

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT BETWEEN THE TOWN OF ADDISON AND DSS FIRE, INC., FOR A FIRE ALARM SYSTEM AT THE ADDISON CONFERENCE CENTER IN AN AMOUNT NOT TO EXCEED \$98,500.00, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Agreement between the Town of Addison and DSS Fire, Inc., for an alarm system at the Addison Conference Center in an amount not to exceed \$98,500.00, 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 10th day of July 2018.

Joe Chow, Mayor

ATTEST:

By: _____
Irma Parker, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A

AGREEMENT BY AND BETWEEN THE TOWN OF ADDISON, TEXAS AND DSS FIRE, INC. FOR A FIRE ALARM SYSTEM

This Agreement ("Agreement") is made and entered into this the _____ day of _____, 2018 ("Effective Date"), is by and between the Town of Addison, Texas, hereinafter called ("Town"), a home rule Texas municipal corporation, and DSS Fire, Inc. hereinafter called ("Contractor").

WITNESSETH:

WHEREAS, the Town initiated a request for proposals, attached hereto as Exhibit "A" and incorporated herein for all purposes ("RFP #18-72"), for the installation of a fire alarm system at the Addison Conference Center ("Services"); and

WHEREAS, the Contractor submitted a response to RFP #18-72 to the Town for the provision of these Services, attached hereto as Exhibit "B" and incorporated herein for all purposes ("Response"); and

WHEREAS, the Town has investigated and determined that it desires to hire the Contractor for the Services.

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

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. Scope of Services.

The Contractor shall provide the Services upon the terms and conditions set forth in the Agreement Documents, hereinafter defined and shall furnish all personnel, labor, equipment, supplies, deliverables and all other items necessary to provide all of the work as specified by the terms and conditions of the Agreement Documents. Contractor will perform the Services with the degree of skill and diligence normally practiced by contractors performing the same or similar services.

2. Term.

The term of the Agreement shall commence upon the Effective Date and the Services described in the Agreement Documents shall be completed no later than September 15, 2018, at which time this Agreement shall terminate. This Agreement may not be renewed.

The Contractor recognizes that the Agreement shall commence upon the Effective Date and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any Agreement after the close of any given fiscal year of the City, which fiscal year ends on September 30th of each year, shall be subject to City Council approval. In the event that the City Council does not approve the appropriation of funds for the Agreement, the Agreement shall terminate at the

end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder. Agreement may be terminated by the City at any time upon providing Contractor thirty (30) days written notice of the termination date.

3. Termination.

This Agreement may be terminated for any reason or for no reason whatsoever, by the terminating party giving the non-terminating party at least thirty (30) days written notice of such termination. Upon termination, Contractor shall be paid in accordance with the terms provided herein, unless Contractor is in breach.

If any party fails to perform any of its obligations under the Agreement Documents, such failure shall constitute a default. The non-defaulting party may give the defaulting party written notice of the default. The defaulting party shall have ten (10) business days after the receipt of such notice in which to cure the default. Failure to cure the default shall constitute a breach of this Agreement. In the event of a breach, the non-breaching party may terminate this Agreement and may obtain any reasonable remedy provided by law.

Upon the termination or expiration of this Agreement, Contractor shall transfer, assign and make available to City, or City's representative, all documents, records, reports, studies, and information, and all ideas and concepts, (whether kept electronically, in writing, or otherwise) prepared by or for Contractor under or in connection with this Agreement. The same shall be promptly delivered to City, and all of City's property and materials in Contractor's possession or control belonging to City. The obligations in this subsection shall survive the expiration or termination of this Agreement.

4. Agreement Price; Payment Terms and Insurance.

In exchange for those services described in the Agreement Documents, the City agrees to pay Contractor an amount not to exceed Ninety-Eight Thousand Five Hundred and no/100s (\$98,500.00).

On or before the 10th day of each month, Contractor shall submit to City an invoice for the Services provided by Contractor during the immediately preceding month. Each invoice shall be form and content satisfactory to City and shall, among other things, include: (i) a specific description of the Services; (ii) such documentation and information as City may require to verify the accuracy of the invoice; and (iii) the sum of all prior payments under this Agreement and the balance remaining that may be charged to the Services. Charges not in dispute shall be paid within thirty (30) days of receipt of invoice.

The Contractor shall comply with the insurance requirements set forth in RFP #18-72.

6. Agreement Documents.

The "Agreement Documents", as that term is used herein, shall include the following documents, and this Agreement does hereby expressly incorporate same herein as fully as if set forth verbatim in the Agreement.

- a. This Agreement;
- b. Town of Addison RFP #18-72, attached hereto as **Exhibit "A"**; and

- c. Contractor Response to RFP #18-72, attached hereto as **Exhibit "B"**.

This Agreement shall incorporate the terms of all attachments in their entirety. To the extent that **Exhibit "A"** or **Exhibit "B"** are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, the provisions of **Exhibit "A"**, and then the provisions of **Exhibit "B"**, shall prevail in that order.

7. Entire Agreement.

The Agreement Documents contain the entire agreement of the parties with respect to the matters contained herein. All provisions of the Agreement Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to the Agreement Documents shall be made except upon the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement Documents except as specifically provided for in such amendment.

8. Counterparts.

This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

9. INDEMNIFICATION.

CONTRACTOR, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES (COLLECTIVELY REFERRED TO AS "CONTRACTOR" FOR PURPOSES OF THIS SECTION), AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, COUNCIL MEMBERS, REPRESENTATIVES, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, INJURIES (INCLUDING DEATH) LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) ARISING DIRECTLY OR INDIRECTLY OUT OF THE OPERATION OR PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT. THE CITY WILL NOT ACCEPT LIABILITY FOR INJURIES THAT ARE THE RESULT OF THE NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION OF CONTRACTOR. CONTRACTOR AGREES TO ACCEPT LIABILITY FOR INJURIES TO ITSELF OR OTHERS CAUSED BY ITS OWN NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION. THIS INDEMNIFICATION PROVISION IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY 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 CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONTRACTOR, 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.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CITY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CITY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND OWNER SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

10. Venue.
This Agreement shall be constructed under and in accordance with the laws of the State of Texas and venue shall be in Dallas County, Texas.
11. Binding Effect.
This Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.
12. Ordinances.
Except as specifically provided in the Agreement Documents, the parties agree that Contractor shall be subject to all Ordinances of the City, whether now existing or in the future arising.
13. Authority to Execute.
The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and 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 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.
14. Assignment.
This Agreement may not be assigned without the written agreement of both parties.

15. Sovereign Immunity.

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

16. Notice.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to: DSS Fire, Inc.
ATTN: Mitchell Stamps
2602 National Place
Garland, TX 75041

If to Town, to: Town of Addison
Attn: City Manager
5300 Belt Line Road
Dallas, Texas 75254

17. Severability.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. Representations.

Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its legal counsel.

19. Force Majeure.

If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the

amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any such delay resulting from such "force majeure" event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a "force majeure" event causing such delay and the other party shall not otherwise be aware of such "force majeure" event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

20. Independent Contractor. The relationship between the Town and the Contractor is that of independent contractor, and the Town and the Contractor by the execution of this Agreement do not change the independent status of the Contractor. The Contractor is an independent contractor, and no term or provision of this Agreement or action by the Contractor in the performance of this Agreement is intended nor shall be construed as making the Contractor the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.
21. No Boycott of Israel. Pursuant to Texas Government Code Chapter 2270, Contractor's execution of this Agreement shall serve as verification that the Contractor does not presently boycott Israel and will not boycott Israel during the term of this Agreement.
22. 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. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures and seals on this the ____ day of _____, 2018.

TOWN OF ADDISON, TEXAS
a Texas municipality

By: _____
Wesley S. Pierson, City Manager

Date: _____

DSS FIRE, INC.

By: _____

Print Name: Mitchell Stamps

Title: Vice President of Sales

Date: 7/02/2018

STATE OF TEXAS §
 §
COUNTY OF Name §

BEFORE ME, the undersigned authority, on this day personally appeared **Wesley S. Pierson** known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me he is the duly authorized representative for the **Town of Addison, Texas** and he executed said instrument for the purposes and consideration therein expressed.

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 §
 §
COUNTY OF Dallas §

BEFORE ME, the undersigned authority, on this day personally appeared **Mitchell Stamps** known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to he is the duly authorized representative for _____ and he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2nd day of July, 2018.



Notary Public in and for the State of Texas
My Commission Expires: 05/23/2021



EXHIBIT "A"

RFP #18-72

(a copy of RFP #18-72 is on file in the Office of the City Secretary)

EXHIBIT "B"

Contractor Response to RFP #18-72

(a copy of Contractor's Response to RFP #18-72 is on file in the Office of the City Secretary)