

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BETWEEN THE TOWN OF ADDISON AND NATHAN D. MAIER CONSULTING ENGINEERS, INC., FOR DESIGN AND BID PHASE SERVICES ASSOCIATED WITH THE VITRUVIAN PARK – FARMERS BRANCH CREEK SEDIMENT REMOVAL PROJECT IN AN AMOUNT NOT TO EXCEED \$158,000, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

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

**Section 1.** The Agreement for Professional Engineering Services between the Town of Addison and Nathan D. Maier Consulting Engineers, Inc., for design and bid phase services associated with the Vitruvian Park – Farmers Branch Creek Sediment Removal Project in an amount not to exceed \$158,000, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

**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 26<sup>nd</sup> day of June 2018.

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

By: \_\_\_\_\_  
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney

# EXHIBIT A

**AGREEMENT  
BETWEEN  
THE TOWN OF ADDISON, TEXAS (TOWN)  
AND  
NATHAN D. MAIER CONSULTING ENGINEERS, INC. (CONSULTANT)  
FOR  
PROFESSIONAL ENGINEERING SERVICES**

Made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2018,

BETWEEN the Town:     The Town of Addison, Texas  
                                  16801 Westgrove Drive  
                                  Addison, Texas 75001  
                                  Telephone: (972) 450-7001

and the Consultant:     Nathan D. Maier Consulting Engineers, Inc.  
                                  12377 Merit Drive, Suite 700, Dallas, Texas, 75251  
                                  Telephone: 214-739-4741

for the following Project:   Vitruvian Park - Sediment Removal

The Town and the Consultant agree as set forth below.

**THIS AGREEMENT** is made and entered by and between the **Town of Addison, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "Town," and **Nathan D. Maier Consulting Engineers, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Agreement"; and

**WHEREAS**, the Town desires to engage the services of the Consultant to provide professional services which shall include, but not be limited to, the preparation of plans, specifications, and permitting for the removal of sediment from the Vitruvian Park ponds within the Town of Addison, Texas; hereinafter referred to as "Project"; and

**WHEREAS**, the Consultant desires to render such professional engineering services for the Town upon the terms and conditions provided herein.

**NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:**

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# EXHIBIT A

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

## ARTICLE 1 CONSULTANT'S SERVICES

- 1.1 **Employment of the Consultant** – The Town hereby agrees to retain the Consultant to perform professional engineering services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement. The standard of care for all professional services performed and/or furnished by Consultant under the terms and conditions of this Agreement shall be consistent with the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be authorized from time to time by the Town.
  - 1.2.1 **Requirement of Written Change Order** – "Extra" work, or "claims" invoiced as "extra" work, or "claims" which have not been issued as a duly executed, written change order by the Addison Town Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Addison Town Council's authorization for the Addison Town Manager to execute said change order.
  - 1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE ADDISON TOWN MANAGER.** Project Managers, Superintendents, and/or Inspectors of the Town are not authorized to issue verbal or written change orders.
- 1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement and receipt of written Notice to Proceed, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as **Exhibit "B"** and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than as identified in **Exhibit "A"**.
- 1.4 **Failure to Meet Established Deadlines** – Consultant acknowledges that time is of the essence in the performance of services under this Agreement as set forth in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B."

## ARTICLE 2

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# EXHIBIT A

## THE TOWN'S RESPONSIBILITIES

Town shall do the following in a timely manner so as not to delay the services of Consultant:

- 2.1 **Project Data** – The Town shall furnish required information that it currently has in its possession, as expeditiously as necessary for the orderly progress of the work, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.
- 2.2 **Town Project Manager** – The Town shall designate, when necessary, a representative authorized to act on the Town's behalf with respect to the Project (the "Project Manager"). The Town or such authorized representative shall examine the documents submitted by the Consultant and shall render any required decisions pertaining thereto as soon as practicable so as to avoid unreasonable delay in the progress of the Consultant's services. The Project Manager is not authorized to issue verbal or written change orders for "extra" work or "claims" invoiced as "extra" work.

## ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be based on a combined Lump Sum and hourly fee in the total amount of **One Hundred Fifty Eight Thousand and 00/100 Dollars (\$158,000.00)**, ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B." **The final five percent (5%) of the Consultant's Fee, or Seven Thousand Nine Hundred and 00/100 Dollars (\$7,900.00), shall not be paid until the Consultant has completed all of the services described in Exhibit "A" and delivered to the Town all of the documents, plans, data, maps, and/or other information required in Exhibit "A."**
  - 3.1.1 **Completion of Final Report** – Town and Consultant agree that the Final Plans and Specifications shall be completed, submitted to, and accepted by the Town prior to payment of the **final five percent (5%) of the Consultant's Fee, or Seven Thousand Nine Hundred and 00/100 Dollars (\$7,900.00)**. The electronic formatting shall be consistent with the standards established in Town of Addison Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" documents, if any, shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.
  - 3.1.2 **Disputes between Town and Construction Contractor** – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor (the "Contractor") and the City, and upon receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not



# EXHIBIT A

to certify that sufficient cause exists for the City to declare the Contractor in default of the terms and conditions of the agreement. Consultant shall submit his findings in writing to the City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from the City. City and Consultant agree that if requested by the City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

**3.1.3 Consultation and Approval by Governmental Authorities and Franchised Utilities**

– Consultant shall be responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and to participate in consultation with said agencies in order to obtain all necessary approvals and/or permissions. The Consultant shall be responsible for preparation and timely submittal of documents required for review, approval, and/or recording by such agencies. The Consultant shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by such agencies at no additional charge to City.

- 3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "C," Town of Addison Guidelines for Direct Expenses, General and Administrative Markup, and Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing of all Direct Expenses, including the subcontractors, prior to submitting to the Town for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the Town's sole and exclusive remedy for said overpayment.

- 3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the Town, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph ("Additional Services"). These services may include, but are not limited to:

- 3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A."

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- 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A." Drafts or revisions required as the result of errors or omissions by the Consultant shall not be considered Additional Services, but shall fall within the Scope of Services.
- 3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
- 3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
- 3.3.5 Compensation for Additional Services authorized by the Town shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.
- 3.3.6 Compensation for Additional Services authorized by the Town shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to Town.

## SCHEDULE OF FEES AND CHARGES

The following Schedule of Fees and Charges shall be modified on January 1, 2019.

Principal	\$150.00 - \$250.00 / hour
Expert Testimony (Trial and Depositions)	\$350.00 - \$500.00 / hour
Expert Testimony (Preparation Work)	\$250.00 - \$350.00 / hour
Registered Engineer	\$120.00 - \$235.00/ hour
Registered Surveyor	\$100.00 - \$160.00/ hour
Engineer-in-training	\$90.00 - \$115.00 / hour
Senior Designers	\$90.00 - \$135.00 / hour
Technician	\$85.00 - \$115.00 / hour
Drafter	\$60.00 - \$85.00 / hour
Field Party	\$165.00 / hour
Secretarial/Word Processing	\$67.00 / hour
Construction Manager	\$120.00 - \$215.00/ hour
Construction Inspector	\$85.00 - \$115.00 / hour
Emergency Services	\$160.00 - \$280.00 / hour

1. Unless otherwise stated, statements will be submitted monthly for charges incurred during the month and payments will be due within thirty (30) days following receipt of the statements.

# EXHIBIT A

Effective January 1, 2018

- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to the Town. Invoices are to be mailed to Town immediately upon completion of each individual task listed in Exhibit "B." On all submitted invoices, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.
- 3.5 **Timing of Payment** – Town shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by Town to Consultant is considered to be complete upon mailing of payment by Town. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by Town, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Town shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21<sup>st</sup>) calendar day after the date the Town receives the invoice. Town shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, Town shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the Town, Consultant shall submit to Town a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid Town in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. Town agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.7 **Failure to Pay** – Failure of the Town to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the Town, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10<sup>th</sup>) calendar day after written notice of suspension was provided to Town, in accordance with Chapter 2251, Subchapter "D" ("Remedy for Nonpayment") of the *Texas Government Code*. The Town shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant's services are materially changed due to no error on behalf of Consultant in the performance of
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# EXHIBIT A

services under this Agreement, the amounts of the Consultant's compensation shall be equitably adjusted as approved by Town. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.

- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of Town in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to Town all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the Town. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

## ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of the Town** – The Project is the property of the Town, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without Town's prior written consent. Town shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 7, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project and promptly furnish the same to the Town in an acceptable electronic format. All such reproductions shall be the property of the Town who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project.
- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that Town is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the Town and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (*Texas Government Code*, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.
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# EXHIBIT A

## ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

- 5.1 **Required Professional Liability Insurance** – Consultant shall maintain, at no expense to Town, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.
- 5.2 **Required General Liability Insurance** - Consistent with the terms and provisions of Exhibit "D," Town of Addison Contractor Insurance Requirements, Consultant shall maintain, at no expense to Town, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name the Town, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.
- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of Exhibit "D," Town of Addison Contractor Insurance Requirements, Consultant shall maintain, at no expense to Town, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and authorized to transact business in the State of Texas. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by
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# EXHIBIT A

return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

- 5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If Project size and scope warrant, Town of Addison Contractor Insurance Requirements, Consultant shall maintain, at no expense to the Town, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Consistent with the terms and provisions of Exhibit "F," such policy shall name the Town, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that the same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to the Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

## ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to the Town as indicated in Article 3.4. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

## ARTICLE 7 AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE

The Consultant agrees that at any time during normal business hours and as often as the Town may deem necessary, Consultant shall make available to representatives of the Town for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the Town 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, and for a period of four (4) years 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 Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated on the Affidavit, attached hereto as Exhibit "E" and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "E". Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

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# **EXHIBIT A**

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit "F" and incorporated herein for all purposes.

If the Agreement is required to go to the City Council for approval, then the Consultant shall execute and deliver to the Town the Form 1295 Certificate of Interested Parties, as required by section 2252.908, Texas Government Code, as amended, prior to the City's execution of this Agreement.

## **ARTICLE 8 TERMINATION OF AGREEMENT / REMEDIES**

Town may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If Town terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the Town is required to pay in order to finish the Project. On any default and/or breach by Consultant, Town may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If Town terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of the Town in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to Town all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

## **ARTICLE 9 DISPUTE RESOLUTION / MEDIATION**

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

## **ARTICLE 10**

### **INDEMNITY**

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## EXHIBIT A

CONSULTANT SHALL HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS TOWN COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENTS), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED OR RESULTING FROM THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES, OR ANY OTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF PROFESSIONAL SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE TOWN (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST TOWN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. THIS INDEMNIFICATION SHALL EXTEND TO THE PAYMENT OR REIMBURSEMENT OF THE TOWN'S REASONABLE ATTORNEYS FEES AND ASSOCIATED COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE CONSULTANT'S LIABILITY.

CONSULTANT SHALL PROMPTLY NOTIFY TOWN OF THE DEFENSE COUNSEL RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER, AND TIMELY NOTIFY TOWN OF ANY AND ALL LEGAL ACTIONS TAKEN BY THE DEFENSE COUNSEL REGARDING ANY AND ALL CLAIMS.

THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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# EXHIBIT A

## ARTICLE 11 NOTICES

Consultant agrees that all notices or communications to Town permitted or required under this Agreement shall be delivered to Town at the following addresses:

### **Director of Infrastructure and Development Services**

Town of Addison  
16801 Westgrove Drive  
Addison, Texas 75001

Town agrees that all notices or communication to Consultant permitted or required under this Agreement shall be delivered to Consultant at the following addresses:

### **CONSULTANT**

William L. Wallace, PE, Executive Vice President  
Nathan D. Maier Consulting Engineers, Inc.  
12377 Merit Drive, Suite 700  
Dallas, Texas, 75251

Any notice provided in writing under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication 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 postmarked by the sending party. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

## ARTICLE 12 MISCELLANEOUS

- 12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "F," all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modifies except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 Exhibit "A," Scope of Services.

12.1.2 Exhibit "B," Compensation Schedule / Project Billing / Project Budget.

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## EXHIBIT A

12.1.3 Exhibit "C," Town of Addison Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

12.1.6 Exhibit "D," Town of Addison Contractor Insurance Requirements.

12.1.7 Exhibit "E," Affidavit.

12.1.8 Exhibit "F", Conflict of Interest Questionnaire, Form CIQ.

- 12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the Town. The Consultant further agrees that the assignment or subletting or any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the Town as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 12.3 **Successors and Assigns** – Town and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, 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 as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 12.5 **Venue** – This entire Agreement is performable in Dallas County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Dallas County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for an on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
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## EXHIBIT A

- 12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.11 **Sovereign Immunity** – The parties agree that the Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.14 **No Third Party Beneficiaries** -- Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.15 **No Boycott – Israel** – Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.
-

# EXHIBIT A

**IN WITNESS WHEREOF**, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

**Effective Date:** \_\_\_\_\_

**TOWN:**

Town of Addison, Texas

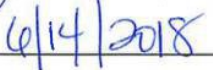
By: \_\_\_\_\_  
Wesley S. Pierson, City Manager

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

**CONSULTANT:**

Nathan D. Maier Consulting Engineers, Inc.

By:  \_\_\_\_\_  
Jean Maier Dean, President

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

# EXHIBIT A

STATE OF TEXAS

§  
§  
§

COUNTY OF DALLAS

**BEFORE ME**, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Wesley S. Pierson**, Town of Addison, Texas City Manager, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration expressed, and in the capacity therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this \_\_\_\_ day of \_\_\_\_\_, 2018.

Notary Public In and For the State of Texas  
My commission expires: \_\_\_\_\_

STATE OF

Texas

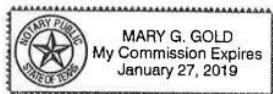
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COUNTY OF

Dallas

**BEFORE ME**, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Jean Jean, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration expressed, and in the capacity therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE** this 14th day of June, 2018.



Mary G. Gold  
Notary Public In and For the State of Texas  
My commission expires: 1-27-19



# EXHIBIT A

**Exhibit "A"**  
**Scope of Services**  
**Agreement by and between the Town of Addison, Texas (Town)**  
**and Nathan D. Maier Consulting Engineers, Inc. (Consultant)**  
**to perform Professional Engineering Services for**  
**VITRUVIAN PARK – SEDIMENT REMOVAL**

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## **SCOPE OF SERVICES**

The scope of services for this project is divided into eight specific tasks, which are outlined in the following paragraphs.

### **TASK 1 – Meetings and Coordination**

NDM will provide project coordination throughout the contract. This shall include coordination with Town representatives, attorneys working on water rights issue, and potential contractors. The scope of services is based on the following meetings.

1. Up to three (3) meetings with Town representatives during the design phase.
2. Up to two (2) meetings with attorneys during the design phase.

If approved by the Town in advance, NDM will discuss the proposed project with representatives of the City of Farmers Branch. NDM will also provide the Town with information requested by UDR, related to project status. The scope of services does not include the development or maintenance of a project web-site, meetings with UDR representatives, or public meetings.

### **TASK 2 – Field Reconnaissance, Data Review and Survey**

The Town shall secure any necessary right-of-entry permission for Task 2 services. NDM will perform a field reconnaissance to determine the condition of the existing sediment and surrounding improvements

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# EXHIBIT A

The Town will provide available information for completion of the project. This will include existing record drawings, pumping information, pertinent records related to water rights issues, and water accounting information. NDM will review the information provided by the Town and incorporate the information into the analyses and design.

NDM will perform survey services for the project. This will include survey of the existing top of walls/channel, sediment elevation at the base of the wall/channel, survey of top of weirs and sediment at the base of structures, normal water surface elevations, and approximately 35 cross-sections. This information will provide the basis for establishing a surface that reflects the top of existing sediment. NDM will also perform survey in the natural area along the downstream portion of the project area and tie existing trees in this area. Additional survey will be obtained for the potential work/storage area located to the southeast of Farmers Branch Creek. Existing improvements and trees in this area will be tied and identified.

## TASK 3 – GEOTECHNICAL SERVICES

NDM will provide geotechnical services related to the sediment evaluation for the removal process. The geotechnical services shall include the collection of samples at 5 locations. This will include two samples in each of the in-line lakes and one sample in the off-line pond. The samples will be taken at an approximate depth of 2-feet and the following analyses will be run for each sample and for a composite sample.

1. grain size analysis,
2. liquid and plastic limits,
3. unit weight, specific gravity and void ratios
4. paint filter test

In addition the parameters defined above, each sample and the composite sample will be evaluated for potential of contamination by testing for the following:

1. total petroleum hydrocarbons (TPH)
2. volatile organic compounds (VOC)
3. semi-volatile organic compounds (SVOC)
4. herbicides
5. organochlorine pesticides
6. polychlorinated biphenyls (PCB)
7. metals
8. TCLP (composite sample only).

The results of the analyses will be summarized in a geotechnical and testing report.

## **TASK 4 – REMOVAL ALTERNATIVES AND PRELIMINARY PLAN DEVELOPMENT**

NDM will develop preliminary plans for sediment removal. The preliminary plans will be developed based on the sediment removal using hydraulic dredging as the main means of removal. The preliminary plans will provide plan views, cross-sections, and conceptual details. The preliminary plans will include sufficient detail to make appropriate regulatory submittals.

NDM will perform evaluations for the preliminary plan development. The evaluation will include coordination with perspective contractors to identify construction related issues. This will include types of equipment available, equipment limitations related to material size and type, quantity of water used during dredging operations, use of geotextile tubes for dewatering, and the use of polymers for drying/dewatering process. This information will provide the basis for establishing pertinent dredging requirements and limitations. The allowance of any mechanical means for sediment removal will be evaluated, based on equipment limitations and material size only. Any mechanical removal will be limited to the minimum necessary to complete the project and would be combined with hydraulic removal for the majority of the project area.

NDM will use the information related to the quantity of water during the dredging operations as the basis to evaluate the need for make-up water during the construction activity to meet the Town's water rights requirements, as established by the permit with the TCEQ, and whether the project will qualify for a Temporary Water Use Permit. NDM will modify the previous monthly water balance calculations to reflect the impacts of the construction activity. This will provide the Town with information to determine any additional pumping duration that may be required to meet the water rights permit requirements. This will also provide the information necessary for review by the TCEQ for a Temporary Water Use Permit.

The preliminary plans will also address access locations for construction equipment, staging and work areas, and depth of removal. Consideration will be given to the stability of existing channel banks, related to the construction and removal process. The preliminary plans will be developed to remove sediments for the three existing ponding areas.

The preliminary plans will be provided to the Town for review and comment. NDM will make appropriate modifications to provide a final preliminary plan set and prepare an opinion of probable cost.

## **TASK 5 – REGULATORY PERMITTING AND SUBMITTALS**

NDM will prepare information for submittal to the USACE, TCEQ. The final preliminary plans will be the basis for these submittals. The scope of services does not include any submittals to FEMA or the City of Farmers Branch related to any CLOMR or LOMR and such a submittal is not anticipated. This task includes the following activities:



# EXHIBIT A

1. Coordination with representatives of the USACE and permit submittal, as required to perform the sediment removal activities. This includes the following activities:
  - a. Prepare an updated delineation map of the jurisdictional waters of the U. S.
  - b. Evaluation of the project to determine if a Nationwide Permit or Letter of Permission is required to authorize the project.
  - c. Evaluation of procedures to minimize the impacts to jurisdictional waters of the U. S.
  - d. Evaluation of the project site for potential impact to federally listed endangered or threatened species.
  - e. A desktop evaluation of potential cultural resources impacts.
  - f. Submit permit application to the USACE describing the project and the means and methods of sediment removal. Either at Nationwide Permit or a Letter of Permission.
  - g. Address project mitigation with the USACE to justify no mitigation costs for the project.
2. Coordination with the TCEQ and Texas Fish and Wildlife, if necessary, related to potential impacts of the project related to the sediment removal.
3. Coordination and submittal of data to the TCEQ related to potential water rights impacts and make-up water for the hydraulic dredging operations and an application for a Temporary Water Use Permit.

## **TASK 6 – SEDIMENT REMOVAL CONSTRUCTION PLANS**

Following the acceptance of the Preliminary Plans, as identified in Task 5, NDM will proceed with the preparation of construction plans for the project. This will include modifications to the final preliminary plans required due the regulatory submittals and additional details required for the construction plans. This task assumes that no additional geotechnical data will be required for the plan development. The Construction Plans will include additional cross-sections, details, identification of access locations, location of construction staging, location for geotextiles tubes (required for sediment dewatering), restoration requirements, and SWPPP controls. NDM will submit 90% plans to the Town for review and approval. This submittal will include an opinion of probable cost, draft contract documents, and technical specifications. The contract documents will address the means and methods required for the sediment removal, requirement for the contractor to legally dispose of the geotextile tubes and the sediment contents, methods used for progress payments, restoration requirements, permit limitations and controls, and project close-out requirements. NDM will also provide the Town with a projection of additional sediment that may enter the project area during construction and will provide a contingency for additional sediment removal. The contract documents will identify any critical dates and activities related to the construction process and any associated contractor limitations and milestones. Following The Town's review and approval, NDM will provide final plans and technical specifications required to complete the project.

## TASK 7 – BIDDING ASSISTANCE

Following the receipt of approvals, NDM shall provide assistance to the Town during the bidding phase. These services shall include:

1. Provide one original set of 11" by 17" plans and specifications
2. Attendance at pre-bid conference
3. Preparation of project addendums
4. Coordination with perspective contractors
5. Attendance at bid opening and review of bids
6. Preparation of final contract document

## TASK 8 – Recirculation Pump

This task shall be authorized specifically in writing and includes all of the services for the evaluation, design, and plan preparation related to the Recirculation Pump. The Recirculation Pump is located a short distance upstream of the downstream weir within the Vitruvian Ponds. The recirculation pump has issues related to accumulation of sediment and blockage of the pump intake. These services shall include the following items:

1. Survey around the pump to establish the pump location, intake location, and surrounding sediment and bottom elevation.
2. Analysis of sediment profile to establish possible alternative intake locations.
3. Evaluation of hydraulic conditions surrounding the pump.
4. Consideration of potential improvement options. Improvement options will consider:
  - a. Adjustment of the intake location by extending an intake pipe.
  - b. Weir box, intake extension walls, and/or screening improvements to potentially reduce the sediment build-up at the intake location.
5. Preparation of plans including plan sheet, cross-sections, structural design, and appropriate details.
6. Submittals of plans for review and comment.
7. Preparation of permitting related to impacts to jurisdictional waters of the U. S. This permitting shall be for a Nationwide Permit and will include:
  - a. Submittal of a PCN.
  - b. Description of action and alternative evaluation.
  - c. Delineation of Waters of the U.S.
  - d. Evaluation of project avoidance.
  - e. Qualitative and quantitative evaluation of unavoidable impacts.
  - f. Evaluation and justification for no compensatory mitigation.
  - g. Coordination with the USACE.
8. Preparation of contract documents and cost opinion related to the pump improvements.
9. Assistance during the bidding services phase.

## ADDITIONAL SERVICES

Any services not specifically named in the Scope of Services shall be considered Additional Services. Additional Services required from NDM that may arise and are not outlined above shall be performed on an hourly basis according to the attached "Schedule of Fees and Charges". The proposed services are based on the following conditions:

1. The Town of Addison will acquire all permissions for right-of-entry.
2. The Town will secure any approvals required from UDR for implementation of the sediment removal project.
3. The scope of services assumes no additional submittals to regulatory agencies beyond the services specifically stated in Task 6. (This scope does not include any survey for specific state or federally listed protected species).
4. No field services related to cultural resources review is included in this scope of services.
5. The services do not include any construction review services or close-out of permits.



# EXHIBIT A

## EXHIBIT "B" COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

Agreement by and between the Town of Addison (Town)  
and Nathan D. Maier Consulting Engineers, Inc. (Consultant)  
to perform Professional Engineering Services for  
VITRUVIAN PARK – SEDIMENT REMOVAL

### I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

NDM will perform these services on the following basis:

Lump sum fee for Tasks 1 – 7	<b>\$ 128,000</b>
<b>Hourly (not to exceed) Task 8</b>	<b><u>\$ 30,000</u></b>
<b>TOTAL AMOUNT</b>	<b>\$158,000</b>

Invoices will be submitted monthly on or around the first of each month for services rendered and for reimbursable expenses incurred. Invoices for services are due within thirty (30) days of receipt.

# EXHIBIT A

## EXHIBIT "C" TOWN OF ADDISON GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

- I. **CONSULTANT'S RESPONSIBILITY**. The Consultant shall be solely responsible for the auditing of all direct expense, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those to be included under a sub-contract, prior to the Town for reimbursement, and Consultant shall be responsible for the accuracy thereof. Any overpayment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment(s) for services; however, this shall not be the Town's sole and exclusive remedy for said overpayment.

### II. **GUIDELINES FOR DIRECT EXPENSES**.

- A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of the Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall Town reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of Town's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by Town. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

- B. **Supplies, Material, Equipment** – Town shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by Town's Project Manager in writing.
- C. **Commercial Reproduction** – Town shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to Town at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- D. **In-House Reproduction** - Consultant shall make arrangements with the Town for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is

## EXHIBIT A

required as a prerequisite for payment, including the number or reproductions, the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

- E. **Commercial Plotting** – Town shall reimburse the actual cost of plots, specifically limited to final documents, provided the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- F. **In-House Plotting** – Consultant shall make arrangements with Town for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.
- G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.
- H. **Postage, Mail, and Delivery Service** – Town shall reimburse the actual cost of postage and delivery of Instruments of Service, provided the Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the Town, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Consultant and/or the Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.
- I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with the Town's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.



# EXHIBIT A

## III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

1. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to Town specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to Town what costs would be considered direct costs. Town shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. Town reserves the right to reject any and all requests for General and/or Administrative Markup.

## IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

1. **Adherence to Currently Adopted Town Travel Policy** – Unless otherwise stated within this Agreement, reimbursements shall be governed by the same travel policies provided for Town employees according to current adopted policy. All lodging and meals are reimbursed in accordance with IRS rules and rates as shown on the U.S. General Services Administration website for the Town: <http://www.gsa.gov/portal/category/21287>.
2. Prior to the event, Consultant shall request, and the Town shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

# EXHIBIT A

## EXHIBIT "D" TOWN OF ADDISON PROFESSIONAL SERVICES/CONSULTANT INSURANCE GUIDELINES

### REQUIREMENTS

Contractors performing work on CITY OF ADDISON property or public right-of-way shall provide the CITY OF ADDISON a certificate of insurance or a copy of their insurance policy(s) (and including a copy of the endorsements necessary to meet the requirements and instructions contained herein) evidencing the coverages and coverage provisions identified herein within ten (10) days of request from CITY OF ADDISON. Contractors shall provide CITY OF ADDISON evidence that all subcontractors performing work on the project have the same types and amounts of coverages as required herein or that the subcontractors are included under the contractor's policy. Work shall not commence until insurance has been approved by CITY OF ADDISON.

All insurance companies and coverages must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must have a A.M. Best's rating A-:VII or greater.

Listed below are the types and minimum amounts of insurances required and which must be maintained during the term of the contract. CITY OF ADDISON reserves the right to amend or require additional types and amounts of coverages or provisions depending on the nature of the work.

TYPE OF INSURANCE	AMOUNT OF INSURANCE	PROVISIONS
1. <b>Workers' Compensation Employers' Liability</b> to include: (a) each accident (b) Disease Policy Limits (c) Disease each employee	Statutory Limits per occurrence  Each accident \$1,000,000 Disease Policy Limits \$1,000,000 Disease each employee \$1,000,000	<b>CITY OF ADDISON to be provided a <u>WAIVER OF SUBROGATION AND 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII rated or above.</b>
2. <b>Commercial General (Public) Liability</b> to include coverage for: a) Bodily Injury b) Property damage c) Independent Contractors d) Personal Injury e) Contractual Liability	Bodily Injury/Property Damage per occurrence \$1,000,000, General Aggregate \$2,000,000 Products/Completed Aggregate \$2,000,000, Personal Advertising Injury per occurrence \$1,000,000, Medical Expense 5,000	<b>CITY OF ADDISON to be listed as <u>ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII rated or above.</b>
3. <b>Business Auto Liability</b> to include coverage for: a) Owned/Leased vehicles b) Non-owned vehicles c) Hired vehicles	Combined Single Limit \$1,000,000	<b>CITY OF ADDISON to be listed as <u>ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A:VII-rated or above.</b>

# EXHIBIT A

Certificate of Liability Insurance forms (together with the endorsements necessary to meet the requirements and instructions contained herein) may be **faxed** to the Purchasing Department: **972-450-7074** or **emailed to: [purchasing@addisontx.gov](mailto:purchasing@addisontx.gov)**. Questions regarding required insurance should be directed to the Purchasing Manager.

With respect to the foregoing insurance,

1. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the City of Addison.
2. All insurance policies shall be endorsed to require the insurer to immediately, or no later than thirty (30) days, notify the City of Addison, Texas of any material change in the insurance coverage.
3. All insurance policies shall be endorsed to the effect that the City of Addison, Texas will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name the City of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
5. Insurance must be purchased from insurers that are financially acceptable to the City of Addison and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Upon request, Contractor shall furnish the City of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

This form must be signed and returned with your quotation. You are stating that you do have the required insurance and if selected to perform work for CITY OF ADDISON, will provide the certificates of insurance (and endorsements) with the above requirements to CITY OF ADDISON within 10 working days.

**A CONTRACT/PURCHASE ORDER WILL NOT BE ISSUED WITHOUT EVIDENCE AND APPROVAL OF INSURANCE.**

**AGREEMENT**

I agree to provide the above described insurance coverages within 10 working days if selected to perform work for CITY OF ADDISON. I also agree to require any subcontractor(s) to maintain insurance coverage equal to that required by the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

**Project/Bid#** Vitruvian Park – Sediment Removal

**Company:** Nathan D. Maier Consulting Engineers, Inc.

**Printed Name:** Jean Maier Dan

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_



# EXHIBIT A

# EXHIBIT A

## EXHIBIT "E" AFFIDAVIT

THE STATE OF TEXAS

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THE COUNTY OF DALLAS

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I, Jean Maier Dean, a member of Nathan D. Maier Consulting Engineers, Inc., make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

☒

Ownership of 10% or more of the voting shares of the business entity.

☒

Ownership of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.

☒

Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

☐

Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars (\$25,000.00).

☐

A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.

☐

Other: \_\_\_\_\_

☐

None of the Above.

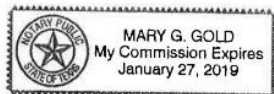
Upon filing this affidavit with the Town of Addison, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this 14 day of June, 2018.

Jean Maier Dean / President  
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared Jean Maier Dean and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.

Sworn to and subscribed before me on this 14th day of June, 2018.



Mary G. Gold  
Notary Public in and for the State of Texas  
My commission expires: 1-27-19

# EXHIBIT A

## EXHIBIT "E" AFFIDAVIT

THE STATE OF TEXAS

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THE COUNTY OF DALLAS

I, Jean Maier Dean, a member of Nathan D. Maier Consulting Engineers, Inc., make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

- ☒ Ownership of 10% or more of the voting shares of the business entity.
- ☒ Ownership of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.
- ☒ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.
- \_\_\_\_\_ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars (\$25,000.00).
- \_\_\_\_\_ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.
- \_\_\_\_\_ Other: \_\_\_\_\_
- \_\_\_\_\_ None of the Above.

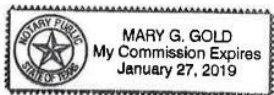
Upon filing this affidavit with the Town of Addison, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this 14th day of June, 2018.

William J. Wallace / Exec. V. Pres.  
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared William J. Wallace and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.

Sworn to and subscribed before me on this 14th day of June, 2018.



Mary G. Gold  
Notary Public in and for the State of Texas  
My commission expires: 1-27-19



# EXHIBIT A

## EXHIBIT "F" CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

### FORM CIQ CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

#### OFFICE USE ONLY

Date Received

1. Name of person who has a business relationship with local governmental entity.

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

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

3. Name of local government officer with whom filer has employment or business relationship.

\_\_\_\_\_  
Name of Local Government Officer

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

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? Yes ☐ No ☐
- B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? Yes ☐ No ☐
- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? Yes ☐ No ☐
- D. Describe each employment or business relationship with the local government officer named in this section.

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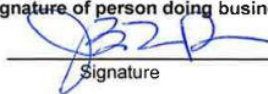
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# EXHIBIT A

## EXHIBIT "F" CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

4. Signature of person doing business with the governmental entity Date:

  
Signature

6/14/2018  
Date

### Local Government Officers Town of Addison, Texas

For purposes of completion of the required Conflict of Interest Questionnaire for the Town of Addison Texas (required by all Vendors who submit bids/proposals), Local Government Officers are:

Mayor: Joe Chow

Council  
Members:

Paul Walden, Council Member  
Tom Braun, Council Member  
Ivan Hughes, Council Member  
Guillermo Quintanilla, Council Member  
Lori Ward, Council Member  
Marlin Willesen, Council Member

City Manager: Wesley S. Pierson

# EXHIBIT A

## EXHIBIT "F" CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

### FORM CIQ CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity

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#### OFFICE USE ONLY

Date Received

1. Name of person who has a business relationship with local governmental entity.

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

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

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Name of Local Government Officer

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


\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# EXHIBIT A

## EXHIBIT "F" CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

4. Signature of person doing business with the governmental entity Date:

  
Signature

6/14/18  
Date

### Local Government Officers Town of Addison, Texas

For purposes of completion of the required Conflict of Interest Questionnaire for the Town of Addison Texas (required by all Vendors who submit bids/proposals), Local Government Officers are:

Mayor: Joe Chow

Council  
Members: Paul Walden, Council Member  
Tom Braun, Council Member  
Ivan Hughes, Council Member  
Guillermo Quintanilla, Council Member  
Lori Ward, Council Member  
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City Manager: Wesley S. Pierson