

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR STREET SWEEPING SERVICES BETWEEN THE TOWN OF ADDISON AND SWEEPING SERVICES OF TEXAS – OPERATING, L.P., IN AN AMOUNT NOT TO EXCEED \$90,000, FOR THE CLEANING AND SWEEPING OF CERTAIN STREETS AND MEDIANS WITHIN THE TOWN 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 Street Sweeping Services between the Town of Addison and Sweeping Services of Texas – Operating, L.P., for the cleaning and sweeping of certain streets and medians within the Town in an amount not to exceed \$90,000, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **10th** 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

STATE OF TEXAS §
 § **AGREEMENT FOR STREET SWEEPING SERVICES**
COUNTY OF DALLAS §

This agreement (“Agreement”) is made by and between the Town of Addison, Texas (“Town”), and Sweeping Services of Texas – Operating, L.P. (“Contractor”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the Town desires to engage the services of Contractor as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the Town solicited and accepted bids to establish a fixed price annual requirements agreement for street sweeping services in Bid No. 20-220 (the “RFB”), and the Contractor submitted a Response to the RFB (the “Response”) on or about October 1, 2020 both of which are incorporated herein for all purposes; and

WHEREAS, the Town to desires to select Contractor and engage the services of Contractor for the cleaning and sweeping of certain streets and medians within the Town; and

WHEREAS, the Contractor desires to provide street sweeping services for the Town in accordance with the RFB and as set forth in the Response on the terms and conditions set forth in this Agreement; and

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I Term

1.1 This Agreement shall commence on the last date of execution hereof (the “Effective Date”). The initial term of this Agreement is for a period of one (1) year (the “Initial Term”).

1.2 The Parties may, upon mutual agreement, renew the term of this Agreement under the same terms and conditions set forth herein for four (4) additional terms of one (1) year each (each a “Renewal Term”).

1.3 Either party may terminate this Agreement, with or without cause, by giving thirty (30) days prior written notice to the other Party.

1.4 The Town may terminate this Agreement immediately at any time without prior written notice to the Contractor in the event that funding is no longer available or the Contractor (1) fails to provide documentation of legal status for any worker provided pursuant to this Agreement upon request of the Town; or (2) fails to comply with Federal Immigration Laws. In the event of such termination the Contractor shall be entitled to compensation for any services completed to the reasonable satisfaction of the Town in accordance with this Agreement prior to such termination.

1.5 The Town may serve written notice upon the Contractor and its surety of the Town's intention to terminate this Agreement if: (i) the work done under this Agreement is abandoned by the Contractor; (ii) the Agreement is assigned without the written consent of the Town; (iii) the Contractor is adjudged bankrupt; (iv) a general assignment of the Contractor's assets is made for the benefit of its creditors; (v) a receiver is appointed for the Contractor or any of its property; (vi) the work required under this Agreement is being unnecessarily delayed; or (vii) the Contractor is violating any of the material conditions of the Agreement, or is executing same in bad faith or otherwise not in accordance with the terms of said Agreement. Unless, within ten (10) days after the serving of such notice, a satisfactory arrangement is made for continuance, Contractor shall be deemed in default and the Agreement shall be automatically terminated. In this event, the Town may take over and prosecute the work to completion. If at fault, the Contractor and its surety shall be liable to the Town for all damages, as well as excess costs sustained by the Town, by reason of prosecution and completion of the required work by the Town. This Agreement shall not be an asset of the Contractor in the event that: (i) Contractor is adjudged bankrupt; (ii) a receiver is appointed; (iii) a general assignment for the benefit of the Contractor's creditors is made; or (iv) the Contractor is proven insolvent or fails in business.

Article II **Scope of Service**

2.1 Services. Contractor shall sweep and clean all streets and medians located in the Town as designated on the Bid Schedule in the RFB and the Response. In event of a conflict among this Agreement, the RFB, and the Response, this Agreement, the RFB and Response will control in that order.

2.2 Schedule of Work. Contractor agrees to commence services under this Agreement upon notice to proceed from the Town.

2.3 Labor. Contractor shall at all times observe and comply with all applicable State and Federal labor and immigration laws with respect to performance of work relative to this Agreement.

2.4 Equipment. Contractor shall provide its own equipment, labor, fuel, safety equipment and any other materials necessary to complete the required work. Contractor shall be responsible for the maintenance and repair of its own equipment and the availability, presence, competence and supervision of its employees.

2.5 Incomplete Work. Failure to complete cleaning of less than ninety percent (90%) of the total scheduled curb miles during any cleaning cycle shall result in a penalty of Twenty- Five Dollars (\$25.00) per curb mile for each curb mile not cleaned. Such penalty shall be deducted by the Town from the amount due the Contractor for the period of cleaning during which the deficiency occurs.

2.6 Bonding Requirements. The Contractor must maintain a Performance Bond acceptable to the Town in an amount of Fifty Thousand Dollars (\$50,000.00), in the form provided in the documents meeting the requirements of this Agreement in effect for the duration required by this Agreement. A Performance Bond shall also be required for each subsequent year of the Agreement and shall be presented to the Town by the Contractor not later than Sixty (60) days prior to the anniversary date of the Agreement. The Performance Bond amount required for each subsequent year of the Agreement shall be Fifty Thousand Dollars (\$50,000.00). Performance Bonds provided to the Town by the Contractor shall guarantee the performance of the Contractor under the terms and conditions of the Agreement for services between the Parties.

Article III Compensation and Method of Payment

3.1 Compensation. Payment for street cleaning shall be made by the unit price per curb mile cleaned as set forth in the Bid Schedule in the Response, contract value will be \$90,000 (\$74,579.07 for scheduled service & \$15,420.93 for contingency extra sweeping). The Town will pay Contractor no later than thirty (30) days from the date invoice is received. The Contractor shall submit an invoice to the Town each month for services performed pursuant to this Agreement. The Town shall remit payment to the Contractor within thirty (30) days after receipt of the monthly invoice from the Contractor.

3.2 Estimates. Quantities specified in the RFB are estimates only of the projected annual requirements. Quantities may be increased beyond the estimated quantities listed in the RFB, as necessary, provided funding is available. The Town is not obligated to pay for or use a minimum or maximum amount of services. The Contractor shall have no claim against the Town for anticipated profits for the estimated quantities listed, diminished, or deleted.

3.3 Price Adjustment. The unit prices specified in the Response shall be firm for the first annual period of this Agreement. If the option to renew for additional one-year period(s) is exercised by the Town, a price adjustment upward (or downward) may be requested by the Contractor. Contractor shall submit a written request for price adjustment and such request shall include the new unit price(s) and the basis for the determination. The index published for the month of November 2020 shall be used as a base for determining price adjustment(s). The index for the month of November for each subsequent renewal period shall be used in determining the adjusted price(s) for the ensuing Renewal Term(s), should renewal option(s) be exercised, and unit price adjustments be requested. Price adjustment shall be determined as follows: Unit price X% change (the point difference between the base index and the subsequent specified index is divided by the beginning index points and multiplied by 100) if the index equals the amount of price change. Whenever a price adjustment is made pursuant to this

clause, the index that was used for computing the most recent price adjustment(s) shall become the new base index for determining further adjustments. There shall be a minimum of at least twelve (12) months between price adjustments. The aggregate of the increase in any unit price shall not exceed 25% of the original unit price.

Article IV
Devotion of Time; Personnel; and Equipment

4.1 The Contractor shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the Town require additional services not included under this Agreement, the Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the Town; and without decreasing the effectiveness of the performance of services required under this Agreement.

4.2 To the extent reasonably necessary for the Contractor to perform the services under this Agreement, the Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Contractor.

Article V
Miscellaneous

5.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

5.2 Assignment. The Contractor may not assign this Agreement without the prior written consent of Town. In the event of an assignment by the Contractor to which the Town has consented, the assignee shall agree in writing with the Town to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

5.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

5.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.5 Amendments. This agreement may be amended by the mutual written agreement of the parties

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

5.7 Independent Contractor. It is understood and agreed by and between the Parties that the Contractor in satisfying the conditions of this Agreement, is acting independently, and that the Town assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the Town. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

5.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for Town:

With Copy to:

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

If intended for Contractor

Attn: Ronnie Kendrix
Sweeping Services of Texas
9000 Trinity Blvd.
Hurst, Texas 76053

5.9 Insurance.

- (a) Contractor shall, during the term hereof, maintain in full force and effect the following insurance: (i) a commercial general liability policy of insurance covering bodily injury, death and property damage including the property of the Town, its officers, contractors, agents and employees (collectively referred to as the "Town") insuring against all claims, demands or actions relating to the work and services provided pursuant to this Agreement with minimum limits on a per project basis of not less than One Million Dollars (\$1,000,000) combined single limit and Two Million Dollars (\$2,000,000) aggregate (per project), including products and completed operations coverage with a minimum aggregate limit of Two Million Dollars

(\$2,000,000) and Personal and Advertising Injury with a minimum per occurrence limit of One Million Dollars (\$1,000,000). This policy shall be primary to any policy or policies carried by or available to the third party; (ii) policy of automobile liability insurance covering all operations of the Contractor pursuant to this Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability; and (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Contractor's employees involved in the provision of services under this Agreement with minimum limits of not less than Five Hundred Thousand Dollars (\$500,000) bodily injury each accident, Five Hundred Thousand Dollars (\$500,000) each employee for illness, and Five Hundred Thousand Dollars (\$500,000) for disease.

- (b) Contractor shall maintain Excess Liability Insurance with a limit of not less than Two Million Dollars (\$2,000,000). Such insurance shall be in excess of the commercial general liability insurance, business auto liability insurance and employer's liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the Town and shall be provided on a "following form basis". Contractor waives all rights against Town, and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the umbrella liability insurance obtained by Town. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG0001.
- (c) The Town shall be Certificate Holder, with the Town named as an additional insured on the Commercial General Liability policy. The insurance certificate shall contain the appropriate additional insured endorsement(s), be attached to the Certificate and the Certificate of Insurance signed by a person authorized by the insurer to confirm coverage on its behalf.
- (d) The commercial liability and workers compensation insurance policy required by this clause shall be endorsed to waive all rights of subrogation against the Town, its officials, employees and volunteers for losses arising from the activities under this Agreement. Copies of such endorsements shall be attached to the Certificate of Insurance signed by a person authorized by the insurer to confirm coverage on its behalf.
- (e) The Town shall be named as an Alternate Employer under the Workers Compensation policy and a copy of endorsement shall be attached to the Certificate of Insurance signed by a person authorized by the insurer to confirm coverage on its behalf.

- (f) Commercial liability insurance shall be endorsed to name the Town, its officers, and employees as additional insureds as to all applicable coverage. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the Town that indicates the insurance company will provide to the Town at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy.
- (g) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. The insurer must be duly authorized to transact business in the State of Texas. The commercial liability and workers compensation insurance policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the Town.
- (h) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted prior to commencement of services. On every date of renewal of the required insurance policies, the Contractor shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the Town. In addition, the Contractor shall within ten (10) business days after written request provide the Town with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the Town is a condition precedent to the payment of any amounts due to Contractor by the Town. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

5.10 Indemnification. TOWN SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF THE CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST TOWN, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "TOWN INDEMNITEES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE (OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF TOWN OR BREACH OF TOWN'S OBLIGATIONS HEREUNDER). CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS TOWN INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF ALL THIRD PARTY PROPERTY TO THE EXTENT CAUSED BY THE CONTRACTOR'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS

OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE TOWN INDEMNITEES, IN WHOLE OR IN PART, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY TOWN INDEMNITEES ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION). THE CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT.

THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

5.11 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all the Parties hereto.

5.12 Debarment and Suspension. In accordance with 2 CFR section 180.300, the Contractor certifies that the Contractor, its directors, shareholders, officers or employees are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Texas, or any of its departments or agencies. If during the term of this Agreement, the Contractor, its directors, shareholders, officers or employees becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the Contractor shall immediately provide notification thereof to Town. The certification in this section is a material representation of fact relied upon by the Town in entering this Contract.

(Signature Page to Follow)

EXECUTED this _____ day of _____, 2020.

Town of Addison, Texas

By: _____
Wesley Pierson
City Manager

ATTEST:

By: _____
Irma Parker
City Secretary

APPROVED:

By: _____
Brenda McDonald, City Attorney

EXECUTED this 30th day of October, 2020.

Company Name

By: 

Name: IAN HALL

Title: PRESIDENT

EXHIBIT A

TERMS AND CONDITIONS

1. **F.O.B. DAMAGE:** Goods shall be F.O.B. Delivered, designated Municipal Facility, Town of Addison, Texas, and shall include all delivery and packaging costs, unless otherwise specified on purchase order. The Town of Addison assumes no liability for goods delivered in a damaged or unacceptable condition. Contractor shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the Town of damage.
2. **QUANTITIES:** In the case of annual estimated requirements contract, the Town of Addison reserves the right to increase, decrease or delete any item or items of material to be furnished. The successful Contractor shall have no claim against the Town for anticipated profits for the quantities called for or diminished or deleted. If the quantities of materials to be furnished are increased, such increase shall be paid for according to the unit prices established for the item.
3. **SPECIFICATIONS:** Town of Addison has included as part of this contract detailed specifications either on the purchase order, bid continuation form or referenced and attached as separate sheets. Any catalog number, brand name or manufacturer's reference used is descriptive, not restrictive, and is indicative of the type and quality the Town desires to purchase.
4. **CONTRACT PERIOD:** In the case of annual estimated requirements contract, the contract shall be for a predetermined period as specified in solicitation.
5. **RENEWAL OPTIONS:** In the case of annual estimated requirements contract, if a clause for option to renew for additional period(s) is (are) included, renewal(s) will be based solely upon the option and agreement between both the Town of Addison and the Contractor. Either party dissenting will terminate the contract in accordance with its initial specified term.
6. **PAYMENT TERMS:** Payment terms are NET 30 unless otherwise specified on purchase order.
7. **INVOICES:** Invoices may be submitted by the Contractor to the Town of Addison Service Center 16801 Westgrove Drive Addison, Texas 75001, or may be submitted electronically to pweir@addisontx.gov.
8. **TAXES:** The Town of Addison is exempt from Federal Excise and State Sales taxes. TAX MUST NOT BE INCLUDED ON INVOICE. Tax exemption certificates will be executed by the Town and furnished upon request.
9. **DELIVERY PROMISE - PENALTIES:** Consistent failure of a Contractor to meet delivery promises without valid reason may cause cancellation of contract and removal from the vendors' list. When delivery delay can be foreseen, the Contractor shall give prior notice to the I.D.S. - Street Department, which shall have the right to extend the delivery date, if reasons for delay appear acceptable. The Contractor must always keep the Stormwater Department advised as to the status of the order. Default in promised delivery, without acceptable reasons, or failure to meet specifications, authorizes the Street Department to purchase goods elsewhere and charge any increase in cost and handling to the defaulting contractor. Every effort will be made by the Street Department to locate the goods at the same or better price as that originally contracted.
10. **PACKAGING:** Unless otherwise indicated, items provided by Contractor will be shipped new, unused, in first class condition, and in containers suitable for damage-free shipment and storage.
11. **TITLE AND RISK OF LOSS:** The title and risk of loss of goods shall not pass to the Town of Addison until the Town receives and takes possession of the goods at the point(s) of delivery.
12. **PLACE OF DELIVERY:** The place of delivery shall be that set forth in the purchase order. The terms of the agreement are "no arrival, no sale".
13. **DELIVERY TIMES:** Deliveries of goods will be accepted only during normal working hours, i.e., 8:00 a.m. - 5:00 p.m. Monday - Friday
14. **PATENT RIGHTS:** The Contractor agrees to indemnify and hold the Town harmless from any claim involving patent right infringement or copyrights on goods supplied.
15. **FUNDING:** The Town of Addison is a home-rule municipal corporation operated and funded on an October 1 to September 30 basis; accordingly, the Town reserves the right to terminate, without liability to the Town, any contract for which funding is not available.
16. **ASSIGNMENT:** The Contractor shall not sell, assign, transfer or convey this contract in whole or in part without the prior written consent of the Purchasing Department.
17. **CHANGE ORDERS:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the Town of Addison.
18. **CONTRACTOR SHALL** indemnify the Town of Addison, its officers, agents, contractors and employees (collectively referred to herein as the Town) in accordance with the terms of indemnification set forth in the applicable bid specifications or when not set forth in the bid specifications, the contractor is required to and shall to the fullest extent allowed by Texas law, defend, indemnify and save harmless the Town of Addison, Texas, its officers, agents, contractors and employees (collectively referred to herein as the Town) from all suits, actions, or other claims of any nature, name and description brought forth or on account of any claims, injuries or damages, actual or alleged, as a result of the execution or performance of contractor, its agents, employees, subcontractors, or suppliers under this purchase order contract or any future contract which may result from this bid award, except when caused by the negligence or willful actions of the Town. Contractor shall pay any judgment with cost which may be obtained against the Town arising from or growing out of such injury or damages.
19. **TERMINATION FOR DEFAULT:** The Town of Addison reserves the right to enforce the performance of this contract in a manner prescribed by law or deemed to be in the best interest of the Town in the event of breach or default on this contract. The Town reserves the right to terminate the contract immediately in the event the Contractor fails to: 1) meet delivery schedules, or 2) otherwise perform in

accordance with specifications. Breach of contract of default authorizes the Town to purchase elsewhere and charge the full increase in cost and handling to the defaulting contractor.

20. **FORCE MAJEURE:** If, by any reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this agreement, then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any Civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonable within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that and Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.
21. **REMEDIES:** The Contractor and the Town of Addison agree that each party have all rights, duties, and remedies available as stated in the Uniform Commercial Code.
22. **VENUE:** This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Dallas County, Texas.
23. **PROHIBITION AGAINST PERSONAL FINANCIAL INTEREST IN CONTRACTS:** No officer or employee of the Town shall have financial interest, direct or indirect, in any contract with the Town, or be financially interested, directly or indirectly, in the sale to the Town of any land, materials; supplies or services, except on behalf of the Town and any officer or employee guilty thereof shall there by forfeit such person's office or position. Any violation of this section, with the knowledge, expressed or implied, of the person or corporation contracting with the City Council shall render the contract involved voidable by the City Manager or City Council.