

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

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT BETWEEN THE TOWN OF ADDISON AND COBB, FENDLEY & ASSOCIATES, INC. FOR PROFESSIONAL ENGINEERING SERVICES TO THE TOWN OF ADDISON FOR VARIOUS SERVICES AND PROJECTS WITHIN THE TOWN IN AN AMOUNT NOT TO EXCEED \$100,000.00, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

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

**SECTION 1.** The Agreement between the Town of Addison and Cobb, Fendley & Associates, Inc., for professional engineering services to the Town of Addison for various services and projects within the Town in an amount not to exceed \$100,000.00, 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.

**DULY RESOLVED AND ADOPTED** by the City Council of the Town of Addison, Texas, on this the **10<sup>th</sup>** day of **NOVEMBER 2020**.

**TOWN OF ADDISON, TEXAS**

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

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Irma Parker, City Secretary

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

# EXHIBIT A

**AGREEMENT  
BETWEEN  
THE TOWN OF ADDISON, TEXAS (TOWN)  
AND  
COBB, FENDLEY & ASSOCIATES, INC. (CONSULTANT)  
FOR  
PROFESSIONAL ENGINEERING SERVICES**

Made as of the \_\_\_\_ day of \_\_\_\_\_ in the year 2020,

BETWEEN the Town:     The Town of Addison, Texas  
                                  5300 Belt Line Road  
                                  Addison, Texas 75001  
                                  Telephone: (972) 450-7001

and the Consultant:     Cobb, Fendley & Associates, Inc.  
                                  2801 Network Boulevard, Suite 800  
                                  Frisco, Texas, 75034  
                                  Telephone: (972) 335-3214

for the following Project:   **Providing Professional Engineering Services to  
the Town for various services and projects  
within the Town.**

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 **Cobb, Fendley & Associates, Inc.** a Texas corporation, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as the "Agreement." The agreement shall commence on the Effective Date and continue for one (1) year ("Initial Term"). Upon completion of the Initial Term, the Town may, at its sole discretion, elect to renew this Agreement for four (4) additional one (1) year terms (each, individually, the "Renewal Term"). The Town shall provide the Consultant thirty (30) days advance written notice of its intent to renew the agreement prior to the end of the Initial Term or Renewal Term, as applicable.

**WHEREAS**, the Town desires to engage the services of the Consultant to include, but not be limited to, Professional Engineering Services for the Town of Addison, Texas, hereinafter referred to as the "Services"; 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 for the Town. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement.
- 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 as shown in Exhibit "A," in the form of written change orders, may be authorized from time to time by the Town. In the event of a conflict between any term or condition contained in Exhibit "A" and this Agreement, this Agreement shall control.
  - 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 City 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 City Council's authorization for the Addison City 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 CITY 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 Task Order(s), 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, under normal circumstances and standard review times, the Services shall be completed within **the timeline identified in each Task Order.**

- 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 an **Payment Basis** not to exceed **ONE HUNDRED THOUSAND and 00/100 Dollars (\$100,000.00)**, (“Consultant’s Fee”) per year (Initial Term or Renewal Term, as applicable), for the duration of the agreement, and shall be paid in accordance with Article 3. Compensation by the Town to the Consultant for Services shall be on a fixed fee or time & materials basis, as specified in the applicable Task Order. All time shall be billed at the Consultant’s then current labor billing rates. Current billing and labor rates shall be made available to the Town upon request. This agreement contemplates that alternate compensation may be proposed by either Party on a Task Order specific basis, including fixed price, or time and materials tasks, or negotiated rates, which if applicable, shall be specified in the Task Order.
- 3.1.1 **Completion of Final Report** – intentionally omitted.

- 3.1.2 **Disputes between Town and Construction Contractor** – intentionally omitted.
- 3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – intentionally omitted.
- 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 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to the Town. Invoices are to be mailed to Town **monthly** for each individual task listed in Exhibit “A.” 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.
- 3.4 **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.
- 3.5 **Disputed Payment Procedures** – In the event of a disputed or contested billing by Town, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Town shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21<sup>st</sup>) calendar day after the date the Town receives the invoice. Town shall provide Consultant an opportunity to cure the basis

of the dispute. If a dispute is resolved in favor of the Consultant, Town shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the Town, Consultant shall submit to Town a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid Town in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. Town agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

- 3.6 **Failure to Pay** – Failure of the Town to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the Town, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10<sup>th</sup>) calendar day after written notice of suspension was provided to Town, in accordance with Chapter 2251, Subchapter “D” (“Remedy for Nonpayment”) of the *Texas Government Code*. The Town shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.
- 3.7 **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.
- 3.8 **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.

**3.9 Obligations of the Consultant**

3.9.1 GENERAL. Consultant shall serve as Town's professional consultant for all Services in connection with this Agreement and any Task Order between the Parties and shall provide professional consultation and advice and furnish customary services incidental thereto. Consultant shall perform all work hereunder in a manner satisfactory and acceptable to the Town in accordance with the terms and conditions of this Agreement, including the Standard (as defined in Section 3.9.3). Consultant shall perform all Services in a timely and professional manner, utilizing at all times an economical and expeditious manner for performing such Services consistent with the Standard (as defined in Section 3.9.3) and shall cause all Subcontracted Services to be similarly undertaken and performed. No less than monthly (and at any other time as Town may request), Consultant shall keep Town informed, orally or in writing, as to the status of all Services in process. All oral information shall be subsequently confirmed in writing if requested by Town. Notwithstanding anything to the contrary in this Agreement, Consultant is not and shall not be deemed to be an agent of Town for any purpose but shall in all events be an independent contractor exercising control over its work and the manner in which it is performed. Accordingly, except as specifically set forth in this Agreement or a Task Order, (a) nothing in this Agreement or any Task Order shall make Consultant a partner or agent of Town for any purpose, and Town shall not be deemed an agent for Consultant, and (b) neither Consultant nor Town shall have the right or authority to assume, create, or enlarge any obligations or commitment on behalf of the other and shall not represent itself as having the authority to bind the other in any manner. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture or joint enterprise relationship, or to allow Town to exercise discretion or control over the professional manner in which the Consultant performs the Services which are the subject matter of this Agreement or any Task Order; provided always however that the Services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such Services. The method and manner in which Consultant's Services hereunder and under any Task Order shall be performed shall be determined by the Consultant in its sole discretion. The

employees, agents, and representatives of, and the methods, equipment and facilities used by, the Consultant shall at all times be under the Consultant's exclusive direction and control. Upon completion of any documents, drawings, records, plans, reports, designs, specifications, information, or other work product, in whatever form or format (collectively, Work Product), Consultant shall provide to Town two (2) sets of such Work Product for its review and consideration of approval. Notwithstanding Town's approval of or payment for any of such Work Product, Consultant attests that such Work Product, and as the same may be amended or supplemented by the Consultant, shall be sufficient and adequate for the Project for which they are prepared. Notwithstanding Town's approval of or payment for any Work Product, Consultant attests and represents that the same, including as the same may be amended or supplemented by Consultant, per the Standard, shall, to the best of Consultant's knowledge, information and belief as a civil engineer performing the practice of civil engineering in accordance with the standards, duties, and obligations set forth herein, be free from material error, and shall be satisfactory to the Client. In accordance with the Standard, Consultant agrees that if it shall recommend unsuitable materials in connection with any Project or this Agreement or if the design of a Project should be defective in any way, Consultant will assume sole responsibility for any damages, loss, claims, or expenses to the extent caused by Consultant's recommendation of unsuitable materials or defective design. Approval by the Town of, or payment by Town for, any Services or any of Consultant's Work Product pursuant to this Agreement shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its owners, employees, subcontractors, agents and consultants for the accuracy and competency of the same, nor shall such approval or payment be deemed to be an assumption of or an indemnification for such responsibility or liability by the Town for any defect, error or omission in such Documents, it being understood that the Town at all times is ultimately relying on Consultant's skill and knowledge in providing Services and in preparing Work Product. All Work Product shall be professionally sealed as may be required by law, rule, code, or regulation.

3.9.2 AUTHORIZATION TO PROCEED. The Consultant shall not begin work on any Services until the Town directs Consultant in writing to proceed. Unless otherwise specified in a Task Order, each Task Order shall constitute notice and authorization to proceed in connection with the applicable Services.



3.9.3 STANDARD OF CARE; REPRESENTATIONS. The standard of care applicable to Consultant, including Consultant's Personnel, in rendering Services or Subcontracted Services shall be the standard of professional ethics and the degree of skill, care and diligence normally employed by professional engineers performing the same or similar Services or Subcontracted Services in the same locality (Dallas County, Texas) in which the work and services hereunder are being provided (collectively, the Standard). The Consultant shall re-perform and otherwise remedy any Services, including Subcontracted Services, not meeting the Standard without additional compensation. Further, Consultant and all subcontractors shall perform all Services in accordance with any applicable law, rule, regulation or order of any federal, state or local agency having jurisdiction over any matter related to this Agreement that is in effect or effective at the time such Services or Subcontracted Services are performed. Consultant represents that it is authorized to practice civil engineering in the State of Texas and that any necessary licenses, permits or other authorization to practice civil engineering and professional surveying and to provide the Services set forth herein have been heretofore acquired as required by law, rule or regulation. Consultant agrees and acknowledges that Town is entering into this Agreement in reliance on Consultant's professional abilities with respect to performing the Services set forth herein.

#### **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. Use of modified or incomplete documents under this paragraph shall be at Town's risk with no liability to Consultant.

- 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** – Consistent with the terms and provisions of Exhibit “D,” Town of Addison Contractor Insurance Requirements, 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 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. Consultant will provide written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, 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. Consultant will provide written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, 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, and if identified on the checklist located in Exhibit “D,” 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, 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, 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 City Council for approval, then the Consultant shall execute and deliver to the Town the Form 1295 Certificate of Interested Parties, as required by section 2252.908, Texas Government Code, as amended, prior to the 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.

This agreement may be terminated by either party for convenience upon thirty (30) days written notice or for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within five (5) business days of written notice and diligently complete the correction thereafter.

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 CITY 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 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:

**Director of Public Works & Engineering  
Town of Addison, Texas  
16801 Westgrove Dr.  
Addison, Texas, 75001  
Telephone: (972) 450-2849**

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

**Cobb, Fendley & Associates  
J. Cal Bostwick, Executive Vice President  
2801 Network Boulevard, Suite 800  
Frisco, Texas, 75034  
Telephone: (972) 335-3214**

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 “G,” 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.
- 12.1.9 Exhibit "G", CobbFendley Standard Task Order Form
- 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, Consultant's execution of this Agreement shall serve as verification that

the Consultant 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: \_\_\_\_\_  
Wesley S. Pierson, City Manager

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

**CONSULTANT:**  
Cobb, Fendley & Associates, Inc.

By:  \_\_\_\_\_  
J. Cal Bostwick, P.E., Executive Vice President

Date: 10-26-2020

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 \_\_\_\_\_, 2020.

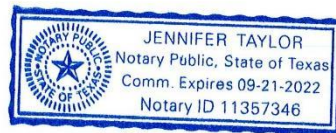
\_\_\_\_\_  
Notary Public In and For the State of Texas  
My commission expires: \_\_\_\_\_

STATE OF Texas                   §  
   §  
COUNTY OF Collin           §

**BEFORE ME**, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared J. M. Bostwick 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 26<sup>th</sup> day of October, 2020.

Jennifer Taylor  
\_\_\_\_\_  
Notary Public In and For the State of Texas  
My commission expires: 09-21-2022



**EXHIBIT "A"**  
**SCOPE OF SERVICES**  
**Agreement by and between the Town of Addison, Texas (Town)**  
**and Cobb, Fendley & Associates, Inc. (Consultant)**  
**to perform Professional Services**

At the Town's request and in the Town's sole discretion, the Town may engage from time to time the Consultant to perform professional engineering Services (as defined in this Exhibit) in connection with a Project. Consultant agrees to perform such Services in accordance with the terms and conditions of this Agreement and with any individual Task Order (as defined in this Exhibit and in Article 1). The Town reserves the right, in its sole discretion, to hire other Consultants for any reason and for any purpose. In performing its professional engineering Services hereunder and in connection with each Project and Task Order, the Consultant shall follow the degree of professional engineering standard of care and skill set forth in Section 3.9.3 of this Agreement.

The Services to be provided by the Consultant shall be as mutually agreed to in separate written Task Orders executed by Town and Consultant (Task Order) in substantially the form attached as Exhibit G. Accordingly, whenever used in this Agreement, the term Services shall mean those services specified in a Task Order and all related work (and including any Subcontracted Services). Each Task Order shall include, directly or by reference, appropriate cost and pricing data and such other documentation as required by the Town. Each Task Order shall be subject to and integrated into this Agreement, and the terms of this Agreement shall be incorporated into and made a part of each Task Order. All Services shall be performed by the employees of Consultant unless otherwise provided in a Task Order. Consultant shall be wholly and solely responsible for any Services or Subcontracted Services provided by any officer, owner, employee, agent, representative, contractor or subcontractor of Consultant (collectively, Consultant's Personnel).

**EXHIBIT "B"**  
**COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET**  
**Agreement by and between the Town of Addison, Texas (Town)**  
**and Cobb, Fendley & Associates, Inc. (Consultant)**  
**to perform Professional Services**



Senior Engineer V or Principal .....	\$295.00/HR
Senior Engineer IV or Project Manager V .....	\$280.00/HR
Senior Engineer III or Project Manager IV .....	\$245.00/HR
Senior Engineer II or Project Manager III .....	\$235.00/HR
Senior Engineer I or Project Manager II .....	\$200.00/HR
Engineer III or Project Manager I .....	\$175.00/HR
Engineer II .....	\$155.00/HR
Engineer I .....	\$130.00/HR
Graduate Engineer .....	\$110.00/HR
Senior Technician III (GIS, Telecom, Utility, CAD, Field) .....	\$170.00/HR
Senior Technician II (GIS, Telecom, Utility, CAD, Field) .....	\$150.00/HR
Senior Technician I (GIS, Telecom, Utility, CAD, Field) .....	\$130.00/HR
Technician III (GIS, Telecom, Utility, CAD, Field) .....	\$105.00/HR
Technician II (GIS, Telecom, Utility, CAD, Field) .....	\$85.00/HR
Technician I (GIS, Telecom, Utility, CAD, Field) .....	\$65.00/HR
Licensed State Land Surveyor .....	\$245.00/HR
Senior Registered Professional Land Surveyor .....	\$215.00/HR
Registered Professional Land Surveyor .....	\$175.00/HR
4 Person Survey Crew .....	\$195.00/HR
3 Person Survey Crew .....	\$175.00/HR
2 Person Survey Crew .....	\$150.00/HR
1 Person Survey Crew .....	\$110.00/HR
2 Person Hy-Drone Crew .....	\$350.00/HR
2 Person UAV Drone Crew .....	\$245.00/HR
Construction Manager III .....	\$290.00/HR
Construction Manager II .....	\$240.00/HR
Construction Manager I .....	\$190.00/HR
Construction Observer III .....	\$160.00/HR

(Continued)

Construction Observer II .....	\$135.00/HR
Construction Observer I .....	\$115.00/HR
Sr. Right-of-Way Agent III or ROW Project Manager III .....	\$260.00/HR
Sr. Right-of-Way Agent II or ROW Project Manager II .....	\$205.00/HR
Sr. Right-of-Way Agent I or ROW Project Manager I .....	\$185.00/HR
Right-of-Way Agent III or ROW Attorney .....	\$165.00/HR
Right-of-Way Agent II .....	\$145.00/HR
Right-of-Way Agent I .....	\$115.00/HR
Right-of-Way Technician .....	\$105.00/HR
Administrative .....	\$110.00/HR
Clerical .....	\$85.00/HR
Field Data Device .....	\$40.00/HR/unit

**SUBSURFACE UTILITY ENGINEERING**

Two-Man Designating Crew (4-Hour Minimum) .....	\$170/HR
One-Man Designating Crew (4-Hour Minimum) .....	\$110/HR
Vacuum Excavation Truck with 2 Technicians (Vac 6000) (4-Hour Minimum) ....	\$315/HR
Vacuum Excavation Truck with 2 Technicians (Vac 3000 & 4000) (4-Hour Minimum) .....	\$295/HR
Ground Penetrating Radar with 1 Technician (4-Hour Minimum) .....	\$260/HR
Traffic Control Officer .....	@ Cost + 10%
Traffic Control (Lane Closures, etc.) .....	To Be Negotiated
Permits (Local, State, etc.) .....	@ Cost + 10%
Designation, Location & Traffic Control Vehicles .....	\$6.50/Mile

**REIMBURSABLE EXPENSES**

Technology Fee (*) .....	\$3.75/HR
Consultant or Specialty Contractor (Outside Firm) .....	@ Cost + 10%
Courier, Special Equipment Rental .....	@ Cost + 10%
Reasonable Out of Town Travel Expenses (Air, Hotel, Rental, etc.) .....	@ Cost
Mileage (Standard Car or Truck) .....	IRS Approved Rate
Per Diem for Out of Town Travel (Per Day/Person) .....	GSA Standard Rate/Day
Title Plant Charges .....	@ Cost + 10%
Other Misc. Expenses Related to the Project .....	@ Cost + 10%

**Professional Services Agreement**  
(CobbFendley – Eng Serv MSA 2020)

(Continued)

In-House Reproduction:

Copies (Up to 11" x 17").....	\$0.15/Each
Color Prints (Up to 11" x 17") .....	\$1.50/Each
Color Prints (Larger than 11" x 17") .....	\$3.00/Sq. Ft.
Bluelines (All Sizes) .....	\$1.00/Each
Bond Prints (All Sizes).....	\$2.00/Each
Mylar Prints .....	\$12.00/Each
Vellum Prints .....	\$9.00/Each

(\*) Technology charges added to each billable man-hour.

**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
<b>Workers' Compensation Employers' Liability</b> to include: (a) each accident (b) Disease Policy Limits (c) Disease each employee	Statutory Limits per occurrence  Each accident \$1,000,000 Disease Policy Limits \$1,000,000 Disease each employee \$1,000,000	<b><u>TOWN OF ADDISON to be provided a WAIVER OF SUBROGATION AND 30 DAY NOTICE OF CANCELLATION or</u></b> material change in coverage. Insurance company must be A-:VII rated or above.
2. <b>Commercial General (Public) Liability</b> to include coverage for: a) Bodily Injury b) Property damage c) Independent Contractors d) Personal Injury e) Contractual Liability	Bodily Injury/Property Damage per occurrence \$1,000,000, General Aggregate \$2,000,000 Products/Completed Aggregate \$2,000,000, Personal Advertising Injury per occurrence \$1,000,000, Medical Expense 5,000	<b><u>TOWN OF ADDISON to be listed as ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION or</u></b> material change in coverage. Insurance company must be A-:VII rated or above.
3. <b>Business Auto Liability</b> to include coverage for: a) Owned/Leased vehicles b) Non-owned vehicles c) Hired vehicles	Combined Single Limit \$1,000,000	<b><u>TOWN OF ADDISON to be listed as ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION or</u></b> 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) shall be submitted to the Finance Department by fax at: (972) 450-7050 or emailed to: [sglickman@addisontx.gov](mailto:sglickman@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. Contractor shall immediately 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#** \_\_\_\_\_

**Company:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

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

EXHIBIT "E"  
AFFIDAVIT

THE STATE OF TEXAS                   §  
   §  
THE COUNTY OF Dallas               §

I, J. Cal Bostwick, a member of the Consultant team, 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: \_\_\_\_\_.
- X 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.

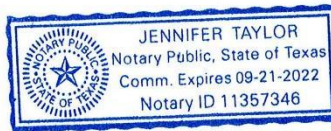
Signed this 26<sup>th</sup> day of October, 2020.

[Signature] Executive Vice President  
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared J. Cal Bostwick 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 26<sup>th</sup> day of October, 2020.

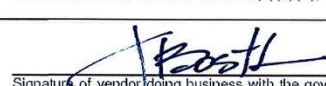
Jennifer Taylor  
Notary Public in and for the State of Texas  
My commission expires: 09-21-2022



Professional Services Agreement  
(CobbFendley – Eng Serv MSA 2020)

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

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor doing business with local governmental entity	<b>FORM CIQ</b>
<p><small>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</small></p> <p><small>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</small></p> <p><small>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 vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</small></p> <p><small>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</small></p>	<b>OFFICE USE ONLY</b>
<p><b>1</b> Name of vendor who has a business relationship with local governmental entity.</p> <p align="center">N/A</p>	<p>Date Received</p>
<p><b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (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 on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>	
<p><b>3</b> Name of local government officer about whom the information is being disclosed.</p> <p align="center">_____</p> <p align="center">Name of Officer</p>	
<p><b>4</b> Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p align="center"> <input type="checkbox"/> Yes      <input type="checkbox"/> No                 </p> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p align="center"> <input type="checkbox"/> Yes      <input type="checkbox"/> No                 </p>	
<p><b>5</b> Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>	
<p><b>6</b> <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>	
<p><b>7</b></p> <p align="center">                       _____                      Signature of vendor doing business with the governmental entity                 </p>	<p align="center">                     10-26-2020                      _____                      Date                 </p>

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 11/30/2015

**Professional Services Agreement**  
 (CobbFendley – Eng Serv MSA 2020)

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

**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:	Lori Ward, Mayor Pro Tem Guillermo Quintanilla, Deputy Mayor Pro Tem Tom Braun, Councilman Ivan Hughes, Councilman Paul Walden, Councilman Marlin Willesen, Councilwoman
City Manager:	Wesley S. Pierson

**EXHIBIT "G"**  
**COBBFENDLEY STANDARD TASK ORDER FORM**

**MASTER SERVICE AGREEMENT (MSA), Task Order No.** \_\_\_\_\_

Pursuant and subject to the above captioned MSA dated \_\_\_\_\_ between \_\_\_\_\_  
and \_\_\_\_\_. CLIENT hereby requests that  
CONSULTANT performs the work described below upon the terms set forth:

**CLIENT PROVIDED INFORMATION:**

Work Site: \_\_\_\_\_

Work to Be Performed: \_\_\_\_\_

Drawings, plans, specifications (are) (are not) attached: \_\_\_\_\_

Date and Time to Commence: \_\_\_\_\_

Date and Time to Complete: \_\_\_\_\_

Equipment, vehicles, tools, materials, supplies to be furnished or obtained through third parties  
by CLIENT (if any): \_\_\_\_\_

Invoice Mailing Instructions: \_\_\_\_\_

Other Requirements or Variance from MSA (if any): \_\_\_\_\_

**CONSULTANT PROVIDED INFORMATION:**

Compensation: \_\_\_\_\_

Scope of Work: \_\_\_\_\_

**ACCEPTANCE:**

The foregoing TASK ORDER is accepted on the terms set forth as indicated by the signatures  
below.

**CONSULTANT**

**CLIENT**

**COBB, FENDLEY & ASSOCIATES, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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