

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES BETWEEN THE TOWN OF ADDISON AND KLEINFELDER, INC. TO PERFORM MATERIAL TESTING SERVICES AS QUALITY ASSURANCE FOR THE MATERIALS UTILIZED IN THE CONSTRUCTION OF THE MIDWAY ROAD REVITALIZATION PROJECT IN AN AMOUNT NOT TO EXCEED \$225,289.00, 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 for Professional Engineering Services between the Town of Addison and Kleinfelder, Inc., for professional engineering services related to the Midway Road Revitalization Material Testing Project in an amount not to exceed \$225,289.00, 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 **8th** day of **DECEMBER 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
KLEINFELDER, Inc. (CONSULTANT)
FOR
PROFESSIONAL SERVICES**

Made as of the ____ day of _____ in the year 2020,

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

and the Consultant: Kleinfelder, Inc.
 7805 Mesquite Bend Drive, Suite 100
 Irving, Texas 75063
 Telephone: (972) 868-5900

for the following Project: Midway Road Revitalization Material Testing

The Town and the Consultant agree as set forth below.

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

WHEREAS, the Town desires to engage the services of the Consultant to provide professional services which shall include, but not be limited to, Material Testing Services within the Town of Addison, Texas; hereinafter referred to as "Project"; and

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

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

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

**ARTICLE 1
CONSULTANT'S SERVICES**

1.1 **Employment of the Consultant** – The Town hereby agrees to retain the Consultant to perform professional engineering services in connection

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with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement. The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality ("Standard of Care"). Consultant makes no other representation, guarantee, or warranty, express or implied, regarding the Services, or in any communication (oral or written), certification, report, opinion, or instrument of service provided pursuant to 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, including all assumptions and limitations stated therein. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be mutually authorized by the parties from time to time.
 - 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 and the Consultant, 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 receipt of written Notice to Proceed, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B" and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than as identified in Exhibit "A."
- 1.4 **Failure to Meet Established Deadlines** – Consultant acknowledges that time is of the essence in the performance of Services under this Agreement as set forth in the Compensation Schedule / Project Billing / Project Budget attached hereto as **Exhibit "B."**

**ARTICLE 2
THE TOWN'S RESPONSIBILITIES**

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

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

**ARTICLE 3
CONSULTANT'S COMPENSATION**

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Type of Payment Basis not to exceed **Two-Hundred and Twenty-Five Thousand Two-Hundred Eighty-Nine and 00/100 Dollars (\$225,289.00)**, ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B." The total estimated compensation for Consultant's services included in the breakdown by tasks as noted in Exhibit "B" incorporates all labor, overhead, profit, Reimbursable Expenses and Consultant's Subconsultants' charges. Consultant may alter the distribution of compensation between individual tasks of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Town.
 - 3.1.1 **Completion of Final Report** – Town and Consultant agree that the Final Reports shall be completed, submitted to, and accepted by the Town prior to payment of the final five percent (5%) of the Consultant's Fee, **Eleven Thousand Two Hundred Sixty Four and 45/00 Dollars (11,264.45)**. The electronic formatting of all Final Reports shall be consistent with industry standards and the Standard of Care used by contemporary members of Consultant's profession practicing under similar circumstances within the state of Texas.

- 3.1.2 **Disputes between Town and Construction Contractor** – If the Project involves the Consultant performing Material Testing Consulting Services relating to an agreement between a Construction Contractor (the “Contractor”) and the Town, and upon receipt of a written request by Town, Consultant shall research previous and existing conditions of the Project, and provide a Professional Determination whether or not the materials and/or processes delivered by the Contractor are within the limits of the specifications and within the common practices of the work performed. Consultant shall submit his findings in writing to the Town, or submit a written request for a specific extension of time (including the basis for such extension), within ten (10) calendar days of receipt of the written request from the Town. Town and Consultant agree that if requested by the Town, completion of this task shall be included in the Consultant’s Fee and considered to be within the Scope of Services as defined under this Agreement.
- 3.2 **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. Direct expenses are part of the compensation for the Items listed in Exhibit “B” with the exception of items listed in the “Personnel” Heading. Town of Addison Guidelines for Direct Expenses, General and Administrative Markup, and Travel and Subsistence Expenses shall be followed. The Consultant shall be solely responsible for the auditing of all Direct Expenses, including the subcontractors, prior to submitting to the Town for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the Town for errors in submittals for reimbursement may be deducted from the Consultant’s subsequent payment for services; provided, however this shall not be the Town’s sole and exclusive remedy for said overpayment.
- 3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit “A” of this Agreement. If authorized in writing by the Town, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph (“Additional Services”) and shown in the “Personnel” Category in Exhibit “B.” These services may include, but are not limited to:
- 3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit “A.”
- 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit “A.” Drafts or revisions required as the result

of errors or omissions by the Consultant shall not be considered Additional Services, but shall fall within the Scope of Services.

- 3.3.3 Additional copies of final reports and which are not provided for or contemplated in the Scope of Services as described in Exhibit "A".
 - 3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
 - 3.3.5 Compensation for Additional Services authorized by the Town shall be on an hourly basis according to the personnel rates listed in Exhibit "B." The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to Town.
- 3.4 **Invoices** – No payment to Consultant shall be made until Consultant tenders an acceptable invoice to the Town. Invoices are to be mailed to Town on a monthly basis and shall cover all work performed during the month. 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, the items listed in Exhibit "A."
- 3.5 **Timing of Payment** – Town shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by Town to Consultant is considered to be complete upon mailing of payment by Town. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by Town, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Town shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the Town receives the invoice. Town shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, Town shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the Town, Consultant shall submit to Town a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid Town in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. Town agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

- 3.7 **Failure to Pay** – Failure of the Town to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the Town, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to Town, in accordance with Chapter 2251, Subchapter “D” (“Remedy for Nonpayment”) of the Texas Government Code. The Town shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant’s services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant’s compensation shall be equitably adjusted as approved by Town. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of Town in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to Town all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant’s compensation shall be equitably adjusted as approved by the Town. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of the Town** – The Project is the property of the Town, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials delivered under the terms of this agreement 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. All reuse of or reliance on Consultant’s documents outside the intended scope of this Agreement shall be at the Town’s sole risk and without liability or legal exposure 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 as deliverables (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 require the provision of written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.
- 5.2 **Required General Liability Insurance** – Consistent with the terms and provisions of Exhibit “D,” Town of Addison Contractor Insurance Requirements, Consultant shall maintain, at no expense to Town, a general liability insurance policy with a company that maintains a

minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name the Town, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the Town for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to Town at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

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

non-renewal, or material modification of any policies, or ten (10) days for non-payment of premium, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

**ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS**

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to the Town as indicated in Article 3.4.

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

The Consultant agrees that at any time during normal business hours and as often as the Town may deem necessary, Consultant shall make available to representatives of the Town for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the Town to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the Town Charter, which is repeated on the Affidavit, attached hereto as **Exhibit "E"** and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "E." Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

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

If the Agreement is required to go to the 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 material default and/or material 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 after notice and reasonable opportunity to cure has been offered to Consultant. If Town terminates this Agreement and Consultant is not in material default of the Agreement, Consultant shall be entitled to compensation for any and all work completed according to the industry standard of care, and to the satisfaction of the Town in accordance with the provisions of this Agreement prior to termination.

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

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

ARTICLE 9 DISPUTE RESOLUTION / MEDIATION

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

ARTICLE 10 INDEMNITY

CONSULTANT SHALL HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ITS 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 REASONABLE 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

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THIS AGREEMENT AND/OR ARISING OUT OF PROFESSIONAL SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE TOWN (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST TOWN BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. THIS INDEMNIFICATION SHALL EXTEND TO THE PAYMENT OR REIMBURSEMENT OF THE TOWN'S REASONABLE ATTORNEY'S 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.

CONSULTANT'S INDEMNITY AND DEFENSE OBLIGATIONS UNDER THIS ARTICLE 10 ARE LIMITED BY AND TO BE READ AS COMPLYING WITH SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE.

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 address:

Director of Public Works and Engineering Services

Town of Addison
16801 Westgrove Drive
Addison, Texas 75001

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

CONSULTANT

Joel Peters, PE
Kleinfelder, Inc.
Sr. Project Manager
7805 Mesquite Bend Drive, Suite 100
Irving, Texas 75063

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

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

**ARTICLE 12
MISCELLANEOUS**

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

12.1.1 **Exhibit “A,”** Scope of Services.

12.1.2 **Exhibit “B,”** Compensation Schedule / Project Billing / Project Budget.

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

12.1.6 **Exhibit “D,”** Town of Addison Contractor Insurance Requirements.

12.1.7 **Exhibit “E,”** Affidavit.

12.1.8 **Exhibit “F,”** Conflict of Interest Questionnaire, Form CIQ.

12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the Town. The Consultant

further agrees that the assignment or subletting or any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the Town as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

- 12.3 **Successors and Assigns** – Town and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 12.5 **Venue** – This entire Agreement is performable in Dallas County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Dallas County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for an on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

- 12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.11 **Sovereign Immunity** – The parties agree that the Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.14 **No Third Party Beneficiaries** – Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.15 **No Boycott – Israel** – Pursuant to Texas Government Code Chapter 2271, 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.
- 12.16 **Site Access** – Town shall provide unimpeded and timely access to the Project site as may be required by Consultant for the successful and timely performance of the Services, included third party sites.
- 12.17 **Warranty of Title, Waste Ownership** – Consultant will not take title to any hazardous materials found at the Project site. Any risk of loss with respect to all materials shall remain with the Project site owner. Consultant shall not be considered the generator of such materials nor be responsible for the arrangement, transportation, treatment, and/or disposal of any materials. All samples shall remain the property of the Town. Where necessary, the Town shall be responsible to promptly, at its sole cost, remove and dispose of samples, cuttings and hazardous materials.

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:
Kleinfelder, Inc.

By:  _____

Printed Name: David Boes

Title: Vice President/Area Manager

Date: 11-20-2020

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: _____

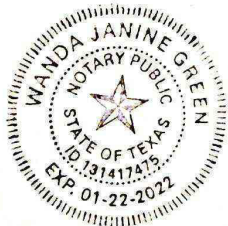
STATE OF Texas §
 §
COUNTY OF Dallas §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared David R. Boes, 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.

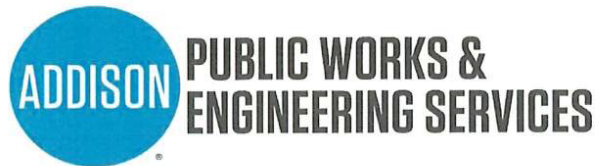
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 20th day of November, 2020.

Wanda Janine Green
Notary Public In and For the State of Texas

My commission expires: 1-22-2022



**EXHIBIT A
SCOPE OF WORK FOR PROFESSIONAL SERVICES CONSTRUCTION MATERIAL
TESTING SERVICES**



This scope provides for Construction Material Testing for the Town of Addison Public Works and Engineering Services Department for professional testing and consulting services.

Firms providing Construction Material Testing services for the Town of Addison must have an established in-house laboratory meeting the standards of the ASTM requirements, whichever may be appropriate for the services proposed.

Firms providing services under this agreement must be qualified, as required by law, to provide the services proposed. Firms providing services under this agreement must be capable of providing the personnel and services indicated in the specific project proposal.

PROFESSIONAL SERVICES REQUIRED

Construction Materials Testing Services

Firms proposing these services shall supply all labor, supervision, installed and consumable materials, equipment, tools, and each and every item of expense necessary for performing laboratory analyses for the City of Dallas (the City), as required herein. The services required to be performed may include inspection, testing or analysis of one or more of the following:

- A. Soils Identification
- B. Compaction and Control Testing
- C. Aggregate Testing
- D. Concrete Testing
- E. Asphaltic Concrete Testing
- F. Coring Services
- G. Structural Steel
- H. Drilled Shaft Inspection
- I. Other Services as Requested

CONSTRUCTION MATERIALS TESTING

All firms proposing to provide Construction Materials Testing Services for the Town of Addison must have an established in-house laboratory and must be capable of providing the personnel and services indicated in the schedule, unless otherwise provided for in these schedules.

The following unit fees shall provide full compensation for all manpower supervision, material, equipment, overhead, profit, and any other costs required to provide these services, F.O.B. including invoice preparation and three copies of the report to the City.

Item 999 – Destination Charge – Covers all personnel and vehicle costs for travel to and from the Project Site. This Item shall also be used for sample pick-up and cylinder pick-up.

Item #	Laboratory Test Description	ASTM/TEX Procedure	Units
DESTINATION CHARGE			
999	Destination Charge (Employee Time and Vehicle Charge)		Lump Sum
SOIL IDENTIFICATION			
200	Atterburg Limits (Liquid and Plastic Limits and PI)	D-4318	Each
201	Atterburg Limits with Lime Additive (Liquid and Plastic Limits and PI)	D-4318	Each
223	Lime / pH Series, 5 Points	C-977	Each
COMPACTION AND CONTROL TESTING			
300	Standard Proctor Test (Moisture-Density Relationship - Proctor Curve)	D-698	Each
301	Modified Proctor Test (Moisture-Density Relationship - Proctor Curve)	D-1557	Each
401	Sieve Analysis (Soil and Aggregate Particle Size through #200 Sieve)	C-422	Each
402	Material Finer than #200 Sieve (% Passing #200 Sieve)	D-1140	Each
403	Moisture-Density Relationship (Proctor Compaction Curve) 4"	D-698	Each
404	Moisture-Density Relationship (Proctor Compaction Curve) 6"	D698 or D-1557	Each
405	Field Density Test (Volumetric) Lab Portion	D-1556 or D-2167	Each
406	Field Gradation Tests (Lime/Cement) (Min. 3/Max. 10/Trip) (Technician/ Tests)		Each
407	Field Lime Depth Check (Min. 3/Max. 10/Trip) (Technician/ Tests)		Each
410	Nuclear Field Density Test (Min 2 / Max 8 Per Trip) (Technician & Tests)	D-2922 or D-3017	Each
411	Continuous Nuclear Field Density Testing (Technician & Tests) (Min 2 Hrs)	D-2922 or D-3017	Hour
411-OT	Continuous Nuclear Field Density Testing (Tech / Tests)(@ Town Request)	D-2922 or D-3017	Hour

AGGREGATE			
500	Sieve Analysis (Aggregate Particle Size)	C-136 or TEX-200-F	Each
501	Specific Gravity Tests of Coarse and Fine Aggregates	C-127 or C-128 TEX-201-F or TEX 202-F	Each
Item #	Laboratory Test Description	ASTM/TEX Procedure	Units
502	Material Finer than #200 Sieve (Decantation)	C-117 or TEX-200-F	Each
503	Unit Weight Determination (Aggregate Unit Weight, Rodding, Jiggling or Shoveling)	C-29 or TEX-200-F	Each
504	Sand Equivalent (Aggregate Quality Test)	D-2419 or TEX-2003-F	Each
520	L.A. Abrasion (Abrasion Resistance)	C-311 or C-535	Each
521	Sulfate Soundness (Soundness of Aggregate by Sodium or Magnesium Sulfate)	C-88	Each
522	TxDOT Wetball Mill (Flexible Base Quality Tests)	TEX-116-E	Each
CONCRETE TESTING			
600	Compression Test (Concrete Cylinders - Test and Hold)	C-31, C-39	Each
602	Compressive Strength Mortar (2" x 2" Cubes)	C-109	Each
603	Concrete Technician (Sampling & Testing Concrete)	C-138, C-143, C-231, C-172, C-173, C-1064	Hour
603-OT	Concrete Technician (Sampling & Testing Concrete) (@Town Request)		Hour
604	Review of Concrete Mix Designs (Review Against Project Specifications)		Lump Sum
610	Windsor Probe Testing (3 Probes Per Test)	C-803	Each
611	Compression and Modulus of Rupture (Brick Prism)		Each
ASPHALT TESTING			
700	Marshall Stability (Stability of Hot Mix Asphalt) 3 Specimens Required	D-1559	Each
701	Hveem Stability (Stability of Hot Mix Asphalt) 3 Specimens Required	TEX-208-F	Each
702	Molding Specimens (Molding Specimens Required for Marshall or Hveem Stability)	D-1559 or TEX-206-F	Each
703	Asphalt Density or Percent Voids (Determining Specific Gravity or Unit Weight of Marshall or Hveem Stability Specimens)	D-2726 or TEX-207-F	Each
705	Extraction/ Gradation (Percent Asphaltic Bitumen and Aggregate Particle Size)	D-2127 or TEX-210-F	Each
708	Max Theoretical Specific Gravity (Specific Gravity of Asphalt Mixture)	TEX-227-F	Each
710	Asphalt Technician (Sampling & Testing Concrete)		Hour

710-OT	Asphalt Technician (Sampling & Testing Concrete) (@Town Request)		Hour
CORING SERVICES (Concrete and Asphalt)			
800	2" Core (Vertical) (Includes Equipment)	C-42	Per Inch
801	4" Core (Vertical) (Includes Equipment)	C-42	Per Inch
802	6" Core (Vertical) (Includes Equipment)	C-42	Per Inch
805	Compressive Test of Concrete Cores	C-39 and C-42	Each
806	Asphalt Density/Percent Voids (Specific Gravity/Unit Specific Gravity/Unit Weight)	D-2726 or TEX-207	Each
807	Coring Technician Time		Hour
807-OT	Coring Technician Time (@ Town Request)		Hour
STRUCTURAL STEEL			
922	Structural Steel Inspector (2 Hour Minimum)		Hour
922-OT	Structural Steel Inspector (2 Hour Minimum) (@ Town Request)		Hour
DRILLED SHAFT INSPECTION			
1100	Drilled Shaft Inspector (2 Hour Minimum)		Hour
1100-OT	Drilled Shaft Inspector (2 Hour Minimum) (@ Town Request)		Hour
Item #	Laboratory Test Description	ASTM/TEX Procedure	Units
PERSONNEL (Separate from Other Item Numbers)			
002	Senior Engineer (As requested by Town)		Hour
003	Staff Engineer (As requested by Town)		Hour
005	Senior Engineering Tech (As requested by Town)		Hour
006	Engineering Tech (As requested by Town)		
006-OT	Engineering Tech (Overtime - As requested by Town)		Hour
007	Clerical (As Requested by Town)		Hour
DC1	Direct Costs (As Requested by Town)		Allowance

Item # Qualifications / Experience Requirements of Personnel

- 002 Senior Engineer - Bachelor of Science in Civil Engineering or Geology from an accredited university, P.E. or equivalent with a minimum of five (5) years of experience.
- 003 Staff Engineer - Bachelor of Science in Civil Engineering or Geology from an accredited university.
- 005 Senior Engineering Technician - Minimum five (5) years of experience in Construction Materials Testing.
- 006 Engineering Technician - Minimum two (2) years of experience in this field.

- 007 Clerical – Hours as Requested.
- DC1 Direct Costs – As Requested. Actual Cost for requested services plus 10%.

Specific requirements as to types, numbers and locations of testing, special conditions and procedures controlling the work will be established by the Town Project Manager on a case by case basis for each location.

Work may include engineering or scientific interpretation, field and laboratory services and reports as required the Town. Any Engineering work must be conducted under the guidance / direction of a licensed professional engineer or other licensed professional as required by the Texas Engineering Practice Act and other governing laws.

II. OTHER REQUIREMENTS

- A. **Laboratory Credentials: Testing laboratories must comply with ASTM E329.**
- B. All Firms must have previous experience on similar services.
- C. All Firms must exhibit availability to perform requested services as needed.
- D. All Firms must be capable to perform services on time.
- E. All laboratory and office facilities are subject to review by the Town of Addison.

III. TESTING REPORTS

The following standard requirements shall govern all testing reports submitted under this agreement unless otherwise directed by the Town Project Manager. Each report issued to the Town shall provide as a minimum:

1. Report Date.
2. The Project Number, Name and Specific Location of the Work.
3. Date of service, Project Title and Limits.
4. Testing Lab Letterhead with Authorized Signature.
5. Report Identification Number, Description, Items performed, Quantity Performed and Location.
6. Test Results.
7. Contract Standards Controlling the Test(s).
8. Compliance or noncompliance with the specifications.
9. Any extenuating circumstances affecting the test(s) or result(s).
10. Include dates and description of service time chargeable to delays, rescheduling and overtime premiums.
11. If manpower is involved, provide names, classification, times and hours.
12. Required report distribution as follows:
 - a. E-mail Report to everyone on the Project List within 24-Hrs. of Results.
 - b. Provide one original of all Test Reports with Monthly Invoice.
13. Identify any and all retests on the Report.
14. Provide receipts for all requested reimbursements under Item DC1

IV. BILLING - INVOICE FORMAT

All invoices for work performed under this price agreement will be required to clearly provide the following:

1. Consultants Monthly Application and Certification for Payment (Form 16-MT).
2. Monthly Invoice Summary Spreadsheet (Matching Exhibit 'B').
3. Copy of Valid Insurance Certificate.
4. List of report numbers and dates for billed charges.
5. Monthly Summary (Item Numbers only listed once).
6. Detailed Summary of work (Listed by Report Number and Date).
7. Test Reports and/or Daily Report Sheets for all work Invoiced.
8. Send Invoice to the Town. (one original and PDF File).

If an Invoice is revised, show the "Revised" and the revision date on the resubmittal. If the Revised Invoice has a different Invoice Number than the Original Invoice, a note must be added to show the Original Invoice Number and that this Revised Invoice replaces the Original Invoice.

EXHIBIT B COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET



MATERIAL TESTING SERVICES Midway Road Revitalization EXHIBIT 'B'

Item #	Laboratory Test Description	ASTM/TEX Procedure	Estimated Quantity	Units	Unit Price	Extension
DESTINATION CHARGE						
999	Destination Charge (Employee Time and Vehicle Charge)		400	Lump Sum	\$ 340.00	\$ 56,000.00
SOIL IDENTIFICATION						
200	Atterberg Limits (Liquid and Plastic Limits and PI)	D-4318	10	Each	\$ 85.00	\$ 850.00
201	Atterberg Limits with Lime Addition (Liquid and Plastic Limits and PI)	D-4318	2	Each	\$ 85.00	\$ 170.00
223	Lime / pH Series, 5 Points	C-977	4	Each	\$ 175.00	\$ 700.00
COMPACTION AND CONTROL TESTING						
300	Standard Proctor Test (Moisture-Density Relationship - Proctor Curve)	D-698	20	Each	\$ 265.00	\$ 5,300.00
301	Modified Proctor Test (Moisture-Density Relationship - Proctor Curve)	D-1557	1	Each	\$ 265.00	\$ 265.00
401	Sieve Analysis (Soil and Aggregate Particle Size through #200 Sieve)	C-422	5	Each	\$ 125.00	\$ 625.00
402	Material Finer than #200 Sieve (W. Passing #200 Sieve)	D-1140	10	Each	\$ 85.00	\$ 850.00
403	Moisture-Density Relationship (Proctor Compaction Curve) 4"	D-698	5	Each	\$ 265.00	\$ 1,325.00
404	Moisture-Density Relationship (Proctor Compaction Curve) 6"	D-698 or D-1557	1	Each	\$ 265.00	\$ 265.00
405	Field Density Test (Volumetric) Lab Portion	D-1556 or D-2167	1	Each	\$ 50.00	\$ 50.00
406	Field Gravimetric Test (Lime/Cement) (Min. 3 & Max. 10 Per Trip) (Technician and Tests)		200	Each	\$ 25.00	\$ 5,000.00
407	Field Lime Depth Check (Min. 3 & Max. 10 Per Trip) (Technician and Tests)		150	Each	\$ 25.00	\$ 3,750.00
410	Nuclear Field Density Test (Min. 3 & Max. 10 Per Trip) (Technician and Tests)	D-2922 or D-3017	500	Each	\$ 40.00	\$ 20,000.00
411	Continuous Field Density Testing (Technician and Tests) (Minimum 2 Hours)	D-2922 or D-3017	80	Hour	\$ 68.00	\$ 5,440.00
411-OT	Continuous Field Density Testing (Technician and Tests) (Overtime Requested by Town)	D-2922 or D-3017	10	Hour	\$ 99.00	\$ 990.00
AGGREGATE						
500	Sieve Analysis (Aggregate Particle Size)	C-336 or TEX-200-F	5	Each	\$ 125.00	\$ 625.00
501	Specific Gravity Tests of Coarse and Fine Aggregates	C-127 or C-128, TEX-200-F or TEX-200-F	2	Each	\$ 85.00	\$ 170.00
502	Material Finer than #200 Sieve	C-117 or TEX-200-F	2	Each	\$ 85.00	\$ 170.00
503	Unit Weight Determination (Aggregate Unit Weight, Rounding, Heaving or Shoving)	C-29 or TEX-200-F	2	Each	\$ 65.00	\$ 130.00
504	Sand Equivalent (Aggregate Quality Test)	D-2419 or TEX-200-F	1	Each	\$ 100.00	\$ 100.00
510	L.A. Abrasion (Abrasion Resistance)	C-311 or C-535	1	Each	\$ 150.00	\$ 150.00
511	Sulfate Soundness (Soundness of Aggregate by Sodium or Magnesium Sulfate)	C-88	1	Each	\$ 150.00	\$ 150.00
512	TxDOT Wetbar MFI (Flexible Base Quality Tests)	TEX-116-F	4	Each	\$ 200.00	\$ 800.00
CONCRETE TESTING						
600	Compression Test (Concrete Cylinders - Test and Hold)	C-39	2250	Each	\$ 26.00	\$ 58,500.00
602	Compressive Strength Mortar (2" x 2" Cubes)	C-109	10	Each	\$ 30.00	\$ 300.00
603	Concrete Technician (Sampling and Testing Concrete)	TEX-116-F or C-308 (Concrete) (Technician and Tests)	500	Hour	\$ 66.00	\$ 33,000.00
603-OT	Concrete Technician (Sampling and Testing Concrete) (Overtime as Requested by Town)		50	Hour	\$ 89.00	\$ 4,450.00
604	Review of Concrete Mix Designs (Review Against Project Specifications)		3	Lump Sum	\$ 500.00	\$ 1,500.00
610	Windsor Probe Testing (3 Probes Per Test)	C-803	5	Each	\$ 30.00	\$ 150.00
611	Compression and Modulus of Rupture (Brick Prism)		2	Each	\$ 220.00	\$ 440.00
ASPHALT TESTING						
700	Marshall Stability (Stability of Hot Mix Asphalt) 3 Specimens Required	D-1559	4	Each	\$ 175.00	\$ 700.00
701	Hveem Stability (Stability of Hot Mix Asphalt) 3 Specimens Required	TEX-208-F	4	Each	\$ 175.00	\$ 700.00
702	Molding Specimens (Molding Specimens Required for Marshall or Hveem Stability)	D-1559 or TEX-208-F	1	Each	\$ 65.00	\$ 65.00
703	Asphalt Density/Proctor Void (Maximum or Minimum) (Maximum or Minimum)	D-3726 or TEX-207-F	10	Each	\$ 60.00	\$ 600.00
705	Extraction/Gradation (Percent Asphaltic Bitumen and Aggregate Particle Size)	D-2127 or TEX-210-F	1	Each	\$ 160.00	\$ 160.00
708	Maximum Theoretical Specific Gravity (Specific Gravity of Asphalt Mixture)	TEX-227-F	1	Each	\$ 150.00	\$ 150.00
710	Asphalt Technician (Sampling and Testing Concrete)		20	Hour	\$ 66.00	\$ 1,320.00
710-OT	Asphalt Technician (Sampling and Testing Concrete) (Overtime as Requested by Town)		2	Hour	\$ 99.00	\$ 198.00

Professional Services Agreement – (Kleinfelder, Midway Road Revitalization Material Testing Services) Page 22
Addison/ USA, Inc.



MATERIAL TESTING SERVICES
Midway Road Revitalization
EXHIBIT 'B'

Item #	Laboratory Test Description	ASTM/TEX Procedure	Estimated Quantity	Units	Unit Price	Extension
CORING SERVICES (Concrete and Asphalt)						
800	2" Core (Vertical) (Includes Equipment)	C-42	250	Per Vertical Inch	\$ 3.38	\$ 845.00
801	4" Core (Vertical) (Includes Equipment)	C-42	180	Per Vertical Inch	\$ 4.40	\$ 792.00
802	6" Core (Vertical) (Includes Equipment)	C-42	20	Per Vertical Inch	\$ 6.60	\$ 132.00
805	Compressive Test of Concrete Cores	C-39 and C-42	10	Each	\$ 78.00	\$ 780.00
806	Asphalt Density/Percent Voidness of Concrete or Asphalt Concrete Slabs or Cores	D-2726 or TEX-207-F	3	Each	\$ 60.00	\$ 180.00
807	Coring Test Includes Time	D-2726 or TEX-207-F	16	Hour	\$ 60.00	\$ 960.00
807-01	Coring Test Includes Time (Overtime Requested by Town)	D-2726 or TEX-207-F	3	Hour	\$ 160.00	\$ 480.00
STEEL TYPICAL STEEL						
922	Structural Steel Inspector (2 Hour Minimum)		4	Hour	\$ 70.00	\$ 280.00
922-01	Structural Steel Inspector (2 Hour Minimum) (Overtime as Requested by Town)		2	Hour	\$ 105.00	\$ 210.00
DRILLED SHAFT INSPECTION						
1100	Drilled Shaft Inspector (2 Hour Minimum)		15	Hour	\$ 66.00	\$ 990.00
1100-01	Drilled Shaft Inspector (2 Hour Minimum) (Overtime as Requested by Town)		4	Hour	\$ 99.00	\$ 396.00
PERSONNEL (Separate from Other Item Numbers)						
002	Senior Engineer (As requested by Town)		15	Hour	\$ 175.00	\$ 2,625.00
003	Staff Engineer (As requested by Town)		10	Hour	\$ 140.00	\$ 1,400.00
005	Senior Engineering Tech (As requested by Town)		20	Hour	\$ 70.00	\$ 1,400.00
006	Engineering Tech (As requested by Town)		20	Hour	\$ 66.00	\$ 1,320.00
006-01	Engineering Tech (Overtime - as requested by Town)		4	Hour	\$ 99.00	\$ 396.00
007	Client (As Requested by Town)		15	Hour	\$ 65.00	\$ 975.00
007-01	Client (As Requested by Town)		1	Allowance	\$ 5,000.00	\$ 5,000.00
PC1	Direct Costs (As Requested by the Town)					
Total						\$ 225,289.00

Proposal Prepared By: Neil Pelton, PE, Sr. Project Manager
 Proposal By (Company Name): Kleinfelder, Inc.
 Signature: [Signature]

Date: 11/20/2020



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

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

II. **GUIDELINES FOR DIRECT EXPENSES.**

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

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

B. **Supplies, Material, Equipment** – Town shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by Town's Project Manager in writing.

C. **Commercial Reproduction** – Town shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to Town at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the Town. Consultant shall provide such documentation to Town for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

D. **In-House Reproduction** - Consultant shall make arrangements with the Town for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. Town shall provide Consultant with a standard format for documenting these charges. Completion of the Town's reproduction log is required as a prerequisite for payment, including the number or reproductions, the

date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

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

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

- 1. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to Town specifically what costs are included in the markup calculation. To apply

General and/or Administrative Markup, Consultant must also document to Town what costs would be considered direct costs. Town shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. Town reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

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

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

REQUIREMENTS

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

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

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

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

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

With respect to the foregoing insurance,

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

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

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

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

AGREEMENT

I agree to provide the above described insurance coverages within 10 working days if selected to perform work for TOWN OF ADDISON. I also agree to require any subcontractor(s) to maintain insurance coverage equal to that required of 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: Midway Road Revitalization – Material Testing

Company: Kleinfelder, Inc.

Printed Name: David R. Boes

Signature:  **Date:** 11-20-2020

EXHIBIT "E"
AFFIDAVIT

THE STATE OF TEXAS §
 §
THE COUNTY OF DALLAS §

I, David R. Boes, a member of Kleinfelder, Inc, make this affidavit and hereby on oath state the following:

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

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

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

Signed this 20th day of November, 2020.

[Signature]
Signature of Official / Title


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

Sworn to and subscribed before me on this 20th day of November, 2020.



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

EXHIBIT "F"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

FORM CIQ CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity	
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	OFFICE USE ONLY
<p>1. Name of person who has a business relationship with local governmental entity. NA</p>	<p>Date Received</p>
<p>2. Check this box if you are filing an update to a previously filed questionnaire. <input type="checkbox"/></p> <p>(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>	
<p>3. Name of local government officer with whom filer has employment or business relationship. NA Name of Local Government Officer</p> <p>This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>4. Signature of person doing business with the governmental entity Date:</p> <p align="center">  _____ Signature </p> <p align="center"> 11-20-2020 _____ Date </p>	

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
Mayor Pro Tempore:	Lori Ward
Deputy Mayor Pro Tempore:	Guillermo Quintanilla
Council Members:	Tom Braun, Council Member Ivan Hughes, Council Member Marlin Willesen, Council Member Paul Walden, Council Member
City Manager:	Wesley S. Pierson