 - ii. Comments on general excavatability of soils and shale encountered
 - iii. Recommendations for pipe installation, including bedding and backfill
 - iv. Recommendations for tunneling operations
2. A geotechnical report will be furnished by the geotechnical engineer to present the results of the field and laboratory data as well as analyses and recommendations. Three (3) copies of the report will be provided by the geotechnical engineer, with one (1) copy going to the City. The data contained in the geotechnical report will be made available to contractors during the bidding process for informational purposes.

C. Subsurface Utility Engineering (SUE)

1. Level A investigation of existing water line connection point, and potential crossing utilities. The Level A investigation shall consist of performing up to four (4) level A testholes or "locates" of existing utilities. The Level A investigation will be conducted in accordance with ASCE publication CI/ASCE 38-02 and include the location of said utility in three dimensions obtained through non-destructive geophysical methods.

D. Preliminary Water Line Design

1. Visit the site to perform field verification of the survey.
2. Preliminary plan and profile drawings preparation for approximately 8,000 linear feet of 20-inch water line, 1,500 linear feet of 12-inch water line, 3,800 linear feet of 8-inch water line, 500 feet of gravity sanitary sewer, and 1,500 linear feet of 18-inch reclaimed water line.
 - a. Prepare (22"x34") plan and profile drawings at 1"=20' horizontal and 1"=8' vertical scale.
 - b. Plan view of the base map shall have all above ground features shown and clearly labeled along with existing utilities based on field ties and record information.
 - c. Plan view shall include design notes for stationing, size, slope, pipe material, embedment, length and construction method.
 - d. Profile view shall include design notes for stationing, size, slope, flow-line of pipe, pipe material, embedment, length and construction method.
 - e. Prepare preliminary water line details, including connection details.
 - f. Design tunnels/bores including casing/tunnel liner plate minimum thickness and inside diameter, shafts, allowable methods, control of ground water, and appropriate tolerances with the chosen method.
 - g. Perform one (1) site visit to verify preliminary design.
3. Preliminary Traffic Control and Detour Plan Preparation.

- a. City and TxDOT typical traffic control details will be included as required.
4. Franchise Utility Coordination
 - a. Provide one set of drawings to each franchise utility encountered for their review. Request each franchise to mark up the drawings to show the size, type, and location of their utilities.
 - b. Coordinate with franchise utilities if any relocations are required. Notify City if any relocations will be required.
5. Prepare preliminary general notes and details, including City Standard Details where applicable.
6. Prepare preliminary technical specifications utilizing City Standard Specifications, and any special specifications.
7. Compile and prepare an updated opinion of probable construction cost for the entire project using recent average unit bid prices which are representative of similar types of construction in the local area.
 - a. The ENGINEER 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 provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

E. Deliverables

1. Preliminary design submittal (60%)
 - a. Submit four (4) copies to City for review and comment.
 - b. Submittal shall include the following:
 - i. Preliminary design plans (22"x34")
 - ii. Preliminary technical specifications
 - iii. Opinion of probable construction cost

F. Meetings

1. Attend one (1) meeting with City to kick-off preliminary design.
2. Attend one (1) meeting with City on-site prior to submittal of preliminary plans, if required.
3. Attend one (1) meeting with City to present and review the preliminary design submittal

Task 4 – FINAL DESIGN

A. Easement Preparation

1. Upon receiving approval of 60% design drawings, ENGINEER will prepare up to thirty-five (35) permanent water line easements and up to thirty-five (35) temporary construction easements (which may be shown on the permanent easement document).
2. Easement instruments will consist of metes and bounds descriptions and exhibits.

B. Final Design

1. Incorporate the preliminary design submittal review comments (one (1) round of comments is anticipated in proposed effort).
2. Prepare updated opinion of probable construction cost.
 - a. The ENGINEER 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 provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
3. Incorporate franchise utility investigation information
4. Incorporate details and technical specifications.
5. Prepare surface repair sheets and details as necessary.
6. Prepare final abandonment layout sheet and letter for TxDOT submittal.
7. Prepare Project Manual using City Standard Construction Contract Documents.

C. Deliverables:

1. Final Design Submittal (95%)
 - a. Submit four (4) copies to the City for review and comment.
 - b. Submittal shall include the following:
 - i. Final design drawings
 - ii. Final design project manual
 - iii. Opinion of probable construction cost

D. Meetings

1. One (1) meeting with City to review Final Design Submittal.

Task 5 – CONSTRUCTION CONTRACT DOCUMENTS

A. Bidding Construction Contract Documents

1. Incorporate City comments from 95% design submittal and prepare construction contract documents, bid plans, and opinion of probable construction cost.
2. Construction contract documents will consist of the final plans and project manual, both signed and sealed by a licensed professional engineer in the State of Texas and in accordance with comments provided by the City during final design.

B. Deliverables:

1. Construction Contract Documents Submittal
 - a. Submit four (4) copies to the City for bidding.
 - b. Submittal shall include the following:
 - i. Bid drawings
 - ii. Bid project manual
 - iii. Opinion of probable construction cost

Task 6 – BID PHASE SERVICES

A. Bid Phase Services

1. Provide electronic bid documents to the City purchasing department for bidding.
2. Provide the Notice to Bidders to the City for publication. The City will be responsible for publication of the notice. The City will be responsible for distribution of the bidding documents to prospective contractors, suppliers and plan rooms.
3. The following assistance will be provided to the City during the bidding phase:
 - a. Preparation of addenda and delivery to City for distribution to plans holders.
 - b. Responses to questions submitted by plans holders.
 - c. Attend bid opening facilitated by City.
 - d. Preparation of bid tabulation.
 - e. Preparation of recommendation of award letter.
4. Conformance plans and specifications
 - a. Based on potential questions and addenda from the bidding phase, prepare conformance set of plans and specifications to be used during construction.
 - i. Provide up to four (4) sets to City for execution.

Task 7 – CONSTRUCTION PHASE SERVICES

A. Construction Phase Services

1. Pre-Construction Conference
 - a. Prepare for and attend a pre-construction conference prior to commencement of Work at the Site
2. Site Visits
 - a. Visit the construction site up to twelve (12) times during construction to perform construction observation. 12 months construction time is assumed.
 - b. Site Visits are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgement.
 - c. Based on information obtained during site visits, ENGINEER will determine if Contractor's work is generally proceeding in accordance with the Contract Documents, and ENGINEER will keep CITY informed of the general progress of the work.
3. Recommendations with Respect to Defective Work
 - a. Provide recommendations to City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of site visit evaluations, ENGINEER believes such work will not produce a completed Project that conforms generally to Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Notwithstanding the foregoing, the City reserves the right to disapprove or reject Contractor's work without a recommendation from the ENGINEER.
4. Clarifications and Interpretations
 - a. Issue necessary clarifications and interpretations of the Contract Documents to City as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of the Contract Documents. Field orders authorizing variations from the requirements of the Contract Documents will be made by City.
5. Change Orders
 - a. Recommend change orders to City, as appropriate.
 - b. Review and make recommendations related to Change Orders submitted or proposed by the Contractor.
6. Shop Drawings and Samples
 - a. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to

submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

7. Substitutes and “or-equal”

- a. Evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.
- b. Provide recommendations to City

8. Inspections and Tests

- a. Review certificates of inspections and tests within ENGINEER’s area of responsibility for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER will be entitled to rely on the results of such tests and facts being certified. The scope of services assumes the pumps and motors will go through a non-witnessed factory test. Attending testing will be considered additional services.

9. Disagreements between City and Contractor

- a. As necessary, ENGINEER will, with reasonable promptness, render initial written decision on all claims of City and Contractor relating to the acceptability of Contractor’s work or the interpretation of the requirements of the Contract Documents pertaining to the progress of the Contractor’s work. In rendering such decisions, ENGINEER will be fair and not show partiality to City or Contractor and will not be liable in connection with any decision rendered in good faith in such capacity. The initial decision of the ENGINEER shall be required as a condition precedent to mediation or litigation of any claim arising prior to the date final payment is due to the Contractor, unless thirty (30) days have passed after a claim has been referred to the ENGINEER with no decision having been rendered.

10. Final Walkthrough and Punchlist Preparation

- a. Attend final walkthrough with Contractor and City to determine if the completed work of Contractor is generally in accordance with the Contract Documents.
 - i. Limitation of Responsibilities: The ENGINEER will not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual entity performing or furnishing the work. ENGINEER will not have the authority or responsibility to stop the work of any Contractor.

- b. Compile punch list from information gathered during final walkthrough with City and Contractor.

Task 8 – RECORD DRAWINGS

A. Record Drawings

1. Obtain and review comments and field changes on the construction plans from City and Contractor.
2. Prepare record drawings based on comments and field changes. The ENGINEER will not be providing resident engineering services and will not be observing on a full-time basis, and will therefore not seal the record drawings. The record drawings will be provided in the following format:
 - a. (1) Mylar hardcopy full-size (22"x34")
 - b. PDF electronic copy

Task 9 – PERMITTING

A. Permitting

1. The City will be responsible for administration of TxDOT UIR permits. The ENGINEER will prepare exhibits for permit submittal.
2. The ENGINEER will aid the City in coordinating the Utility Agreement (U-35) with TxDOT and prepare reimbursement invoices as necessary. This also includes providing betterment calculations and coordination efforts with TxDOT, and their designated Utility Coordinator.

Task 10 – SURVEY AND EASEMENTS

A. Survey and Easements

1. See components of Task 3 and Task 4.

Task 11 – EASEMENT ACQUISITION SERVICES

A. Easement Acquisition Services

ENGINEER will perform the following services for this task:

1. Provide appraisals for proposed easements on up to twenty-five (25) parcels for the proposed lines. Appraisals will be approved by the City prior to beginning negotiations with property owners. The appraisals will be prepared by State Certified Appraisers in accordance with the Uniform Standards of Professional Appraisal Practice Act (USPAP). The appraisals will be suitable for use in condemnation proceedings, if necessary.

2. Provide property negotiation services for up to twenty-five (25) parcels for the proposed line as follows:
3. The offer to purchase the properties will be based on the appraisals as indicated above. The City will establish the value to be used in negotiation and the range of negotiating authority to be given to the right-of-way agent. ENGINEER's Real Estate Agent will provide the services of qualified right-of-way agents to secure the required right-of-way for the project. The right-of-way agents will provide each property owner a copy of The Texas Landowner Bill of Rights, but will NOT be required to provide negotiation services under the Uniform Relocation and Acquisition Act (Uniform Act).
4. ENGINEER's Real Estate Agent will negotiate on behalf of the City and utilize conveyance documents and other necessary forms as prescribed by the City. ENGINEER's Real Estate Agent will provide a good faith effort to acquire the rights-of-way through a negotiation process, which will generally consist of three (3) contacts with the property owner, or his authorized representative. A maximum of five (5) total contacts will be provided to reach an agreement with the property owner, or to determine that further negotiations will be non-productive and that eminent domain actions will be necessary to acquire the property. If absentee owners are involved, the negotiations may be conducted via telephone, fax, or by mail. If the schedule for acquisition of the right-of-way or other factors arise, which make it expedient, travel outside the project area to meet with the absentee owners may be desirable. If such events arise, the travel must be specifically authorized by the City. If such travel is authorized, the expenses involved, including the agent's services, will be considered additional services.
5. The initial offer made to the property owner will be based on the value authorized by the City. All counter-offers by the property owner, along with ENGINEER's Real Estate Agent recommendations will be presented to the City for consideration. The City must establish and recommend such counter offers before ENGINEER's Real Estate Agent will be authorized to agree to the requested changes. All monetary offers made to the property owners will be within the limits authorized by the City in the various stages of the negotiation.
6. After reaching an agreement with the landowner on the consideration and all other terms of the transaction, ENGINEER's Real Estate Agent will forward to the City a Memorandum of Agreement (M/A) executed by the property owner to be ratified by the City. This M/A sets forth the compensation and any other terms and conditions agreed upon. The City will be responsible for obtaining the City's ratification and for returning the ratified M/A to ENGINEER's Real Estate Agent. ENGINEER's Real Estate Agent will then inform the Title Company that the parcel is ready for closing.
7. ENGINEER's Real Estate Agent will coordinate contacts with the CITY to deliver any payments to the Title Company prior to closing.
8. This Scope of Services assumes that costs for Title Commitments, Title Policies and recording fees will be purchased by the City through the assistance of the Real Estate Agent. The amount paid for the Title Policies will not exceed premium amounts set by the Texas Department of Insurance and agreed upon in advance between the City and the Title Company. Any additional Title Company services such as recording fees shall be agreed upon in advance

between the City and the Title Company. ENGINEER's Real Estate Agent will review liens or other exceptions reported in the Title Commitment. ENGINEER will coordinate the location and the effect of any utility easements. ENGINEER will report the results of the Title Commitment to the City, recommending the disposition of the exceptions. The decision whether the reported exceptions are acceptable or must be eliminated will be the responsibility of the City. Any action required to clear title is not included in the Scope of Work for this project, and if required, will be considered Additional Services.

9. ENGINEER's Real Estate Agent will coordinate and attend all closings at the Title Company.
10. ENGINEER's Real Estate Agent will confirm that the Title Company records all documents at the Denton County Courthouse after closing.
11. ENGINEER's Real Estate Agent will confirm that the Title Company forwards copies of all recorded documents to the City.

Task 12 – CONFLICT ANALYSIS

A. Conflict Analysis

- a. I-35 (from I-35E/I-35W split to Denton County Line) Schematic Review: Review proposed TxDOT ROW maps and proposed roadway alignment schematics as compared to the existing CITY water and sanitary sewer maps. Identify potential conflicts between proposed TxDOT ROW, proposed roadway, water and sanitary sewer utilities.
- b. Site Visits to Conflict Areas: After conflict identification, perform site visit to obtain additional information not shown on maps and schematics.
- c. Coordination with CITY regarding conflicts between the future roadway infrastructure and the CITY's water and sanitary sewer infrastructure that creates a service interruption that the CITY deems not in their best interest therefore warranting a potential realignment of the roadway to avoid the conflict with the water and/or sanitary sewer infrastructure.
- d. Coordination with TxDOT regarding conflicts between the future roadway infrastructure and the CITY's water and sanitary sewer infrastructure that creates a service interruption that the CITY deems not in their best interest therefore warranting a potential realignment of the roadway to avoid the conflict with the water and/or sanitary sewer infrastructure.

B. Deliverables:

- a. Meeting notes and action items for each attending party from the coordination efforts.
- b. Conceptual map identifying conflicts and conceptual OPCC.

ADDITIONAL SERVICES NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES

City and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, ENGINEER can provide these services, if needed, upon the City's written request. Any additional amounts paid to ENGINEER as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include, but are not limited to the following:

- Redesign to reflect project scope changes requested by the CITY or TxDOT, required to address changed conditions or change in direction previously approved by the CITY, mandated by changing governmental laws, or necessitated by the CITY's acceptance of substitutions proposed by the contractor.
- Additional Construction Site Visits
- Additional Construction Shop Drawing and Sample Review and Comment
- Additional Traffic Control Plan Details
- Traffic signal design
- Sidewalk design
- Design of any offsite drainage improvements beyond the improvements identified in the scope
- Preparation for and attendance at public meetings
- Furnish additional copies of review documents and/or bid documents in excess of the number of the same identified above.
- Negotiation of temporary right-of-entries.
- Services related to disputes over bid protests, bid rejection, and re-bidding of the contract for construction.
- Construction management and inspection services.
- Performance of materials or specialty testing services.
- Services necessary due to default of the Contractor.
- Services related to damages caused by fire, flood, earthquake or other acts of God.
- Services related to warranty claims, enforcement, and inspection after final completion.
- Services related to Survey Construction Staking.
- Services to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY.
- Performance of miscellaneous and supplemental services related to the project as requested by the CITY.
- Retaining wall design
- "Value engineering" after bidding
- Traffic studies or reports
- SWPPP inspections / coordination
- Any services not listed in the Scope of Services

ATTACHMENT "B"

Compensation for Engineering Design Related Services for:

IH-35E-MAYHILL - UTILITY-RELOCATIONS

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$922,800** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

For Tasks 1-12 the total compensation shall be on a reimbursable (hourly) basis and not to exceed **\$922,800**.

Progress payments for shall be paid monthly based on the actual work satisfactorily completed per month in each phase, with the following amounts of the total compensation for each phase of the Project:

• Task 1 – Design Management	\$46,700
• Task 2 – Alignment Study	\$51,400
• Task 3 – Preliminary Design	\$171,000
• Task 4 – Final Design	\$79,500
• Task 5 – Construction Contract Documents	\$14,500
• Task 6 – Bid Phase Services	\$18,700
• Task 7 – Construction Phase Services	\$61,900
• Task 8 – Record Drawings Preparation	\$10,100
• Task 9 – Permitting	\$26,600
• Task 10 – Survey and Easements	\$130,200
• Task 11 – Easement Acquisition Services	\$277,200
• Task 12 – Conflict Analysis	\$35,000

Grand Total \$922,800

ENGINEER will not exceed the total maximum labor fee shown without authorization from the CITY. Individual task amounts are provided for budgeting purposes only. ENGINEER reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.10 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the CITY.

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

ATTACHMENT “C”

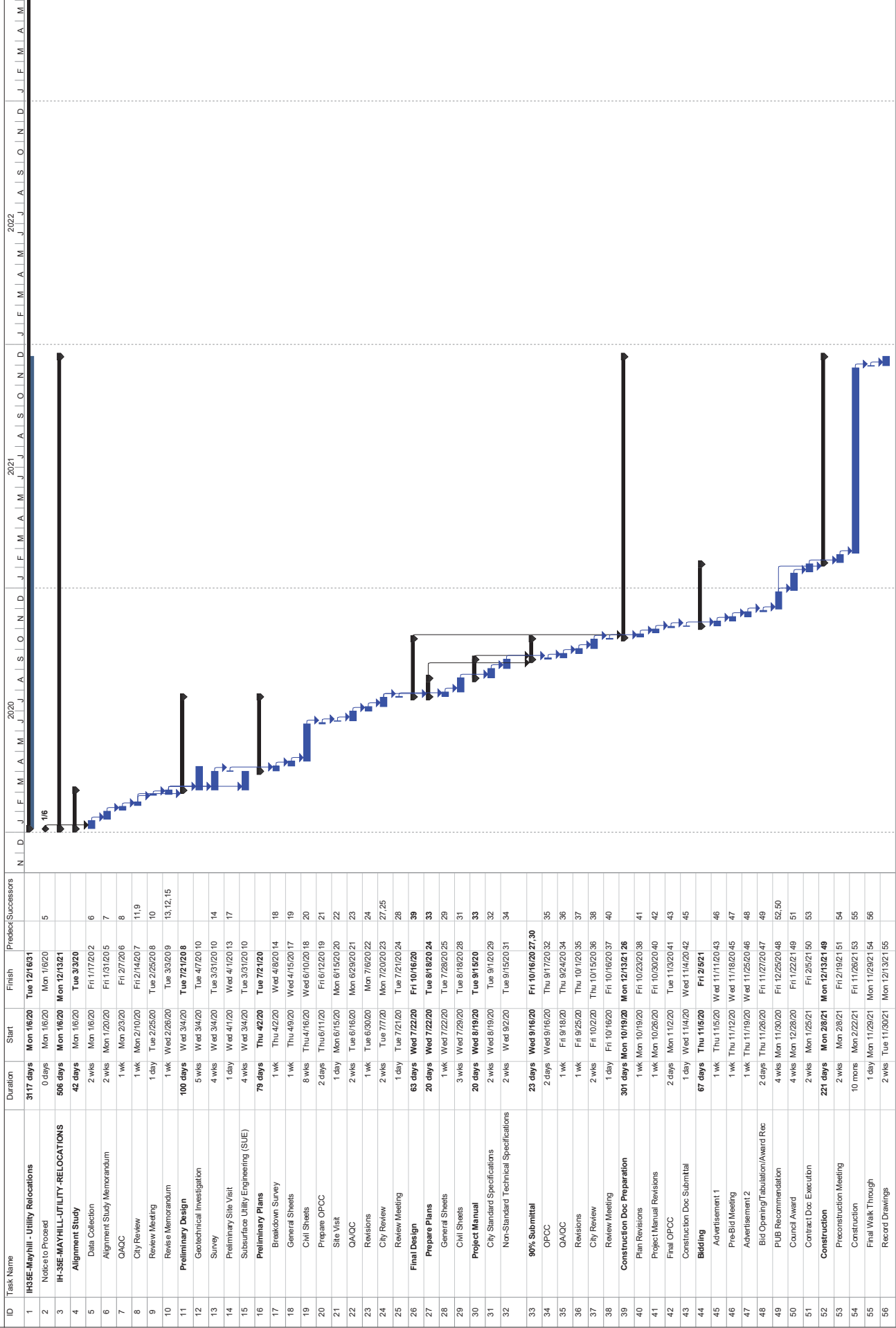
CHANGES AND AMENDMENTS TO STANDARD AGREEMENT

Design Services for

IH-35E-MAYHILL - UTILITY-RELOCATIONS

No modifications to the Standard Agreement are necessary for this project.

ATTACHMENT D - NIH-35E-MAYHILL - UTILITY-RELOCATIONS - PROJECT SCHEDULE



Project: 2018-04 - 100996-Clear-Fork_LIS
Date: Fri 10/23/19

Task: █ Task
Split: █ Split
Milestone: █ Milestone

Summary: █ Summary
Project Summary: █ Project Summary
External Tasks: █ External Tasks

External Milestone: █ External Milestone
Inactive Task: █ Inactive Task
Inactive Milestone: █ Inactive Milestone

Inactive Summary: █ Inactive Summary
Manual Task: █ Manual Task
Duration-only: █ Duration-only

Manual Summary Rollup: █ Manual Summary Rollup
Manual Summary: █ Manual Summary
Start-only: █ Start-only

Finish-only: █ Finish-only
Progress: █ Progress
Deadline: █ Deadline

ATTACHMENT "E"
PROJECT LOCATION MAP
for
IH-35E-MAYHILL - UTILITY-RELOCATIONS

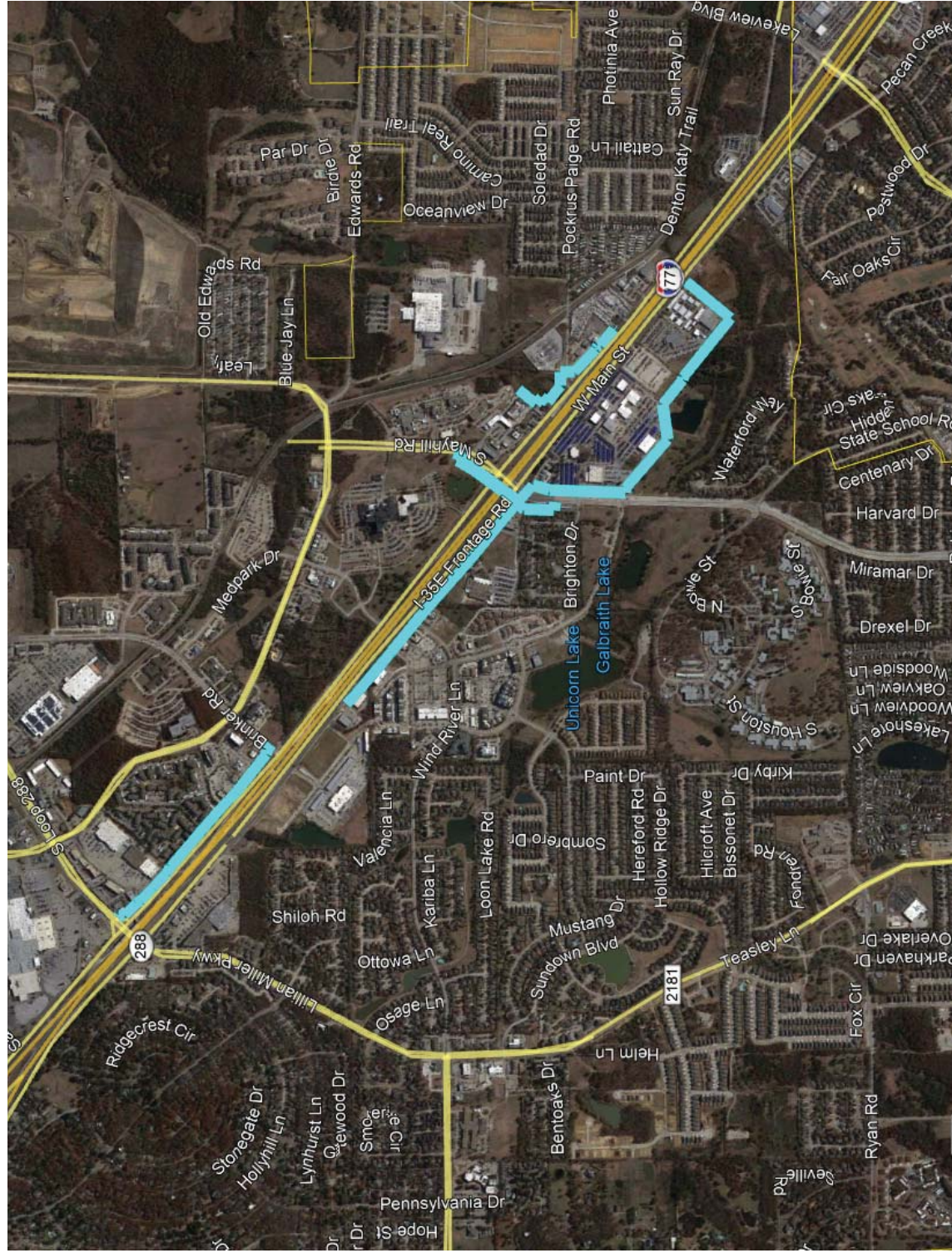


Exhibit CIQ

CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

1 Name of vendor who has a business relationship with local governmental entity. Kimley-Horn and Associates, Inc.

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

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

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

NA

Name of Officer

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

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

Yes

No

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

Yes

No

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

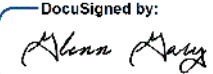
Yes

No

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

NA

4 I have no Conflict of Interest to disclose.

5 DocuSigned by:

 EDB15720A1C6421... 3 business with the governmental entity

12/10/2019

Date

Certificate Of Completion


Envelope Id: 532E6BC91D7D42AF55CB7DFC0B6CD2	Status: Completed
Subject: Please DocuSign: City Council Contract 6590-084 Mayhill I35E Utiliy Locations	
Source Envelope:	
Document Pages: 37	Signatures: 6
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Monisa Rogers
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Monisa.Rogers@cityofdenton.com
	IP Address: 129.120.6.150

Record Tracking

Status: Original	Holder: Monisa Rogers	Location: DocuSign
12/2/2019 3:46:16 PM	Monisa.Rogers@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Monisa Rogers monisa.rogers@cityofdenton.com Senior Buyer City Of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	Completed Using IP Address: 129.120.6.150	Sent: 12/2/2019 3:52:01 PM Viewed: 12/2/2019 3:52:12 PM Signed: 12/2/2019 3:55:45 PM

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 12/2/2019 3:55:48 PM Viewed: 12/2/2019 4:19:19 PM Signed: 12/2/2019 4:25:59 PM
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Mack Reinwand mack.reinwand@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 12/2/2019 4:26:02 PM Viewed: 12/4/2019 10:31:24 AM Signed: 12/4/2019 10:33:56 AM
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Glenn Gary glenn.gary@kimley-horn.com Sr. Vice Presedent Kimley-Horn and Associates, Inc. Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 165.225.34.227	Sent: 12/4/2019 10:33:58 AM Resent: 12/4/2019 8:23:08 PM Resent: 12/5/2019 8:47:42 AM Resent: 12/6/2019 9:53:03 AM Resent: 12/10/2019 1:52:08 PM Viewed: 12/4/2019 10:41:54 AM Signed: 12/10/2019 1:58:36 PM
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Electronic Record and Signature Disclosure:
Accepted: 9/5/2017 7:31:56 AM
ID: a4d44695-81cf-49e7-97f6-7553e995f64a

Signer Events	Signature	Timestamp
<p>Frank Pugsley frank.pugsley@cityofdenton.com Water and Wastewater Utilities Director Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by: <i>Frank Pugsley</i> 22943FE13318483...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150</p>	<p>Sent: 12/10/2019 1:58:39 PM Viewed: 12/10/2019 2:06:18 PM Signed: 12/10/2019 2:06:31 PM</p>
<p>Electronic Record and Signature Disclosure: Accepted: 12/10/2019 2:06:17 PM ID: a3671544-6579-42d9-993c-4ef893f8d842</p>		
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p>	<p>Completed</p> <p>Using IP Address: 129.120.6.150</p>	<p>Sent: 12/10/2019 2:06:34 PM Viewed: 1/15/2020 11:21:08 AM Signed: 1/15/2020 11:21:16 AM</p>
<p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		
<p>Todd Hileman Todd.Hileman@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by: <i>Todd Hileman</i> B776C711BA0D454...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 47.190.47.120 Signed using mobile</p>	<p>Sent: 1/15/2020 11:21:20 AM Viewed: 1/15/2020 11:22:54 AM Signed: 1/15/2020 11:23:01 AM</p>
<p>Electronic Record and Signature Disclosure: Accepted: 7/25/2017 11:02:14 AM ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21</p>		
<p>Rosa Rios rosa.rios@cityofdenton.com City Secretary Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by: <i>Rosa Rios</i> 1C5CA8C5E175493...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150</p>	<p>Sent: 1/15/2020 11:23:06 AM Viewed: 1/15/2020 1:41:44 PM Signed: 1/15/2020 1:42:19 PM</p>
<p>Electronic Record and Signature Disclosure: Accepted: 1/15/2020 1:41:44 PM ID: e2dc406d-5b28-4cdb-9e71-58fac43e8c97</p>		

Person Signer Events	Signature	Timestamp
Editor Deliver Events	Status	Timestamp
Agent Deliver Events	Status	Timestamp
Intermediar Deliver Events	Status	Timestamp
Certified Deliver Events	Status	Timestamp
Car on Cop Events	Status	Timestamp
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)</p>	<p>COPIED</p>	<p>Sent: 12/2/2019 3:55:47 PM</p>
<p>Electronic Record and Signature Disclosure:</p>		

Carion Cop Events	Status	Timestamp
Not Offered via DocuSign		
Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 1px solid blue; padding: 5px; display: inline-block;"> COPIED </div>	Sent: 12/10/2019 2:06:34 PM
Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 1px solid blue; padding: 5px; display: inline-block;"> COPIED </div>	Sent: 1/15/2020 11:23:05 AM
Tracy Holt tracy.holt@cityofdenton.com Administrative Assistant City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 1px solid blue; padding: 5px; display: inline-block;"> COPIED </div>	Sent: 1/15/2020 1:42:23 PM Viewed: 1/15/2020 3:27:22 PM
John Atkins john.atkins@kimley-horn.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div style="border: 1px solid blue; padding: 5px; display: inline-block;"> COPIED </div>	Sent: 1/15/2020 1:42:25 PM Viewed: 1/15/2020 1:45:23 PM

Fitness Events	Signature	Timestamp
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Motor Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	1/15/2020 1:42:25 PM
Certified Delivered	Security Checked	1/15/2020 1:42:25 PM
Signing Complete	Security Checked	1/15/2020 1:42:25 PM
Completed	Security Checked	1/15/2020 1:42:25 PM

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

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

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