

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 MCKINSTRY ESSENTION, LLC FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO THE EXTENSION OF STAFF SERVICES FOR PLANNING, SCOPING AND SCHEDULING, DESIGN, PROCUREMENT AND PROJECT MANAGEMENT WITHIN THE TOWN IN AN AMOUNT NOT TO EXCEED \$170,000.00, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. The Agreement for Professional Engineering Services between the Town of Addison and McKinstry Essention, LLC, for professional engineering services related to the extension of staff services for planning, scoping and scheduling, design, procurement and project management within the Town in an amount not to exceed \$170,000.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

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

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **13th** day of **APRIL** 2021.

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
MCKINSTRY ESSENTION, LLC (CONSULTANT)
FOR
PROFESSIONAL ENGINEERING SERVICES**

Made as of the ____ day of _____ in the year 2021,

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

and the Consultant: McKinstry Essention, LLC
 5005 3rd Ave. South
 Seattle, Washington 98134
 Telephone: (206) 762-3311

for the following Project: Extension of Staff Services

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 McKinstry Essention, LLC a foreign limited liability company with principle place of business in Seattle, Washington, hereinafter referred as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as the "Agreement."

WHEREAS, the Town desires to engage the services of the Consultant to provide an extension of staff services, which shall include but not be limited to, planning, scoping and scheduling, design, procurement and project management within the Town of Addison, Texas, hereinafter referred to as the "Project"; and

WHEREAS, the Consultant desires to render such professional 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:

Professional Services Agreement
(McKinstry Extension of Staff Services)

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**ARTICLE 1
CONSULTANT'S SERVICES**

- 1.1 **Employment of the Consultant** – The Town hereby agrees to retain the Consultant to provide an extension of staff services, which shall include but not be limited to, planning, scoping and scheduling, design, procurement and project management within the Town. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in **Exhibit A**, which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit “A,” in the form of written change orders, may be authorized from time to time by the Town. In the event of a conflict between any term or condition contained in Exhibit “A” and this Agreement, this Agreement shall control.
- 1.2.1 **Requirement of Written Change Order** – “Extra” work, or “claims” invoiced as “extra” work, or “claims” which have not been issued as a duly executed, written change order by the Addison City Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Addison City Council's authorization for the Addison City Manager to execute said change order.
- 1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE ADDISON CITY MANAGER.** Project Managers, Superintendents, and/or Inspectors of the Town are not authorized to issue verbal or written change orders.
- 1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement and receipt of written Notice to Proceed, and to proceed diligently with said work to completion as described in the Project Management Scope of Work and Fee Schedule 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 **thirteen (13) months from the effective date herein**.
- 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 Project Management Scope of Work and Fee Schedule attached hereto as Exhibit “B.”

**ARTICLE 2
THE TOWN'S RESPONSIBILITIES**

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

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

**ARTICLE 3
CONSULTANT'S COMPENSATION**

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Type of Payment Basis not to exceed **ONE HUNDRED SEVENTY THOUSAND and 00/100 Dollars (\$170,000.00)**, ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Price Proposal set forth in Exhibit "B." **The final five percent (5%) of the Consultant's Fee, or EIGHT THOUSAND FIVE HUNDRED and 00/100 Dollars (\$8,500.00), shall not be paid until the Consultant has completed all of the services described in Exhibit "A" and delivered to the Town all of the documents, plans, data, maps, and/or other information required in Exhibit "A."**
 - 3.1.1 **Completion of Record Documents** – Town and Consultant agree that the completion of all Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the Town prior to payment of the **final five percent (5%) of the Consultant's Fee, or EIGHT THOUSAND FIVE HUNDRED and 00/100 Dollars (\$8,500.00)**. The electronic formatting shall be consistent with the standards established in Town of Addison Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents shall be

included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.

3.1.2 **Disputes between Town and Construction Contractor** – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor (the “Contractor”) and the Town, and upon receipt of a written request by Town, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for the Town to declare the Contractor in default of the terms and conditions of the agreement. Consultant shall submit his findings in writing to the Town, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from the Town. Town and Consultant agree that if requested by the Town, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Where applicable, Consultant shall be responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and to participate in consultation with said agencies in order to obtain all necessary approvals and/or permissions. The Consultant shall be responsible for preparation and timely submittal of documents required for review, approval, and/or recording by such agencies. The Consultant shall be responsible for making such changes in any construction documents as may be required by existing written standards promulgated by such agencies at no additional charge to Town.

3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit “B,” and consistent with **Exhibit C**, Town of Addison Guidelines for Direct Expenses, General and Administrative Markup, and Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing of all Direct Expenses, including the subcontractors, prior to submitting to the Town for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the Town for errors in submittals for reimbursement may be deducted from the Consultant's

subsequent payment for services; provided, however this shall not be the Town's sole and exclusive remedy for said overpayment.

- 3.3 **Invoices** – No payment to Consultant shall be made until Consultant tenders an invoice to the Town. Invoices are to be mailed to Town immediately upon completion of each individual task listed in Exhibit “B.” On all submitted invoices, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.
- 3.4 **Timing of Payment** – Town shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by Town to Consultant is considered to be complete upon mailing of payment by Town. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.5 **Disputed Payment Procedures** – In the event of a disputed or contested billing by Town, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Town shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (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.
- 3.6 **Failure to Pay** – Failure of the Town to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the Town, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance

under this Agreement prior to the tenth (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.

- 3.7 **Adjusted Compensation** – If the Scope of the Project or if the Consultant's services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant's compensation shall be equitably adjusted as approved by Town. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.
- 3.8 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of Town in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to Town all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the Town. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of the Town** – The Project is the property of the Town, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without Town's prior written consent. Town shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 7, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project and promptly furnish the same to the Town in an acceptable electronic format. All such reproductions shall be the property of the Town who may use

them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project.

- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that Town is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the Town and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (*Texas Government Code*, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

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

modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish Town with certificates evidencing such coverage prior to commencing work on the Project.

**ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS**

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to the Town as indicated in Article 3.4. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

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

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

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

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

If the Agreement is required to go to the City Council for approval, then the Consultant shall execute and deliver to the Town the Form 1295 Certificate of Interested Parties, as required by section 2252.908, Texas Government Code, as amended, prior to the Town's execution of this Agreement.

**ARTICLE 8
TERMINATION OF AGREEMENT / REMEDIES**

Town may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If Town terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the Town is required to pay in order to finish the Project. On any default and/or breach by Consultant, Town may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If Town terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of the Town in accordance with the provisions of this Agreement prior to termination.

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

CONSULTANT SHALL PROMPTLY NOTIFY TOWN OF THE DEFENSE COUNSEL RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER, AND TIMELY NOTIFY TOWN OF ANY AND ALL LEGAL ACTIONS TAKEN BY THE DEFENSE COUNSEL REGARDING ANY AND ALL CLAIMS.

THIS ARTICLE SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

**ARTICLE 11
NOTICES**

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

**City Manager
Town of Addison, Texas
5300 Belt Line Rd.
Addison, Texas, 75254
Telephone: (972) 450-7000**

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

**McKinstry Essention, LLC
Quinn Tolbert, Regional Director Technical Services
5005 3rd Ave. South
Seattle, Washington 98134
Telephone: (206) 762-3311**

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

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

**ARTICLE 12
MISCELLANEOUS**

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

12.1.1 Exhibit “A,” Scope of Services.

- 12.1.2 Exhibit "B," Project Management Scope of Work and Fee Schedule
 - 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.

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:
McKinstry Essention, LLC

By: Quinn Tolbert
Quinn Tolbert, Regional Director Technical Services

Date: 4/6/21

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 _____, 2021.

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 Quinn Tolbert, 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 6 day of April, 2021.

[Signature]

Notary Public In and For the State of Texas
My commission expires: 10.12.22

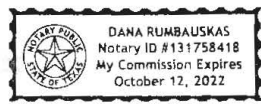
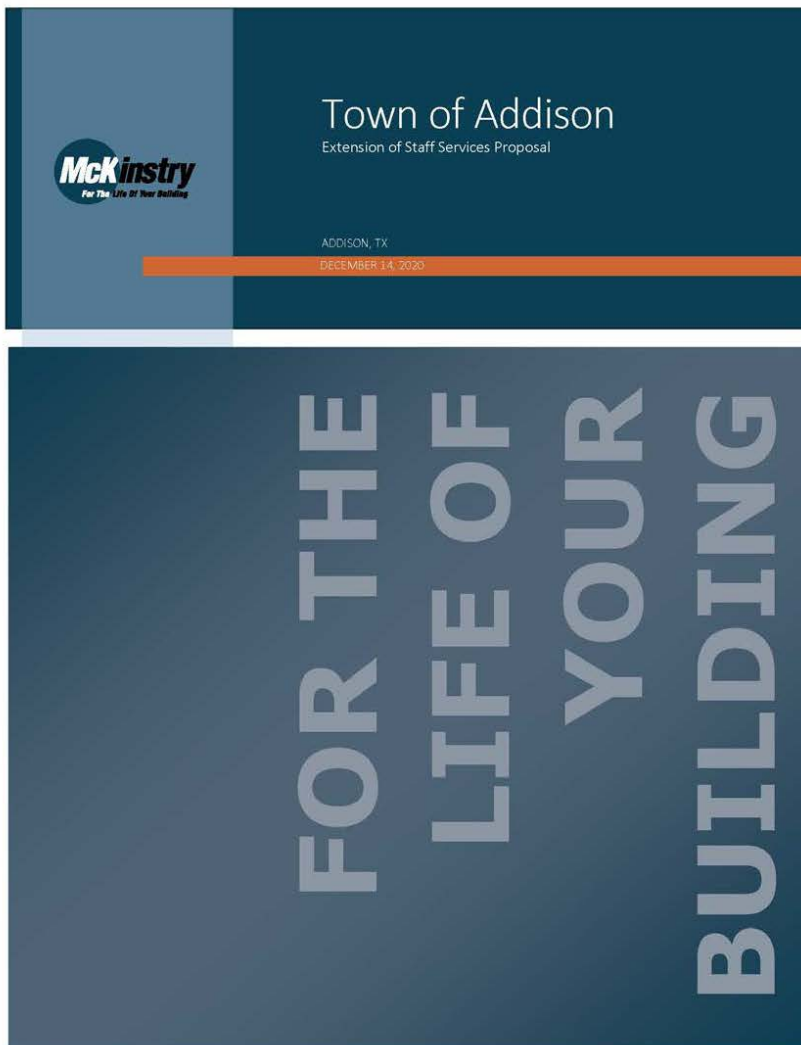
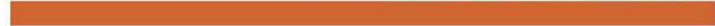
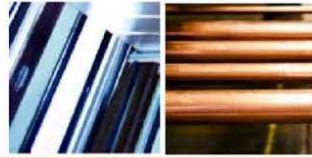


Exhibit "A"
Scope of Services
Agreement by and between the Town of Addison, Texas (Town)
and MCKINSTRY ESSENTION, LLC (CONSULTANT)
to perform Professional Engineering Services for





Contents

1. COVER LETTER 1

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EXTENSION OF STAFF SERVICES PROPOSAL | CONTENTS



Cover Letter



South Region

4201 SPRING VALLEY RD. SUITE 250 • FARMERS BRANCH, TEXAS 75244 • 972.532.4290 • MCKINSTRY.COM

December 9, 2020

Rob Bourestom
Director of General Services
Town of Addison
16801 Westgrove Drive
Addison, TX 75001

RE: Extension of Staff Services Proposal

Dear Mr. Rob Bourestom,

We are delighted at the prospect of providing Extension of Staff Services to the Town of Addison.

We have enclosed a proposal broken down into three phases of work as directed:

1. Phase 1: Planning, Scoping, and Scheduling
2. Phase 2: Design and Procurement
3. Phase 3: Project Management

Our team knows the right practices to keep this project on schedule and within budget while ensuring performance and design intent is met. We will focus on providing a high level of assurance that the building's systems are engineered, installed, and are functioning as designed. This will involve collaboration with the entire project team beginning in the design development phase, extending through the acceptance and close out phases.

We would like to recommend TIPS (The interlocal Purchasing System) as a procurement vehicle to eliminate added stress and cost associated with running a government procurement process. TIPS pre-qualifies vendors for specific contracts through an RFQ/P process, thus allowing the government entity to choose the preferred vendor without any additional procurement. McKinstry has several contract awards through this purchasing cooperative and our recommendation would be to file this project under McKinstry's Consulting and Other Related Services Contract #200601.

We look forward to partnering with The Town of Addison, and we are dedicated to delivery with excellence of your bond projects services through our extension of staff services. If you have any questions or want to discuss our proposal in more detail, you can reach me at 214.755.9664 or douge@mckinstry.com.

Best regards,

Doug Ekstrom, P.E., LEED AP BD+C, CxA
McKinstry Essention, LLC

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EXTENSION OF STAFF SERVICES PROPOSAL | 1



Section
2

Firm Background and Overview

2. Firm Background and Overview

McKinstry Background

For over 60 years, McKinstry has earned a reputation for designing and delivering innovative energy and water efficiency solutions across the United States. Over the last decade, McKinstry performed over \$2.0 billion in energy efficiency construction and consulting projects that were delivered on-time and on budget and reduced energy and water consumption, integrated technologies and systems, and decreased operational costs. We are curious engineers, highly- capable construction professionals and, nimble problem solvers.

In 2009, McKinstry opened our first regional office in Dallas. Our growth in the South Region led us to opening offices in Austin, Houston, and San Antonio, Texas as well as Arkansas, to accommodate our rapidly growing team of over 50 regional engineering and project management experts. Since establishing our South Region presence, McKinstry's South team has entered contracts with over 150 regional clients to provide project management services, energy auditing, sustainability consulting, recommissioning services and/ or turnkey general contracting services for implementation of energy efficiency programs. We are a privately-owned, domestic-only company, with a full suite of services available in our Texas offices. This means no answering to Wall Street stockholders or capital management firms and no expensive international headquarters, research and development costs for products, or large overhead and profit expenses.

Through our growth, we developed a well-earned reputation for collaborative building solutions to ensure occupant comfort, improve systems efficiency, reduce facility operational costs, and optimize resources for a building's entire lifespan. At McKinstry, we take the time to understand your complex and unique needs, and then work to develop a plan that addresses your specific goals. Our consulting process ensures that your personal goals and corporate values are being met throughout every step.

ENGINEERING REVIEW AND RECOMMENDATIONS

Our energy engineering staff is 460 members strong and includes 60 Professional Engineers and 79 LEED®- Accredited Professionals. Our engineering staff has a unique position in the industry as a 60-year-old full-service design, build, operate, and maintain company, which has substantially increased our engineering knowledge capital. Our engineers have access to trades people and construction professionals that allows for a blend of strong engineering with real world construction. We possess the unique in-house capability to review existing designs and make recommendations for improvements.



CONSTRUCTION MANAGEMENT

We assign a dedicated team to deliver all our projects, led by a construction manager. Our construction managers have significant experience and are well versed in the technical tools and planning processes needed to successfully implement construction projects. The construction managers do the following for all projects:

SCHEDULING & PLAN DEVELOPMENT

After a project is approved, McKinstry's first step is to finalize a detailed schedule and work plan. Many of these details have been discussed during project development. The scheduling and work planning process takes into consideration this information, adds significantly more detail based on the Town's input and direction, and crystallizes the information so a clear path can be followed. All our construction managers utilize industry-



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TOWN OF ADDISON
EXTENSION OF STAFF SERVICES PROPOSAL | 2

2. Firm Background and Overview

standard scheduling tools (i.e., Microsoft Project) to formulate schedules. In addition, McKinstry develops a construction work plan that details the major construction tasks and includes information such as the required completion date for each task, task status, responsible party, potential risks, and proactive measures taken to mitigate and minimize possible risks.

SAFETY

McKinstry focuses on jobsite and company safety and has enjoyed excellent safety ratings for over 10 years. As a people-first company, safety is taken very seriously. We have a full-time safety team dedicated to preventing loss and maintaining a safe and healthy work environment. Our safety policies are tested and evaluated by each of our departments and we expect full implementation of our safety program by all employees at all levels.



McKinstry's commissioning experience, by the numbers:

800+
BUILDINGS

150+
MILLION
SQUARE FEET

65+
DEDICATED Cx STAFF

100+
LEED® PROJECTS
COMMISSIONED

COMMISSIONING QUALIFICATIONS AND EXPERIENCE

In addition to the services proposed herein, McKinstry would like to further discuss our ability to provide commissioning services for the Town of Addison's construction projects as an additional offering. Buildings that are properly commissioned typically have fewer change orders, tend to be more energy efficient, and have lower operation and maintenance cost. On average commissioning services have a payback of <2 years.

McKinstry has commissioned well over 800 buildings—in excess of 100 million square feet—since it began offering formal Cx services 25+ years ago. The company's Cx experience ranges from basic unitary packaged HVAC equipment to large central steam and chilled water plants to laboratory HVAC and pressurization control systems. This also includes security, electrical, indoor air quality, emergency power, building envelope, lighting, fire alarm detection/monitoring, and numerous other technical building systems.

Our extensive Cx experience encompasses both new construction/renovations and existing buildings. This gives us insight into how systems operate when they are new and how they are integrated into actual building operations and maintenance over the long term.



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TOWN OF ADDISON
EXTENSION OF STAFF SERVICES PROPOSAL | 3



Terms & Conditions

4. Terms & Conditions

Terms and Conditions

PERFORMANCE OF WORK

McKinstry shall perform the scope of work ("Work") specified herein. McKinstry shall furnish all services necessary to perform the Work and perform the Work to completion diligently, expeditiously and with adequate forces. Customer shall use its best efforts to provide all information, materials, documents, and assistance that is reasonably required for McKinstry to perform any and all aspects of the Work.

PAYMENTS

Customer shall pay McKinstry the compensation specified herein ("Price") for the value of Work that McKinstry has completed, as the Work is completed. Customer shall pay McKinstry within thirty (30) days of receiving an invoice. McKinstry will be entitled to interest at the amount allowed by Texas law on all sums overdue and unpaid from the date due.

TERMINATION

Either Party may terminate this agreement upon fifteen (15) days written notice to the other Party. In such case, the rights and obligations of each Party that arose prior to the termination date shall survive such termination.

DISPUTES

In case of dispute between the Parties, the Parties will attempt to negotiate a resolution. If a dispute remains unresolved more than thirty (30) calendar days after the commencement of negotiation, and the Parties have not agreed to extend such date, then the Parties shall pursue mediation. If any dispute remains unresolved more than sixty (60) calendar days after the commencement of mediation, then either Party may pursue arbitration. *No litigation will be commenced by either Party unless all of the foregoing steps have been pursued to completion.*

CHOICE OF LAW, VENUE

The validity, interpretation, and performance of this agreement shall be governed by the laws of the state in which the Work is performed. The venue for resolving any dispute shall be the county in which the Work is performed.

FORCE MAJEURE

Neither McKinstry nor Customer shall be considered in breach of this agreement to the extent that the Party's performance is prevented by an event or events that are beyond the control of such party, including but not limited to acts of God, fire, earthquake, flood, storm, war, rebellion, revolution, insurrection, riot, strike, nuclear contamination, and/or acts or threats of terrorism.

Notwithstanding any other provision(s) of this or any related agreement(s), if McKinstry's is delayed, disrupted, suspended, or otherwise impacted as a direct or indirect result of COVID-19 (coronavirus), including, but not limited to, by (1) disruptions to material and/or equipment supply; (2) illness of McKinstry's workforce and/or unavailability of labor; (3) government quarantines, closures, or other mandates, restrictions, and/or directives;



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TOWN OF ADDISON
EXTENSION OF STAFF SERVICES PROPOSAL | 9

4. Terms & Conditions

(4) owner or contractor restrictions and/or directives; and/or (5) fulfillment of McKinstry's contractual or legal health and safety obligations associated with COVID-19; then, McKinstry shall be entitled to a reasonable equitable adjustment to its scope, schedule, duration, and price to account for such delays, disruptions, suspensions, and impacts.

NO WAIVER

No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver.

INTELLECTUAL PROPERTY

Intellectual property provided by McKinstry to Customer as part of the Work are instruments of service owned by McKinstry and are not "work made for hire" as such term is defined under U.S. copyright law. When the Work is performed to completion, McKinstry grants to Customer a limited license to use the Intellectual Property to operate, maintain, renovate, and manage the subject matter of the Work.

DAMAGES LIMITATION

Neither party shall be liable to the other party for any consequential, indirect, special, incidental, exemplary, or similar, damages or losses, including loss of profits, arising out of or relating to this agreement, whether based in contract or tort or any other theory, even if a party has been advised of the possibility of such damages. Furthermore, the total aggregate liability of either party, under any theory, is limited to the agreement price.

INDEMNIFICATION

McKinstry shall indemnify and hold harmless Customer from and against all third party claims, damages, losses and expenses for bodily injury, sickness, disease, or death or destruction of tangible property, directly arising from McKinstry's performance of the Work, but only to the extent caused by the negligent acts or omissions of McKinstry.

SEVERABILITY, SURVIVAL

If any portion of this agreement shall be held invalid in whole or in part under any law, rule, regulation, or order, then such portion shall remain in effect only to the extent permitted, and the remaining portions of the agreement shall remain in full force and effect. Any invalid portions shall be substituted with an interpretation that most accurately reflects the Parties' intentions.

AMENDMENT

This agreement may not be amended except pursuant to a written amendment signed by an authorized signer of each Party.

COMPLETE AGREEMENT

This agreement, including the exhibits attached hereto, is a fully integrated agreement. Any legal terms and conditions appearing elsewhere in this agreement shall be ignored to the extent they contradict or are



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EXTENSION OF STAFF SERVICES PROPOSAL | 9

4. Terms & Conditions

inconsistent with the terms and conditions contained in the foregoing numbered list. All previous agreements between McKinstry and Customer as to the Work are superseded by this agreement.

PRICE PROPOSAL

Town of Addison shall reimburse McKinstry for its time and expenses per the table below:

| Extension of Staff Services | |
|--|------------------|
| | Contract Amount |
| Phase:1 Planning Scoping, and Scheduling | \$13,000 |
| Phase 2: Design and Procurement | \$32,000 |
| Phase 3: Project Management | \$125,000 |
| Sub Total: | \$170,000 |

We are excited for the opportunity and look forward to working with you on this project. Please signify acceptance of this proposed scope of work by signing below.

AUTHORIZATION

Town of Addison Extension of Staff Services Proposal is Authorized By:

Town of Addison

McKinstry Essention, LLC

Name

Name

Title

Title

Signature

Signature

Date: _____

Date: _____



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TOWN OF ADDISON
EXTENSION OF STAFF SERVICES PROPOSAL | 9

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

**Agreement by and between the Town of Addison (Town)
and MCKINSTRY ESSENTION, LLC (Consultant)
to perform Professional Engineering Services for
Extension of Staff Services**

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

| TASK TO BE COMPLETED | DOLLAR AMOUNT |
|--|----------------------------|
| Phase 1: Planning Scoping, and Scheduling | \$13,000.00 |
| Phase 2: Design and Procurement | \$ 32,000.00 |
| Phase 3: Project Management | \$ 125,000.00 |
| <i>TOTAL CONSULTANT'S FEE (NOT-TO-EXCEED)</i> | <i>\$170,000.00</i> |



Section
3



Scope of Work
& Fee Schedule

3. Project Management Scope of Work & Fee Schedule

OVERVIEW

The Town of Addison seeks to achieve optimal outcome from certain planned HVAC, roofing, and ADA projects, including maximizing energy and operational cost savings, minimizing ongoing maintenance, and achieving on-budget and on-time implementation at the following facilities:

| Facilities | Roof | HVAC | ADA | Filtration | Budget |
|-----------------------|------|------|-----|------------|-------------|
| Service Center | X | X | | | \$1,068,735 |
| Fire 2 | X | X | | | \$153,497 |
| Theatre | X | | | | \$272,190 |
| Surveyor Pump Station | X | X | | | \$96,947 |
| Vitruvian Restrooms | | X | | | \$13,000 |
| Pavilion | X | X | X | | \$398,529 |
| Stone Cottage | | X | | | \$24,960 |
| PD Gun Range | | | | X | \$360,000 |

SCOPE OF SERVICES

Objective:

The objective of McKinstry Essention, LLC is to act as an "extension of staff" to manage all aspects of the above referenced Client projects to achieve optimal outcome.

Phased Services:

The scope of services shall be performed in three phases as outlined below:

Phase 1: Planning, Scoping and Scheduling

Time Frame: 20-30 days

Scope: McKinstry Essention, LLC will perform the following functions:

1. Review all planned scope and budgets and provide feedback.
2. Advise on additional or altered scope options to improve comfort, efficiency, or long-term maintainability
3. Advise on additional scope that may provide additional benefits, such as LED lighting, centralized HVAC control, UV germicidal irradiation, etc.
4. Prepare basic energy savings calculations to +/- 20% accuracy for all planned scope for payback considerations
5. In conjunction with Client staff, prepare a workable phasing plan
6. In conjunction with Client staff, prepare a program implementation schedule, with consideration given to occupied spaces, events, seasonal variations, etc.



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TOWN OF ADDISON
EXTENSION OF STAFF SERVICES PROPOSAL | 3

3. Project Management Scope of Work & Fee Schedule

Deliverables:

- A. Recommended Scope additions or alterations
- B. Energy savings calculations and payback analysis
- C. Recommended phasing plan
- D. Implementation Schedule

Fee: \$13,000

Phase 2: Design and Procurement

Time Frame: 45-60 days

Scope: McKinstry Essention, LLC will perform the following functions:

- 1. Ensure any required designs or engineering needs are identified prior to bidding
- 2. For purposes of managing outcomes, where appropriate, create conceptual Design Intent and Operational Intent criteria for specific scope items
- 3. Write RFQ & work with Client's procurement department to solicit any needed architect or engineering design firms. Assist the Client in the evaluation and selection process.
- 4. In conjunction with client, determine best method of procurement for each type of scope (i.e. competitive sealed bid, design/build, etc.)
- 5. Work with Client's selected architect or engineer to generate bid packages, with special emphasis on design intent and operational intent. Ensure architect/engineer adheres to schedule.
- 6. Write RFQs / RFPs & work with Client's procurement department to publish
- 7. Conduct pre-bid meetings
- 8. Manage site walk-throughs and subsequent requests for information (RFIs) from potential respondents
- 9. Assist in evaluating responses and make recommendations
- 10. Assist negotiating and securing contracts with winning bidders

Deliverables:

- A. Conceptual design intent / operational intent criteria, where appropriate
- B. Recommended procurement method
- C. Complete RFP/RFQ bid packages
- D. Recommendations on contractors

Fee: \$32,000



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EXTENSION OF STAFF SERVICES PROPOSAL | 4

3. Project Management Scope of Work & Fee Schedule

Phase 3: Project Management

Time Frame: 8-10 Months

Scope: McKinstry Essention, LLC will perform the following functions:

1. Kick off projects with each contractor, ensuring acceptance and compliance on:
 - a. Scope review and mission alignment
 - b. Points of contact and background checks
 - c. Schedule
 - d. Set conditions precedent
 - e. Standards of Work
 - f. Standards of Conduct
 - g. Tool and material storage
 - h. Access
 - i. Jobsite Cleanliness
2. Ensure all bonds and permits are obtained
3. Manage submittal process, including Client approvals
4. Issue Notices to Proceed
5. Conduct regularly scheduled progress meetings
6. Manage contractors to the approved schedule
7. Ensure work meets or exceeds specifications and meets design intent and operational intent
8. Manage contingency and change order process
9. Ensure installation quality meets or exceeds expectations
10. Manage billing requests
11. Manage punch list
12. Project close out

Deliverables:

- A. Final schedule
- B. Progress updates
- C. Submittal log
- D. RFI log
- E. Meeting minutes
- F. Project financial updates
 - a. % complete
 - b. contingency
 - c. change orders
- G. Close out documentation

Fee: \$125,000



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TOWN OF ADDISON
EXTENSION OF STAFF SERVICES PROPOSAL | 5

3. Project Management Scope of Work & Fee Schedule

Exclusions

1. Taxes, bonds, and permit fees
2. Job site trailer/workspace

Clarifications

1. All fees include travel and expenses



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TOWN OF ADDISON
EXTENSION OF STAFF SERVICES PROPOSAL | 6

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 and 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 and 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) shall be submitted to the Finance Department by fax at: (972) 450-7050 or emailed to: sglickman@addisontx.gov. Questions regarding required insurance should be directed to the Purchasing Manager.

With respect to the foregoing insurance,

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

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

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

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

AGREEMENT

I agree to provide the above described insurance coverages within 10 working days if selected to perform work for TOWN OF ADDISON. I also agree to require any subcontractor(s) to maintain insurance coverage equal to that required by the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The Town accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

Project/Bid# _____

Company: McKinstry _____

Printed Name: Quinn Toibet _____

Signature: Quinn Toibet _____ Date: 4.6.21 _____

EXHIBIT "E"
AFFIDAVIT

THE STATE OF TEXAS §
 §
THE COUNTY OF Dallas §

I, _____, a member of the Consultant team, make this affidavit and hereby on oath state the following:

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

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

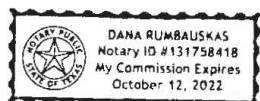
Upon filing this affidavit with the Town of Addison, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this 6 day of April, 2021.

Quin A Regional Director
Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared _____ 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 6 day of April, 2021.



[Signature]
Notary Public in and for the State of Texas
My commission expires: 10-12-22

EXHIBIT "F"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

| CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity | | FORM CIQ | | | | |
|--|---|---|-----------------|--|---------------|--|
| <p><small>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.003(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</small></p> <p><small>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</small></p> <p><small>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</small></p> | <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th align="center" colspan="2" style="padding: 2px;">OFFICE USE ONLY</th> </tr> <tr> <td style="width: 50%; padding: 2px;">Date Received</td> <td style="width: 50%;"></td> </tr> </table> | | OFFICE USE ONLY | | Date Received | |
| OFFICE USE ONLY | | | | | | |
| Date Received | | | | | | |
| <p>1 Name of vendor who has a business relationship with local governmental entity.</p> <p align="center" style="font-size: 1.2em; color: blue;">Mc Kinstry</p> | | | | | | |
| <p><input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p> | | | | | | |
| <p>3 Name of local government officer about whom the information is being disclosed.</p> <p align="center" style="font-size: 1.5em; color: blue;">NA</p> <p align="center"><small>Name of Officer</small></p> | | | | | | |
| <p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> | | | | | | |
| <p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p> | | | | | | |
| <p><input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p> | | | | | | |
| <p>7</p> <p align="center" style="font-size: 1.2em; color: blue;"> </p> <p align="center"><small>Signature of vendor doing business with the governmental entity</small></p> | | <p align="center" style="font-size: 1.2em; color: blue;">4.6.21</p> <p align="center"><small>Date</small></p> | | | | |

Form provided by Texas Ethics Commission

www.ethics.state.tx.us

Revised 11/30/2015

Local Government Officers Town of Addison, Texas

For purposes of completion of the required Conflict of Interest Questionnaire for the Town of Addison Texas (required by all Vendors who submit bids/proposals), Local Government Officers are:

Mayor: Joe Chow

Council
Members: Lori Ward, Mayor Pro Tem
Guillermo Quintanilla, Deputy Mayor Pro Tem
Tom Braun, Councilman
Ivan Hughes, Councilman
Paul Walden, Councilman
Marlin Willesen, Councilman

City Manager: Wesley S. Pierson