



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	2/27/12
Department:	Public Works
Department Head:	Gerald P. Cosgrove, P.E.
Agenda Coordinator (include phone #): Irene Pegues (7198)	
Project No. 6212	

CAPTION

To approve a Professional Services Agreement by and between the City of Plano and Birkhoff, Hendricks & Carter, LLP, in the amount of \$66,000, to prepare a performance specification for the replacement of the City's Water and Wastewater Supervisory Control and Data Acquisition (SCADA) and authorizing the City Manager to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR: 2011-12	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	586,000	0	586,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	-66,000	0	-66,000
BALANCE	0	520,000	0	520,000

FUND(S): **WATER CIP**

COMMENTS: Funds are included in the FY 2011-12 Water CIP. This item, in the amount of \$66,000, will leave a current year balance of \$520,000 for the Monitoring & Control Ridgeview project.

STRATEGIC PLAN GOAL: Updating the monitor and control systems at the Ridgeview Pump station relate to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

The Supervisory Control and Data Acquisition System (SCADA) was initially installed at the Water, Waste Water Pumping Stations and elevated storage tanks in 1993 by Automation Services. The SCADA system automatically controls all critical plant processes and provides a computer terminal interface for plant operators. The system has served the City well with few major interruptions. Although the system is still operating, various Programmable Logic Controllers (PLC), a key component of the SCADA system, are no longer manufactured and have been obsolete for approximately 5 to 7 years. Repairs have been made utilizing spare and scrapped parts. The risks of failure of the PLCs, resulting in service interruptions have increased since parts and service are no longer being supported by the manufacturer. Furthermore, the PLC software was originally installed using DOS based computers. Since that time there has been a patch installed which allows the system to operate in a windows based system which has continually been problematic causing the software to lock up.



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<u>Task</u>	Basic Services	<u>Estimated Budget</u>
Collect and Compile Data		\$6,200.00
Workshop Hardware		\$5,760.00
Software Investigation		\$6,900.00
Workshop Software		\$5,760.00
High-Tech Procurement Specifications		\$9,000.00
Prepare Evaluation Criteria		\$2,340.00
Meetings to Discuss RFP		\$1,200.00
Selection Process		\$6,840.00
Implementation		<u>\$22,000.00</u>
	Total	\$66,000.00

List of Supporting Documents: Engineering Services Agreement	Other Departments, Boards, Commissions or Agencies N/A
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**WATER & WASTEWATER SCADA
(SUPERVISORY CONTROL AND DATA ACQUISITION)**

PROJECT NO. 6212

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, hereinafter referred to as "City", and **BIRKHOFF, HENDRICKS & CARTER, L.L.P.**, a **TEXAS** Limited Liability Partnership, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

W I T N E S S E T H:

WHEREAS, the City desires to engage the services of the Engineer to prepare a performance specification for the replacement of the City's Water and Wastewater SCADA System and to perform other related engineering services in connection with the **WATER & WASTEWATER SCADA (SUPERVISORY CONTROL AND DATA ACQUISITION)** project located in the City of Plano, Collin County, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

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

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY

NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

ENGINEER AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF ENGINEER'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF ENGINEER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. ENGINEER SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF ENGINEER FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND ENGINEER SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of one (1) year from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Engineer shall execute the affidavit shown in Exhibit "E". Engineer understands and agrees that the existence of a prohibited interest during the term of this contract will render the contract voidable.

XI. Contract Termination

The parties agree that City shall have the right to terminate this Agreement with or without cause upon thirty (30) days written notice to Engineer. In the event of such termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

XII. Engineer's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Project will not vary from opinions prepared by Engineer.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Project is the property of the City and Engineer may not use the drawings and specifications therefor for any purpose not relating to the Project without City's consent. City shall be furnished with such reproductions of drawings and specifications as City may reasonably require. Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made during construction and he will promptly furnish the City with one (1) complete set of reproducible record prints. Prints shall be furnished, as an additional service, at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Project. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "E", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano
Public Works Department, Suite 250
P.O. Box 860358
Plano, TX 75086-0358
Attn: Shahrzad Tavana

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Birkhoff, Hendricks & Carter, L.L.P.
11910 Greenville Avenue, Suite 600
Dallas, TX 75243
Attn: John W. Birkhoff, P.E.

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XVI. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Contract Interpretation:

Although this Agreement is drafted by the City, should any part be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County, Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

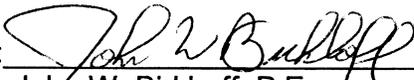
G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

SIGNED on the date indicated below.

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
A Texas Limited Liability Partnership

DATE: 1/18/12

BY: 
John W. Birkhoff, P.E.
MANAGING PARTNER

CITY OF PLANO, TEXAS

DATE: _____

BY: _____
Bruce D. Glasscock
CITY MANAGER

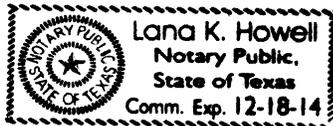
APPROVED AS TO FORM:

Diane C. Wetherbee
CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 18th day of JANUARY, 2012, by **JOHN W. BIRKHOFF, P.E., MANAGING PARTNER**, of **BIRKHOFF, HENDRICKS & CARTER, L.L.P.**, a **TEXAS** Limited Liability Partnership, on behalf of said company.





Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2012, by **BRUCE D. GLASSCOCK, CITY MANAGER**, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT "A"

SCOPE OF SERVICES

WATER & WASTEWATER SCADA (SUPERVISORY CONTROL AND DATA ACQUISITION)

DESCRIPTION:

Provide engineering services to prepare a performance specification for the replacement of the City's Water and Wastewater SCADA System utilizing the State Fair of Texas' High Tech Procurement Process.

The engineering services will include the following:

1. Meet with City staff to obtain expectation of the replacement system by the City.
2. Obtain from City what hardware the City would like to retain from current system.
3. Obtain from City any preferences on proposed hardware.
4. Obtain from City the existing I/O that is to be deleted from the new system.
5. Obtain from City any additional I/O that the City desires to be added to the new system.
6. Obtain from City desires in the communications between sites and current weak points with the system for communications.
7. Obtain from City the current automated reports.
8. Obtain from City the desired automated reports and format of each report.
9. Create the proposed I/O count for each site.
10. Determine I/O that is available through the motor control centers, switchgear and power correction equipment that can be utilized or added to the SCADA system.
11. Obtain from the City the likes and dislikes of the current SCADA screens.
12. Investigate available RTU's and prepare a matrix of comparison.
13. Meet with City in a workshop format to discuss gathered data. Through the workshop process, determine the needs of the system hardware. Determine actual I/O for the new system, determine screen preferences, and determine type of RTU.

14. During workshop discuss the various methods of radio communication and zero in on desired method.
15. During workshop discuss automated reports desired by the City.
16. During workshop have discussions on software expectations. Discuss the following:
 - a) Polling
 - b) Web Access
 - c) Security
 - d) Alarm Handling (phone, text, email)
 - e) Historian
 - f) Alarms
 - g) Software Upgrades
 - h) Technical Support
17. Investigate available software packages and prepare matrix of comparison. Consider short list of packages and arrange for demo of each package.
18. Conduct a workshop on software packages and move towards determination of a package for implementation.
19. Prepare the performance specification for the SCADA replacement proposals.
20. Prepare a QA/QC implementation plan to verify compliance to specification.
21. Prepare the High Tech Procurement Proposal which could include the following:
 - a) Work experience and qualifications. This shall include a list of similar types of projects performed for other cities, references (name and telephone nos.), the software used on those projects, and a resume of project manager. Resume of system integrator proposed for this project. Contractor shall demonstrate a minimum of five years of experience with the completion of fifteen Municipal Water and Wastewater SCADA Systems within the past 10-years.
 - b) Description of the scope of services proposed. This should include expressing interest in this assignment along with an outline of definitive scope of work that illustrates an understanding of the City's needs. This should include an outline of how the contractor, if successful, intends to proceed with the project. This should explain the methodology, implementation plan and termination plan.
 - c) Alternatives to the requirements listed in this request which will make the final product more useful to the City.
 - d) Outline phases of work and estimate the time required for each phase of the project.
 - e) Production Site. Indicate the location of the site where the packaged software will be

customized for SCADA's system.

- f) Project Price. The price sheet shall include an itemized list for each phase of the project, each remote site and a total price.
 - g) Description of on-site training and manufacturer's training on Software.
 - h) Description of how alarms can be presented on screen and the historic log.
 - i) Description of historic data storage proposed.
 - j) Report generation within software to record, report and archive hourly pumpage flows and hourly elevated storage tank levels.
 - k) Description of interface to third party software.
 - l) Description of polling scheme and times/report by exception/combination being proposed.
 - m) Descriptions of logic in RTUs.
 - n) Description of dial up alarm system, number of people, type of interface (phones & pagers), how message is relayed.
 - o) List of spare parts being proposed.
 - p) Provide I/O count at each site used for sizing expansion unit of RTU.
 - q) RTU manufacturer and model proposed.
 - r) Typical graphical screen for Water Pump Station, Storage Tanks and Lift Stations.
 - s) Statement that a Performance Bond and Payment Bond in the amount of 100% of the contract will be furnished. Such bonding shall be by companies licensed and authorized to provide such capabilities in the State of Texas.
 - t) Statement of the type of support and service to be provided after installation (days of week, hours per day and service center location).
 - u) Statement that all designs, wiring diagrams and the alike will be designed, sealed, signed and dated by a Licensed Professional Engineer in the State of Texas.
 - v) Description of Network and web based version of SCADA software.
 - w) Discussion of security of system from outside intruders. Discussion of firewall to protect the system.
22. Prepare the criteria for evaluation and anchors for rating, which could include the following:
- a) Quality of the responses and compliance with information requests contained in the RFP.

- b) Qualifications and experience of persons identified as integrator.
 - c) The Contractors performance in other cities. This includes consideration of the similarity of the project to this project and the quality of the system. This may include site visits.
 - d) Description of SCADA's software, network capabilities, polling scheme, archiving method, alarm reporting, historic data methods, compatibility to 3rd party software, software security from outside world, use of laptops/tablets/phones from remote locations.
 - e) Computer software and hardware and RTU.
 - f) CRT system screens, reports and data storage.
 - g) The vendor's estimated time to complete the project.
 - h) Contractors understanding of needs and the ability to communicate and demonstrate leadership and technical skills which will contribute to the timely and successful completion of this assignment.
 - i) Overall cost for the project.
 - j) Support and service staff, locations, hours.
23. Assist the City in the evaluation of the proposals.
24. Participate in the interview process.
25. Review shop drawing submittals.
26. Make one site visits to each site during construction.
27. Meet with City and system integrator during monthly progress meetings.
28. Have instrumentation/electrical engineer, Bill Goff review system integrator's shop drawings, attend factory (shop) testing and observe field installations of hardware and terminations. Be present as each site is directed to new HMI software to assist in trouble shooting for quick resolution and conversion.
29. Provide written responses to Contractor's request for information.

EXCLUSIONS

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

- 1. Providing an on-site representative.

2. Environmental impact statements and assessments.
3. Fees for permits or advertising.
4. Certification that work is in accordance with plans and specifications.
5. Environmental cleanup.
6. Landscape architecture.
7. Flood plain reclamation plans.
8. Title searches.
9. Trench safety designs.
10. Quality control and testing services during construction.
11. Services in connection with condemnation hearings.
12. Preliminary engineering report.
13. Phasing of Contractors work.
14. On-site safety precautions, programs and responsibility.
15. Consulting services by others not included in proposal.
16. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans).
17. Traffic engineering report or study.
18. Computer modeling except as defined in scope of services.
19. Title searches, boundary surveys, or property surveys.

CITY RESPONSIBILITY

1. Provide access to each site being included in the SCADA System.
2. Participate in workshops.

EXHIBIT "B"

COMPLETION SCHEDULE SCADA

Collect and Compile Data on Existing System, Visit Each Site	6-Weeks
Workshop–Hardware, Communications, Reports, Software Expectations	1-Day
Investigation of Software Packages	4-Weeks
Workshop – Software Package	1-Day
Prepare Performance Specification, High-Tech Procurement	4-Weeks
Prepare Criteria for Evaluation and Anchors for Rating	2-Weeks
Meet and Review RFP Documents	1-Day
Complete Selection Process	6-Weeks
System Implementation	6-Months

EXHIBIT "C"

PAYMENT SCHEDULE SCADA

Compensation for engineering services shall be based on the following fee schedule for time actually spent on the project:

Classification/Task	Straight Time (Rate)
Partner-In-Charge	\$220.00
Project Manager	\$180.00
Electrical Engineer	\$110.00
Design Engineer	\$136.00
E.I.T.	\$110.00
AutoCAD III	\$125.00
AutoCAD II	\$109.00
AutoCAD I	\$90.00
Word Processor II	\$101.00
Word Processor I	\$69.00
Survey Crew	\$155.00
Expenses at Invoice Cost Times	1.15
Plotting Services	\$5.00 /plot
Mileage	I.R.S. Limit
Delivery Service	\$50.00

Total not to exceed \$66,000.00 without scope change.



**McLaughlin
Brunson**
Insurance Agency LLP

Dear Valued Client:

RE: SB 425 - Certificates of Insurance

We provide the following information to assist you in responding to your client's insurance requirements in your existing contacts as well as better preparing you to respond to future RFPs. If you have any questions about this or any other issue we can help with, please give us a call.

There is a new law effective Jan. 1, 2012 that affects certificates of insurance.

SB 425 requires that all certificate of insurance forms, including electronic evidence of insurance, be approved by the Texas Department of Insurance before the form can be used to certify insurance after Jan. 1, 2012. Already approved is the ACORD 25 form (2010/05), which is widely used in business as a standard certificate. Company-specific forms will have to be approved by TDI, or a company can agree to accept the ACORD 25 form as evidence of casualty insurance.

Special certificate forms can be filed for approval at:

P&C Intake Unit
Texas Department of Insurance
333 Guadalupe
Austin, TX 78701

After Jan. 1, 2012 it will be illegal for an agent or insurance company to issue evidence of insurance on a certificate form that has not been approved by TDI. It is also illegal for anyone to require an agent or insurance company to use a certificate form that has not been approved.

The law provides some guidance on the construction and limitations of certificates, as follows:

- A certificate is not a policy of insurance and does not amend, extend, or alter the coverage afforded by the referenced insurance policy.
- A certificate shall not confer to the certificate holder new or additional rights beyond what the referenced policy or any executed endorsement provides
- A certificate may not contain a reference to a legal or insurance requirement contained on a contract other than the underlying contract of insurance or endorsement to the insurance policy.
- A person may have a legal right to notice of cancellation, nonrenewal or material change or any similar notice if (1) the person is named within the policy or an endorsement to the policy and (2) the policy or endorsement, or state law or rule, requires notice to be provided.

Futhermore, the law provides this warning to certificate holders: "A certificate of insurance that is executed, issued, or required and that is in violation of this chapter is void and has no effect."

If you have any questions about the new law, please contact the Texas Department of Insurance at 800-252-3439. You can view more information about the filing rules on the TDI website at <http://www.tdi.texas.gov/rules/informal1216.html>. You can read the text of SB 425 at <http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/SB00425F.pdf>

6600 LBJ Freeway, Suite 220
Dallas, Texas 75240

214-503-1212 Phone 1-800-506-1011 214-503-8899 Fax
mclaughlinbrunson.com

EXHIBIT "D"

ENGINEERING

INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this contract until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the Purchasing Agent of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the Risk Manager, City of Plano, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed upon the provisions of the Contract.
- 1.4 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.
 - 1.4.1 The following definition of the term "City" applies to all policies issued under the contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

- 1.6 Engineer agrees to defend and indemnify the City of Plano, its officers, agents and employees as provided in Paragraph VII. of this contract.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.8 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.9 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.10 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Engineer's Insurance - "Occurrence" Basis:

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
 - 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this contract;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
 - 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the contract, for the term of the Contract and up to three years after the contract is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

ENGINEERING

City of Plano - Insurance Checklist

("X" means the coverage is required.)

<u>Coverages Required</u>	<u>Limits (Figures Denote Minimums)</u>
<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under contract
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim \$2,000,000 aggregate
<input type="checkbox"/> 17. Garage Liability	\$ _____ BI & PD each occurrence

EXHIBIT "E"

AFFIDAVIT OF NO PROHIBITED INTEREST

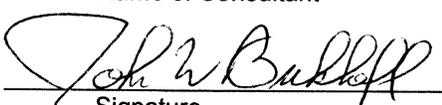
I, the undersigned declare that I am authorized to make this statement on behalf of Birkhoff, Hendricks & Carter, L.L.P. and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of Birkhoff, Hendricks & Carter, L.L.P. is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

Birkhoff, Hendricks & Carter, L.L.P.
Name of Consultant

By: 
Signature

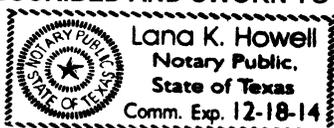
JOHN W BIRKHOFF
Print Name

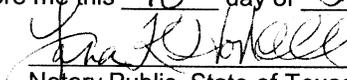
MANAGING PARTNER
Title

1/18/12
Date

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUBSCRIBED AND SWORN TO before me this 18th day of JANUARY, 2012.




Notary Public, State of Texas