

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE COMMERCIAL REAL ESTATE BROKER AND BROKER SERVICES INDEFINITE QUANTITY CONTRACT BETWEEN THE TOWN OF ADDISON, TEXAS AND CBRE, INC. FOR PROFESSIONAL BROKERAGE SERVICES; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Commercial Real Estate Broker and Broker Services Indefinite Quantity Contract between the Town of Addison, Texas and CBRE, Inc. for professional brokerage services, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the contract.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 13th day of September, 2016.

Todd Meier, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A

**TOWN OF ADDISON
COMMERCIAL REAL ESTATE BROKER AND
BROKER SERVICES
INDEFINITE QUANTITY CONTRACT**

THE STATE OF TEXAS §
TOWN OF ADDISON §

KNOW ALL MEN BY THESE PRESENTS, this Contract is made and entered into as of _____, for the term of two (2) years, effective upon award of the contract, by and between the **Town of Addison** (hereinafter referred to as the "Town") acting by and through the City Council of the Town and CBRE, Inc., (hereinafter referred to as "Broker") with offices located at 2100 McKinney, Suite 700, Dallas, Texas 75201.

WITNESSETH:

WHEREAS, Town intends to contract with a professional commercial real estate broker firm for professional services for an initial two (2) year term with the option to extend for three (3) additional one-year terms, on a year to year basis, providing both parties concur; and

WHEREAS, the miscellaneous projects to be included in this Contract include the acquisition, disposition, and management of real property owned or leased by the Town; and

WHEREAS, all real property and lease transactions will be conducted pursuant to the Texas Local Government Code Chapter 263 through 280; and,

WHEREAS, the Town has determined that Broker is the highest qualified provider of commercial real estate services through a competitive solicitation process authorized by the Texas Local Government Code Chapter 262; and,

WHEREAS, Town and Broker have agreed upon the fair and reasonable negotiated pricing schedule for services to be provided; and,

WHEREAS, the Town has determined that the services of a professional Broker are necessary from time to time for the benefit of the Town; and,

WHEREAS, Town desires to contract with Broker for complete commercial real estate services as detailed in any "Work Order" that may be issued under this Contract; and

WHEREAS, Town and Broker have agreed to provide commercial real estate services as provided in future mutually agreed Work Orders.

NOW, THEREFORE, Town and Broker, in consideration of the terms, covenants and conditions herein contained, Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, do hereby agree and contract as follows:

ARTICLE 1

SCOPE OF SERVICES AND COMPENSATION

- 1.1. Broker, as an Independent Contractor and Licensed Broker in its relationship with Town, shall perform all professional services for any Work Order as authorized. The Indefinite Quantity Contract is to be used for a wide variety of Projects and Services. The Services may range from, but are not limited to: acquisition and disposition of real property, identification of potential property for acquisition, assistance with negotiation of pricing or leasing, and other principle lines of business as described in Broker's RFP response, incorporated as Attachment A.

Town will provide Broker with the requirements of all projects in writing as numbered proposed Work Orders, as

described in Article 4, Work Orders. Work Orders shall specify the targeted completion date and negotiated fee for subject project.

- 1.2. Town shall compensate Broker in accordance with the agreed terms and conditions of this Contract and the particular Work Order. All fees must be consistent with and not higher than the recommended practices and fees published by the applicable professional association, if any, and may not exceed any maximum provided by law. Any conflict shall be decided in accordance with Section 28.2 (Order of Precedence).
- 1.3. Broker's Service under this Contract for the purposes of negotiation of Work Orders will be based on the negotiated hourly rates and percentages as indicated in Attachment B to this Contract.
- 1.4. Partial payments will be authorized on a percentage complete basis and may be submitted on a monthly basis. Broker's invoices to Town shall provide complete information and documentation to substantiate Broker's charges and shall be in a form to be specified by Town's Representative. Should additional backup material be requested by the Town Representative, Broker shall comply promptly with such request.
- 1.5. The cost for each project will be negotiated separately for each Work Order issued and will be either Fixed Price (lump sum), success fee, or not-to-exceed hourly contract. The type of cost basis used will be determined according to the requirements of

each project. If the scope of the work is sufficiently defined then a fixed price (lump sum) contract is preferred, however for projects that are not as definitive a not-to-exceed units price (hourly) contract may be used.

- 1.6. **Reimbursable Charges.** In addition to the Professional Fee, not to exceed reimbursable charges may be authorized in the Work Order, including:
 - 1.6.1. Additional unusual vehicle travel (other than normal office to job, office to meeting, office to job site, etc.) will be compensated at the current mileage rate established by the Internal Revenue Service.

ARTICLE 2 BROKER'S SERVICES

- 2.1. Broker's Basic Services consist generally of the categories described below. All services shall be subject to approval of Town through Town's Chief Financial Officer or his designee, hereinafter referred to as "Town Representative". Broker shall perform all work commensurate with the care and skill ordinarily used by members of Broker's profession under the same or similar circumstances at the same time and in the same locality satisfactory and acceptable to Town, as determined by its Town Representative or his designee.
 - 2.1.1. Transaction Management
 - 2.1.2. Leasing Administration
 - 2.1.3. Strategic Planning
 - 2.1.4. Consulting - Project Management

ARTICLE 3 TOWN'S RESPONSIBILITIES

- 3.1. Town shall designate representatives authorized to act in its behalf. All submissions shall be to the Town Representative. Town shall examine documents submitted by Broker and render decisions pertaining thereto promptly to avoid unreasonable delay in the orderly progress of Broker's work. Failure to timely review any document shall not cause damages for delay claim and Broker's only remedy shall be a extension of time reasonable for performance.
- 3.2. Broker shall be entitled to reasonably rely on the accuracy of the information, reports, and materials which Town shall furnish. Broker shall not be liable for damages caused due to erroneous or incorrect data which Town requires or instructs Broker to use.

- 3.3. Any charges which may be assessed for municipal zoning and/or permit fees will be paid by the Town and are to be included by Broker in the specifications for the project. Any charges not included in the specifications will be paid by Town, but only upon prompt written notice by Broker and advance written approval by Town. Approval shall not be unreasonably withheld.
- 3.4. Town will provide Broker with its written requirements for the Project as may be necessary and practicable for the orderly and expeditious process of the work. To the extent practicable, these documents shall be utilized in the preparation of the Contract Documents.
- 3.5. If Town or Broker observes or otherwise becomes aware of any fault or defect in the Project, it shall give prompt written notice thereof to the other.

ARTICLE 4 WORK ORDERS

- 4.1. Work performed by the Broker will be authorized by the Town by written Work Order issued prior to work being performed. Each such Work Order shall be incorporated into and made a part of this Contract.
- 4.2. Time is of the essence as to the completion date in each Work Order. Any Work Order issued during the effective term of this Contract and not completed within that period shall be completed by Broker within the time specified in the Work Order, time being of the essence. This Contract shall survive the expiration of the termination date as to such orders and shall govern the Town and Broker's rights and obligations with respect to that order to the same extent as if the order was completed during the term of the Contract, specifically including all insurance and indemnification provisions contain herein. Such continuation of the Contract shall terminate when either the Town shall accept the project as substantially complete or written notice is given to Broker by the Town Representative that Broker's services are no longer required under the Work Order, or termination for cause under Article 9 (Termination, Default, Time of the Essence and Force Majeure), whichever shall first occur.
- 4.3. Each Work Order shall be prepared by the Town and shall include, but not be limited to, the name and number of the project, location of the work to be performed, a description of the work to be performed, any items to be furnished by the Town, any special provision and a completion date for the work. Upon receipt of the proposed Work Order, the Broker shall furnish to the Town a schedule for the work, suggested personnel required for the timely completion of the work based on the Town's completion date, itemized projected Cost of the Work Order based on the negotiated rates as shown in ARTICLE 1 (SCOPE OF SERVICES AND COMPENSATION) and a total, not-to-exceed Cost of the Work Order.
- 4.4. The Town may accept or reject, in whole or in part, such submission. In the event of rejection the parties agree to negotiate in good faith the Work Order items to reach agreement as to each item. Once agreement has been reached, the Work Order will be completed and signed by the Broker. Such Work Order shall be signed by the Town Representative as recommended for approval. The Work Order will then be submitted to the City Council for its consideration. The Work Order is contingent upon and not effective until approved by a formal order of the City Council and notice to proceed has been issued by the Town Representative. Upon approval, the Work Order shall be executed and delivered to the Broker.
- 4.5. Work Orders will be issued at the sole discretion of the Town. There may be no Work Orders issued under this or any subsequent Contract. There is no limit, on the number of Work Orders that may be issued. There is no guarantee of the issuance of any Work Order(s) or any amount of work under this Contract.
- 4.6. Concurrent with the issuance of a Work Order by Town, Broker shall execute an affidavit certifying that there has been no material change in the qualifications of the Broker and Broker remains as fully qualified to perform the services as the date on which the Town considered the response of Broker to the Request for Proposals.

- 4.7. Broker understands that each Work Order Project Performance Schedule is of critical importance and agrees to undertake all necessary efforts to expedite the performance of service required herein, so that services are completed as scheduled. In this regard, Broker shall proceed with sufficient qualified personnel and Brokers necessary to fully and timely accomplish all services required under this Contract, time being of the essence.

**ARTICLE 5
SUSPENSION OF WORK**

- 5.1 Should the Town desire to suspend the work but not terminate the Contract, the Town will issue a written order to stop work setting out the terms of the suspension. The Broker will stop all work and cease to incur costs during the term of the suspension.
- 5.2 The Broker will resume work when notified to do so by the Town in a written authorization to proceed. Suspension of work does not extend the date of performance for any Work Order or other Contract period. If additional time is required to complete the work because of the suspension, a Work Order amendment will be executed as mutually agreed in writing by Broker and Town.
- 5.3 If Broker is delayed by the Town due to a suspension of work, or otherwise, the Brokers sole and exclusive remedy for delay shall be the right to a time extension for completion of the Work Order and not damages.
- 5.4 If the work is suspended, Broker shall be compensated for all services performed prior to receipt of written notice from Town of such suspension.

**ARTICLE 6
BROKER'S ACCOUNT RECORDS**

Records of Broker or Broker expenses pertaining to services on any approved Work Order and records of account between Town and Broker shall be kept on a generally recognized accounting basis, shall be maintained in Dallas County for a minimum of one (1) year from the termination date of this Contract and with full and immediate access allowed to authorized representatives of the Town upon request for any purpose including, but not limited to, evaluating compliance with this and other provisions of this Contract. Town or its authorized representative shall have the right to make copies of any and all documents, books, backup documents, or other items either included in the records of account or supporting such records at Town's cost.

**ARTICLE 7
PAYMENTS TO BROKER**

- 7.1. Payments for each Work Order will be authorized on a percentage complete basis and may be submitted on a monthly basis.
- 7.2. Payments for Additional Services for Broker, as herein above referred to, shall be made following presentation, review and approval of the Broker's detailed invoice.
- 7.3. Broker's invoices to Town shall provide complete information and documentation to substantiate Broker's charges, and shall be in a form to be specified by Town Representative. All payments to Broker shall be made on the basis of the invoices submitted by Broker and approved by Town Representative. Town shall approve all undisputed items in each invoice properly submitted by Broker in accordance with the Prompt Payment Act as set forth below in this Article. Should any items be disputed by Town, additional backup material may be requested by Town Representative to substantiate such disputed items. Broker shall comply promptly with such request. Notwithstanding a request for additional backup materials, Town shall pay all undisputed items in accordance with the Prompt Payment Act. In Town's own discretion, should Town Representative determine it necessary, Broker shall make all its records and books related to this Contract available to Town, Town's

independent auditor or other person or entity authorized by Town in writing, for inspection and auditing purposes.

- 7.4. Town reserves the right to correct any error that may be discovered in any invoice that may have been paid to Broker and to adjust the same to meet the requirements of the Contract. Following approval of invoices, Town will pay Broker in accordance with the Prompt Payment Act.
- 7.5. Prompt Payment Act. Broker agrees that a temporary delay in making payments due to the Town's accounting and disbursement procedures shall not place the Town in default of this Contract and shall not render the Town liable for interest or penalties, provided such delay shall not exceed thirty (30) calendar days after its due date. Any payment not made within thirty (30) calendar days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

ARTICLE 8 INDEPENDENT CONTRACTOR

The Broker at all times shall be an independent contractor and not an agent, servant, joint venturer, joint adventurer, or employee of the Town. The Broker shall be fully responsible for its own acts, forbearance, negligent act(s) or deed(s) and all acts and omissions of its employees and subcontractors in conjunction with the performance of services or work under this agreement and shall be specifically responsible for sufficient supervision and inspection of the work of its subcontractors and suppliers to insure compliance in every respect with the contract requirements. There shall be no contractual relationship between any subcontractor or supplier of the Broker and the Town by virtue of this Contract. No provision of this Contract shall be for the benefit of any party other than the Town and Broker.

ARTICLE 9 TERMINATION, DEFAULT, TIME OF THE ESSENCE AND FORCE MAJEURE

- 9.1. In connection with the work outlined in this Contract, it is agreed and fully understood by Broker that Town may cancel or indefinitely suspend further work hereunder or terminate this Contract or any Work Order or Work Orders, singularly or in any combination before the end of the term, any extension thereof, or completion date upon seven (7) days written notice to Broker, and upon receipt of said notice all work and labor being performed under this Contract shall cease, as a result of any of the following conditions:
 - 9.1.1. By mutual consent and agreement of both parties hereto.
 - 9.1.2. By the Town, by notice in writing to the Broker as consequence of failure by the Broker to perform the services herein set forth in a satisfactory manner and within the limits provided, in the sole judgment of Town, with proper allowances being made for circumstances beyond the control of the Broker. In such instance, Town shall provide Broker with ten business days notice of default or failure to perform, and demand to cure. Upon failure of Broker to cure any such default or failure to perform, Town shall provide notice of termination described in this paragraph above.
 - 9.1.3. By either party, upon the failure of the other party to fulfill its obligations as set forth in the Contract, Work Order(s), or other incorporated document by giving written notice one to the other establishing the effective date of termination.
 - 9.1.4. By the Town, without cause, for reasons of its own and not subject to the mutual consent of the Broker, upon not less than thirty days written notice to the Broker.
- 9.2. Broker shall invoice Town for all work satisfactorily completed and shall be compensated in accordance with the terms of this Contract for all work accomplished prior to the receipt of said notice. No amount shall be due for lost or anticipated profits. All plans, field surveys, maps, cross sections and other data, design and work related to the Project shall become the property of Town in accordance with Article 10,

"Ownership of Documents", upon the termination of this Contract, and shall be promptly delivered to Town in a reasonably organized form without restriction on future use. Should Town subsequently contract with a new Broker for continuation of services on the Project, Broker shall cooperate in providing information and shall be released or saved harmless from any acts of negligence on the part of other in use of said data.

- 9.3. If the termination of this Contract is due to the failure of the Broker to fulfill its obligations under section 9.1.2 herein,
 - 9.3.1. the Town may take over the project and prosecute the work to completion by contract or otherwise. In such case, the Broker shall be liable to the Town for any actual documented costs the Town may incur, and
 - 9.3.2. the cost to the Town of employing another firm to complete the required work, the time required to do so and other factors which affect the value to the Town of the work performed to the date of default may, at the sole discretion of the Town, be offset against the amount of compensation, if any, to be paid.
- 9.4. Nothing contained in this Article 9 shall require Town to pay for any work which is unsatisfactory as determined by Town Representative or which is not submitted in compliance with the terms of this Contract. Town shall not be required to make any payments to Broker when Broker is in default under this Contract, nor shall this Article constitute a waiver of any right, in law and in equity, which Town may have if Broker is in default, including the right to bring legal action for damages. Default shall include, but not be limited to the failure to complete Broker's work in accordance with the performance schedule and in accordance with ARTICLE 4 (WORK ORDERS).
- 9.5. At the termination of the Contract between Town and Broker, Broker shall furnish to Town a listing of current records pertaining to any outstanding obligations or other records or information required by the Contract, including any Work Order, or requested in writing by Town in either printed or electronic format or both. Broker agrees to furnish such information in an electronic form which is compatible with the Town's computer system and/or the computer system of any subsequent vendor or contractor of Town selected for continuation of the services as described in whole or part herein, including any Work Order, or as may be added by amendment. Broker agrees to cooperate with any subsequent vendor or contractor of Town and to use efforts commensurate with the care and skill ordinarily used by members of Broker's profession under the same or similar circumstances at the same time and in the same locality to insure a transition of services without interruption or degradation of service. This provision will survive the termination of this Contract and shall be a continuing obligation until the transition of services is complete. All items listed or required in this provision shall be furnished by Broker to Town without additional cost or expense to Town.
- 9.6. Broker understands and agrees that time is of the essence and that any failure of Broker to complete the services within the agreed Project Performance Schedule will constitute a material breach of this Contract. Broker shall be fully responsible for its delays or for failures to use its best efforts in accordance with the terms of this Contract. Where damage is caused to the Town due to Broker's failure to perform in these circumstances, Town may withhold, to the extent of such damage, Broker's payments hereunder without waiver of any of Town's additional legal rights or remedies.
- 9.7. Neither Town nor Broker shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible or circumstances beyond its control. However, notice of such impediment or delay in performance must be given with ten (10) days and all reasonable efforts undertaken to mitigate its effects.

**ARTICLE 10
OWNERSHIP OF DOCUMENTS**

- 10.1. All Broker's work product completed or partially completed specifically in furtherance of this Contract including, but not limited to, estimates, specifications, investigations, studies, and other documents, shall be the property of Town to be used as Town desires, without restriction. Copies may be retained by Broker. Broker shall be liable to Town for any loss or damage to such documents while they are in the possession of, or while being worked upon by Broker or anyone connected with Broker, including agents, employees, Brokers or subcontractors. All documents lost or damaged by Broker shall be replaced or restored by Broker to the extent reasonably possible without cost to Town.
- 10.2. Upon completion of each Work Order, Broker shall prepare, and within thirty (30) calendar days of completion of project, deliver to Town all work product documents created for the Work Order in a format as described by Town Representative.

**ARTICLE 11
GENERAL, SUPPLEMENTARY AND SPECIAL CONDITIONS:
CONTRACT ADMINISTRATION**

- 11.1. This Contract shall be administered on behalf of Town by its Town Representative, and Broker shall fully comply with any and all instructions from said Representative. Any dispute arising hereunder shall be submitted to Representative. The decision of the City Council in any dispute arising hereunder shall be final and binding.

**ARTICLE 12
RESPONSIBILITY FOR WORK: INDEMNIFICATION AND INSURANCE**

- 12.1. Approval by Town shall not constitute nor be deemed a release of the responsibility and liability of Broker, its employees, subcontractors, agents and Brokers for the accuracy and competency of their work; nor shall such approval be deemed to be an assumption of such responsibility by Town for any defect, error or omission in the documents prepared by Broker, its employees, subcontractors, agents and Brokers. **IN THIS REGARD, BROKER SHALL INDEMNIFY TOWN TO THE EXTENT OF BROKER'S NEGLIGENT ACTS, ERRORS OR OMISSIONS FOR DAMAGES RESULTING FROM SUCH ACTS, ERRORS OR OMISSIONS, AND SHALL SECURE, PAY FOR AND MAINTAIN IN FORCE DURING THE TERM OF THIS CONTRACT SUFFICIENT ERRORS AND OMISSIONS INSURANCE IN AN AMOUNT OF NOT LESS THAN ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) SINGLE LIMIT, WITH CERTIFICATES EVIDENCING SUCH COVERAGE TO BE PROVIDED TO TOWN.**
- 12.2. **OTHER THAN FOR PROFESSIONAL LIABILITY CLAIMS, TO THE FULLEST EXTENT ALLOWED BY LAW, BROKER AGREES TO INDEMNIFY AND HOLD HARMLESS TOWN, TOWN TRUSTEES OR OTHER ELECTED OFFICIALS, DIRECTOR, EMPLOYEES, AGENTS AND REPRESENTATIVES, (HEREINAFTER REFERRED TO AS "INDEMNITEES") AGAINST ALL CLAIMS, DEMANDS, ACTIONS, SUITS, LOSSES, DAMAGES, LIABILITIES, COST AND/OR EXPENSE OF EVERY KIND AND NATURE (INCLUDING, BUT NOT LIMITED TO COURT COST, LITIGATION EXPENSE AND ATTORNEYS FEES), PAYING SAME AS THEY ACCRUE, AND ALL RECOVERABLE INTEREST THEREON, INCURRED BY OR SOUGHT TO BE IMPOSED ON INDEMNITEES BECAUSE OF INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY (WHETHER REAL, PERSONAL OR INCHOATE), TO THE EXTENT ARISING OUT OF OR IN ANY WAY RELATED (WHETHER DIRECTLY OR INDIRECTLY, CAUSALLY OR OTHERWISE) TO: (1) THE PERFORMANCE OF, ATTEMPTED PERFORMANCE OF, OR FAILURE TO PERFORM, OPERATION OR WORK UNDER THIS CONTRACT BY BROKER,, ITS EMPLOYEES OR AGENTS ITS SUBCONTRACTORS AND/OR ANY OTHER PERSON OR ENTITY; (2) THE PRESENCE ON TOWN REAL PROPERTY, INCLUDING ANY IMPROVEMENTS LOCATED THEREON, OF BROKER, ITS SUBCONTRACTORS, EMPLOYEES, SUPPLIERS, VENDORS OR ANY OTHER PERSON ACTING ON BEHALF OF BROKER. THIS INDEMNIFICATION SHALL APPLY, WHETHER OR NOT ANY SUCH INJURY OR DAMAGE HAS BEEN BROUGHT ON ANY THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INTENTIONAL WRONG DOING, STRICT PRODUCT LIABILITY OR BREACH OF NON-DELEGABLE DUTY. BROKER FURTHER AGREES TO DEFEND (AT THE ELECTION OF ANY INDEMNITEE) AGAINST ANY CLAIM, DEMAND, ACTION OR SUIT FOR WHICH INDEMNIFICATION IS PROVIDED HEREUNDER.**

12.3. IN NO EVENT DOES THE TOWN REQUIRE OR BROKER AGREE TO INDEMNIFY OR HOLD HARMLESS THE TOWN FOR CLAIMS OR LIABILITY RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE TOWN OR ITS EMPLOYEES, AGENTS, SUBCONTRACTORS OR OTHER THIRD PARTIES.

12.4. **INSURANCE.** The Broker, at Broker's sole cost, shall additionally purchase and maintain in force the following minimum insurance coverage during the term of this Contract or as otherwise herein provided. Such insurance shall be in the amount and in full compliance with the following terms and conditions:

12.4.1. Within ten (10) days after the Effective Date of this Contract, Town requires and Broker agrees that the following insurance coverage will be met and in effect for the life of the awarded contract, inclusive of any Work Order, prior to any delivery of any service and/or performance of work. Broker agrees to furnish and maintain in effect for the duration of this Contract and any renewal, the insurance listed herein from an insurance company acceptable to Town and authorized to do business in the State of Texas. Broker will submit verification of coverages to the Town Representative showing the Town as the certificate holder. The Town will neither be responsible for nor authorize payments for services rendered without having the applicable certificates on file. Broker, at Broker's sole cost, shall purchase and maintain the following minimum insurance coverage during the Term of this Contract:

12.4.1.1. Workers' Compensation Insurance in the amount and in compliance with the provisions as provided for by Texas Law as established by the Texas Workers Compensation Act, Title 5, Subtitle A, Texas Labor Code for all of his employees assigned to operate or work under this agreement. In the event the Broker elects to sublet any work, Broker shall require subcontractors to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are afforded protection by the Broker.

Any vendor that conducts business with Dallas County, Dallas, whether it is for goods and/or services, must maintain lawful worker's compensation requirements and adequate liability limitations.

- a) workers compensation meeting the acceptable requirements as established by the Texas Workers' Compensation Act, Title 5, Subtitle A, Texas Labor Code; and

Vendors and/or their freight contractors must be prepared to show coverage verification prior to entering upon Town premises.

Failure to comply with lawful requirements or adequate liability requirements may result in delay of payments and/or cancellation of the contract. (Court Order 94-1243, August 9, 1994)

The Texas Workers' Compensation Commission has adopted Rule 110.110 effective for public works bids advertised after September 1, 1994 and **this does affect your bid on this project.**

Providing false or misleading certificates of coverage, failing to provide or maintain required coverage, or failing to report any change that materially affects the coverage may subject the contractor(s) or other persons providing services on this project to legal penalties. **THIS AFFECTS YOUR SUBCONTRACTORS.**

According to TWCC, "This rule does not create any duty or burden on anyone which the law does not establish. **Therefore, the Town should not experience any increase in cost because of the need to comply with the Texas Workers' Compensation laws.**

- A. Definitions: TWCC Rule 110.110 Workers' Compensation Insurance Coverage.
1. Certificate of coverage ("Certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement. TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 2. Duration of the project - Includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
 3. Persons providing services on the project ("subcontractor" in Article 406-096) - Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- B. The Broker shall provide coverage, based on proper reporting of classification code and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the Broker providing services on the project, for the duration of the project.
- C. The Broker must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Broker's current certificate of coverage ends during the duration of the project, and Broker must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The Broker shall obtain from each person providing services on a project, and provide to the governmental entity.
1. A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing service on the project; and
 2. No later than seven (7) days after receipt by the Broker, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate ends during the duration of the project.
- F. The Broker shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

- G. The Broker shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Broker knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Broker shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Broker shall contractually require each person with whom it contracts to provide services on a project, to:
 - 1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project:
 - 2. Provide to the Broker, prior to that person beginning work on the project a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project:
 - 3. Provide the Broker, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project:
 - 4. Obtain from each other person with whom it contracts, and provide to the Broker.
 - A. A certificate of coverage, prior to the other person beginning work on the project; and
 - B. the coverage period, if the coverage period shown on the current certificate of a new certificate of coverage showing extension of coverage, prior to the end of coverage ends during the duration of the project;
 - 5. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - 6. Notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - 7. Contractually require each person with whom it contracts, to perform as required by paragraphs I.1 - I.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract to providing or causing to be provided a certificate of coverage, the Broker is representing to the governmental entity that all employees of the Broker who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the

coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Broker to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K. The Broker's failure to comply with any of these provisions is a breach of contract by the Broker which entitles the governmental entity to declare the contract void if the Broker does not remedy the breach with ten (10) days after receipt of notice of breach from the governmental entity.

This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the Town.

- 12.4.1.2. Comprehensive General Liability Insurance, including Contractual Liability - Commercial General Liability Insurance coverage shall carry limits of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for bodily injury and property damage per occurrence with a general aggregate of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). There shall not be any policy exclusion or limitations for contractual liability covering the Brokers obligations herein; personal injury/advertising liability; medical payments; fire damage legal liability; broad form property damage, and/or liability for independent contractors.

This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the Town.

- 12.4.1.3. Comprehensive Automobile Liability - Comprehensive Auto Liability insurance covering all owned, hired and non-owned vehicles used in connection with the work performed under the Contract with limits of liability not less than One Hundred Thousand and 00/100 Dollars (\$100,000.00) each person and Three Hundred Thousand and 00/100 Dollars (\$300,000.00) each accident for bodily injury and One Hundred Thousand and 00/100 Dollars (\$100,000.00) each occurrence for property damage for a combined single limit for bodily injury and property damage liability of not less than Four Hundred Thousand and 00/100 Dollars (\$400,000.00).

This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the Town.

- 12.4.1.4. Professional Liability - Insurance Requirements - PROPOSER SHALL INDEMNIFY TOWN FOR DAMAGES RESULTING FROM NEGLIGENT ACTS, ERRORS OR OMISSIONS AND SHALL SECURE, PAY FOR AND MAINTAIN IN FORCE DURING THE TERM OF THE CONTRACT AND THEREAFTER FOR AN ADDITIONAL FIVE (5) YEARS FROM DATE THE PROJECT IS ACCEPTED AS COMPLETE BY THE COMMISSIONERS COURT, SUFFICIENT ERRORS AND OMISSIONS INSURANCE IN AN AMOUNT OF NOT LESS THAN ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) SINGLE LIMIT, WITH CERTIFICATES EVIDENCING SUCH COVERAGE.

- 12.4.2. Broker agrees that, with respect to the above referenced insurance, all insurance contracts will contain following required provisions:

- 12.4.2.1. Name the Town of Addison, Texas as a certificate holder as to all applicable policies.
- 12.4.2.2. Provide for an endorsement that the "other insurance" clause shall not apply to Town where Town is an additional insured on the policy.
- 12.4.2.3. Provide for notice to the Town at the address shown below by registered mail.

- 12.4.2.4. Broker agrees to waive subrogation against Town, its officers and employees for injuries, including death, property damage or any other loss.
- 12.4.2.5. Broker shall provide that all provisions of this Contract concerning liability, duty and standard of care, together with the indemnification provisions, shall be underwritten by contractual liability coverage sufficient to include obligation within applicable policies.
- 12.4.2.6. Broker shall notify Town in the event of any change in coverage and shall give such notices not less than thirty (30) days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance.
- 12.4.3. Approval, disapproval or failure to act by the Town regarding any insurance supplied by Broker shall not relieve Broker of full responsibility or liability for damages and accidents as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate the Broker from liability.
- 12.4.4. Within ten (10) days after the Effective Date of this Contract and prior to and as a condition precedent to the commencement of any work or delivery, the Broker agrees to submit verification of the insurance coverage in the type, amount and meeting all conditions as contained in this Contract, to Town Representative showing Town as the certificate holder (general liability insurance) with coverage dates inclusive to that of the Contract term and each renewal period, if any.
- 12.4.5. Broker will provide to Town notice of cancellation, non-renewal, or reductions in coverage limits of any of the above-listed insurance requirements.
- 12.5 The provisions of this Article will survive termination or expiration of this Contract or any determination that this Contract is any portion of this Contract is void, voidable, invalid, or unenforceable.

**ARTICLE 13
ASSIGNMENT**

The Parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Contract. Broker shall not assign, sublet or transfer any interest in this Contract without prior written authorization of Town Representative.

**ARTICLE 14
COMPLIANCE WITH LAWS, ORDINANCES, ETC.**

- 14.1. Broker, its Brokers, agents, employees, and subcontractors shall be familiar with and at all times shall comply with all Federal, State and local laws, statutes, ordinances, codes, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Contract, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations, all local, State and national boards, bureaus and agencies and non-discrimination laws and regulations and safety. When required, the Broker shall furnish the Town satisfactory proof of compliance therewith. **BROKER SHALL INDEMNIFY AND SAVE HARMLESS THE TOWN AND ITS OFFICIAL REPRESENTATIVES AGAINST ANY CLAIM ARISING FROM VIOLATION OF ANY SUCH LAW, ORDINANCE OR REGULATION BY BROKER OR BY BROKER'S CONTRACTORS, SUBCONTRACTORS, SUB-CONSULTANTS, EMPLOYEES, OR AGENTS.**
- 14.2. Broker will pay all taxes, if any, required by laws arising by virtue of the services performed hereunder. Town is qualified for exemption pursuant to the provisions of Article 20.02 (H) of the Texas Limited Sales, Excise and Use Tax Act.
- 14.3. **NONDISCRIMINATION.** As a condition of this Contract, Broker will take all necessary action to insure that, in connection with any work under this Contract, it will not discriminate in the treatment or

employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. In this regard, Broker shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period, following contract completion, of three (3) years, with full access allowed to authorized representatives of Town upon request for purposes of evaluating compliance with this and other provisions of this Contract.

**ARTICLE 15
ENFORCEMENT, VENUE, GOVERNING LAWS AND NOTICES**

- 15.1. This Contract shall be enforceable in Dallas County, Texas, and if legal action is necessary by either Party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Dallas County, Texas. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas and is expressly subject to the Town's Sovereign Immunity and Title 5 of the Texas Practice and Civil Remedies Code.
- 15.2. All notices and correspondence to Town by Broker shall be mailed or delivered as follows:

Town of Addison, Texas
Attn: Wesley S. Pierson
5300 Bellline Road
Dallas, Texas 75254

- 15.3. All notices and correspondence from Town to Broker shall be mailed or delivered as follows:

Peter Jansen
Regional Director | CBRE Public Institutions
100 Congress Ave, Suite 500
Austin, TX 78701

OR

Peter.Jansen@CBRE.com

**ARTICLE 16
TERM**

- 16.1. This Contract becomes effective when fully executed by both parties (hereinafter, the "Effective Date") and will terminate two (2) years later from that Effective Date, unless termination occurs as otherwise provided hereinafter. The Broker will not begin work or incur Costs until authorized in writing by the County to proceed with the work, as more fully set forth herein.
- 16.2. The Town, in its sole discretion, shall have the right, but not the obligation, to renew this Contract for three (3) periods of one (1) year (total of three (3) additional years) from the termination date, provided that the Broker shall agree in writing.

**ARTICLE 17
FINANCIAL INTEREST PROHIBITED: CONFIDENTIALITY**

- 17.1. Broker covenants and represents that Broker, its officers, employees, agents, Brokers, and subcontractors will have no financial interest, direct or indirect, in the transactions that will be recommended or required for the completion of Work Orders.
- 17.2. Broker understands that no officer or employee of Town shall have any financial interest, direct or indirect, in any contract with Town, or be financially interested, directly or indirectly, in the sale to Town of any land, materials, supplies, or services, except on behalf of Town as an officer or employee. Any

violation of this prohibition, with the express knowledge of the person or corporation contracting with Town shall render the Contract involved voidable by the City Council.

- 17.3. Broker's reports, evaluations, design, data and all other documentation and work developed by Broker hereunder shall not be disclosed to any third parties without the prior approval of Town Representative.

ARTICLE 18 REPORTING

- 18.1 The Broker shall promptly advise the Town in writing of events which have significant impact upon the Contract, including but not limited to:

18.1.1. Problems, delays or adverse conditions which will materially affect the ability to meet time schedules or goals or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of any action taken, or contemplated, and any Town assistance needed to resolve the situation.

18.1.2. Favorable developments or events which enable the Broker to meet time schedules and goals sooner than anticipated or to produce more work units than originally projected.

- 18.2 The Broker shall coordinate all work with the Town Representative Department or with such other person as may be designated by Town Representative in writing.

- 18.3 The Broker shall report progress on work undertaken to the designated point-of-contact at not greater than weekly intervals.

ARTICLE 19 BROKER RESOURCES

The Broker contracts and agrees that the firm has adequate qualified personnel in its employment and all required transportation, equipment, materials, supplies and any and all other goods and services for performance of services required under this Contract including any Work Order, or will be able to obtain such personnel, transportation, equipment, materials supplies and any and all other goods and services from sources other than the Town. Unless otherwise specified, the Broker for the compensation received shall furnish all personnel, transportation, equipment, materials, supplies and any and all other goods and services required to perform the work authorized herein at its sole cost and expense. All employees of the Broker or of any subcontractor shall have all required licenses, knowledge and experience as will enable them to perform the duties assigned to them. Broker contracts and agrees that any employee of the Broker or any subcontractor who, in the opinion of the Town, is incompetent or whose conduct becomes detrimental to the work or whose conduct reflects adversely on the Town shall immediately be removed from association with the project.

ARTICLE 20 SUBCONTRACTS

- 20.1 The Broker shall not subcontract or otherwise transfer any portion of the work authorized by the Town without prior approval in writing by the Town. Under no circumstances shall the Broker subcontract more than fifty percent (50%) of this Contract.

- 20.2 Subcontractors shall comply with the provisions of this Contract and all Work Orders. No subcontract will relieve the Broker of its responsibility under this Contract.

**ARTICLE 21
SUCCESSORS AND ASSIGNS**

The Town and the Broker each binds itself, its successors, executors, administrators, assigns and subcontractors in respect to all covenants of this agreement. The Broker shall not assign, subcontract or transfer its interest in this agreement without prior written agreement of the Town.

**ARTICLE 22
DISPUTES**

The Town Supervisor shall act as referee in all disputes under the terms of this Contract between the parties hereto. The Town Representative and the Broker shall negotiate in good faith toward resolving such disputes. In the event the Town Representative or the Broker are unable to reach an acceptable resolution of disputes concerning the work to be performed under this Contract, the Town Representative shall present unresolved disputes arising under the terms of this Contract to the City Council. The decisions of the City Council as it pertains to unresolved disputes shall be final and binding.

**ARTICLE 23
NOTIFICATION**

When notice is permitted or required by this Contract, it shall be in writing and shall be presumed delivered when delivered in person or three (3) days subsequent to the date placed, postage prepaid, in the U. S. Mail, Certified or Registered, Return Receipt Requested and addressed to the parties at the following address. All notifications shall be made in writing to the addresses below:

For the Broker:

Peter Jansen
Regional Director | CBRE Public Institutions
100 Congress Ave, Suite 500
Austin, TX 78701

For the Town:

Town of Addison, Texas
Attn: Wesley S. Pierson, City Manager
5300 Beltline Road
Dallas, Texas 75254

Either party hereto may from time to time designate another and different address for receipt of notice of such change of address to the other party.

**ARTICLE 24
INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE**

- 24.1 The following documents are incorporated herein as if reproduced herein word for word:
- 24.1.1 Work Orders as mutually agreed upon as set forth in this Contract.
 - 24.1.2 Broker's response to Solicitation Request for Qualifications – Real Estate Consulting Services – RFQ 16-102
 - 24.1.3 Request for Qualifications – Real Estate Consulting Services – RFQ 16-102
- 24.2 In the event of any inconsistency between the provisions of this agreement, the inconsistency shall be resolved by giving precedence in the following order: (1) the Work Orders; (2) this Contract; (3) the RFQ.

**ARTICLE 25
MISCELLANEOUS GENERAL PROVISIONS**

- 25.1 Applicable Law. This Contract and all matters pertinent thereto shall be construed and enforced in accordance with the laws of the State of Texas and exclusive venue shall be in Dallas County, Texas. Notwithstanding anything herein to the contrary, this Contract is expressly made subject to the Town's Sovereign Immunity, Title 5 of Texas Civil Practice and Remedies Code, and all applicable State of Texas and Federal laws.
- 25.2 Entire Agreement. This Contract, including all Work Orders, all exhibits and addendum, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto as herein provided.
- 25.3 Severability. If any provision of this Contract shall be held invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.
- 25.4 Default/Waiver/Mitigation. It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Contract does not preclude pursuit of other remedies in this Contract or provided by law. Broker shall have a duty to mitigate damages.
- 25.5 Federal or State of Texas Funding. In the event that any Work Order or part thereof is funded by State of Texas or U. S. Government federal funding and any statute, rule, regulation, grant, contract provision or other State of Texas or U. S. Government law, rule, regulation or other provision imposes additional or greater requirement(s) than stated herein, Broker agrees to timely comply therewith without additional cost or expense to Town.
- 25.6 Headings. The titles which are used following the number of each paragraph are only for convenience in locating various provisions of this Contract and shall not be deemed to affect the interpretation or construction of such provision.
- 25.7 Number and Gender. Words of any gender used in this Contract shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.
- 25.8 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- 25.9 Funding. Notwithstanding any provisions contained herein, this Contract is expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the agreement and any extension thereto. Broker shall have no right of action against the Town in the event that the Town is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Contract or failure to budget or authorize funding for this Contract during the current or future fiscal years. In the event that Town is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding or if funds become unavailable, the Town, at its sole discretion, may, subsequent to execution by Town, provide funds from a separate source or terminate this Contract.

**ARTICLE 26
APPROVED BROKERS**

The following are the approved Brokers for this Contract:

**CBRE, Inc.
2100 McKinney, Suite 700
Dallas, Texas 75201**

IN WITNESS WHEREOF, THE TOWN OF ADDISON has caused this Contract to be signed by its City Manager, duly authorized to execute same in its behalf by Resolution No. approved by the City Council on _____, 2016, and _____, signing by and through its duly authorized representative, thereby binding the parties hereto, their successors, assigns and representatives for the faithful and full performance of the terms and provisions of this Contract.

ATTEST:

Wesley S. Pierson, City Manager
Town of Addison

ATTEST:



Scott Senese, Senior Managing Director
CBRE

APPROVED AS TO FORM:

BRENDA N. MCDONALD, TOWN ATTORNEY