

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 KLEINFELDER, INC, FOR DESIGN, BID, AND CONSTRUCTION PHASE SERVICES ASSOCIATED WITH THE CELESTIAL GROUND STORAGE TANK IMPROVEMENTS PROJECT IN AN AMOUNT NOT TO EXCEED \$154,589.00, 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 for Professional Engineering Services between the Town of Addison and Kleinfelder, Inc., for design, bid, and construction phase services associated with the Celestial Ground Storage Tank Improvements Project in an amount not to exceed \$154,589.00, 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 11th day of June 2019.

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
KLEINFELDER, INC. (CONSULTANT)
FOR
PROFESSIONAL ENGINEERING SERVICES**

Made as of the _____ day of _____ in the year 2019,

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

and the Consultant: Kleinfelder, Inc.
 7805 Mesquite Bend Drive
 Suite 100
 Irving Texas 75063
 Telephone: (972) 467-2799

for the following Project: Professional Design and Construction Management
Services of the Rehabilitation of 6.0 MG Celestial
Ground Storage Tank (GST)

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 **Kleinfelder, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Agreement."

WHEREAS, the Town desires to engage the services of the Consultant to provide professional services which shall include, but not be limited to, design and construction services for a ground storage tank 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:

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 service performed or furnished by Consultant under this Agreement will be 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 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 is 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 on a Type of Payment Basis not to exceed **One Hundred Fifty-Four Thousand Five Hundred Eighty Nine and 00/100 Dollars (\$154,589)**, ("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 Seven Hundred Twenty-Nine and 45/100 Dollars (\$7,729.45), 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 Report 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 Seven Hundred Twenty-Nine and 45/100 Dollars (\$7,729.45). 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 Town, and upon receipt of a written request by Town, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for the Town to declare the Contractor in default of the terms and conditions of the agreement. Consultant shall submit his findings in writing to the Town, 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 Town. Town and Consultant agree that if requested by the Town, 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 Town.

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."

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.

Hourly Billable Rates by Position

POSITION	RATE
Senior Project Manager	\$215/Hour
Project Engineer	\$150/Hour
Project Professional	\$145/Hour
Staff Professional II	\$135/Hour
Senior Principal Professional	\$275/Hour
Project Control Specialist II	\$85/Hour
Professional	\$80/Hour
Project Administration I	\$75/Hour
Construction Inspector	\$85/Hour

- 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 (21st) 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 (10th) 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 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.

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 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.

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 Town 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 Town'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

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.

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:

Assistant Director of Infrastructure 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:

Kleinfelder, Inc.
David R. Boes, Area Manager
7805 Mesquite Bend Drive
Irving, Texas 75063

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.

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.
- 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.

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: _____

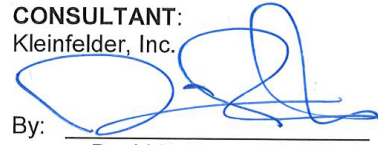
TOWN:
Town of Addison, Texas

By: _____

Lisa Pyles, Director of Infrastructure and Development Services

Date: _____

CONSULTANT:
Kleinfelder, Inc.

By: 

David R. Boes, PG, VP, Area Manager

Date: 05.29.19

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 _____, 2019.

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

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 David R. Bos 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 29th day of May, 2019.

Wanda Janine Green
Notary Public In and For the State of Texas
My commission expires: 1-22-2022

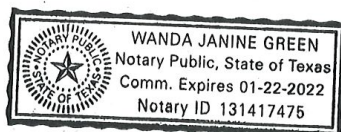


Exhibit "A"
Scope of Services
Agreement by and between the Town of Addison, Texas (Town)
and Kleinfelder, Inc. (Consultant)
to perform Professional Engineering Services for
Rehabilitation of 6.0 MG Celestial Ground Storage Tank (GST)

PURPOSE AND SCOPE OF BASIC SERVICES

The following scope of services describes the detailed tasks that will be performed by Kleinfelder to successfully execute this project.

TASK 1 – PROJECT MANAGEMENT SERVICES

Task 1.1 – Project Management Services

Kleinfelder's project manager will interface with Town of Addison's (Town) project manager on a regular basis. Regularly scheduled monthly meetings will be conducted by the project manager to review schedule, budget, and project coordination issues.

Manage the project scope of work for a period of 10 months, including monitoring schedule and budget, making staff assignments to maintain the project schedule, and general management and coordination of project staff and the Client as described below:

- Prepare a Project Execution Plan. The Project Execution Plan will assemble and document the basic plan and procedures to be followed during the execution of the work and will include the following: project team organization, team contact list, communication protocol, scope of work, budget, quality control procedures, and schedule.
- Project Schedule. The work described herein has been based on the project duration of 10 months that includes the design, construction administration, and construction observation phases. An Microsoft (MS) project schedule will be prepared for this project.
- Monthly Invoice. Prepare and submit monthly invoices including budget status, and expenditures during the previous month with a cover letter detailing items of work being invoiced.
- Regularly scheduled monthly meetings will be conducted by the project manager to review schedule, budget, and technical and departmental coordination issues. Up to six (6) meetings are anticipated for this project.

Task 1.2 - Develop Health and Safety Plan

Kleinfelder will prepare a Health and Safety Plan (HASP) for the site, including a list of project personnel responsible for health and safety, hazard analysis for the anticipated activities, required personal protective equipment, safety programs, emergency response planning, contingency measures and forms. Field personnel will be briefed on the plan and will be provided a copy of the HASP. Kleinfelder's field team will consist of engineering staff and the professional divers.

Task 1.3 - Review Available Information.

Kleinfelder will review the information provided by the Town. Our team may request the following tank information:

- Any available inspection records or photos including previously completed dive reports
- Current site photos of known deficiencies
- Any special access issues at the tank site
- Any known sedimentation issues
- Any maintenance record for the GST

TASK 2 – DESIGN PHASE SERVICES

Task 2.1 – Condition Assessment of Tank

Kleinfelder will complete a condition assessment of the Celestial Tank with a dive inspection of the interior and visual assessment for the exterior. Prior to conducting the condition assessment of the interior, divers and equipment will be disinfected prior to entering the tank. Kleinfelder will furnish all the necessary materials, equipment and labor required to accomplish the disinfection. Disinfection will be performed in accordance with the requirements of AWWA C652 "Disinfection of Water Storage Facilities" and the regulations of the State of Texas.

Our team will:

- Perform an appropriate safety briefing for its staff prior to each site visit.
- Photograph the tank to capture the potential issues which have been observed.
- Perform visual assessment for tank's various asset group. For visual assessment of tank, Kleinfelder will use appropriate personal protective equipment (PPE) and fall protection and ensure that entry into tank is in accordance with the Health and Safety plan.
- Diving operations will be conducted in accordance with:
 - a. OSHA, 29 CFR, 1910 Subpart T – Commercial Diving Operations

b. ADCI, Consensus Standards for Commercial Diving Operations and Underwater Operations

- When diving is performed, a minimum 3-man dive team according to OSHA regulation will perform the inspection. Divers will provide photographic and video graphic documentation with narration of the tank's interior inspection.
- Ensure that all divers and other equipment are disinfected prior to entering the tank.
- Make a visual observation of the GST. The foundation (as observed on the ground); the interior of the tank including the sidewall and floor if no sediment is present; interior columns; the roof structure will be reviewed; and other accessible structural components will be reviewed. For any inaccessible features, photographs will be utilized to review and catalogue the areas. Man lifts, or scaffolding will not be used. Field observations will be compared to record drawings and assessed.
- Review record information collected during Task 1 as a post-condition assessment activity.
- Perform a general evaluation of site security.

The Town's responsibilities include:

- Provide access to Celestial GST for Kleinfelder staff. Kleinfelder's tank inspection team will require support from one Town maintenance staff person, from the time of arrival to completion of the assessment.
- Fill the tank to highest operational level as per the agreed schedule and be ready to isolate the tank from the distribution system during the assessment of the tank if needed.
- Opening guards, or hatches for Kleinfelder to visually evaluate electrical components.
- Disinfection Residual Data of the system, if needed.
- Providing the record drawings, as well as any existing information on the tank.

Task 2.2 – Preliminary and Final Design Services

Kleinfelder will prepare a set of construction drawings, specifications and opinion of probable construction cost for the rehabilitation of the Celestial GST. The Scope of Services anticipated for this task include the following:

- Review of record information provided by the Town.
- Tank roof repair:
 - Coordinate with TCEQ to request for an exception for the existing roof slope.

- Topographical survey for the project site.
 - Topographical survey to locate all visible improvements and features located within the project area
 - Sufficient ground shots at +/- 25-foot grid
 - Establish 3 control points with horizontal/vertical coordinates referenced to the Town survey network
 - Locate trees 4" and greater in diameter within the project area
 - Prepare 3D AutoCAD (.dwg) file with 1-foot contour intervals
- Design Services
 - Coating:
 - Remove the existing grout coating and install new coating system to enhance the roof drainage.
 - Provide coating for the tank exterior and various appurtenances.
 - Structure:
 - Repair spalling and reinforcing corrosion
 - Add material to provide roof slope with positive drainage.
 - Repair Seal Cracking and grout.
 - Safety & Security:
 - Remove site fence and replace with new fencing.
 - Remove existing interior ladder cage.
 - Operational:
 - Extend the sidewalk around the tank perimeter to improve tank assessment access.
 - Provide options (up to two) on the tank drain system and design one of the Client- selected options.
 - Remove and replace the overflow weirs and bolts.
 - Blast and recoat the existing piping
 - Miscellaneous Improvements
 - Site Grading.

Task 2.3 - Preparation of Plans

Intermediate submittals of the construction plans, specifications and contract documents shall be submitted to the Town of Addison at 60%, and 90% completion levels. A maximum of two (2) weeks will be allotted for internal review of the documents by the Town of Addison at each complete level before proceedings to the next level.

Task 2.4 – Design Review Submittals

Submittal	Drawings	Specifications	Opinion of Cost	No. of Copies
60%	Draft	Draft	Preliminary	3
90%	Final	Final	Final	3
Bid Set	Bid Set	Bid Set	Bid Set	3

It has been assumed that Town of Addison will reproduce and distribute drawings and specifications for bidders during the bid phase.

Task 2.5 – Opinion of Probable Construction Cost

Prepare updated opinion of probable construction costs at the 60% and 90% completion stages.

Deliverables

- Three (3) hard copy (11"x17") and one (1) electronic copy of rehabilitation drawings of 60% design level.
- Three (3) hard copy (11"x17") and one (1) electronic copy of rehabilitation drawings of 90% design level.
- Three (3) set of specifications and contract documents will be delivered as part of the 60% and 90% design submittal.
- One (1) set of opinion of probable construction cost will be submitted as part of the 60% and 90% design submittal.

TASK 3 – BID PHASE AND CONSTRUCTION ADMINISTRATION SERVICES

Kleinfelder will provide Bid Phase and construction administration services to include the following:

Task 3.1 – Bid Phase Services

Kleinfelder will attend the pre-bid meeting for the project, prepare meeting notes, log questions for bidders, and prepare up to three (3) addendums. In addition, Kleinfelder will assist the Town in tabulating and comparing the bids, and evaluating bidder qualifications, based on reference verification. It is assumed that Town will advertise for bids, reproduce and distribute contract documents and addendum to plan holders, maintain a list of plan holders, and host the pre-bid meeting.

Task 3.2 – Construction Coordination Meetings

Kleinfelder will attend the pre-construction meetings. Kleinfelder will attend construction meetings with the contractor, subcontractors, and Town staff on a

monthly basis to discuss the progress of the project. Attendance of up to four (4) meetings is included as a part of this scope. These meetings are in addition to those described in Task 1.

Task 3.3 – File Preparation

Kleinfelder will maintain a file of shop drawings with review comments, RFIs, change orders, and other documents processed by Kleinfelder.

Task 3.4 – Shop Drawing Review

Receive and review technical documents submitted by contractor. Submittals will be reviewed by the Kleinfelder for general conformance to the contract documents. Subsequent to Kleinfelder's review, we will return the submittal to the contractor. Kleinfelder will maintain a log of shop drawings that have been submitted, and the disposition. We estimate that approximately eighteen (18) shop drawings submittals will be reviewed.

Task 3.5 – Requests for Information

Review, coordinate with Town staff and respond to contractor's request for information (RFIs). When appropriate, suggestions and alternatives will be provided to the contractor and/or Town staff. A log of RFIs will be maintained. Up to eight (8) RFIs are included as a part of this contract.

Task 3.6 – Contract Change Orders

Analyze and make recommendations to Town staff regarding contractor change orders during the construction phase. Change orders will be evaluated from an engineering perspective. Up to two (2) change order requests are included as a part of this contract.

TASK 4 – RECORD DOCUMENTS

Kleinfelder will provide Record Documents of the work performed as described below.

Task 4.1 Record Documents

Prepare record drawings based on information/red lines supplied by the contractor and Kleinfelder's Project Representative. One (1) hard copy (11"x17") and one (1) electronic copy of record drawings after construction completion will be prepared. Also, copies of RFIs and Change Orders will be provided to the Client.

TASK 5 - CONSTRUCTION OBSERVATION SERVICES

Kleinfelder will provide Construction Observation Services of the work performed as described below.

Task 5.1 – Construction Observation Services

During the rehabilitation construction phase, Kleinfelder will provide a project representative meeting the Town of Addison requirements to perform periodic field visits and construction observation services for four (4) months (5 hrs. per day, including travel and reporting, for 3 days a week) of the duration. During the field visits, the project representative will meet with the prime contractor representative to review the overall activities and progress of the project. In a proactive manner, we intend to identify potential issues that may impede project progress or potentially add cost to the successful completion of the project. If there are any issues identified, they will be discussed with the contractor to manage both the schedule and cost through project completion. The actual cost for field inspection may vary from our estimate due to factors beyond our control. We will coordinate closely with the Town during the construction and keep you apprised of the actual effort expended versus our projections. Several observations are required during the construction phase, and include the following:

- Visual assessment and documentation of existing tank conditions;
- Review of products delivered to the project site (quantity, type, and quality);
- Monitoring the roof repair process for project specific requirements;
- Review of contractor construction practices to determine if the roof repair may be adversely affected (such as construction sequence and other improvements).

Because the duties of the field representative vary from day to day, and sometimes from hour to hour, the primary field representative with construction observation experience will be on site. Weekly reports with daily entries will be generated and provided to the Client to document the onsite quality assurance program.

ADDITIONAL SERVICES

The following services are not included in the *Scope of Basic Services* and will be considered as *Additional Services*, if and when they are required or requested:

- The services of specialty sub-consultants or other special outside services other than those described in the above Scope.
- Assessment of third-party communication systems installed on the tanks.

- Any construction material testing.
- Costs, including equipment replacement, associated with decontamination of personnel/equipment as a result of encountering hazardous/toxic materials at site.
- No Hydraulic modeling is included in this proposal.
- Meetings, other than those described in the above Scope.
- Additional report copies or submittals; or report revisions after final submission.
- Additional or increased insurance coverage (if available) other than described in the Services Agreement.
- Coordination with regulatory agencies other than described in the above Scope. In an event TCEQ does not approve the roof slope exception then an alternate design option may be discussed with the Town with the additional fee for designing that option.
- Environmental coordination with the regulatory agencies except as described in the above scope.
- Any other services not specifically included in the above Scope.
- Electrical and Instrumentation (SCADA) work is excluded from this proposal.

If Kleinfelder is obligated to prepare for or appear in litigation or arbitration proceedings on behalf of the Owner, Kleinfelder shall receive additional compensation to be mutually agreed upon.

LIMITATIONS

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions and recommendations will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided.

This proposal is valid for a period of Ninety (90) days from the date of this proposal, unless a longer period is specifically required by the Owner in which case that time frame will apply. This proposal was prepared specifically for The Owner and its designated representatives and may not be provided to others without Kleinfelder's express permission.

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

Agreement by and between the Town of Addison, Texas (Town)
and Kleinfelder, Inc. (Consultant)
to perform Professional Engineering Services for
Rehabilitation of 6.0 MG Celestial Ground Storage Tank (GST)

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

Kleinfelder proposes to perform Tasks 1 to 4 for a total lump sum fee in the amount of **\$128,615**. The lump sum fees include applicable labor, overhead, and expenses. Task 5 will be performed on time and materials basis for a total estimated fee of **\$25,974**. The fee breakdown by Task is listed below.

Task 1 – Project Management Services	\$12,600
Task 2 – Design Phase Services	\$79,975
Task 3 – Bid Phase & Construction Administration Services	\$31,560
Task 4 – Record Documents	\$ 4,480
Total Lump Sum Fee	\$128,615
Task 5 – Construction Observation Services (4 months)	\$ 25,974
Total Estimated Project Fee	\$154,589

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 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.

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

REQUIREMENTS

Contractors performing work on TOWN OF ADDISON property or public right-of-way shall provide the TOWN 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 TOWN OF ADDISON. Contractors shall provide TOWN 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 TOWN 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. TOWN 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. Workers' Compensation Employers' Liability 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	TOWN 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.
2. Commercial General (Public) Liability 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	TOWN OF ADDISON to be listed as <u>ADDITIONAL INSURED</u> and provided <u>30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII rated or above.
3. Business Auto Liability to include coverage for: a) Owned/Leased vehicles b) Non-owned vehicles c) Hired vehicles	Combined Single Limit \$1,000,000	TOWN OF ADDISON to be listed as <u>ADDITIONAL INSURED</u> and provided <u>30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII-rated or above.

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. 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 Town of Addison.
2. All insurance policies shall be endorsed to require the insurer to immediately, or no later than thirty (30) days, notify the Town of Addison, Texas of any material change in the insurance coverage.
3. All insurance policies shall be endorsed to the effect that the Town 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 Town 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 Town 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 Town 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 TOWN OF ADDISON, will provide the certificates of insurance (and endorsements) with the above requirements to TOWN 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 TOWN 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 Town accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

Project/Bid# Professional Design and Construction Management Services of the Rehabilitation of 6.0MG Celestial Ground Storage Tank GST).

Company: Kleinfelder, Inc.

Printed Name: David R. Boes

Signature:  **Date:** 05.29.19

EXHIBIT "E"
AFFIDAVIT

THE STATE OF TEXAS

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THE COUNTY OF DALLAS

I, David R. Boes, a member of Kleinfelder 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.

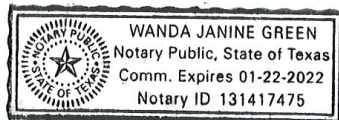
Upon filing this affidavit with the Town of Addison, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this 29th day of May, 2016. 2019

Signature of Official / Title VP, Area manager

BEFORE ME, the undersigned authority, this day personally appeared David R. Boes 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 29th day of May, 2016.

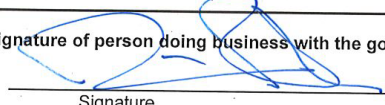


Wanda Janine Green
Notary Public in and for the State of Texas
My commission expires: 1-22-2022

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	
<p><small>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.</small></p>	OFFICE USE ONLY
<p>1. Name of person who has a business relationship with local governmental entity.</p>	<p>Date Received</p>
<p>2. Check this box if you are filing an update to a previously filed question <input type="checkbox"/></p> <p><small>(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.)</small></p>	
<p>3. Name of local government officer with whom filer has employment or business relationship.</p> <p style="text-align: center;"><u>none not applicable</u></p> <p style="text-align: center;"><small>Name of Local Government Officer</small></p> <p><small>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.</small></p> <p>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 <input type="checkbox"/> No <input type="checkbox"/></p> <p>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 <input type="checkbox"/> No <input type="checkbox"/></p> <p>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 <input type="checkbox"/> No <input type="checkbox"/></p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	

EXHIBIT "F"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

4. Signature of person doing business with the governmental entity Date:	
 _____ Signature	<u>05.29.19</u> _____ 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:	Marlin Willesen, Council Member Guillermo Quintanilla, Council Member Lori Ward, Council Member Paul Walden, Council Member Ivan Hughes, Council Member Tom Braun, Council Member
City Manager:	Wesley S. Pierson