

DRAFT



REGULAR MEETING OF THE CITY COUNCIL

October 25, 2022

ADDISON TREEHOUSE

14681 MIDWAY RD. SUITE 200, ADDISON, TX 75001
6:00 PM EXECUTIVE SESSION & WORK SESSION
7:30 PM REGULAR MEETING

Notice is hereby given that the Addison City Council will conduct a Regular Meeting on Tuesday, October 25, 2022 at the Addison TreeHouse. Email comments may be sent to iparker@addisontx.gov by 3:00 pm the day of the meeting. The meeting will be live streamed on Addison's website at www.addisontexas.net.

Call Meeting to Order

Pledge of Allegiance

EXECUTIVE SESSION

Closed (Executive) Session of the Addison City Council pursuant to: Section 551.074 Personnel Matters - Tex. Gov. Code, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, pertaining to:

- Municipal Court Presiding and Alternate Judges

- City Manager

Section 551.071 Consultations with Attorney, Tex. Gov. Code, Consultation with an attorney to seek advise of its attorney about: (1)(A) pending or contemplated litigation or (1)(2) a settlement offer regarding:

- Update on Midway Road Revitalization Project Condemnations

Reconvene in to Regular Session: In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matters discussed in Executive Session pursuant to:

Section 551.074 Personnel Matters - Tex. Gov. Code

Section 551.071 Consultations with Attorney, Tex. Gov. Code

WORK SESSION

1. Present and Discuss the Annual Council Strategic Planning Process.
2. Present and Discuss the Non-Profit Organization Grant Funding Process.

REGULAR MEETING

Announcements and Acknowledgments Regarding Town and Council Events and Activities

- Recognition of the Town's Receipt of 3 Government Finance Officer's Association Awards

Discussion of Meetings / Events

Public Comment

The City Council invites citizens to address the City Council on any matter, including items on the agenda, except public hearings that are included on the agenda. Comments related to public hearings will be heard when the specific hearing starts. Citizen comments are limited to three (3) minutes, unless otherwise required by law. To address the Council, please fill out a City Council Appearance Card and submit it to a staff member prior to the Public Comment item on the agenda. The Council is not permitted to take any action or discuss any item not listed on the agenda. The Council may choose to place the item

on a future agenda.

Consent Agenda

All items listed under the Consent Agenda are considered routine by the City Council and will be enacted by one motion with no individual consideration. If individual consideration of an item is requested, it will be pulled from the Consent Agenda and discussed separately.

3. Consider Action on the **Minutes from the October 11, 2022 City Council Meeting.**
4. Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Addison Arbor Foundation and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$65,000.
5. Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Metrocrest Services and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$82,650.
6. Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Outcry Theatre and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$2,500.
7. Consider Action on a **Resolution Approving a Grant Funding Agreement with WaterTower Theatre and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$425,000 in Cash and In-Kind Contributions.
8. Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Dallas Cat Lady and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$5,000.
9. Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Dallas County Mental Health & Retardation d/b/a Metrocare Services and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$2,500.

10. Consider Action on a **Resolution Approving a Grant Funding Agreement with On Eagles Wings, Inc. d/b/a Woven Health Clinic and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$5,000.
11. Consider Action on a **Resolution Approving an Agreement for Funding Between the Town of Addison and the World Affairs Council of Dallas/Fort Worth and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$60,000.
12. Consider Action on a **Resolution Approving an Agreement for Funding Between the Town of Addison and the Metrocrest Chamber of Commerce and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$38,500.
13. Consider Action on a **Resolution Approving an Agreement Between the Town of Addison and WaterTower Theatre, Inc. for the Use of the Addison Theatre Centre and Authorizing the City Manager to Execute the Agreement.**
14. Consider Action on a **Resolution Approving the Purchase of Nine Vehicles, a Vermeer Chipper and Two Thermal Cameras for the Fire, Police, Parks, Utilities and General Services Departments and Authorizing the City Manager to Execute the Purchase Agreements** in an Amount Not to Exceed \$635,240.43.
15. Consider Action on a **Resolution Approving a Contract Agreement Between the Town of Addison and Texas Standard Construction, LTD. for Construction Services for the Town of Addison Rawhide Creek Basin Drainage and ADA Improvements and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$1,903,640.76.
16. Consider Action on the **Purchase of Water Quality Analyzers from Hach Company and Authorize the City Manager to Execute the Purchase Order** in an Amount Not to Exceed \$69,481.60.
17. Consider Action on a **Resolution Adopting an Investment Strategy and Approving Brokers, Dealers, and Financial Institutions for Fiscal Year 2022-2023.**

18. Consider Action on an **Ordinance to Amend the Code of Ordinances by Amending Chapter 66 (Solid Waste) Article II (Collection And Disposal), Division 2 (Service Charge) Section 66-52 Increasing from \$12.56 to \$13.24 the Monthly Fee For Each Residential Unit.**
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Regular Items

19. Hold a Public Hearing, Present, Discuss, and Consider Action on an **Ordinance Amending Planned Development (PD) District Ordinance No. 099-025 for a 7.76 Acre Property Located at the Southeast Corner of Westgrove Drive and Excel Parkway in order to Modify Use Regulations by Allowing Light Assembly of Jewelry as a Permitted Use.** Case 1861-Z / 16650 Westgrove Drive (Precision Set).
20. Present, Discuss, and Consider Action on a **Resolution to Accept the Resignation of Addison Municipal Court No. 1 Alternate Judge Danielle Dulaney Effective October 25, 2022.**
21. Present, Discuss, and Consider Action on the **Ordinances to Reappoint Larry Dwight as Presiding Municipal Judge to the Addison Municipal Court of Record #1, Reappoint Cass Callaway and Appoint George "Buck" Johnson as Alternate Municipal Judges to the Addison Municipal Court of Record #1 and Authorize the Interim City Manager to Execute the Agreements.**
22. Present, Discuss, and Consider Action on the **Addison Athletic Club Renovation Total Project Budget.**
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Adjourn Meeting

NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel); §551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH
DISABILITIES. PLEASE CALL (972) 450-7017 AT LEAST 48 HOURS IN
ADVANCE IF YOU NEED ASSISTANCE.**

POSTED BY: _____
Irma G. Parker, City Secretary

DATE POSTED: _____

TIME POSTED: _____

DATE REMOVED FROM BULLETIN BOARD: _____

REMOVED BY: _____

Council Meeting 2023

1.

Meeting Date: 10/25/2022

Department: City Manager

Pillars: Optimize the Addison Brand

Milestones: Promote and protect the Addison Way

AGENDA CAPTION:

Present and Discuss the **Annual Council Strategic Planning Process.**

BACKGROUND:

Since 2016, Addison's City Council has met annually to discuss strategic priorities for the Town. Council requested a Work Session to discuss this process. Staff will facilitate this discussion by providing relevant information about strategic planning, Addison's current strategic planning process, and strategic planning processes utilized by our comparator cities. Staff will then seek Council direction regarding future strategic planning processes.

RECOMMENDATION:

Staff seeks Council direction.

Attachments

Presentation - Strategic Planning Discussion

Strategic Planning Discussion

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ADDISON

Purpose of Work Session

- Staff Will Provide a Brief Overview of Strategic Planning
- Staff Will Review Recent Strategic Planning Efforts in Addison
- Staff Will Summarize the Strategic Planning Efforts of Comparator Cities

- Staff Will Seek Council Direction on Addison's Future Strategic Planning Efforts

Strategic planning is a process in which an organization's leaders define their vision for the future and identify their organization's goals and objectives.

Benefits of Strategic Planning

The primary benefits derived from strategic planning are:

- Helps an organization to be proactive instead of just responding to situations
- Helps formulate better strategies using a logical, systematic approach
- Enhances communication between employers and employees
- Aligns efforts toward established goals and objectives
- Empowers individuals working in the organization

Recent Addison Efforts

Since 2016, Addison's City Council has met annually to discuss strategic questions and identify key priorities for the Town.

A consultant from Strategic Government Resources (SGR) has led these interactive discussions and aided the Council in identify Strategic Pillars and Milestones.

The Council has annually adopted a resolution containing Strategic Pillars and Milestones to provide clear direction to Staff as they developed their budgets and activities for the next fiscal year.

This process has taken place in late May or June of each year. The results are formally adopted by resolution. A quarterly report of progress toward each initiative is provided to Council.

Pillar: Gold Standard in Customer Service

Milestone: Promote and Protect the Addison Way

Initiative: Conduct a Resident Survey

Status: The Resident Survey was conducted in December of 2021. The Survey Report was presented to Council on March 8, 2022.

Comparator City Survey Data

The Town uses these 13 municipalities as Comparator Cities:

Allen

Carrollton

Coppell

Farmers Branch

Flower Mound

Frisco

Grapevine

Irving

Lewisville

McKinney

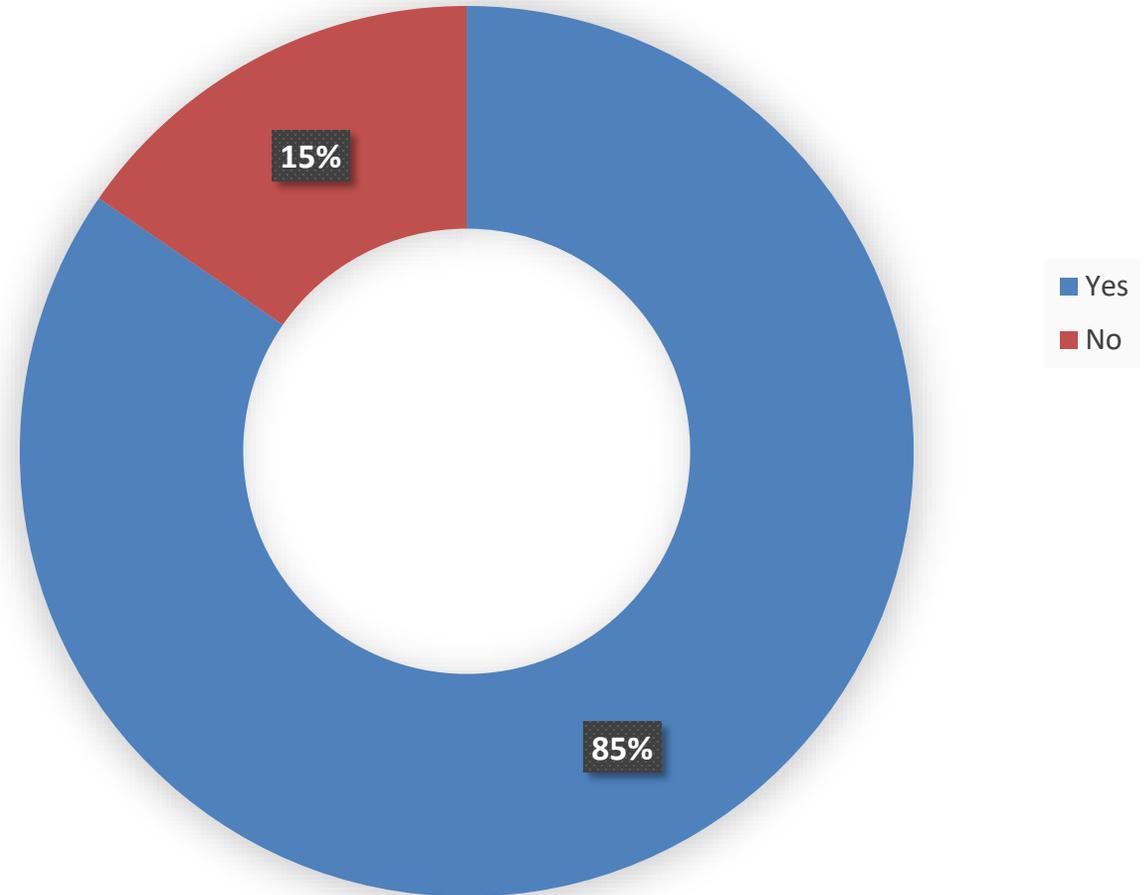
Plano

Richardson

University Park

Comparator City Survey Data

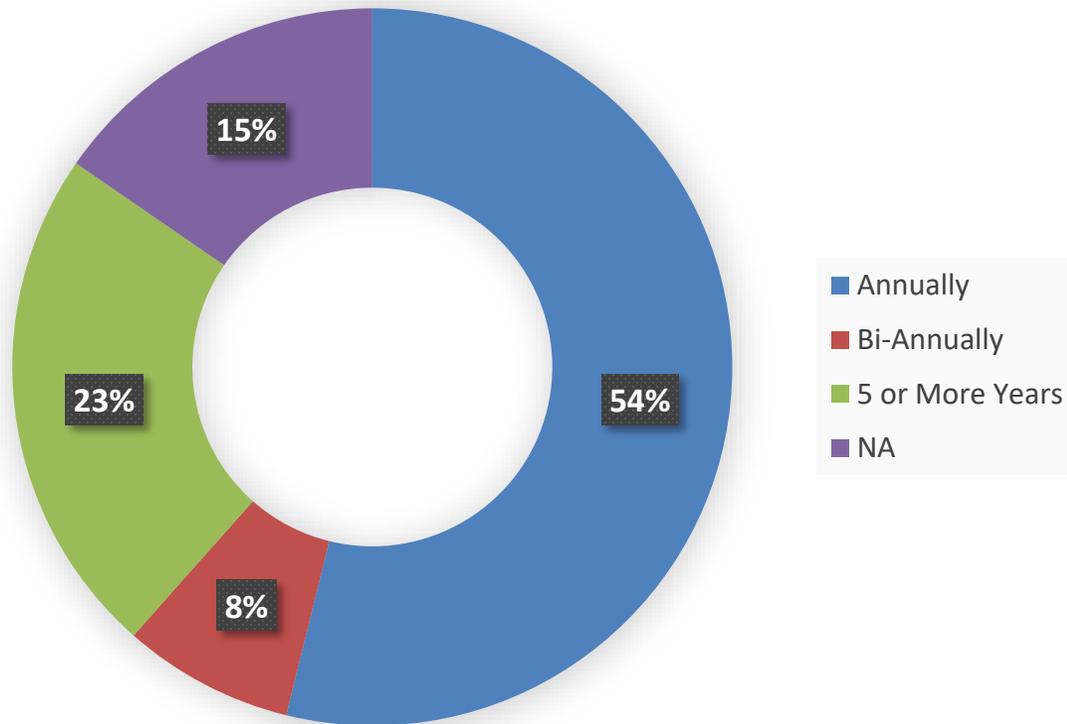
Does Your Council Participate in the Development of a Strategic Plan for your Community?



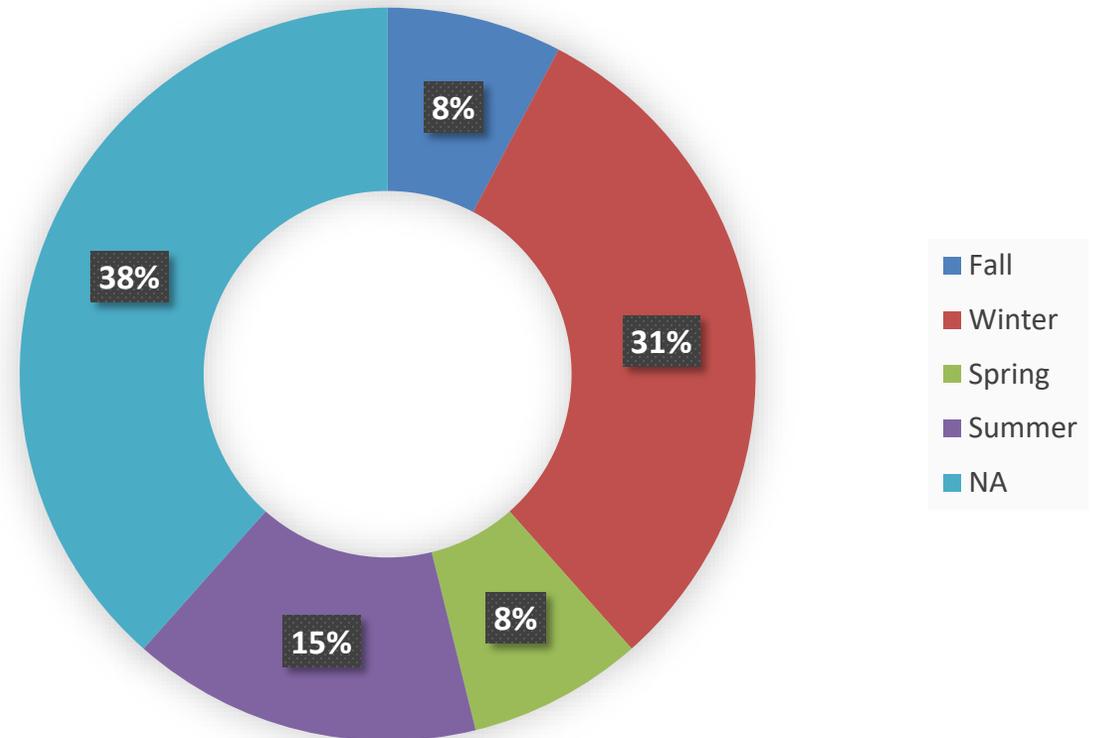
Comparator City Survey Data



Strategic Planning Frequency



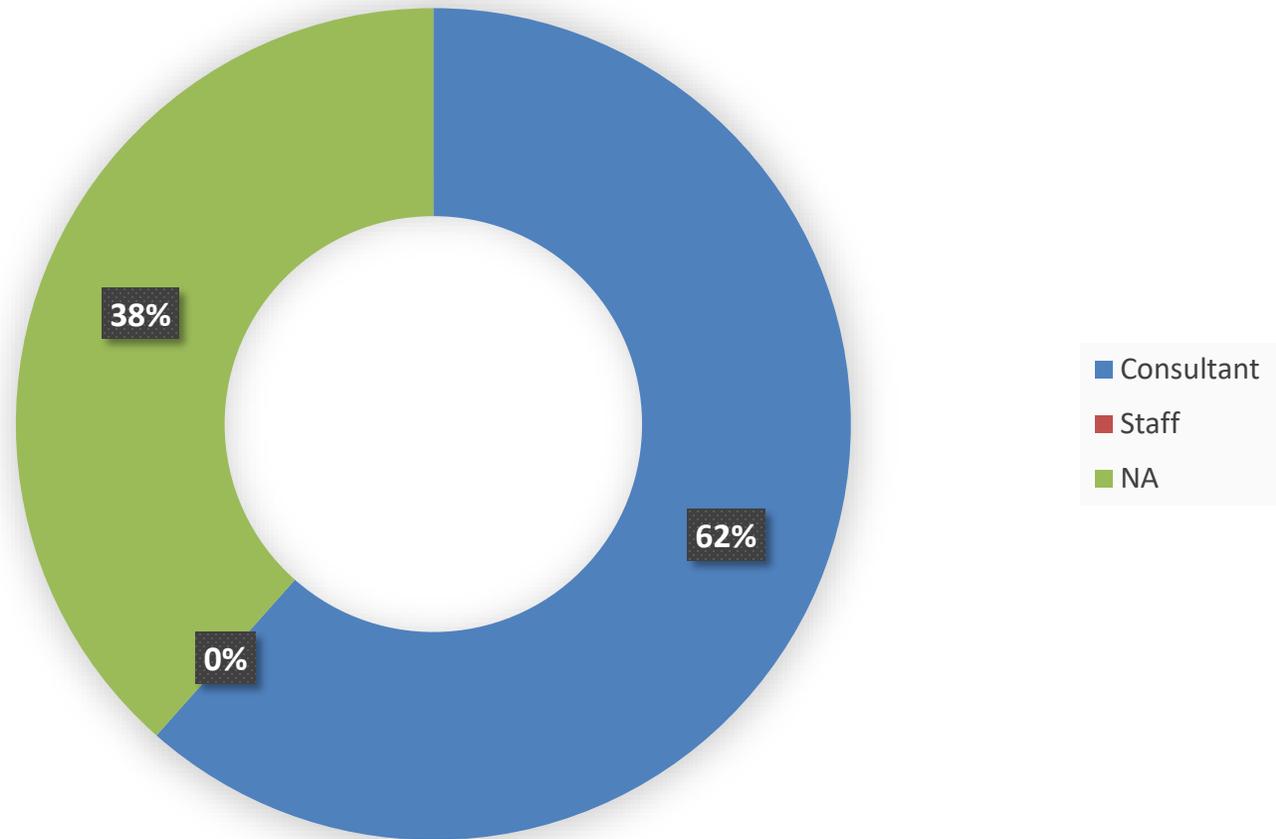
What Time of Year Do you Plan?



Comparator City Survey Data



Who facilitates the process?



Common Strategic Planning Process Components

- Work Session(s)
- SWOT Analysis
- Revisit Mission and Values
- Discuss Priorities
- Council Establishes “Big Picture” (Pillars and Milestones)
- Staff Develops Initiatives
- Formal Adoption (stand alone document or within budget document)
- Link budget projects and programs to Strategic Plan

Common Strategic Planning Goals

- Economic Development
- Infrastructure Investment
- Customer Service
- Financial Stewardship
- Public Safety

Addison's Strategic Pillars

- Innovative in Entrepreneurship and Business
- Excellence in Asset Management
- Excellence in Transportation Systems
- Gold Standard in Customer Service
- Gold Standard in Financial Health
- Gold Standard in Public Safety
- Optimize the Addison Brand

Staff Seeks Council Direction

Does Council wish to alter the Strategic Planning Process for next year?

If so, in what ways?

Council Meeting 2023

2.

Meeting Date: 10/25/2022

Department: City Manager

Pillars: Gold Standard in Customer Service

Milestones: Promote and protect the Addison Way

AGENDA CAPTION:

Present and Discuss the **Non-Profit Organization Grant Funding Process.**

BACKGROUND:

Each year, the Town of Addison enters into agreements with various non-profit organizations that promote public purposes and benefit the Addison community.

Council requested a Work Session to review the grant funding process. Staff will provide an overview of Addison’s current program and the procedures utilized by many of our comparator cities. Staff will then request Council direction regarding the grant funding process.

RECOMMENDATION:

Staff seeks Council direction.

Attachments

Presentation - NPO Grant Funding Process

Non-Profit Organization (NPO) Grant Funding

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KEY PARTICIPANTS

Finance Department

- Oversees entire funding process and serves as point of contact
- Monitors contract compliance
- Processes all payments

Community Partners Bureau

- Requested to complete CPB evaluation form of appointed NPO

City Council

- Evaluates applications for respective organizations (Council Liaisons)
- Provides final funding decisions

Non-Profit Organization Grant Funding

FISCAL YEAR 2023 NPO FUNDING PROCESS

May 31, 2022

- Distribute instruction letters and application materials to non-profit organizations

June 17, 2022

- Grant applications due
- Begin review of financials for all NPO funding applicants

June 23, 2022

- Distribute applications to all members of Council (via agenda packet)

June 28, 2022

- Organizations present to Council

July 1, 2022

- Financial reviews complete, any issues or concerns addressed with Council during Budget Retreat

Non-Profit Organization Grant Funding

FISCAL YEAR 2023 NPO FUNDING PROCESS CONTINUED

August 2022

- FY23 NPO funding discussed at Budget Retreat
- Once funding amounts are determined, coordinate with appropriate Town Staff to prepare funding agreements, communicate with Legal
- Communicate determined funding levels to NPO funding applicants

September 2022

- Complete agreements and resolutions, present to Council for approval

October/November 2022

- First 50% funding payment issued to NPOs who have fully executed agreements

} WE ARE HERE

October 31, 2022

- NPOs submit their 4th and final Quarterly Grant Report for the previous fiscal year (FY22)

Q1-Q4, 2022-23

- NPOs submit their Quarterly Grant Reports to Finance

May 30, 2023

- Second 50% funding payment issued to NPOs who have turned in all appropriate documentation to-date

What revenue source are our comparator cities using to fund their grants?

Our comparator cities utilize a variety of revenue sources to fund service grants, including:

- Community Development Block Grants (CDBG) received from the US Department of Housing and Urban Development (HUD)
- General Fund
- Tourism (Hotel) Fund

Non-Profit Organization Grant Funding

How is the total annual grant funding determined, and how do our comparator cities determine a specific dollar amount to fund each organization?

Our comparator cities utilize several different tools to determine the total annual funding amount:

- CDBG Public Services cap (no more than 15% of CDBG funds may be used, set by HUD)
- Review of previous year's budget
- Fixed percentage of General Fund budget from previous year (i.e., 0.5% of total fund, \$2 per capita allocated)

Specific dollar amounts for each organization is similarly determined from city to city. Generally, our comparator cities follow this process:

- Applicants make a funding request with their initial application
- A board or committee reviews applications and agrees with requested amount or proposes a new figure based on services provided
- Staff brings recommended dollar amounts to Council to make ultimate funding decision during annual budget process
- We also learned that if a social service organization can demonstrate a quantifiable benefit to a city's department, then it may be integrated into the department's annual budget.
 - Ex. The Town of Flower Mound's Environmental Services Department provides funding to Keep Flower Mound Beautiful

Are NPOs supported in ways other than direct funding grants?

Generally, our comparator cities are limited in formally supporting NPOs beyond direct funding grants:

- Staff supports NPOs implement reporting procedures in compliance with the city or HUD requirements
- Staff supports organization by promoting messaging on city run media channels (social media, website, newsletters, etc.)
- Help NPOs connect with other groups in community supporting joint initiatives or resources
- Discounts on renting city owned facilities for meetings

What is the process to determine the eligibility of an NPO?

Our comparator cities have similar requirements as the Town when determining eligibility:

- Programs should be focused on benefitting residents within the city
- Must be a tax-exempt organization
- Must be in good standing with the State of Texas and IRS
- Must be in good standing with the city (property taxes up to date, successfully fulfilled all prior contractual obligations)
- Some cities have a minimum operation time requirement before requesting funding

Do selected NPOs enter into a defined agreement with the city?

Most of our comparator cities require their NPOs to enter into defined agreements with the city. The one city that reported not having this requirement require the following:

- Complete mid-year report detailing accomplishments
- Funding is distributed on a reimbursement basis only

Non-Profit Organization Grant Funding

Participating Comparator Cities Summary

	Managing Department	Funding Source	Annual Funding Methodology	Additional Support	Formal Agreement in Place
Addison	Finance	Hotel and General Fund	Historic reference/ available funds	Marketing on city platform	Yes
Allen	Community Enhancement	CDBG	15% of CDBG funds	Financial reporting implementation	Yes
Carrollton	Finance	CDBG	15% of CDBG funds	Unknown	Yes
Coppell	Finance	General Fund	Historic reference/available funds	Unknown	Unknown
Flower Mound	Financial Services	General Fund	<.5 percent of General Fund from previous year	Marketing on city platform	No; funds released on reimbursement basis
Irving	Housing and Redevelopment	CDBG and General Fund (as needed)	15% of CDBG funds; supplemental support from GF as needed	Access to community network	Yes
Lewisville	Neighborhood Services	CDBG and General Fund	15% of CDBG funds; fixed dollar amount (FY23 increase to \$195k)	Access to community network	Yes
McKinney	Housing and Community Development	General Fund	Historic reference/ available funds	Promotion through Community Dev Corp	Yes
Plano	Neighborhood Services	Tourism and General Fund	Historic reference/current available funds; fund created with \$2 GF monies per capita	Discounts on city-owned facilities	Yes

Staff requests **direction from Council**.

Does Council wish to amend Addison's current grant funding process?

Additional Notes

- State statute - Addison may not expend more than 15% of the Town's annual hotel tax revenue on art related events and activities
- Addison has consistently maintained a closed process for applications due to having a limited number of staff available to review more applications beyond what we currently receive

Council Meeting 2023

3.

Meeting Date: 10/25/2022

Department: City Secretary

AGENDA CAPTION:

Consider Action on the Minutes from the October 11, 2022 City Council Meeting.

BACKGROUND:

The minutes for the October 11, 2022 City Council Meeting have been prepared for consideration.

RECOMMENDATION:

Administration requests approval.

Attachments

Minutes - October 11, 2022

DRAFT

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL EXECUTIVE, WORK AND REGULAR SESSION

October 11, 2022

Addison Treehouse
14681 Midway Rd., Ste 200, Addison, TX 75001
5:30 PM Executive Session & Work Session
7:30 PM Regular Meeting

A Regular Meeting was held by the City Council of the Town of Addison, Texas on October 11, 2022, with an Executive Session and Work Session beginning at 5:30 PM followed by the Regular Session at 7:30 PM in the Addison Treehouse, 14681 Midway Road, Suite 200, Addison, Texas 75001. The following members were present to-wit:

Present: Mayor Joe Chow; Mayor Pro-Tempore Kathryn Wheeler; Deputy Mayor Pro-Tempore Lori Ward; Council Member Tom Braun; Council Member Darren Gardner; Council Member Guillermo Quintanilla; Council Member Eileen Resnik

Call Meeting to Order: Mayor Chow called the meeting to order at 5:31 PM.

Pledge of Allegiance: Mayor Chow led the Pledge of Allegiance.

EXECUTIVE SESSION

Closed (Executive) Session of the Addison City Council pursuant to:

- Section 551.074, Tex. Gov. Code, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, pertaining to:
 - City Manager Selection Process Update

Mayor Chow closed the open meeting to convene the City Council into Closed Executive Session at 5:32 PM.

Reconvene into Regular Session: In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matters discussed in Executive Session.

Mayor Chow reconvened the City Council into Regular Session at 7:55 PM.

REGULAR MEETING – 7:55 PM

Announcements and Acknowledgments Regarding Town and Council Events and Activities

Discussion of Meetings / Events

Public Comment: *The City Council invites citizens to address the City Council on any matter, including items on the agenda, except public hearings that are included on the agenda. Comments related to public hearings will be heard when the specific hearing starts. Citizen comments are limited to three (3) minutes, unless otherwise required by law. To address the Council, please fill out a City Council Appearance Card and submit it to a staff member prior to the Public Comment item on the agenda. The Council is not permitted to take any action or discuss any item not listed on the agenda. The Council may choose to place the item on a future agenda.*

Destiny Curlee, 3990 Viturvian Way, addressed the City Council regarding his concerns on the parking ordinance.

Consent Agenda: *All items listed under the Consent Agenda are considered routine by the City Council and will be enacted by one motion with no individual consideration. If individual consideration of an item is requested, it will be pulled from the Consent Agenda and discussed separately.*

1. **Consider Action on the Minutes from the September 27, 2022 City Council Meeting.**
2. **Consider Action on a Resolution Approving a Professional Services Agreement Between the Town of Addison and Dunaway Associates, LLC. for Contract GIS Staffing and Authorizing the City Manager to Execute the Agreement in an Amount Not to Exceed \$110,500.**
3. **Consider Action on a Resolution Approving an Agreement Between the Town of Addison and Fuquay Inc. for Fiscal Year 2022-2023 Manhole Rehabilitation Services and Authorizing the City Manager to Execute the Agreement in an Amount Not to Exceed \$60,000.**
4. **Consider Action on the Purchase of Traffic Signal Controllers, Traffic Signal Smart Monitoring Devices, Vehicle Detection Upgrades, Associated Components, and the Renewal of Traffic Signal Software Maintenance from Paradigm Traffic Systems, Inc., and Authorize the City Manager to Execute the Purchase Order in an Amount Not to Exceed \$131,000.**

5. **Consider Action on the Purchase of Water Meters from Thirkettle Corporation DBA as Aqua-Metric Sales Company, Inc Through HGACBuy and Authorize the City Manager to Execute the Purchase Order in an Amount Not to Exceed \$150,000.**
6. **Consider Action on an Ordinance Providing for Increased Prior and Current Service Annuities Under the Act Governing the Texas Municipal Retirement System for Retirees and Beneficiaries of Deceased Retirees of the Town of Addison and Establishing an Effective Date.**
7. **Consider Action on a Resolution Finding that Oncor Electric Delivery Company LLC's Application to Change Rates Within the Town Should be Denied and Finding that the Town's Reasonable Rate Case Expenses Shall be Reimbursed by Oncor.**
8. **Consider Action on a Resolution Authorizing a Thirteen-Year Conventional Hangar Lease for Commercial Aeronautical Use with StoneDome Real Estate, LLC for 4581 Claire Chennault Drive at Addison Airport and Authorizing the City Manager to Execute the Agreement.**
9. **Consider Action on the Rejection of Bids Received in Response to Bid #22-164 for Airport Perimeter Road Repairs**
10. **Consider Action on a Resolution Approving an Agreement for Professional Services with Garver, LLC for On-Call Professional Consulting Services for Airport Capital Projects and Authorizing the City Manager to Execute the Agreement in an Amount Not to Exceed \$150,000.**

Resolution No. R22-061: Dunaway Associates, LLC Agreement for Contract GIS Staffing.

Resolution No. R22-062: Fuquay, Inc. Agreement for Manhole Rehabilitation Services FY 2022-2023.

Ordinance No. O22-35: Texas Municipal Retirement System Increase of Annuities for Retirees & Beneficiaries of Deceased Retirees.

Resolution No. R22-063: Denial of Oncor Electric Delivery Company's LLC Application for Change of Rates.

Resolution No. R22-064: StoneDome Real Estate, LLC, 13-yr Hanger Lease, 4581 Claire Chennault Drive.

Resolution No. R22-065: Garver, LLC On-Call Agreement for Airport Capital Projects.

MOTION: Council Member Braun moved to approve Consent Agenda Items 1-10 as presented. Deputy Mayor Pro-Tem Ward seconded the motion. Motion passed unanimously.

Regular Items

11. **Hold a Public Hearing, Present, Discuss, and Consider Action on an Ordinance**

Approving a Special Use Permit (SUP) for Property Located at 15375 Addison Road, that is Currently Zoned Local Retail (LR), to Allow a Restaurant. Case 1849-SUP/15375 Addison Road (Ambrosia Café). *[Ken Schmidt, Director of Development Services]*

The Addison Planning and Zoning Commission, meeting in regular session on September 20, 2022, voted to recommend denial of an ordinance changing the zoning on property located at 15375 Addison Road, which property is currently zoned Local Retail (LR) with Special Use Permits (SUP), Ordinance Nos. 083-025, 091-036, and 091-062. The request included an SUP to allow the building to be used as a restaurant.

In accordance with Section 14 (Denial; request for public hearing), Article XXIX (Changes and Amendments), Appendix A (Zoning) of the Addison Code of Ordinances, the applicant has submitted a written request for public hearing for City Council consideration of their appeal of the Planning & Zoning Commission's denial of the application.

Following the Planning and Zoning Commission meeting, the applicant submitted revised application materials and staff has prepared updated analysis for consideration of this item. All updated plans and analysis are included with this agenda item.

Administration recommends approval with the following conditions:

1. Upon issuance of a CO for this restaurant, SUP Ordinance Nos. 083-025, 091-036, and 091-062 permitting a restaurant with the sale of alcohol for on-premises consumption shall be repealed.
2. Operating hours that result in venue closure no later than 12:00 am and venue opening no earlier than 6 am.
3. Prohibition on the use of BYOB services.

In accordance with Section 4 (Written Protest), Article XXIX (Changes and Amendments), Appendix A (Zoning) of the Addison Code of Ordinances, a favorable vote of three-fourths of the City Council is required to approve this request due to the action by the Planning and Zoning Commission to recommend denial of the application.

Public Hearing: Lina Ismail, Restaurant Owner/Operator, addressed the City Council and answered questions presented by the City Council. No other citizens addressed the City Council.

MOTION: Council Member Braun moved to approve with the conditions as proposed by Staff. Mayor Pro-Tem Wheeler seconded the motion. Motion carried 6-1 with Deputy Mayor Pro-Tem Ward casting the dissenting vote.

Ordinance O22-36: Case 1849-SUP/15375 Addison Road (Ambrosia Café).

12. **Hold a Public Hearing, Present, Discuss, and Consider Action on an Ordinance Approving a Special Use Permit (SUP) for Property Located at 14380 Marsh Lane, Suite 100 that is Currently Zoned Planned Development (PD), Ordinance No. 007-034, to Allow a Restaurant with a Drive-Thru. Case 1855-SUP/14380 Marsh Lane, Suite 100 (Jeremiah's Italian Ice).** *[Lesley Nyp, Planning & Development Manager]*

The Addison Planning and Zoning Commission, meeting in regular session on September 20, 2022, voted to recommend approval of an ordinance changing the zoning on property located at 14380 Marsh Lane, Suite 100, which property is currently zoned Planned Development (PD), Ordinance No. 007-034, as amended by Ordinance Nos. 013-026, O16-017, O16-018, and O19-06, by approving a Special Use Permit (SUP) to allow the building to be used as a restaurant with a drive-thru.

MOTION: Council Member Gardner moved to approve as presented. Council Member Braun seconded the motion. Motion carried unanimously.

Ordinance No. O22-37: Case 1855-SUP/14380 Marsh Lane, Suite 100 (Jeremiah's Italian Ice).

13. **Hold a Public Hearing, Present, Discuss, and Consider Action on an Ordinance Approving a Special Use Permit (SUP) for Property Located at 14380 Marsh Lane, Suite 160 that is Currently Zoned Planned Development (PD), Ordinance No. 007-034, to Allow a Restaurant with the Sale of Alcoholic Beverages for On-Premises Consumption. Case 1858-SUP/14380 Marsh Lane, Suite 160 (Buttermilk Biscuits Brunch House).** *[Lesley Nyp, Planning & Development Manager]*

The Addison Planning and Zoning Commission, meeting in regular session on September 20, 2022, voted to recommend approval of an ordinance changing the zoning on property located at 14380 Marsh Lane, Suite 160, which property is currently zoned Planned Development (PD), Ordinance No. 007-034, as amended by Ordinance Nos. 013-026, O16-017, O16-018, and O19-06, by approving a Special Use Permit (SUP) to allow the building to be used as a restaurant with the sale of alcoholic beverages for on-premises consumption, subject to the following condition: (1) The applicant shall not use any terms or graphic depictions that relate to alcoholic beverages in any exterior signage.

Public Hearing: Jay Woo, Architect representing the property owner, was present to answer any questions. No other citizens addressed the City Council.

MOTION: Council Member Resnik moved to approve as presented. Mayor Pro-Tem Wheeler seconded the motion. Motion carried unanimously.

Ordinance No. O22-38: Case 1858-SUP/14380 Marsh Lane, Suite 160 (Buttermilk Biscuits Brunch House).

14. **Hold a Public Hearing, Present, Discuss, and Consider Action on an Ordinance Adopting a Development Plan for the Addison Reserve Townhomes, including a Site Plan, Landscape Plan, Lighting Plan, Facade Plans and Floor Plans for 31 Townhomes and Associated Public Open Space and Common Area Lots in an Existing Planned Development District (PD), Through Ordinance 022-08, Situated on Approximately 1.804 Acres located at 4150 Beltway Drive. Case 1856-Z/4150 Beltway Drive (Addison Reserve Townhomes).** *[Ken Schmidt, Director of Development Services]*

The Addison Planning and Zoning Commission, meeting in regular session on September 20, 2022, voted to recommend approval of an Ordinance Adopting a Development Plan for Addison Reserve Townhomes, including a Site Plan, Landscape Plan, Lighting Plan, Façade, and Floor Plans for 31 townhomes, and associated public open space and common area lots in an existing Planned Development District (PD), through Ordinance O22-08, situated on approximately 1.804 acres, located at 4150 Beltway Drive.

Public Hearing: Developer Josh Nichols was available to address the City Council and answer questions. No other citizens addressed the City Council.

MOTION: Deputy Mayor Pro-Tem Ward moved to approve as presented. Council Member Gardner seconded the motion. Motion carried unanimously.

Ordinance No. O22-39: Case 1856-Z/4150 Beltway Drive (Addison Reserve Townhomes).

15. **Present, Discuss, and Consider Action on an Ordinance Granting a Meritorious Exception to Chapter 62 of the Code of Ordinances for Cy-Fair Animal Hospital, a Veterinary Clinic Located at 15003 Inwood Road, Suite D, to Exceed the Maximum Permitted Letter Height and Effective Area for an Attached Sign. Case MR2022-08/Cy-Fair Animal Hospital.** *[Lesley Nyp, Planning & Development Manager]*

Cy-Fair Animal Hospital is a new veterinary clinic located within a multi-tenant building at 15003 Inwood Road. The tenant completed an interior remodel of the suite and has been issued a Temporary Certificate of Occupancy. During the sign permit review process, staff determined that the proposed attached sign did not comply with the Town's sign code.

The subject property has four suites within the existing structure, and this clinic is located within Suite D. Due to the placement of the structure and the orientation of the tenant spaces, Suite D does not have any direct frontage along Inwood Road. The primary customer entrance is oriented south towards the adjacent property, limiting visibility from the roadway. To allow for an attached sign to be visible from the roadway, a projecting wall was constructed adjacent to Suite D. The face of this wall is 227 feet from the property line, and it projects 20 feet from the south building facade.

The proposed attached sign is 63 inches tall and 158.5 inches long, with an effective sign area of approximately 69 square feet. The top of the sign will be situated approximately 25 feet above grade. The sign letters are 30.5 and 11.1 inches tall, and the sign logo is 63 inches tall. The sign includes the business name and logo and will be internally illuminated with white LED lights. The applicant is seeking a meritorious exception to allow the proposed attached sign to exceed the maximum permitted letter/logo height and effective area. Per the Sign Code, the maximum permitted letter/logo height is 30 inches, with up to 50 percent of the sign letters permitted to be up to 25 percent taller, achieving a maximum height of 37.5 inches. The proposed 63-inch logo exceeds the maximum height requirement by 25.5 inches. Per the Sign Code, this tenant space is allocated one square foot of effective sign area for each linear foot of tenant space frontage. Suite D is 45 feet wide, which would allow for up to 45 square feet in effective sign area. The proposed

attached sign has an effective sign area of 69.3 feet, exceeding the maximum effective sign area by 24.3 feet.

The applicant is pursuing a Meritorious Exception to the sign code in accordance with the code provisions stated below:

Town of Addison Code of Ordinances, Chapter 62 (Signs)

Section 62-33. – Meritorious exceptions.

(d)(3) The council may consider appeals on the basis that such regulations and/or standards will, by reason of exceptional circumstances or surroundings, constitute a practical difficulty or unnecessary hardship or on the basis that the proposed improvement although falling under the definition of a "sign," constitutes art that makes a positive contribution to the visual environment.

Staff believes that the criteria is met for a meritorious exception for this proposed attached sign. The term "Animal Hospital" is an essential component of the sign that significantly impacts the size and scale of the sign logo and lettering. Achieving full sign code compliance while maintaining the same wording for the sign would result in a poorly scaled sign that would be difficult for Inwood Road commuters to decipher. The sign is appropriately scaled for the building and is compatible with other signs in the Inwood corridor.

MOTION: Council Member Braun moved to approve as presented. Council Member Resnik seconded the motion. Motion carried unanimously.

Ordinance No. O22-40: Case MR2022-08/Cy-Fair Animal Hospital.

Adjourn Meeting

There being no further business coming before the City Council the meeting was adjourned at 9:31 PM.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma G. Parker, City Secretary

Council Meeting 2023

4.

Meeting Date: 10/25/2022

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Addison Arbor Foundation and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$65,000.

BACKGROUND:

Town staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request of funds for their organization that directly enhances the Town. Staff and appointed Council member liaisons evaluate applications for their respective organizations individually. Town staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, quarterly grant reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The quarterly grant reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town staff can request them at any time.

The Addison Arbor Foundation (AAF) submitted an application to the Town requesting a \$65,000 primary grant for Fiscal Year 2023. During the Council Budget Work Session on August 3, 2022, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2023 budget. During the discussion about the AAF, Council directed staff to grant the AAF their requested amount of \$65,000, but as a \$50,000 primary grant and \$15,000 in matching funds.

This grant funding agreement allocates \$50,000 and an additional \$15,000 in matching funds at the sole discretion and determination of the Town, once the Organization can demonstrate to the satisfaction of the Town that it has accumulated additional funding from sources outside of the Town for \$15,000 within the Terms of the Agreement. The Town has reviewed and evaluated the application determining that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Addison Arbor Foundation grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Grant Funding Agreement FY23-Addison Arbor Foundation

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND ADDISON ARBOR FOUNDATION, IN AN AMOUNT NOT TO EXCEED \$50,000.00; APPROVING ADDITIONAL MATCHING FUNDING NOT TO EXCEED \$15,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Addison Arbor Foundation submitted a Program application to the Town for consideration; and

WHEREAS, the Town has reviewed the Program application and investigated and determined that the requests set forth in therein are for a public purpose and will benefit its citizens; and

WHEREAS, the Town and Addison Arbor Foundation desire to enter into the attached agreement to set forth the terms and conditions regarding Addison Arbor Foundation’s use of the allocated Program funding.

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

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The Agreement for Grant Funding between the Town and Addison Arbor Foundation in an amount not to exceed \$50,000.00 and providing for a dollar-for-dollar match of additional funding not to exceed \$15,000.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

SECTION 3. 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 25th day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

STATE OF TEXAS §
 § AGREEMENT FOR GRANT FUNDING
COUNTY OF DALLAS §

This Agreement for Grant Funding ("Agreement") is made and entered into as of the 1st day of October, 2022 by and between the Town of Addison, Texas (the "City") and Addison Arbor Foundation (the "Organization").

WITNESSETH:

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

WHEREAS, the City Council has adopted an application process ("Application") whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

WHEREAS, the Organization submitted an Application to the City for consideration; and

WHEREAS, the City has reviewed the Application, investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

WHEREAS, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2022, through the 30th day of September, 2023, except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization's Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

Accordingly, the Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program"):

- (a) Purchase or commission and install public art pieces(s) in locations identified in collaboration with the Addison Parks Department. The locations shall be located on Town property, or easements granted to the Town on new construction or existing property. The City must provide prior written approval for the artist, selected artwork and location of the installation;
- (b) Will work with the Town and the developer to bring public art, landscaping, and interactive media for the DART Silver Line rail station and surrounding areas to fruition;
- (c) Will work with the Parks Department to identify tree and shrub replacement opportunities and park enhancements; and
- (d) Fund the Organization's operating expenses.

The Organization shall submit detailed quarterly Program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

January 30, 2023
April 30, 2023
July 30, 2023
October 30, 2023

In satisfaction hereof and as determined by the City, the Program may be provided directly by the Organization or funding of the Program may be provided to the City by the Organization. The Program will be provided upon the prior approval by the City. Design for any of the Program provided by the Organization is subject to the City's approval prior to installation thereof.

III. FUNDING

The City shall pay to the Organization the sum of no more than Fifty Thousand and No/100 Dollars (\$50,000.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2023. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2023. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. While funding is generally limited to the current fiscal year, due to the nature of the projects that are commissioned by the Organization, it is understood that Program undertaken by the

Organization may not be completed within the Term. If the Organization fails to complete the Program, the Organization may be allowed to continue the Program, provided that it complies with the terms of this Agreement, including quarterly reporting on the expenditure of Funding. If the Organization fails to complete the Program identified herein to the satisfaction of the City within the Term, then the Organization shall return any and all unexpended Funding to the City immediately upon request, and the Organization may be ineligible for the receipt of Funding the following year.

Notwithstanding anything to the contrary provided herein, the parties agree that the Organization is eligible for a dollar for dollar match not to exceed Fifteen Thousand and No/100 Dollars (\$15,000.00) at the sole discretion and determination of the City, if the Organization can demonstrate to the satisfaction of the City that it has accumulated additional funding from private donations outside of the City within the Term of this Agreement ("Matching Funds"), in accordance with the provisions of Exhibit "A" attached hereto and incorporated herein for all purposes. For the purpose of calculating the Matching Funds, Private Donations, as defined in Exhibit "A" attached hereto and incorporated herein for all purposes, received by the Organization as a result of the North Texas Giving Day on September 22, 2022, may be included in the calculation for Fiscal Year 2023. However, a subsequent North Texas Giving Day within the Fiscal Year 2023 may not be included in the calculation.

The Funding (including all Matching Funds) shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Funding shall be paid from funds of the City consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH

THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE PARTIES SHALL PROMPTLY ADVISE THE EACH OTHER IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS SECTION IV, INCLUDING THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

V. TERMINATION

This Agreement may be cancelled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice. Notice of termination shall be

sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

Upon Agreement termination and payment or tender of any refund, all obligations of the Organization under this Agreement shall be discharged, except as otherwise provided herein (e.g., obligations surviving termination of this Agreement). After which, no action shall lie or accrue for additional benefit, consideration or value for or based upon the Program performed under or pursuant to this Agreement.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, from this Agreement or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer, employee, representative, or volunteer of the Organization shall have any financial interest, direct or indirect, in this Agreement or the proceeds hereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, the Organization shall submit a budget showing the use of the Funding provided, pursuant to this Agreement, for the City's review and the Organization shall make such quarterly financial reports to the City, as provided for herein, listing the expenditures made by the Organization from the Funding. The City's approval of the Organization's annual budget creates a fiduciary duty in the Organization with respect to the Funding provided under this Agreement.

Funding received hereunder may be spent for day-to-day operations, supplies, salaries and administrative costs (including the completion of a compilation report), provided that such costs are necessary for Program completion purposes, for which the Funding may be used as described herein.

The Organization shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of Funding received pursuant to this Agreement. On request of the City at any time, the Organization shall make all its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Beginning FY 2017, and every other year thereafter, so long as the Organization is a recipient of grant funding, the Organization shall provide the City financial statement(s) prepared by its accountant or financial officer within ninety (90) days of the end of the applicable fiscal year. Likewise, beginning FY 2018 and every other year thereafter, so long as the Organization is a recipient of grant funding, the City may request a compilation report prepared by an independent accounting firm prior to the end of the applicable fiscal year. The Organization shall deliver the compilation report to the City within one hundred twenty (120) days of the end of the applicable fiscal year. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in a hard-copy, non-electronic format.

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

(a) The City may conduct an on-site visit to the Organization during the Term;

(b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified in writing of any changes to the schedule; and

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of

this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Agreement shall be deemed to constitute that the City and the Organization are partners or joint ventures with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Agreement creates, a joint enterprise.

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

The Organization acknowledges that any and all records of the Organization, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, as amended. The Organization agrees to fully and promptly cooperate with the City in responding to requests for information received by the City for the foregoing information pursuant to the Act. In the event the Organization determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the

public under the provisions of the Act, the Organization shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

XV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Agreement shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and the Organization agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Dr. Jay M. Ihrig
Addison Arbor Foundation
P.O. Box 1649
Addison, Texas 75001

Email Address for Financial
Reports: ivillalta@addisontx.gov

XVIII. SEVERABILITY

The terms of this Agreement are severable, and if any section, paragraph, clause, or other portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Agreement initially.

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement and agreement between the City and the Organization and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Organization.

XXI. SOVEREIGN IMMUNITY

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XXII. NO BOYCOTT ISRAEL

Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

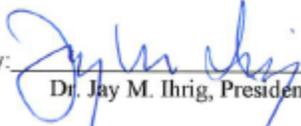
[signature page follows]

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

ADDISON ARBOR FOUNDATION

By: _____
Hamid Khaleghipour
Interim City Manager

By:  _____
Dr. Jay M. Ihrig, President & Director

Date: _____

Date: 10/5/22

EXHIBIT "A"

**DESCRIPTION OF "MATCHING FUNDS" AND PROCESS
FOR DISTRIBUTION OF MATCHING FUNDS
FOR ADDISON ARBOR FOUNDATION
FROM HOTEL/MOTEL TAX FUNDS**

For every One Dollar of Private Donations (as hereinafter defined) actually received by Addison Arbor Foundation ("AAF"), the City shall, in accordance with the provisions of this Agreement, pay to AAF Matching Funds in an amount up to but not exceeding Fifteen Thousand and No/100 Dollars (\$15,000) for Fiscal Year 2023. In order to receive Matching Funds, AAF shall provide to the City such proof of its receipt of Private Donations as the City shall reasonably require. Beginning October 1, 2022, AAF may make application on or before the 15th day of every three (3) month period for distribution of Private Donations and the City shall pay such matching funds provided the City has received adequate proof, in the City's sole opinion, of the actual receipt of Private Donations by AAF as set forth in each application. The application shall be on a form provided by the City.

For the purposes of this Agreement, the term "Private Donations" shall mean and include: cash funds actually received by AAF during the term hereof from any private donations in the form of cash and received by the AAF on or before September 30, 2023. Pledged amounts shall not count toward the Private Donations for the calculation of Matching Funds.

Council Meeting 2023

5.

Meeting Date: 10/25/2022

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Metrocrest Services and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$82,650.

BACKGROUND:

Town Staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request of funds for their organization that directly enhances the Town. The Town Staff and appointed Council Member Liaisons evaluate applications for their respective organizations individually. Town Staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements mayor may not be required, but Town Staff can request them at any time.

Metrocrest Services submitted an application to the Town requesting \$82,650 for Fiscal Year 2023. During the Council Budget Work Session on August 3, 2022, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2023 budget. During the discussion about Metrocrest Services, Council directed staff to grant Metrocrest Services their requested amount of \$82,650. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Metrocrest Services grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Grant Funding Agreement FY23-Metrocrest Services

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND METROCREST SERVICES, IN AN AMOUNT NOT TO EXCEED \$82,650.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Metrocrest Services submitted a Program application to the Town for consideration; and

WHEREAS, the Town has reviewed the Program application and investigated and determined that the requests set forth in therein are for a public purpose and will benefit its citizens; and

WHEREAS, the Town and Metrocrest Services desire to enter into the attached agreement to set forth the terms and conditions regarding Metrocrest Services’ use of the allocated Program funding.

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

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The Agreement for Grant Funding between the Town and the Metrocrest Services in an amount not to exceed \$82,650.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

SECTION 3. 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 25th day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

STATE OF TEXAS
COUNTY OF DALLAS

§
§
§

AGREEMENT FOR GRANT FUNDING

This Agreement for Grant Funding ("Agreement") is made and entered into as of the 1st day of October, 2022 by and between the Town of Addison, Texas (the "City") and Metrocrest Services (the "Organization").

WITNESSETH:

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

WHEREAS, the City Council has adopted an application process ("Application") whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

WHEREAS, the Organization submitted an Application to the City for consideration; and

WHEREAS, the City has reviewed the Application, investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

WHEREAS, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2022, through the 30th day of September, 2023, except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization's Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

Accordingly, the Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program"):

(a) Provide direct material assistance and short-term emergency assistance to residents and citizens of the City of which includes:

- 1) Rent;
- 2) Utilities;
- 3) Food;
- 4) Financial education;
- 5) Employment counseling;
- 6) Transportation Services;
- 7) Home safety modifications and home delivered meals for Seniors; and
- 8) Other related services.

(b) Provide information and referral on health and social service issues to residents and citizens of the City of which includes:

- 1) Employment Assistance;
- 2) Health and Social Services Referrals;
- 3) Support Group Information; and
- 4) Other related referrals.

(c) Provide indirect assistance to residents and citizens for the City of which includes:

- 1) Collaboration with others in the community for awareness of need and maximum utilization of resources;
- 2) Community education about issues, needs, and resources;
- 3) Inquiry into the causes of identified problems;
- 4) Participation in the development of plans and strategies to address the causes; and
- 5) Provisions of volunteer opportunities for community-wide involvement in the programs of the Organization.

The Organization shall submit detailed quarterly Program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

January 30, 2023
April 30, 2023
July 30, 2023
October 30, 2023

III. FUNDING

The City shall pay to the Organization the sum of no more than Eighty-Two Thousand Six Hundred Fifty and No/100 Dollars (\$82,650.00) ("Funding") as follows: fifty percent (50%) of the

Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2023. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2023. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Funding shall be paid from funds of the City consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR

WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS SECTION IV, INCLUDING THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

Upon Agreement termination and payment or tender of any refund, all obligations of the Organization under this Agreement shall be discharged, except as otherwise provided herein (e.g., obligations surviving termination of this Agreement). After which, no action shall lie or accrue for additional benefit, consideration or value for or based upon the Program performed under or pursuant to this Agreement.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, from this Agreement or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer, employee, representative, or volunteer of the Organization shall have any financial interest, direct or indirect, in this Agreement or the proceeds hereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, the Organization shall submit a budget showing the use of the Funding provided, pursuant to this Agreement, for the City's review and the Organization shall make such quarterly financial reports to the City, as provided for herein, listing the expenditures made by the Organization from the Funding. The City's approval of the Organization's annual budget creates a fiduciary duty in the Organization with respect to the Funding provided under this Agreement.

Funding received hereunder may be spent for day-to-day operations, supplies, salaries and administrative costs (including the completion of a compilation report), provided that such costs are necessary for Program completion purposes, for which the Funding may be used as described herein.

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application

packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in a hard-copy, non-electronic format.

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

(a) The City may conduct an on-site visit to the Organization during the Term;

(b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified in writing of any changes to the schedule; and

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other

conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Agreement shall be deemed to constitute that the City and the Organization are partners or joint ventures with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Agreement creates, a joint enterprise.

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

The Organization acknowledges that any and all records of the Organization, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, as amended. The Organization agrees to fully and promptly cooperate with the City in responding to requests for information received by the City for the foregoing information pursuant to the Act. In the event the Organization determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the public under the provisions of the Act, the Organization shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

XV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Agreement shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and the Organization agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Mr. Tracy Eubanks
Metrocrest Services
13801 Hutton Drive, Suite 150
Farmers Branch, Texas 75234

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

The terms of this Agreement are severable, and if any section, paragraph, clause, or other portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Agreement initially.

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement and agreement between the City and the Organization and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Organization.

XXI. SOVEREIGN IMMUNITY

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XXII. NO BOYCOTT ISRAEL

Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

METROCREST SERVICES

By: _____
Hamid Khaleghipour
Interim City Manager

By:  _____
Mr. Tracy Eubanks, CEO

Date: _____

Date: 9/29/22

Council Meeting 2023

6.

Meeting Date: 10/25/2022

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Outcry Theatre and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$2,500.

BACKGROUND:

Town Staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request of funds for their organization that directly enhances the Town. The Town Staff and appointed Council Member Liaisons evaluate applications for their respective organizations individually. Town Staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town Staff can request them at any time.

Outcry Theatre submitted an application to the Town requesting \$10,000 for Fiscal Year 2023. During the Council Budget Work Session on August 3, 2022, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2023 budget. During the discussion about Outcry Theatre, Council directed Staff to grant Outcry Theatre \$2,500. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Outcry Theatre grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Grant Funding Agreement FY23-Outcry Theatre

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND OUTCRY THEATRE, IN AN AMOUNT NOT TO EXCEED \$2,500.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Outcry Theatre submitted a Program application to the Town for consideration; and

WHEREAS, the Town has reviewed the Program application and investigated and determined that the requests set forth in therein are for a public purpose and will benefit its citizens; and

WHEREAS, the Town and Outcry Theatre desire to enter into the attached agreement to set forth the terms and conditions regarding Outcry Theatre’s use of the allocated Program funding.

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

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The Agreement for Grant Funding between the Town and the Outcry Theatre in an amount not to exceed \$2,500.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

SECTION 3. 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 25th day of OCTOBER 2022.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

STATE OF TEXAS
COUNTY OF DALLAS

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AGREEMENT FOR GRANT FUNDING

This Agreement for Grant Funding ("Agreement") is made and entered into as of the 1st day of October, 2022 by and between the Town of Addison, Texas (the "City") and Outcry Theatre (the "Organization").

WITNESSETH:

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

WHEREAS, the City Council has adopted an application process ("Application") whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

WHEREAS, the Organization submitted an Application to the City for consideration; and

WHEREAS, the City has reviewed the Application, investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

WHEREAS, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2022, through the 30th day of September, 2023, except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization's Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

Accordingly, the Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program"):

- (a) Production costs for performances at the Addison Theatre Centre, such as: sets, props, costumes, and other production specific expenses.

The Organization shall submit detailed quarterly Program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

- January 30, 2023
- April 30, 2023
- July 30, 2023
- October 30, 2023

III. FUNDING

The City shall pay to the Organization the sum of no more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2023. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2023. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Funding shall be paid from funds of the City consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS,

OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS SECTION IV, INCLUDING THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

Upon Agreement termination and payment or tender of any refund, all obligations of the Organization under this Agreement shall be discharged, except as otherwise provided herein (e.g., obligations surviving termination of this Agreement). After which, no action shall lie or accrue for additional benefit, consideration or value for or based upon the Program performed under or pursuant to this Agreement.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, from this Agreement or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer, employee, representative, or volunteer of the Organization shall have any financial interest, direct or indirect, in this Agreement or the proceeds hereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, the Organization shall submit a budget showing the use of the Funding provided, pursuant to this Agreement, for the City's review and the Organization shall make such quarterly financial reports to the City, as provided for herein, listing the expenditures made by the Organization from the Funding. The City's approval of the Organization's annual budget creates a fiduciary duty in the Organization with respect to the Funding provided under this Agreement.

Funding received hereunder may be spent for day-to-day operations, supplies, salaries and administrative costs (including the completion of a compilation report), provided that such costs are necessary for Program completion purposes, for which the Funding may be used as described herein.

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in a hard-copy, non-electronic format.

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

- (a) The City may conduct an on-site visit to the Organization during the Term;
- (b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified in writing of any changes to the schedule; and
- (c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any

manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Agreement shall be deemed to constitute that the City and the Organization are partners or joint ventures with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Agreement creates, a joint enterprise.

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

The Organization acknowledges that any and all records of the Organization, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, as amended. The Organization agrees to fully and promptly cooperate with the City in responding to requests for information received by the City for the foregoing information pursuant to the Act. In the event the Organization determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the public under the provisions of the Act, the Organization shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

XV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Agreement shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and the Organization agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Becca Johnson-Spinos
Outcry Theatre, Inc.
1915 N. Central Expy., #120
Plano, Texas 75075

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

The terms of this Agreement are severable, and if any section, paragraph, clause, or other portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Agreement initially.

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement and agreement between the City and the Organization and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Organization.

XXI. SOVEREIGN IMMUNITY

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XXII. NO BOYCOTT ISRAEL

Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

OUTCRY THEATRE

By: _____
Hamid Khaleghipour
Interim City Manager

By:  _____
Ms. Becca Johnson-Spinos
Artistic Director

Date: _____

Date: Oct 11, 2022

Council Meeting 2023

7.

Meeting Date: 10/25/2022

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider Action on a **Resolution Approving a Grant Funding Agreement with WaterTower Theatre and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$425,000 in Cash and In-Kind Contributions.

BACKGROUND:

Town Staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request of funds for their organization that directly enhances the Town. The Town Staff and appointed Council Member Liaisons evaluate applications for their respective organizations individually. Town Staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town Staff can request them at any time.

The WaterTower Theatre (WTT) submitted an application to the Town requesting a \$425,000 primary grant for Fiscal Year 2023. During the Council Budget Work Session on August 3, 2022, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2023 budget. During the discussion about the WTT, Council directed staff to grant the WTT \$376,589 (\$226,589 and \$150,000 in matching funds). This grant funding agreement allocates \$226,589 and an additional \$150,000 in matching funds at the sole discretion and determination of the Town if the Organization can demonstrate to the satisfaction of the Town that it has accumulated additional funding from sources outside of the Town for \$150,000 within the Terms of the Agreement. Additionally, the Town agrees to the following in-kind amounts: \$16,400 in office rent and \$32,011 in production rent. Creating a net value of a \$425,000 grant. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The WaterTower Theatre grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Grant Funding Agreement FY22-WaterTower Theatre

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND WATERTOWER THEATRE TO PROVIDE \$226,589.00 IN GRANT FUNDING WITH PERFORMANCE MEASURES, \$48,411.00 AS AN IN-KIND DONATION FROM THE TOWN AND ADDITIONAL FUNDING NOT TO EXCEED \$150,000.00 IN MATCHING FUNDS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, WaterTower Theatre submitted a Program application to the Town for consideration; and

WHEREAS, the Town has reviewed the Program application and investigated and determined that the requests set forth in therein are for a public purpose and will benefit its citizens; and

WHEREAS, the Town and WaterTower Theatre desire to enter into the attached agreement to set forth the terms and conditions regarding WaterTower Theatre’s use of the allocated Program funding.

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

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The Agreement for Grant Funding between the Town and WaterTower Theatre to provide \$226,589.00 in grant funding with performance measures, \$48,411.00 as an in-kind donation from the Town and additional funding not to exceed \$150,000.00 in matching funds, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

SECTION 3. 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 25th day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

STATE OF TEXAS
COUNTY OF DALLAS

§
§
§

AGREEMENT FOR GRANT FUNDING

This Agreement for Grant Funding ("Agreement") is made and entered into as of the 1st day of October, 2022 by and between the Town of Addison, Texas (the "City") and WaterTower Theatre (the "Organization").

WITNESSETH:

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

WHEREAS, the City Council has adopted an application process ("Application") whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

WHEREAS, the Organization submitted an Application to the City for consideration; and

WHEREAS, the City has reviewed the Application, investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

WHEREAS, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2022, through the 30th day of September, 2023, except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization's Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

Accordingly, the Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program"):

- (a) One co-production with Stage West in Fort Worth (WTT production is the first, Stage West follows);
- (b) Main Stage Season of 4 shows (12 in person performances each, 48 total);
- (c) 2 workshops of new musicals and plays with public final performance (2 in person performances);
- (d) Multiple Educational Programs at no cost to students including continued development of a magnate music theatre program at Rowlett High School and Saturday morning classes for children with disabilities; and
- (e) Summer Internship- paid producing internships & technical internships for 18-22 year olds (Summer 2023).

The Organization shall submit detailed quarterly program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

January 30, 2023
April 30, 2023
July 30, 2023
October 30, 2023

III. FUNDING

The City shall pay to the Organization the sum of no more than Two Hundred Twenty-Six Thousand Five Hundred Eighty-Nine and No/100 Dollars (\$226,589.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2023. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2023. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The City agrees to make an in-kind donation to the Organization in an amount not to exceed Forty-Eight Thousand Four Hundred Eleven and No/100 Dollars (\$48,411.00). Sixteen Thousand Four Hundred and No/100 Dollars (\$16,400.00) of which shall be designated for Office Rent and

Thirty-Two Thousand Eleven and No/100 Dollars (\$32,011.00) of which shall be designated for Production Rent.

Notwithstanding anything provided in this Section and in accord with the description of "Matching Funds" and the process for distribution of Matching Funds, attached hereto as Exhibit "A" and incorporated herein by reference, the parties agree that the Organization is eligible for an additional **One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00)** at the sole discretion and determination of the City if the Organization can demonstrate to the satisfaction of the City that it has accumulated additional Program funding from sources outside of the City in the amount of **One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00)** within the Term of this Agreement ("Matching Funds").

The Funding (including all Matching Funds) shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Funding shall be paid from funds of the City consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY

ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS SECTION IV, INCLUDING THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

Upon Agreement termination and payment or tender of any refund, all obligations of the Organization under this Agreement shall be discharged, except as otherwise provided herein (e.g., obligations surviving termination of this Agreement). After which, no action shall lie or accrue for

additional benefit, consideration or value for or based upon the Program performed under or pursuant to this Agreement.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, from this Agreement or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer, employee, representative, or volunteer of the Organization shall have any financial interest, direct or indirect, in this Agreement or the proceeds hereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, the Organization shall submit a budget showing the use of the Funding provided, pursuant to this Agreement, for the City's review and the Organization shall make such quarterly financial reports to the City, as provided for herein, listing the expenditures made by the Organization from the Funding. The City's approval of the Organization's annual budget creates a fiduciary duty in the Organization with respect to the Funding provided under this Agreement.

Funding received hereunder may be spent for day-to-day operations, supplies, salaries and administrative costs (including the completion of a compilation report), provided that such costs are necessary for Program completion purposes, for which the Funding may be used as described herein.

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. **SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.** If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in a hard-copy, non-electronic format.

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

(a) The City may conduct an on-site visit to the Organization during the Term;

(b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified in writing of any changes to the schedule; and

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Agreement shall be deemed to constitute that the City and the Organization are partners or joint ventures with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Agreement creates, a joint enterprise.

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

The Organization acknowledges that any and all records of the Organization, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, as amended. The Organization agrees to fully and promptly cooperate with the City in responding to requests for information received by the City for the foregoing information pursuant to the Act. In the event the Organization determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the public under the provisions of the Act, the Organization shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

XV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Agreement shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and the Organization agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Mr. Shane Peterman
WaterTower Theatre
15650 Addison Road
Addison, Texas 75001

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

The terms of this Agreement are severable, and if any section, paragraph, clause, or other portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Agreement initially.

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement and agreement between the City and the Organization and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Organization.

XXI. SOVEREIGN IMMUNITY

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XXII. NO BOYCOTT ISRAEL

Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

[signature page follows]

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

WATERTOWER THEATRE

By: _____

Hamid Khalehipour
Interim City Manager

By: _____

Mr. Share Peterman
Producing Artistic Director

Date: _____

Date: 9.29.22

EXHIBIT "A"

**DESCRIPTION OF "MATCHING FUNDS" AND PROCESS
FOR DISTRIBUTION OF MATCHING FUNDS
FOR WATERTOWER THEATRE
INCORPORATED FROM HOTEL/MOTEL
TAX FUNDS**

For each One Dollar of Theatre Funds (as defined herein) actually received by WaterTower Theatre ("WTT"), the City shall pay to WTT an equal amount ("Matching Funds") up to but not exceeding One Hundred Fifty Thousand and No/100 Dollars (\$150,000). In order to receive Matching Funds, WTT shall provide to the City such proof of its receipt of Theatre Funds as the City shall reasonably require. **Beginning January 1, 2023, WTT may make application on or before the 15th day of each month for distribution of Matching Funds and the City shall pay such matching funds provided the City has received adequate proof, in the City's sole opinion, of the actual receipt of Theatre Funds by WTT as set forth in each application. Disbursements are made in a minimum of \$5,000 increments.**

For the purposes of this Agreement, the term "Theatre Funds" shall mean and include: (i) cash funds actually received by WTT during the term hereof from any gifts, grants, donations, or other cash contributions from any person or business entity (whether for-profit or non-profit), and (ii) the qualifying season ticket funds, which shall be determined by multiplying (a) the number of 2022-2023 WTT season tickets sold by WTT between January 1, 2022 and November 15, 2022, times (b) the average cost of a single season subscription¹, times (c) 25%. (e.g., total # of tickets x average cost x .25 = qualifying season ticket funds).

¹ The average costs will include all regular season tickets (\$149) together with all early-purchased season tickets (\$129) sold during the applicable period.

Council Meeting 2023

8.

Meeting Date: 10/25/2022

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Dallas Cat Lady and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$5,000.

BACKGROUND:

Town Staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request of funds for their organization that directly enhances the Town. The Town Staff and appointed Council Member Liaisons evaluate applications for their respective organizations individually. Town Staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town Staff can request them at any time.

The Dallas Cat Lady submitted an application to the Town requesting \$7,500 for Fiscal Year 2023. During the Council Budget Work Session on August 3, 2022, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2023 budget. During the discussion about the Dallas Cat Lady, Council directed staff to grant the Dallas Cat Lady \$5,000. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Dallas Cat Lady grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Grant Funding Agreement FY23-Dallas Cat Lady

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND DALLAS CAT LADY, IN AN AMOUNT NOT TO EXCEED \$5,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Dallas Cat Lady submitted a Program application to the Town for consideration; and

WHEREAS, the Town has reviewed the Program application and investigated and determined that the requests set forth in therein are for a public purpose and will benefit its citizens; and

WHEREAS, the Town and Dallas Cat Lady desire to enter into the attached agreement to set forth the terms and conditions regarding Dallas Cat Lady’s use of the allocated Program funding.

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

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The Agreement for Grant Funding between the Town and the Dallas Cat Lady in an amount not to exceed \$5,000.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

SECTION 3. 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 25th day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

STATE OF TEXAS
COUNTY OF DALLAS

§
§
§

AGREEMENT FOR GRANT FUNDING

This Agreement for Grant Funding ("Agreement") is made and entered into as of the 1st day of October, 2022 by and between the Town of Addison, Texas (the "City") and Dallas Cat Lady (the "Organization").

WITNESSETH:

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

WHEREAS, the City Council has adopted an application process ("Application") whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

WHEREAS, the Organization submitted an Application to the City for consideration; and

WHEREAS, the City has reviewed the Application, investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

WHEREAS, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2022, through the 30th day of September, 2023, except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization's Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

Accordingly, the Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program"):

(a) Spay/neuter program allowing approximately 150 cats and kittens, stray or feral cats as well as cats and kittens in the foster system for adoption, in an effort to reduce the stray and feral cat population; and

(b) Other programs available to the general public designed to assist cats and caregivers in need.

The Organization shall submit detailed quarterly Program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

January 30, 2023
April 30, 2023
July 30, 2023
October 30, 2023

III. FUNDING

The City shall pay to the Organization the sum of no more than Five Thousand and No/100 Dollars (\$5,000.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2023. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2023. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Funding shall be paid from funds of the City consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES

SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE

RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS SECTION IV, INCLUDING THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

Upon Agreement termination and payment or tender of any refund, all obligations of the Organization under this Agreement shall be discharged, except as otherwise provided herein (e.g., obligations surviving termination of this Agreement). After which, no action shall lie or accrue for additional benefit, consideration or value for or based upon the Program performed under or pursuant to this Agreement.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, from this Agreement or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer, employee, representative, or volunteer of the Organization shall have any financial interest, direct or indirect, in this Agreement or the proceeds hereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, the Organization shall submit a budget showing the use of the Funding provided, pursuant to this Agreement, for the City's review and the Organization shall make such quarterly financial reports to the City, as provided for herein, listing the expenditures made by the Organization from the Funding. The City's approval of the Organization's annual budget creates a fiduciary duty in the Organization with respect to the Funding provided under this Agreement.

Funding received hereunder may be spent for day-to-day operations, supplies, salaries and administrative costs (including the completion of a compilation report), provided that such costs are necessary for Program completion purposes, for which the Funding may be used as described herein.

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in a hard-copy, non-electronic format.

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

(a) The City may conduct an on-site visit to the Organization during the Term;

(b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified in writing of any changes to the schedule; and

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and

devices associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Agreement shall be deemed to constitute that the City and the Organization are partners or joint ventures with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Agreement creates, a joint enterprise.

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without

limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

The Organization acknowledges that any and all records of the Organization, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, as amended. The Organization agrees to fully and promptly cooperate with the City in responding to requests for information received by the City for the foregoing information pursuant to the Act. In the event the Organization determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the public under the provisions of the Act, the Organization shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

XV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Agreement shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and the Organization agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Leigh Sessler
Dallas Cat Lady
P.O. Box 181671
Dallas, Texas 75218

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

The terms of this Agreement are severable, and if any section, paragraph, clause, or other portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Agreement initially.

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement and agreement between the City and the Organization and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Organization.

XXI. SOVEREIGN IMMUNITY

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XXII. NO BOYCOTT ISRAEL

Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

DALLAS CAT LADY

By: _____
Hamid Khaleghipour
Interim City Manager

By: ML Sessler
Ms. Leigh Sessler, Exec. Director

Date: _____

Date: Oct. 19, 2022

Council Meeting 2023

9.

Meeting Date: 10/25/2022

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider Action on a **Resolution Approving a Grant Funding Agreement Between the Town of Addison and Dallas County Mental Health & Retardation d/b/a Metrocare Services and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$2,500.

BACKGROUND:

Town Staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request of funds for their organization that directly enhances the Town. The Town Staff and appointed Council Member Liaisons evaluate applications for their respective organizations individually. Town Staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town Staff can request them at any time.

The Dallas County Mental Health & Retardation d/b/a Metrocare Services submitted an application to the Town requesting \$5,000 for Fiscal Year 2023. During the Council Budget Work Session on August 3, 2022, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2023 budget. During the discussion about Metrocare Services, Council directed staff to grant Metrocare Services \$2,500. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The Dallas County Mental Health & Retardation d/b/a Metrocare Services grant funding agreement is included as Exhibit A within the attached resolution. Due to the difference of the requested funding amount and approved funding amount, Metrocare Services adjusted their original program stated in their application, "Train a minimum of 40 individuals, with the capacity to train and certify up to 80

individuals in Mental Health First Aid (MHFA)" to "Train a minimum of 20 individuals, with the capacity to train and certify up to 40 individuals in Mental Health First Aid (MHFA)". This is reflected in Section II. Grant Uses (b) of Metrocare Services' grant funding agreement.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Grant Funding Agreement FY23-Metrocare Services

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND DALLAS COUNTY MHMR D/B/A METROCARE SERVICES, IN AN AMOUNT NOT TO EXCEED \$2,500.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Dallas County MHMR d/b/a Metrocare Services submitted a Program application to the Town for consideration; and

WHEREAS, the Town has reviewed the Program application and investigated and determined that the requests set forth in therein are for a public purpose and will benefit its citizens; and

WHEREAS, the Town and Dallas County MHMR d/b/a Metrocare Services desire to enter into the attached agreement to set forth the terms and conditions regarding Dallas County MHMR d/b/a Metrocare Services’ use of the allocated Program funding.

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

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The Agreement for Grant Funding between the Town and the Dallas County MHMR d/b/a Metrocare Services in an amount not to exceed \$2,500.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

SECTION 3. 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 25th day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

STATE OF TEXAS §
 § AGREEMENT FOR GRANT FUNDING
COUNTY OF DALLAS §

This Agreement for Grant Funding (“Agreement”) is made and entered into as of the 1st day of October, 2022 by and between the Town of Addison, Texas (the “City”) and Dallas County MHMR d/b/a Metrocare Services (the “Organization”).

WITNESSETH:

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

WHEREAS, the City Council has adopted an application process (“Application”) whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

WHEREAS, the Organization submitted an Application to the City for consideration; and

WHEREAS, the City has reviewed the Application, investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

WHEREAS, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization’s use of the public funds.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2022, through the 30th day of September, 2023, except as otherwise provided for herein, and subject to the earlier termination of this Agreement (“Term”). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization’s Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

Accordingly, the Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program"):

(a) To cover the costs of program materials, supplies, and targeted marketing efforts in Addison; and

(b) Train a minimum of 40 individuals, with the capacity to train and certify up to 80 individuals in Mental Health First Aid (MHFA).

The Organization shall submit detailed quarterly Program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

January 30, 2023
April 30, 2023
July 30, 2023
October 30, 2023

III. FUNDING

The City shall pay to the Organization the sum of no more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2023. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2023. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Funding shall be paid from funds of the City consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES

SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE

RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS SECTION IV, INCLUDING THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

Upon Agreement termination and payment or tender of any refund, all obligations of the Organization under this Agreement shall be discharged, except as otherwise provided herein (e.g., obligations surviving termination of this Agreement). After which, no action shall lie or accrue for additional benefit, consideration or value for or based upon the Program performed under or pursuant to this Agreement.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, from this Agreement or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer, employee, representative, or volunteer of the Organization shall have any financial interest, direct or indirect, in this Agreement or the proceeds hereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, the Organization shall submit a budget showing the use of the Funding provided, pursuant to this Agreement, for the City's review and the Organization shall make such quarterly financial reports to the City, as provided for herein, listing the expenditures made by the Organization from the Funding. The City's approval of the Organization's annual budget creates a fiduciary duty in the Organization with respect to the Funding provided under this Agreement.

Funding received hereunder may be spent for day-to-day operations, supplies, salaries and administrative costs (including the completion of a compilation report), provided that such costs are necessary for Program completion purposes, for which the Funding may be used as described herein.

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in a hard-copy, non-electronic format.

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

(a) The City may conduct an on-site visit to the Organization during the Term;

(b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified in writing of any changes to the schedule; and

(c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and

devises associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Agreement shall be deemed to constitute that the City and the Organization are partners or joint ventures with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Agreement creates, a joint enterprise.

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without

limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

The Organization acknowledges that any and all records of the Organization, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, as amended. The Organization agrees to fully and promptly cooperate with the City in responding to requests for information received by the City for the foregoing information pursuant to the Act. In the event the Organization determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the public under the provisions of the Act, the Organization shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

XV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Agreement shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and the Organization agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Dr. John W. Burruss
Dallas County MHMR
d/b/a Metrocare Services

Email Address for Financial Reports:
ivillalta@addisontx.gov

1345 River Bend Drive, Suite 200
Dallas Texas 75247

XVIII. SEVERABILITY

The terms of this Agreement are severable, and if any section, paragraph, clause, or other portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Agreement initially.

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement and agreement between the City and the Organization and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Organization.

XXI. SOVEREIGN IMMUNITY

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XXII. NO BOYCOTT ISRAEL

Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

METROCARE SERVICES

By: _____
Hamid Khaleghipour
Interim City Manager

By: John W. Burruss
Dr. John W. Burruss
President & CEO

Date: _____

Date: 10/17/2022

Council Meeting 2023

10.

Meeting Date: 10/25/2022

Department: Finance

Pillars: Gold Standard in Financial Health

AGENDA CAPTION:

Consider Action on a **Resolution Approving a Grant Funding Agreement with On Eagles Wings, Inc. d/b/a Woven Health Clinic and Authorizing the City Manager to Execute the Grant Funding Agreement** in an Amount Not to Exceed \$5,000.

BACKGROUND:

Town Staff has developed a grant funding process that allows non-profit organizations within the Town of Addison to submit a request of funds for their organization that directly enhances the Town. The Town Staff and appointed Council Member Liaisons evaluate applications for their respective organizations individually. Town Staff reviews all applicable financials of the non-profit organizations and verifies the organization is in good standing with both the IRS and Texas Secretary of State. To clearly reflect the impact of the grant to Addison and non-Addison residents, Quarterly Grant Reports are required by all non-profit organizations through the end of the Town's Fiscal Year. The Quarterly Grant Reports contain the non-profit organization's goals, objectives and performance measures as identified in the Grant Uses section of the agreement. Financial statements may or may not be required, but Town Staff can request them at any time.

On Eagles Wings, Inc. d/b/a Woven Health Clinic submitted an application to the Town requesting \$8,000 for Fiscal Year 2023. During the Council Budget Work Session on August 3, 2022, Council discussed grant funding allocations for multiple non-profits included in the Fiscal Year 2023 budget. During the discussion about the Woven Health Clinic, Council directed staff to grant the Woven Health Clinic \$5,000. The Town has reviewed and evaluated the application and determined that the non-profit organization's request outlined in the application is for a public purpose that directly enhances the Town of Addison.

The On Eagles Wings, Inc. d/b/a Woven Health Clinic grant funding agreement is included as an attachment to this agenda item.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution-Grant Funding Agreement FY23-Woven Health Clinic

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR GRANT FUNDING BETWEEN THE TOWN OF ADDISON AND EAGLES WINGS, INC. D/B/A WOVEN HEALTH CLINIC, IN AN AMOUNT NOT TO EXCEED \$5,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various non-profit organizations that provide public programs directly benefiting the Town’s citizens as well as the general public; and

WHEREAS, the City Council has adopted a non-profit organization donation grant program (“Program”) whereby these organizations may apply on an annual basis for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the City Council has authorized funding for the Program in the Town’s current fiscal year budget; and

WHEREAS, Eagles Wings, Inc. d/b/a Woven Health Clinic submitted a Program application to the Town for consideration; and

WHEREAS, the Town has reviewed the Program application and investigated and determined that the requests set forth in therein are for a public purpose and will benefit its citizens; and

WHEREAS, the Town and Eagles Wings, Inc. d/b/a Woven Health Clinic desire to enter into the attached agreement to set forth the terms and conditions regarding Eagles Wings, Inc. d/b/a Woven Health Clinic’s use of the allocated Program funding.

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

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The Agreement for Grant Funding between the Town and the Eagles Wings, Inc. d/b/a Woven Health Clinic in an amount not to exceed \$5,000.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

SECTION 3. 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 25th day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

STATE OF TEXAS
COUNTY OF DALLAS

§
§
§

AGREEMENT FOR GRANT FUNDING

This Agreement for Grant Funding ("Agreement") is made and entered into as of the 1st day of October, 2022 by and between the Town of Addison, Texas (the "City") and On Eagles Wings, Inc. d/b/a Woven Health Clinic (the "Organization").

WITNESSETH:

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

WHEREAS, the City Council has adopted an application process ("Application") whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

WHEREAS, the Organization submitted an Application to the City for consideration; and

WHEREAS, the City has reviewed the Application, investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

WHEREAS, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2022, through the 30th day of September, 2023, except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization's Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability pursuant to this

Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City in writing.

Accordingly, the Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program"):

- (a) Funding will be used as part of the Organization's general operating fund to:
 - 1) Deliver primary healthcare services;
 - 2) Chronic disease management and disease prevention programs;
 - 3) Basic Mental Healthcare;
 - 4) Medical supplies, pharmaceuticals, immunizations, radiology, patient educations, patient health events, and community related health events;
 - 5) Continue offering COVID-19 vaccinations, COVID-19 tests, and provide COVID-19 Care Kits for those that contract the virus; and
 - 6) Continue the Chronic Disease Management Program and PREVENT Disease NOW program.

The Organization shall submit detailed quarterly Program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

January 30, 2023
April 30, 2023
July 30, 2023
October 30, 2023

III. FUNDING

The City shall pay to the Organization the sum of no more than Five Thousand and No/100 Dollars (\$5,000.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2023. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2023. Approval of such an advance of Funding shall be at the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. Funding shall never carry over into the subsequent fiscal year. If the Organization fails to complete any Program within the Term, the Organization shall immediately inform the City in writing.

The Funding shall be paid solely from lawfully available funds. Under no circumstances shall the obligations of the City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Funding shall be paid from funds of the City consistent with Article III, Section 52(a) of the Texas Constitution. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the Organization. None of the obligations of the City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE ORGANIZATION SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION

RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS SECTION IV, INCLUDING THE DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAM HEREIN, AS DETERMINED BY THE CITY IN ITS SOLE DISCRETION, SHALL BE RETURNED.

Upon Agreement termination and payment or tender of any refund, all obligations of the Organization under this Agreement shall be discharged, except as otherwise provided herein (e.g., obligations surviving termination of this Agreement). After which, no action shall lie or accrue for additional benefit, consideration or value for or based upon the Program performed under or pursuant to this Agreement.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, from this Agreement or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer, employee, representative, or volunteer of the Organization shall have any financial interest, direct or indirect, in this Agreement or the proceeds hereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, the Organization shall submit a budget showing the use of the Funding provided, pursuant to this Agreement, for the City's review and the Organization shall make such quarterly financial reports to the City, as provided for herein, listing the expenditures made

by the Organization from the Funding. The City's approval of the Organization's annual budget creates a fiduciary duty in the Organization with respect to the Funding provided under this Agreement.

Funding received hereunder may be spent for day-to-day operations, supplies, salaries and administrative costs (including the completion of a compilation report), provided that such costs are necessary for Program completion purposes, for which the Funding may be used as described herein.

The Organization shall maintain complete and accurate financial records of all revenues, expenses, assets and liabilities, including, without limitation, each expenditure of Funding received pursuant to this Agreement. Financial records shall be sent to the City quarterly in the form of both a profit-loss statement and balance sheet in accord with generally accepted accounting principles (GAAP). Upon request by the City, the Organization shall make its financial records available for inspection and review by the City or its designated representative(s).

Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, at the Organization's expense, setting forth the Organization's income, expenses, assets and liabilities. SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required for the City for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in a hard-copy, non-electronic format.

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

- (a) The City may conduct an on-site visit to the Organization during the Term;
- (b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide to the City a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified in writing of any changes to the schedule; and
- (c) The City, through its official logo(s), shall be prominently recognized as a supporter of the Organization in all marketing materials produced or published by the Organization during the term hereof (including all print and digital marketing materials regardless of platform). The Organization shall notify the City in writing of its intent to produce or publish any such marketing materials and provide the City a reasonable opportunity to elect to have its logo(s) removed from the materials prior

to publication. The Organization shall use the City's designated logo(s) in strict conformance with the City's currently adopted branding guidelines. The City hereby grants the Organization a limited, non-exclusive license to use the City's logo solely for the foregoing purposes and the trade names, trademarks, service marks, logos, designs, identification, decals, artwork and other symbols and devises associated with the City ("City Marks") shall at all times remain the sole and exclusive property of the City. The Organization shall not license, sublicense, or use the City Marks in any manner, other than as expressly permitted in this subsection (c), without the prior written approval of the City.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey, by any means whatsoever, this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Agreement shall be deemed to constitute that the City and the Organization are partners or joint ventures with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Agreement creates, a joint enterprise.

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

The Organization acknowledges that any and all records of the Organization, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement may be subject to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, as amended. The Organization agrees to fully and promptly cooperate with the City in responding to requests for information received by the City for the foregoing information pursuant to the Act. In the event the Organization determines that any of its information responsive to a request under the Act is confidential and/or exempt from disclosure to the public under the provisions of the Act, the Organization shall, at its cost, be solely responsible for asserting arguments to the Office of the Attorney General pursuant to §552.305(b) of the Act, and for filing any and all subsequent appeals relating to an opinion of the Texas Attorney General that requires disclosure of the Organization's confidential information. Notwithstanding the foregoing, the Organization agrees that the City may, but shall be under no obligation to, submit arguments to the Attorney General relating to reasons the Organization's confidential information is exempt from disclosure to the public under the Act, regardless of whether the Organization has asserted its own arguments to the Attorney General.

The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

XV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict

compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Agreement shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and the Organization agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization's address:
Ms. Lisa Rigby
On Eagles Wings, Inc.
d/b/a Woven Health Clinic
1 Medical Parkway, Plaza 1, Suite 149
Farmers Branch, Texas 75234

Email Address for Financial Reports:
ivillalta@addisontx.gov

XVIII. SEVERABILITY

The terms of this Agreement are severable, and if any section, paragraph, clause, or other portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Agreement initially.

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement and agreement between the City and the Organization and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Organization.

XXI. SOVEREIGN IMMUNITY

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XXII. NO BOYCOTT ISRAEL

Pursuant to Texas Government Code Chapter 2270, Organization's execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

WOVEN HEALTH CLINIC

By: _____
Hamid Khalehipour
Interim City Manager

By:  _____
Ms. Lisa Rigby, Exec. Director

Date: _____

Date: 10/20/22

Council Meeting 2023

11.

Meeting Date: 10/25/2022

Department: Economic Development

Pillars: Innovative in Entrepreneurship & Business
Optimize the Addison Brand

Milestones: Economic development focus on attracting and retaining entrepreneurship, high-tech conferences, and Transit Oriented Development

AGENDA CAPTION:

Consider Action on a **Resolution Approving an Agreement for Funding Between the Town of Addison and the World Affairs Council of Dallas/Fort Worth and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$60,000.

BACKGROUND:

Over the last few years, the Town of Addison has maintained a formal agreement with the World Affairs Council (WAC) of Dallas/Fort Worth. In the initial years, WAC provided support to the Town to enhance its efforts with World Fest. In Fiscal Year (FY) 2015, the focus of WAC's efforts evolved to provide support in enhancing the Town's international business development efforts and international protocol consulting services.

The management of the agreement falls under the purview of the Economic Development and Tourism Department. A request is being made for approval of the FY 2023 agreement with WAC for an amount not to exceed \$60,000. The agreement includes an amount of \$50,000 to cover deliverables highlighted in the agreement, plus an annual amount of \$10,000 to be utilized for marketing and venue costs for events hosted in Addison.

The World Affairs Council completed the deliverables in the FY 2022 agreement and provided quarterly reports to staff. This was the first full year of Liz Brailsford's tenure as the new president of the World Affairs Council, and she values the relationship the Council has with the Town of Addison.

The scope of the services in the FY 2023 Agreement are similar to the FY 2022 Agreement. The proposed scope of services highlighted in the FY 2023 Agreement include the following:

- A. International Promotion and Business Development:
 - i. Assist Addison in strengthening its International Business Focus.

- ii. Work with Addison to maintain and strengthen existing relationships and forge new relationships with targeted countries.
- iii. Assist Addison to develop strategy on marketing its airport to international businesses.
- iv. Plan, organize, execute and co-host at least two (2) forums/luncheons in Addison unless current COVID-19 conditions or group gathering restrictions prevent such events from being held. In lieu of such events, significant virtual events with Addison as a high-profile participant, through actual participation or major sponsorship, focused on a relevant international business topic will be held.

B. Entrepreneur Development:

- i. Recommend Addison as a prime location for international entrepreneurs/groups to launch a start-up.
- ii. Work with Town staff to include their business resources and city council members in “virtual” visits of delegates from the International Visitor Leadership Program sponsored by the State Department. The goal is to showcase Addison’s international image and outreach.

C. Provide Town of Addison with opportunities to participate in international events:

- i. Make recommendations on events that would be appropriate for Addison City Council to attend including virtual events.
- ii. Provide passes to Town of Addison to such events.
- iii. Recognize City Council present at events from podium where appropriate.

D. Feature the Town of Addison as a Strategic Partner:

- i. Recognize Addison as a partner on World Affairs Council website.
- ii. Recognize Addison as a partner in designated events hosted by World Affairs Council.

E. Consulting Services:

- i. Provide consulting services on how to respond to issues having an international focus.
- ii. Provide cultural consulting awareness services on how to appropriately address dignitaries from particular countries.
- iii. Explore the opportunity to plan a new authentic German program element for the Town’s annual Oktoberfest event in collaboration with the German Consulate in Texas or the German American Chamber of Commerce.

The proposed scope of services was shared with Council Member Lori Ward,

who serves as the liaison to the group, for her review prior to the development of the agreement. The total annual funding amount was approved in the FY 2023 Budget as part of the Economic Development & Tourism Department annual budget paid out of the Hotel Fund.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - World Affairs Council Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR FUNDING BETWEEN THE TOWN OF ADDISON AND WORLD AFFAIRS COUNCIL OF DALLAS/FORT WORTH IN AN AMOUNT NOT TO EXCEED \$60,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR FUNDING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the Town; and

WHEREAS, the City Council has adopted an application process (“Application”) whereby these organizations may apply for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the World Affairs Council of Dallas/Fort Worth submitted an Application to the Town for consideration; and

WHEREAS, the Town and the World Affairs Council desire to enter into the Agreement for Funding to set forth the terms and conditions of the public funding.

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

SECTION 1. The Agreement for Funding between the Town of Addison and World Affairs Council of Dallas/Fort Worth in an amount not to exceed \$60,000.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said 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 **25th** day of **OCTOBER** 2022.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

AGREEMENT FOR FUNDING Economic Development Consulting for FY2022-2023

This Agreement for Funding ("Agreement") is entered into by and between the Town of Addison, Texas (the "City" or "Addison") and World Affairs Council of Dallas/Fort Worth ("World Affairs Council") (the City and World Affairs Council are sometimes referred to herein together as the "parties" and individually as a "party").

RECITALS

1. The City desires to expand its cultural and international trade efforts through its Economic Development & Tourism and Special Events Departments. Among other things, these efforts provide an opportunity to attract tourists and businesses to the City and educate the public on the many cultures that make up the North Texas region.
2. World Affairs Council is a nonprofit corporation established under the laws of the State of Texas with a mission to promote international awareness, understanding, and connections through its multifaceted programs. The Council works to enhance the region's global stature and to prepare North Texans to thrive in our complex world.
3. Addison desires to retain the services of World Affairs Council, and World Affairs Council desires to provide its services to Addison, to enhance the City's international focus, as set forth herein.

NOW, THEREFORE, for and consideration of the above and foregoing premises, the mutual covenants and obligations set forth herein, and other good and valuable consideration, the Town of Addison, Texas and World Affairs Council do contract and agree as follows:

1. **Term.** This Agreement shall be effective on October 1, 2022 (the "Effective Date"), and shall remain in effect through September 30, 2023 (the "Expiration Date"), subject, however, to the termination provisions of this Agreement.
2. **Services.** In connection with this Agreement, World Affairs Council will provide to the City the following non-exclusive services ("Services"):
 - A. International Promotion and Business Development:
 - i. Assist Addison in strengthening its International Business Focus.
 - ii. Work with Addison to maintain and strengthen existing relationships and forge new relationships with targeted countries.
 - iii. Assist Addison to develop strategy on marketing its airport to international businesses.
 - iv. Plan, organize, execute and co-host at least two (2) forums/luncheons in Addison unless current COVID-19 conditions or group gathering restrictions prevent such events from being held. In lieu of such events, significant virtual events with Addison as a high-profile participant, through actual participation or major sponsorship, focused on a relevant international business topic will be held.

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B. Entrepreneur Development:

- i. Recommend the Addison as a prime location for international entrepreneurs/groups to launch a start-up.
- ii. Work with Town staff to include their business resources and city council members in “virtual” visits of delegates from the International Visitor Leadership Program sponsored by the State Department. The goal is to showcase Addison’s international image and outreach.

C. Provide Town of Addison with opportunities to participate in international events:

- i. Make recommendations on events that would be appropriate for Addison City Council to attend including virtual events.
- ii. Provide passes to Town of Addison to such events.
- iii. Recognize City Council present at events from podium where appropriate.

D. Feature the Town of Addison as a Strategic Partner:

- i. Recognize Addison as a partner on World Affairs Council website.
- ii. Recognize Addison as a partner in designated events hosted by World Affairs Council.

E. Consulting Services:

- i. Provide consulting services on how to respond to issues having an international focus.
- ii. Provide cultural consulting awareness services on how to appropriately address dignitaries from particular countries.
- iii. Explore the opportunity to plan a new authentic German program element for the Town’s annual Oktoberfest event in collaboration with the German Consulate in Texas or the German American Chamber of Commerce.

A table reflecting and including these Services is attached to this Agreement as Exhibit A and incorporated herein and made a part hereof.

Performance Reports – World Affairs Council shall provide to the City following or at the end of the first, second, third, and fourth of the City’s fiscal year (2023) quarters (or portion thereof, as applicable) while this Agreement is in effect, a report (“Performance Report”) regarding the work and activities of World Affairs Council for the calendar year quarter immediately prior to the date the report is provided, including, without limitation, (i) all marketing activities of World Affairs Council, (ii) a report on expenses and the payment thereof (e.g., payments to performers, other third parties, and proof of such payment), (iii) a report regarding the activities of World Affairs Council as to all other of the above and foregoing Services. The Performance Report for the (a) first year quarter shall be provided by December 31, 2022, (b) second quarter shall be provided by March 31, 2023, (c) third fiscal year quarter shall be provided by June 30, 2023, and (d) fourth fiscal quarter shall be provided by September 30, 2023. Each such report shall be in form and content satisfactory to the City, and World Affairs Council shall provide supporting information for its report, including any supporting information as the City may

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reasonably request. Upon the expiration or earlier termination of this Agreement, World Affairs Council shall provide such report to the City not later than the 25th day following the Expiration Date or the date of termination, as applicable, and the obligation to provide such report shall survive the expiration or earlier termination of this Agreement.

In connection with the Services, World Affairs Council warrants and represents to the City that:

- 1) World Affairs Council has the skills, qualifications, expertise, experience, and financial capability necessary to perform the Services with a high degree of quality and responsiveness;
- 2) The Services and work will be provided in a professional and timely manner, consistent with the commercially accepted best practices and standards;
- 3) The Services shall comply with all applicable federal, state, or local statutes, ordinances, laws, rules, standards, codes, and regulations;
- 4) World Affairs Council: (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; and, (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of World Affairs Council; and
- 5) The execution and delivery of this Agreement by World Affairs Council does not: (i) conflict with, or result in any violation or breach of, any provision of the World Affairs Council's charter documents; (ii) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which World Affairs Council is a party; or (iii) materially conflict with or violate any franchise, license, judgment, order, statute, law, rule, or regulation applicable to World Affairs Council.

All Services shall be provided by World Affairs Council in cooperation and coordination with the City Staff, and in particular with the Addison Director of Economic Development & Tourism (the "Director"). Any and all promotional or other materials regarding the Scope of Services which are to be prepared, given or delivered by World Affairs Council shall be first presented to the Director for the Director's review and approval prior to the public dissemination of any such materials. Standardized language agreed upon by both parties prior to any public dissemination thereof may, after such agreement, be disseminated in World Affairs Council materials without prior review of those materials. Prior to solicitation of any activities and other vendors, World Affairs Council shall use its reasonable efforts to first obtain the pre-approval of the Director regarding such solicitation; however, the parties hereto recognize that World Affairs

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Council may not be able in all instances to obtain the pre-approval of the Director prior to a solicitation, and in such event World Affairs shall nevertheless, in conducting any solicitation, abide by and comply with such communication standards as the Director shall establish. The Services shall be provided by World Affairs Council in a professional manner. In identifying, selecting, and recommending entertainers, activities, and vendors pursuant to this Agreement, and in performing all of its Services hereunder, World Affairs Council understands and recognizes that the events under this agreement are not for religious or political purposes (and are not events that promote or suggest any religious or political agenda), and World Affairs Council will perform its Services hereunder in accordance therewith.

3. Compensation. For the Services provided by World Affairs Council in accordance with the terms and conditions of this Agreement and subject to the termination provisions of this Agreement, the City will pay World Affairs Council a fee as follows:

- A. The City will pay World Affairs Council Fifty Thousand and No/100 Dollars (\$50,000.00), to be paid in four installments as follows: (1) The first installment (“first Installment”) of \$12,500.00 shall be paid by January 15, 2023, (2) the second installment (“second installment”) of \$12,500.00 shall be paid by April 15, 2023, (3) the third installment (the “third installment”) of \$12,500.00 shall be paid by July 15, 2023, and (4) the fourth and final installment (the “fourth installment”) of \$12,500 shall be paid by October 15, 2023 upon (i) the completion of the Scope of Services (that is, upon completion of all of the Services), and (ii) the satisfactory performance as reasonably determined by the City of all of the Services by World Affairs Council, including, without limitation, the timely receipt by the City of the September (for the last quarter of 2023) Performance Report and all performance reports to be provided prior thereto, in form and content reasonably acceptable to the City (upon the satisfaction of the said (i) and (ii), payment of the third installment shall be by no later than September 31, 2023).
- B. The City will also provide the World Affairs Council a maximum allowance of Ten Thousand Dollars (\$10,000) for marketing and promotional collateral material and event space costs associated for events hosted solely in Addison. This amount is to be paid as a reimbursement to the World Affairs Council upon the receipt of an invoice with demonstrated proof that such expenses were incurred by the World Affairs Council for events hosted solely in Addison.

4. Termination.

- A. *Without cause.* Either party may terminate this Agreement at any time by giving to the other party at least 30 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination or upon the expiration of this Agreement, all finished or unfinished data, studies, reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by World Affairs Council shall be and become the property of the City and World Affairs Council shall promptly deliver such items to the City.

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B. *With cause.*

- (i) If (a) World Affairs Council fails to perform any of World Affairs Council's duties or responsibilities as reasonably determined by the City, or (b) if World Affairs Council fails to fulfill in a timely and professional manner World Affairs Council's obligations under this Agreement, or (c) if World Affairs Council shall violate any of the terms or provisions of this Agreement (the said (a), (b) and (c) being referred to together in this paragraph as a "Failure"), or (d) if World Affairs Council, World Affairs Council's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the City, as determined reasonably but solely by the City, then the City shall have the right to terminate this Agreement effective immediately upon the City giving notice thereof, either oral or in writing, to World Affairs Council.
- (ii) Notwithstanding the foregoing subparagraph B(i), with respect to a Failure, such right of termination shall not be exercised by the City unless and until a Failure remains uncured by World Affairs Council for a reasonable period of time (as determined by the City and communicated to World Affairs Council) after notice thereof (which notice shall specifically identify the Failure) from the City is received by World Affairs Council.
- (iii) If the City's termination of this Agreement for cause is defective for any reason, including but not limited to the City's reliance on erroneous facts concerning World Affairs Council's performance, or any defect in notice thereof, the City's maximum liability shall not exceed the amount payable to World Affairs Council under Section 3 above through the quarter in which the termination for cause is attempted.

- C. If this Agreement is terminated in December 2022, World Affairs Council shall promptly reimburse the amount of the first installment to the City. If this Agreement is terminated: (i) in January, 2023, World Affairs Council shall promptly reimburse to the City the sum of \$ 6,250.00; (ii) in February 2023, World Affairs Council shall promptly reimburse to the City the sum of \$ 3,125.00. If this Agreement is terminated in March, 2023, World Affairs Council shall promptly reimburse the amount of the second installment to the City. If this Agreement is terminated: (i) in April, 2023, World Affairs Council shall promptly reimburse to the City the sum of \$ 6,250.00; (ii) in May, 2023, World Affairs Council shall promptly reimburse to the City the sum of \$3,125.00. If this Agreement is terminated in June, 2023, World Affairs Council shall promptly reimburse the amount of the third installment to the City. If this Agreement is terminated: (1) in July, 2023, World Affairs Council shall promptly reimburse to the City the sum of \$6,250.00; (ii) August, 2023, World Affairs Council shall promptly reimburse to the City the Sum of \$3,125. If this Agreement is terminated in September, 2023, World Affairs Council shall promptly reimburse the amount of the fourth installment to the City. Following such termination, World Affairs Council shall be entitled to no further payment or compensation hereunder, and all finished or

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unfinished data, studies, reports and other items (whether kept electronically, in writing, or otherwise) prepared by World Affairs Council shall be and become the property of the City and World Affairs Council shall promptly deliver such items to the City. The reimbursement obligation set forth herein shall survive the termination of this Agreement.

- 5. **Relationship of Parties.** World Affairs Council is and shall be during the entire term of the Agreement an independent contractor, and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the City to exercise discretion or control over the professional manner in which World Affairs Council performs the Services which are the subject matter of the Agreement; provided always however that the Services to be provided by World Affairs Council shall be provided in a manner consistent with all applicable standards, regulations, and laws governing such Services. Nothing in this Agreement shall be deemed to waive any governmental immunity available to Addison under applicable law.
- 6. **Insurance.** At all times in connection with this Agreement, World Affairs Council shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

a.	Commercial General Liability:	\$1,000,000.00
b.	General Aggregate	\$1,000,000.00
c.	Product/Completed Operations Aggregate	\$1,000,000.00
d.	Personal & Adv. Injury	\$1,000,000.00
e.	Per Occurrence	\$1,000,000.00
f.	Medical Coverage	\$5,000.00 (any one person)
g.	Liquor Liability Endorsement	\$1,000,000.00 (if selling beer and/or wine)
h.	Fire Liability (any one fire)	\$ 50,000.00
i.	Statutory Limits of Workers Compensation Insurance	

All such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, (ii) name the Town of Addison as an additional insured and contain a waiver of the subrogation endorsement in favor of the Town of Addison, (iii) endorsed to read as primary coverage regardless of the application of other insurance, (iv) contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison, and (v) include coverage for the period of time including the Festival days as well as set-up days (usually one day before and one day after the event). Certified copies of all such policies shall be delivered to Addison upon the execution of this Agreement, but in any event no later than two weeks prior to the event; provided, however, that Addison, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance (listing each insurance coverage described and required herein) together with the declaration page of such policies, along with a copy of the endorsements necessary to meet the requirements and instructions contained herein, including, without limitation, the endorsement naming the Town of Addison as an additional insured, and

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shall specifically set forth the notice of cancellation and termination provisions to the Town of Addison. Each such policy shall provide that it shall not be canceled without at least 30-days written notice thereof being given to the Town of Addison. Coverage for Products/Completed Operations must be maintained at least two (2) years after this Agreement is terminated in its entirety, including any renewal thereof or extensions thereto.

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF WORLD AFFAIRS COUNCIL PURSUANT TO THIS AGREEMENT. WORLD AFFAIRS COUNCIL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY INDEMNITEES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY INDEMNITEES. WORLD AFFAIRS COUNCIL AGREES TO INDEMNIFY, DEFEND, AND SAVE HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF WORLD AFFAIRS COUNCIL, ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONTRACTORS, SERVANTS, REPRESENTATIVES, PROFESSIONALS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A CITY INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE WORLD AFFAIRS COUNCIL SHALL INDEMNIFY THE CITY INDEMNITEES TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO WORLD AFFAIRS COUNCIL, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

Notices of Claim. World Affairs Council shall promptly advise City in writing of any claim or demand against the City, related to or arising out of World Affairs Council's acts or omissions under this Agreement and shall see to the investigation and defense of such claims or demand at World Affairs Council's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such defense without relieving World Affairs Council of any of its obligations hereunder. World Affairs Council's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained by World Affairs Council under this agreement.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR A PERIOD OF TWO (2) YEARS.

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7. **Records.** World Affairs Council shall keep complete and accurate records for the Services performed pursuant to this Agreement and any records required by law or government regulation and shall make such records available to City upon request. World Affairs Council shall assure the confidentiality of any records that are required by law to be so maintained. World Affairs Council shall prepare and forward such additional or supplementary records as City may reasonably request.
8. **Notice.** All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the signature page(s) of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by (a) personal delivery, (b) certified or registered mail (in each case, return receipt requested, postage prepaid), (c) nationally recognized overnight courier (with all fees pre-paid), or (d) email of a pdf document containing the required notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (i) when received if delivered or given in person, (ii) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (iii) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (iv) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient.
9. **Reports Confidential.** No reports, information (either in writing or oral), documents, or other materials given to or prepared by World Affairs Council under this Agreement which the City requests in writing to be kept confidential, shall be made available to any individual or organization by World Affairs Council without the prior written approval of the City.
10. **Authority to Execute.** The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.
11. **Ownership of Reports.** The reports, documents and materials prepared by World Affairs Council under or pursuant to this Agreement shall be the sole property of the City.
12. **Assignment.** Inasmuch as this Agreement is intended to secure the specialized services of World Affairs Council, World Affairs Council has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of the City, and any such assignment, transfer, delegation, subcontract or other conveyance without the City's prior written consent shall be considered null and void *ab initio*.
13. **Rights and Remedies Cumulative; Non-Waiver.** 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 right to use any or all other remedies. Said rights and remedies

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are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. The failure by either party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement for any reason whatsoever, including with respect to any such right, power or option or to such compliance or to any other or subsequent default or breach hereof, nor a waiver by either party of its rights at any time to exercise any such right, power or option or to require exact and strict compliance with all the terms hereof. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

14. **Applicable Law; Venue.** In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.
15. **Enforceability.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
16. **Force Majeure.** To the extent either party of this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, or other specific cause reasonably beyond the parties control and not attributable to its malfeasance, neglect or nonfeasance (each an event of "Force Majeure"), the time for performance of such obligation (other than a payment obligation) may be extended for a period equal to the time lost by reason such event, provided, that the party complies with the provisions of this section. Specifically, the party asserting Force Majeure (i) shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention, and (ii) has the burden of demonstrating (1) how and why their performance was so prevented, (2) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (3) that the party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.
17. **No Third-Party Beneficiaries.** This Agreement and all of its terms and provisions are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

EXHIBIT A

18. **Incorporation of Recitals.** The above and foregoing Recitals to this Agreement are true and correct and are incorporated herein and made a part hereof for all purposes.
19. **Construction of Certain Terms.** Section and subsection headings herein are for convenience only and shall not be used in interpretation of this Agreement. The words “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.
20. **Severability.** The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any part of this Agreement is determined by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect. In lieu of any such illegal, unlawful, unconstitutional, or void provision, the parties agree to seek to negotiate to add to this Agreement another provision that would be permitted that is as close to the intent of the original provision as possible.
21. **Statutory Verifications.** World Affairs Council’s execution of this Agreement shall serve as its formal acknowledgement and written verification that: (i) if the requirements of Subchapter J, Chapter 552, Government Code, apply to this Agreement and World Affairs Council agrees that the Agreement can be terminated if World Affairs Council knowingly or intentionally fails to comply with a requirement of that subchapter; (ii) pursuant to Texas Government Code Chapter 2270, that World Affairs Council’s organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement; and (iii) pursuant to Texas Government Code Chapter 2251, that World Affairs Council’s organization does not current discriminate against firearm and ammunition industries and will not for the term of the contract. Discriminating means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with the firearm or ammunition industry or with a person or entity doing business in the firearm or ammunition industry, but does not include an action made for ordinary business purposes.
22. **Entire Agreement and Modification.** This Agreement supersedes all previous Agreements and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

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SIGNATURE PAGE FOLLOWS]

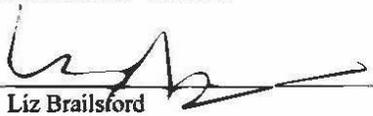
EXHIBIT A

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

TOWN OF ADDISON, TEXAS

WORLD AFFAIRS COUNCIL
OF DALLAS/FORT WORTH

By: _____
Hamid Khaleghipour
Interim City Manager

By: _____

Liz Brailsford
President & CEO

Date: _____

Date: 10/14/22

Notice Address:

Notice Address:

Town of Addison
Attn: City Manager
P.O. Box 9010
Town of Addison, Texas 75001
E: hkhaleghipour@addisontx.gov

World Affairs Council
Attn: Liz Brailsford
325 N. St. Paul Street, Suite 4200
Dallas, TX 75201
E: _____

EXHIBIT A

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**World Affairs Council/Town of Addison
2022-23 Scope of Services
Level of Funding: \$50,000**

1. International Promotion and Business Development (\$15,000):		
<ul style="list-style-type: none"> A. Assist Addison in strengthening its International Business Focus. B. Work with Addison to maintain and strengthen existing relationships and forge new relationships with targeted countries. C. Assist Addison to develop strategy on marketing its airport to international businesses. D. Plan, organize, execute and co-host at least two (2) forums/luncheons in Addison unless current COVID-19 conditions or group gathering restrictions prevent such events from being held. In lieu of such events, significant virtual events with Addison as a high-profile participant, through actual participation or major sponsorship, focused on a relevant international business topic will be held. 		
Item	Date	Accomplishment/Milestone
2. Entrepreneur Development (\$5,000):		
<ul style="list-style-type: none"> A. Recommend the Addison as a prime location for international entrepreneurs/groups to launch a start-up. B. Work with Town staff to include their business resources and city council members in “virtual” visits of delegates from the International Visitor Leadership Program sponsored by the State Department. The goal is to showcase Addison’s international image and outreach. 		
Item	Date	Accomplishment/Milestone
3. Provide Town of Addison with opportunities to participate in international events (\$10,000):		
<ul style="list-style-type: none"> A. Make recommendations on events that would be appropriate for Addison City Council to attend including virtual events. B. Provide passes to Town of Addison to such events. C. Recognize City Council present at events from podium where appropriate. 		
Item	Date	Accomplishment/Milestone
4. Feature the Town of Addison as a Strategic Partner (\$15,000):		
<ul style="list-style-type: none"> A. Recognize Addison as a partner in World Affairs Council website. B. Recognize Addison as a partner in designated events hosted by World Affairs Council. 		
Item	Date	Accomplishment/Milestone
5. Consulting Services (\$5,000):		
<ul style="list-style-type: none"> A. Provide consulting services on how to respond to issues having an international focus. B. Provide cultural consulting awareness services on how to appropriately address dignitaries from particular countries. C. Explore the opportunity to plan a new authentic German program element for the Town’s annual Oktoberfest event in collaboration with the German Consulate in Texas or the German American Chamber of Commerce. 		
Item	Date	Accomplishment/Milestone

Council Meeting 2023

12.

Meeting Date: 10/25/2022

Department: Economic Development

Pillars: Innovative in Entrepreneurship & Business
Optimize the Addison Brand

Milestones: Economic development focus on attracting and retaining entrepreneurship, high-tech conferences, and Transit Oriented Development

AGENDA CAPTION:

Consider Action on a **Resolution Approving an Agreement for Funding Between the Town of Addison and the Metrocrest Chamber of Commerce and Authorizing the City Manager to Execute the Agreement** in an Amount Not to Exceed \$38,500.

BACKGROUND:

For the last few years, the Town of Addison has provided grant funding to the Metrocrest Chamber of Commerce. Two years ago, the agreement transitioned from a grant funding agreement to a service agreement managed by the Economic Development & Tourism Department. The attached resolution includes the proposed service agreement is for Fiscal Year 2023. The service agreement defines a work plan and quarterly reports that must be provided to the Town in order to qualify for payments. The following is what they have proposed to achieve for the Town:

A. Economic Development Marketing:

1. Provide marketing support to Addison Economic Development department, including support and participation in the Annual Economic Development Luncheon.
2. Conduct Business Expo with marketing targeted at Addison Businesses and provide educational sessions.
3. Target Addison-based Chamber members to renew Business Registration.
4. Conduct Economic Development Committee meetings with members, investors, local elected officials, and tri-city departments to advance the goals and mission of Addison Economic Development Department.
5. Collaborate on BREP (business retention and expansion program) targeted at Addison-based businesses and headquarters.

B. Entrepreneur Development/Small Business Support:

1. Highlight local resources available to entrepreneurs (i.e. SBDCs, SCORE, etc.).
2. Host at least one education event geared towards small business.
3. Reach out to Addison Coworking spaces to provide resources to their members.
4. Provide support to Addison ED and Tourism Department on new entrepreneurial initiatives

C. Addison Business Profile Support:

1. Organize and conduct annual Mayors' Forum.
2. Provide local leadership development opportunity via Leadership Metrocrest.
3. Provide ribbon-cutting support for new Chamber members in the Addison area.
4. Provide support to Bush elementary to connect them with the business community.

D. Develop Strategies to Connect the Addison Airport Community and the Addison Business Community

1. Provide airport management, tenants, and users opportunities to attend and benefit from chamber events such as the Business Expo, Chairman's Circle, etc.
2. Increase awareness of airport, new customs facility, and third FBO to chamber members, work with key airport staff to development strategic community engagement.
3. Work with airport staff to host at least one event at airport (virtual/in-person State of the Airport, Airport Appreciation program, etc.)

E. Tourism Support:

1. Consistent brand awareness for Addison, special events, and business amenities.
2. Work with Tourism Manager and Special Events Department to promote hotel packages for Addison's special events amongst chamber members and business community.

This year, the Metrocrest Chamber has requested a 10% or \$3,500 increase in funding. This will help cover inflationary cost increases experienced by the Chamber. This brings the total value of the agreement to \$38,500 which is paid in quarterly installments by the Town. The FY 2023 work plan is very similar to FY 2022. The Metrocrest Chamber of Commerce has worked closely with the Town to achieve their requirements as highlighted in their FY 2022 Work Plan,

and Chamber staff has worked hard to bring value to the Town.

The proposed scope of services was shared with Council Member Kathryn Wheeler, who serves as the liaison to the group, for her review prior to the development of the agreement. \$35,000 in annual funding for the Chamber was approved in the FY 2023 Budget. The additional \$3,500 increase will be covered by the Economic Development Fund, and the Economic Development & Tourism Department will continue to manage the agreement.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Metrocrest Chamber Service Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR FUNDING BETWEEN THE TOWN OF ADDISON AND METROCREST CHAMBER OF COMMERCE IN AN AMOUNT NOT TO EXCEED \$38,500.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT FOR FUNDING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas ("City Council") has investigated and determined that it is in the best interest of the Town of Addison, Texas ("Town") to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the Town; and

WHEREAS, the City Council has adopted an application process ("Application") whereby these organizations may apply for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the Metrocrest Chamber of Commerce ("Metrocrest") submitted an Application to the Town for consideration; and

WHEREAS, the Town and Metrocrest desire to enter into the Agreement for Funding to set forth the terms and conditions regarding use of the public funding.

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

SECTION 1. The Agreement for Funding between the Town of Addison and Metrocrest Chamber of Commerce in an amount not to exceed \$38,500.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said 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 **25th** day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

AGREEMENT FOR FUNDING

Economic Development Consulting Services FY2022-2023

This Agreement for Funding (the "Agreement") is made and entered into as of October, 25, 2022 ("Effective Date") by and between the Town of Addison, Texas (the "City" or "Addison") and Metrocrest Chamber of Commerce (the "Chamber" or "Organization").

RECITALS

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide public funds to the Chamber through its Economic Development and Tourism Department (the "Department"). These funds help support the economic development efforts of the community; and

WHEREAS, the mission of the Organization is to create economic prosperity for their members by providing programs, resources, and support that assist and benefit businesses, government and citizens resulting in a vibrant place to live and work; and

WHEREAS, the City has reviewed the scope of non-exclusive services, hereinafter defined, for the Organization and feels they help fulfill a public purpose and will benefit its businesses and citizens; and

WHEREAS, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization's use of the public funds.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, Addison and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall begin on the Effective Date and expire on September, 30, 2023 (the "Expiration Date"), except as otherwise provided for herein, and subject to the earlier termination of this Agreement ("Term"). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. SERVICES

In connection with this Agreement, the Chamber will provide to the City the following non-exclusive services ("Services"):

A. *Economic Development Marketing:*

- i. Provide marketing support to Addison Economic Development department, including support and participation in the Annual Economic Development Luncheon.
- ii. Conduct Business Expo with marketing targeted at Addison Businesses and provide educational sessions.

EXHIBIT A

- iii. Target Addison-based Chamber members to renew Business Registration.
 - iv. Conduct Economic Development Committee meetings with members, investors, local elected officials, and tri-city departments to advance the goals and mission of Addison Economic Development Department.
 - v. Collaborate on BREP (business retention and expansion program) targeted at Addison-based businesses and headquarters.
- B. *Entrepreneur Development/Small Business Support:*
- i. Highlight local resources available to entrepreneurs (i.e. SBDCs, SCORE, etc.).
 - ii. Host at least one education event geared towards small business.
 - iii. Reach out to Addison Coworking spaces to provide resources to their members.
 - iv. Provide support to Addison ED and Tourism Department on new entrepreneurial initiatives
- C. *Addison Business Profile Support:*
- i. Organize and conduct annual Mayors' Forum.
 - ii. Provide local leadership development opportunity via Leadership Metrocrest.
 - iii. Provide ribbon-cutting support for new Chamber members in the Addison area.
 - iv. Provide support to Bush elementary to connect them with the business community.
- D. *Develop Strategies to Connect the Addison Airport Community and the Addison Business Community*
- i. Provide airport management, tenants, and users opportunities to attend and benefit from chamber events such as the Business Expo, Chairman's Circle, etc.
 - ii. Increase awareness of airport, new customs facility, and third FBO to chamber members, work with key airport staff to development strategic community engagement.
 - iii. Work with airport staff to host at least one event at airport (virtual/in-person State of the Airport, Airport Appreciation program, etc.)
- E. *Tourism Support:*
- i. Consistent brand awareness for Addison, special events, and business amenities.

EXHIBIT A

- ii. Work with Tourism Manager and Special Events Department to promote hotel packages for Addison's special events amongst chamber members and business community.

A table reflecting and including these Services is attached to this Agreement as **Exhibit A** and incorporated herein and made a part hereof.

III. PERFORMANCE REPORTS

The Chamber shall provide the City with a quarterly report (the "Report") regarding all Chamber work and activities for the quarter immediately preceding the Report date. The Report shall include, without limitation, (i) all marketing activities of the Chamber, (ii) all expenses and the payment thereof (e.g., payments to performers, other third parties, and proof of such payment), and (iii) all additional activities of the Chamber other than the above and foregoing Services. Quarterly Reports shall be due as follows: (i) first quarter shall be provided by December 31, 2022; (ii) second quarter shall be provided by March 31, 2023; (iii) third quarter shall be provided by June 30, 2023; and (iv) fourth quarter shall be provided by September 30, 2023. Each such report shall be in a form and provide content satisfactory to the City, and shall provide supporting information, including any supporting documentation as the City may reasonably request. Upon the expiration or earlier termination of this Agreement, the Chamber shall provide any and all outstanding Reports, partial reports included, to the City not later than the 25th day following the Expiration Date or the date of termination, as applicable, and the obligation to provide such report shall survive the expiration or earlier termination of this Agreement.

In connection with the Services, the Chamber warrants and represents to the City that:

- A. The Chamber has the skills, qualifications, expertise, experience and financial capability necessary to perform the Services with a high degree of quality and responsiveness;
- B. The Services and work will be provided in a professional and timely manner, consistent with the commercially accepted best practices and standards;
- C. The Services shall comply with all applicable federal, state or local statutes, ordinances, laws, rules, standards, codes and regulations;
- D. The Chamber: (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and shall remain in good standing throughout the term of this Agreement; (ii) it has the requisite power and authority to carry on its business as it is now being conducted; (iii) it has the legal capacity to enter into this Agreement; and, (iv) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been authorized and approved by all action required on the part of the Chamber; and
- E. The execution and delivery of this Agreement by the Chamber does not: (i) conflict with, or result in any violation or breach of, any provision of the Chamber's charter documents; (ii) result in any violation or breach of, or constitute a default under, or require a consent or waiver under, any of the terms, conditions or provisions of any license, contract or other agreement to which the Chamber is a party; or (iii)

EXHIBIT A

materially conflict with or violate any franchise, license, judgment, order, statute, law, rule or regulation applicable to the Chamber.

All Services shall be provided by the Chamber in cooperation and coordination with the City Staff, and in particular with the Addison Director of Economic Development & Tourism (the "Director"). Any and all promotional or other materials regarding the Services which are to be prepared, given or delivered by the Chamber shall be first presented to the Director for the Director's review and approval prior to the public dissemination of any such materials. Standardized language agreed upon by both parties prior to any public dissemination thereof may, after such agreement, be disseminated in Chamber materials without prior review of those materials. Prior to solicitation of any activities and other vendors, the Chamber shall use its reasonable efforts to first obtain the pre-approval from the Director regarding such solicitation; however, the parties hereto recognize that the Chamber may not be able, in all instances, to obtain the pre-approval of the Director prior to a solicitation, and in such event the Organization shall nevertheless, in conducting any solicitation, abide by and comply with such communication standards as the Director shall establish. The Services shall be provided by the Chamber in a professional manner. In identifying, selecting, and recommending entertainers, activities, and vendors pursuant to this Agreement, and in performing all of its Services hereunder, the Chamber understands and recognizes that the events under this agreement are not for religious or political purposes (and are not events that promote or suggest any religious or political agenda), and the Chamber will perform its Services hereunder in accordance therewith.

IV. COMPENSATION

For the Services provided by the Chamber in accordance with the terms and conditions of this Agreement and subject to the termination provisions of this Agreement, the City will pay the Chamber a fee as follows:

The City will pay the Chamber **Thirty-eight Thousand Five Hundred Dollars (\$38,500.00)**, to be paid in four installments as follows: (1) The first installment ("first Installment") of \$9,625.00 shall be paid by January 15, 2023, (2) the second installment ("second installment") of \$9,625.00 shall be paid by April 15, 2023, (3) the third installment (the "third installment") of \$9,625.00 shall be paid by July 15, 2023, and (4) the fourth and final installment (the "fourth installment") of \$9,625.00 shall be paid by October 15, 2023 upon (i) the completion of the Services (that is, upon completion of all of the Services), and (ii) the satisfactory performance, as reasonably determined by the City, of all Services performed by the Chamber, including, without limitation, the City's timely receipt of the September 2023 Report and all Reports required prior thereto, in a form and providing content reasonably acceptable to the City. Payment of the third installment shall be by no later than September 31, 2023.

V. TERMINATION

- A. *Without cause.* Either party may terminate this Agreement at any time by giving at least 30 days written notice of such termination to the other party. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination or upon the expiration of this Agreement, all finished or unfinished data, studies, reports and other materials and items (whether kept electronically, in writing,

EXHIBIT A

or otherwise) prepared by the Chamber shall be and become the property of the City and the Chamber shall promptly deliver such items to the City.

B. *With cause.*

- (i) If (a) the Chamber fails to perform any of the its duties or responsibilities as reasonably determined by the City, or (b) if the Chamber fails to fulfill in a timely and professional manner its obligations under this Agreement, or (c) if the Chamber violates any of the terms or provisions of this Agreement, or (d) if the Chamber, its agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the City, as determined reasonably but solely by the City, then the City shall have the right to terminate this Agreement effective immediately upon the City giving notice thereof, either oral or in writing, to the Chamber.
- (ii) Notwithstanding subparagraph B(i) above, such right of termination shall not be exercised by the City unless and until the Chamber has been has received notification specifically identifying the failure and the failure remains uncured for a reasonable period of time, as determined by the City.
- (iii) If the City’s termination of this Agreement for cause is defective for any reason, including but not limited to the City’s reliance on erroneous facts concerning the Chamber’s performance, or any defect in notice thereof, the City’s maximum liability shall not exceed the amount payable to the Chamber under Section IV above through the quarter in which the termination for cause takes place.

C. If this Agreement is terminated during the following times, the Chamber shall promptly reimburse the City the corresponding amount. Following such termination, the Chamber shall be entitled to no further payment or compensation hereunder, and all finished or unfinished data, studies, reports and other items (whether kept electronically, in writing, or otherwise) prepared by the Chamber shall be and become the property of the City and the Chamber shall promptly deliver such items to the City. The reimbursement obligation set forth herein shall survive the termination of this Agreement.

Termination Date	Reimbursement to City
December 2022	Amount of first installment to the City
January 2023	\$4,812.50
February 2023	\$2,406.25
March 2023	Amount of Second installment to the City
April 2023	\$4,812.50
May 2023	\$2,406.25
June 2023	Amount of Third installment to the City
July 2023	\$4,812.50
August 2023	\$2,406.25
September 2023	Amount of Fourth installment to the City

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VI. RELATIONSHIP OF PARTIES

The Chamber, during the Term of this Agreement, is and shall be an independent contractor, and nothing in this Agreement is intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, a joint enterprise, or to allow the City to exercise discretion or control over the professional manner in which the Chamber performs the Services which are the subject matter of the Agreement; provided always however that the Services to be provided by the Chamber shall be provided in a manner consistent with all applicable standards, regulations, and laws governing such Services.

VII. INSURANCE

At all times in connection with this Agreement, the Chamber shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

- a. Commercial General Liability: \$1,000,000.00
- b. General Aggregate \$1,000,000.00
- c. Product/Completed Operations Aggregate \$1,000,000.00
- d. Personal & Adv. Injury \$1,000,000.00
- e. Per Occurrence \$1,000,000.00
- f. Medical Coverage \$5,000.00 (any one person)
- g. Liquor Liability Endorsement \$1,000,000.00 (if selling beer and/or wine)
- h. Fire Liability (any one fire) \$ 50,000.00
- i. Statutory Limits of Workers Compensation Insurance

All such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, (ii) name the City as an additional insured and contain a waiver of the subrogation endorsement in favor of the City, (iii) endorsed to read as primary coverage regardless of the application of other insurance, and (iv) contain no cross liability exclusions or insured versus insured restrictions. Certified copies of all such policies shall be delivered to Addison upon the execution of this Agreement, but in any event no later than two weeks prior to the event; provided, however, that Addison, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance (listing each insurance coverage described and required herein) together with the declaration page of such policies, along with a copy of the endorsements necessary to meet the requirements and instructions contained herein, including, without limitation, the endorsement naming Addison as an additional insured, and shall specifically set forth the notice of cancellation and termination provisions to the City. Each such policy shall provide that it shall not be canceled without at least 30-days written notice thereof being given to Addison. Coverage for Products/Completed Operations must be maintained at least two (2) years after Agreement termination, including any renewal thereof or extensions thereto.

CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF CHAMBER PURSUANT TO THIS AGREEMENT. CHAMBER HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY INDEMNITEES") FOR DAMAGE TO ANY

EXHIBIT A

PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY INDEMNITEES. CHAMBER AGREES TO INDEMNIFY, DEFEND, AND SAVE HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CHAMBER, ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, CONTRACTORS, SERVANTS, REPRESENTATIVES, PROFESSIONALS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A CITY INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE CHAMBER SHALL INDEMNIFY THE CITY INDEMNITEES TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CHAMBER, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

Notices of Claim. Chamber shall promptly advise City in writing of any claim or demand against the City, related to or arising out of Chamber's acts or omissions under this Agreement and shall see to the investigation and defense of such claims or demand at Chamber's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such defense without relieving Chamber of any of its obligations hereunder. Chamber's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained by Chamber under this agreement.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR A PERIOD OF TWO (2) YEARS.

VIII. RECORDS

The Chamber shall keep complete and accurate records for the Services performed pursuant to this Agreement and any records required by law or government regulation and shall make such records available to City upon request. The Chamber shall assure the confidentiality of any records that are required by law to be so maintained. The Chamber shall prepare and forward such additional or supplementary records as City may reasonably request.

IX. NOTICE

All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the signature page(s) of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by (a) personal delivery, (b) certified or registered mail (in each case, return receipt requested, postage prepaid), (c) nationally recognized overnight courier (with all fees pre-paid), or (d) email of a pdf document containing the required notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (i) when received if delivered or given in person, (ii) if sent by United States mail, three (3) business days after being deposited in the United

EXHIBIT A

States mail as set forth above, (iii) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (iv) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient.

X. REPORTS CONFIDENTIAL

No Reports, information (either in writing or oral), documents, or other materials given to or prepared by the Chamber under this Agreement which the City requests in writing to be kept confidential, shall be made available to any individual or organization by the Chamber without the prior written approval of the City.

XI. AUTHORITY TO EXECUTE

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

XII. OWNERSHIP OF REPORTS

The reports, documents and materials prepared by the Chamber relating to the Services shall be the sole property of the City.

XIII. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of the Chamber, the Chamber has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of the City, and any such assignment, transfer, delegation, subcontract or other conveyance without the City's prior written consent shall be considered null and void *ab initio*.

XIV. RIGHTS AND REMEDIES CUMULATIVE; NON-WAIVER

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 right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. The failure by either party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement for any reason whatsoever, including with respect to any such right, power or option or to such compliance or to any other or subsequent default or breach hereof, nor a waiver by either party of its rights at any time to exercise any such right, power or option or to require exact and strict compliance with all the terms hereof. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the cancellation, expiration or termination of this Agreement.

EXHIBIT A

XV. APPLICABLE LAW; VENUE

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

XVI. ENFORCEABILITY

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

XVII. FORCE MAJEURE

To the extent either party of this Agreement shall be wholly or partially prevented from the performance of any obligation or duty placed on such party by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, or a government restriction, quarantine or mandatory closure order enacted in response to a pandemic or other public health crises, or other specific cause reasonably beyond the parties control and not attributable to its malfeasance, neglect or nonfeasance (each an event of "Force Majeure"), the time for performance of such obligation (other than a payment obligation) may be extended for a period equal to the time lost by reason such event, provided, that the party complies with the provisions of this section. Specifically, the party asserting Force Majeure (i) shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention, and (ii) has the burden of demonstrating (1) how and why their performance was so prevented, (2) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (3) that the party used commercially reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

XVIII. NO THIRD-PARTY BENEFICIARIES

This Agreement and all of its terms and provisions are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

XIX. INCORPORATION OF RECITALS

The above and foregoing recitals to this Agreement are true and correct and are incorporated herein and made a part hereof for all purposes.

XX. CONSTRUCTION OF CERTAIN TERMS

Section and subsection headings herein are for convenience only and shall not be used in interpretation of this Agreement. The words "includes" and "including" are terms of enlargement

EXHIBIT A

and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

XXI. SEVERABILITY

The sections, paragraphs, sentences, phrases, words, and all other provisions of this Agreement are severable, and if any part of this Agreement is determined by a court of competent jurisdiction to be illegal, unlawful, unconstitutional, or void for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect. In lieu of any such illegal, unlawful, unconstitutional, or void provision, the parties agree to seek to negotiate to add to this Agreement another provision that would be permitted that is as close to the intent of the original provision as possible.

XXII. ENTIRE AGREEMENT AND MODIFICATION

This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

XXI. SOVEREIGN IMMUNITY

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XXII. STATUTORY VERIFICATIONS

Metrocrest Chamber of Commerce's execution of this Agreement shall serve as its formal acknowledgement and written verification that: (i) if the requirements of Subchapter J, Chapter 552, Government Code, apply to this Agreement and Metrocrest Chamber of Commerce agrees that the Agreement can be terminated if Metrocrest Chamber of Commerce knowingly or intentionally fails to comply with a requirement of that subchapter; (ii) pursuant to Texas Government Code Chapter 2270, that Metrocrest Chamber of Commerce's organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement; and (iii) pursuant to Texas Government Code Chapter 2251, that Metrocrest Chamber of Commerce's organization does not current discriminate against firearm and ammunition industries and will not for the term of the contract. Discriminating means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with the firearm or ammunition industry or with a person or entity doing business in the firearm or ammunition industry, but does not include an action made for ordinary business purposes.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]

EXHIBIT A

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

TOWN OF ADDISON, TEXAS

METROCREST CHAMBER OF COMMERCE

By: _____
Hamid Khaleghipour
Interim City Manager

By: _____
Hayden Austin
President

Date: _____

Date: 10-12-22

Notice Address:

Notice Address:

Town of Addison
Attn: City Manager
P.O. Box 9010
Town of Addison, Texas 75001
E: hkhaleghipour@addisontx.gov

Metrocrest Chamber of Commerce
Attn: Hayden Austin
14681 Midway Road, Suite 200
Addison, Texas 75001
E:

EXHIBIT A

EXHIBIT A
Metrocrest Chamber of Commerce/Town of Addison
2022-23 Service Agreement
Request: \$38,500

1. Economic Development Marketing (\$16,500):		
a) Provide marketing support to Addison Economic Development department, including support and participation in the Annual Economic Development Luncheon.		
b) Conduct Business Expo with marketing targeted at Addison Businesses and provide educational sessions.		
c) Target Addison-based Chamber members to renew Business Registration.		
d) Conduct Economic Development Committee meetings with members, investors, local elected officials, and tri-city departments to advance the goals and mission of Addison Economic Development Department.		
e) Collaborate on BREP (business retention and expansion program) targeted at Addison-based businesses and headquarters.		
Item	Date	Accomplishment/Milestone/Progress
2. Entrepreneur Development/Small Business Support (\$6,000):		
a) Highlight local resources available to entrepreneurs (i.e. SBDCs, SCORE, etc.).		
b) Host at least one education event geared towards small business.		
c) Reach out to Addison Coworking spaces to provide resources to their members.		
d) Provide support to Addison ED and Tourism Department on new entrepreneurial initiatives		
Item	Date	Accomplishment/Milestone/Progress
3. Addison Business Profile Support (\$8,000):		
a) Organize and conduct annual Mayors' Forum.		
b) Provide local leadership development opportunity via Leadership Metrocrest.		
c) Provide ribbon-cutting support for new Chamber members in the Addison area.		
d) Provide support to Bush elementary to connect them with the business community.		
Item	Date	Accomplishment/Milestone/Progress
4. Develop strategies to connect the Addison Airport community and the Addison business community (\$6,000):		
a) Provide airport management, tenants, and users opportunities to attend and benefit from chamber events such as the Business Expo, Chairman's Circle, etc.		
b) Increase awareness of airport, new customs facility, and third FBO to chamber members, work with key airport staff to development strategic community engagement.		
c) Work with airport staff to host at least one event at airport (virtual/in-person State of the Airport, Airport Appreciation program, etc.)		
Item	Date	Accomplishment/Milestone/Progress
5. Tourism Support (\$2,000):		
a) consistent brand awareness for the Town of Addison, special events, and business amenities.		
b) Work with Tourism Manager and Special Events Department to promote hotel packages for Addison's special events amongst chamber members and business community.		
Item	Date	Accomplishment/Milestone/Progress

Council Meeting 2023

13.

Meeting Date: 10/25/2022

Department: General Services

Pillars: Optimize the Addison Brand

Milestones: Define and promote Addison Identity

AGENDA CAPTION:

Consider Action on a **Resolution Approving an Agreement Between the Town of Addison and WaterTower Theatre, Inc. for the Use of the Addison Theatre Centre and Authorizing the City Manager to Execute the Agreement.**

BACKGROUND:

WaterTower Theatre, Inc. has been the resident theatre company and the primary lessee of the space in the Addison Theatre Centre since 1996. The performing arts organization rents the administrative office and storage space from the Town and produces several shows within the performance spaces in the Addison Theatre Centre each year.

The Addison Theatre Centre License Agreement is the use agreement between WaterTower Theatre, Inc. and the Town of Addison. The Agreement includes the dates WaterTower Theatre has performance spaces reserved for their productions, the rental costs for each space and details on the use of the facility such as the maintenance of the facility, janitorial services, the spaces that are exclusively used by WaterTower Theatre and those spaces that are considered shared spaces.

This is a one-year Agreement with WaterTower Theatre, Inc. ending September 30, 2023.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - WaterTower Theatre Use Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE TOWN OF ADDISON AND WATER TOWER THEATRE FOR USE OF THE ADDISON THEATRE CENTER TO PROVIDE VARIOUS PERFORMANCES AND WORKSHOPS EACH SEASON; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Addison (“Town”) owns and operates the Addison Theatre Centre (“ATC”) for the purpose of providing and maintaining first class performance arts facilities within the Town of Addison for the benefit of its residents and the general public; and

WHEREAS, Town desires to grant a non-exclusive license to Water Tower Theatre, Inc. to use the ATC to conduct its administrative operations and various performances within the ATC that will serve to promote the ATC and attract other prominent performances to the Town.

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

SECTION 1. The City Council hereby approves the non-exclusive license agreement between the Town and the Water Tower Theatre, Inc. for use of the ATC, a copy of which is attached to this Resolution as **Exhibit A**. The City Manager is hereby authorized to execute said 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 **25th** day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

ADDISON THEATRE CENTRE LICENSE AGREEMENT WaterTower Theatre

This License Agreement ("Agreement") is made by and between the **Town of Addison, Texas** ("City" or "Licensor"), and **WaterTower Theatre, Inc.** ("Licensee" or "WTT") (each a "party" and collectively the "parties"), acting by and through their respective authorized representatives.

RECITALS:

WHEREAS, City owns and operates the Addison Theatre Centre ("ATC") for the purpose of providing and maintaining first class performance arts facilities within the Town of Addison for the benefit of its residents and the general public; and

WHEREAS, City desires to grant Licensee non-exclusive access to the ATC in conformance with this Agreement for Licensee to conduct its administrative operations and various performances within the ATC that will serve to promote the ATC and attract other prominent performances to the Town of Addison.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article I Term

The term of this Agreement shall be for one (1) year beginning on October 1, 2022, and expiring on September 30, 2023, unless extended or earlier terminated in conformance herewith. The term may be extended for up to four (4) additional one (1) year terms at the City's sole discretion; provided, that Licensee delivers to City its written request to extend on or before June 1st of the then current term. All the terms and covenants of this Agreement shall apply to all extension periods, subject to amendment by the mutual written agreement of the parties.

Article II Grant of License; General Conditions

2.1 Grant of License. City hereby grants Licensee a non-exclusive license and right to occupy and use the Licensed Area (defined herein) for the Permitted Use in conformance with the terms and conditions set forth in this Agreement. The license granted herein includes Licensee's use of certain areas within the 'WTT Administrative Offices' for its day-to-day administrative operations as well as the areas available to 'Theatre Rental Groups' in connection with Licensee's Events in conformance herewith (collectively referred to as the "Licensed Area"), as further described and depicted in Exhibit A attached hereto. The foregoing license further includes a non-exclusive right to use the ATC common areas designated in Exhibit A (the "Common Area"), subject to the City's exclusive control and management of the same.

2.2 Access to Other Areas within the ATC. Licensee shall not use the ATC premises for any purpose other than as expressly set forth in this Agreement without first obtaining the prior written consent of the ATC Supervisor (the "Manager"). The Manager may allow Licensee's temporary use of other areas within the ATC at the Manager's sole discretion, subject to City Council approval when required.

2.3 No Subletting. Licensee may not sublet to nor sub-license to others the use of any portion of the ATC without the prior written approval of the City. Any such attempt by Licensee shall be without effect and may, at City's option, result in the immediate termination of this Agreement for default pursuant to Section 8.2.

2.4 City Access; Emergencies. The City will provide reasonable prior notice to Licensee prior to entering the WTT Administrative Offices for official purposes. Notwithstanding, the City shall at all times be entitled to enter any portion of the ATC (including the WTT Administrative Offices) without prior notice (i) in the performance of its governmental functions, and (ii) in response to any emergency, as determined by City in its sole discretion.

2.5 No Other Rights Granted. Licensee shall have no other rights related to its use of the ATC other than rights expressly granted under this Agreement.

Article III Permitted Use

3.1 Permitted Use. Licensee is entitled to use the Licensed Area for the following uses in conformance with the terms and conditions set forth in this Agreement (the "Permitted Use"):

- (a) Licensee's administrative operations;
- (b) conducting Licensee Events (defined in Section 3.3. below);
- (c) sponsoring or hosting educational programs and workshops;
- (d) hosting fundraising events;
- (e) any other use with the prior written approval of the Manager.

Licensee's use of ATC shall be under the general direction and control of the Manager and Licensee agrees to comply with all City rules, policies and directives, whether written or otherwise, applicable to Licensee's use of the ATC pursuant to this Agreement (herein "ATC Rules"). Licensee shall be responsible for ensuring that its managers, officers, employees, representatives, contractors, subcontractors, and invitees are familiar with the ATC Rules and conduct themselves in a professional manner at all times while at the ATC.

3.2 City Acknowledgements. As partial consideration for the rights granted to Licensee herein, Licensee agrees to prominently acknowledge the City for its support of Licensee in all appropriate printed materials. All public references to Licensee will be characterized as "WaterTower Theatre at the Addison Theatre Centre" or a similar phrasing that clearly indicates the Licensee (or its event) is at the ATC.

3.3 Licensee Representatives. Licensee shall provide the Manager the contact information (name, email and phone) for a minimum of two (2) Licensee representatives with authority to act on behalf to Licensee. At least one Licensee representative shall be on-site at all times during any event, show, production, rehearsal, workshop, fundraiser, or other activity occurring at the ATC in connection with Licensee (collectively, "Licensee Events").

3.4 Keys and Alarm Codes. Interior and exterior keys and alarm codes will be provided for use solely by Licensee's employees. Licensee shall be responsible for submitting a key/code request form, which shall include Licensee's contact information, a proposed four-digit code for the alarm, and Licensee's agreement to comply with the applicable terms of use. Licensee will be for each alarm code change and key replacement in conformance with the Fee Schedule (Exhibit C).

3.5 Signage. Licensee shall not place or permit to be placed any sign, plaque, decoration, lettering, advertising matter or descriptive material (collectively, "Signage") in the following locations without the City's prior written approval:

- (a) the exterior of the ATC (including the roof);
- (b) any exterior facing door or window;
- (c) any display window space; or
- (d) within five feet (5') behind the storefront of the ATC (if visible from the Common Area).

All approved Signage shall conform with the ATC Rules, as well as the general standards of design, motif, and decor from time to time established by the City for the ATC. Licensee may seek approval for Signage by providing the Manager a written proposal describing in detail the Signage proposed location(s) for such. Following the Manager's acceptance of a completed proposal, the Manager shall promptly approve, deny or request reasonable modifications to the proposal.

3.6 Licensee Property. Licensee shall provide the Manager an inventory of all of personal property of Licensee located in the ATC on or before July 1st of each year. Licensee shall be responsible for promptly providing the Manager an updated inventory reflecting any changes in the same throughout the term of this Agreement.

3.7 Parking. The rights granted under this Agreement do not include Licensee's right to occupy any specific parking areas or spaces. Notwithstanding, the Manager may, in the City's sole discretion, grant Licensee's staff written permission to park in a defined area(s) or spaces.

3.8 Use of City Property. City may, in its sole discretion, grant Licensee permission to use City-owned personal property and equipment ("City Property") in connection with Licensee's use of the ATC pursuant to this Agreement. Licensee acknowledges that all City Property is provided in an "AS IS", "WHERE IS" condition with all faults and the City makes no representations or warranties, either express or implied, as to the condition of the City Property or the suitability or fitness of the same for any particular use.

- (a) *Use by Licensee*. Licensee shall be responsible for ensuring that all persons using City Property comply with all ATC Rules and procedures (including all Manager directives) applicable to the use of such property.
- (b) *Use by Others*. Licensee shall not promise or commit any City Property to any person (other than Licensee's employees) without the Manager's prior written approval. In the event Licensee is working in conjunction with an outside company as co-presenter or producer on a production, Licensee shall submit a written list of City Property requested for the production for review and approval by the Manager at least thirty (30) days prior to Licensee committing the City Property for use in connection with the same.
- (c) *No Outdoor Use*. City Property shall not be used outdoors or removed from the ATC without the prior written consent of the Manager.

3.9 Licensee Improvements. Subject to the Manager's consent, Licensee may erect or install within the Licensed Area and performance space any temporary alterations, additions, or equipment needed for any permitted use which does not alter the structural integrity or basic configuration of the performance

space ("Licensee Improvements"). Licensee's right to install such improvements shall be subject to strict compliance with all other provisions of this Agreement regulating the use of the ATC, the ATC Rules, and all other applicable governmental laws, statutes, ordinances, codes, and regulations governing the same.

- (a) *Construction of Improvements.* Licensee shall require that all contractors performing work within the ATC provide performance and payment bonds prior to commencement of construction of any improvements to the ATC. Each of the foregoing bonds shall be issued in a sum equal to the full amount of the construction contract and name the City and Licensee as joint obligees. All construction work shall be in conformance with the City's building code and all other applicable laws.
- (b) *Removal of Licensee Improvements.* Licensee shall remove all Licensee Improvements at its sole expense upon the earlier of (1) strike for the event, (ii) thirty (30) days following the Manager's written request for removal, or (iii) the expiration or earlier termination of this Agreement (herein "Removal Period"). Licensee shall repair any damage caused by such removal and fully restore the ATC to substantially the same condition as existed prior to installation of the same, except for ordinary wear and tear and/or loss due to other casualty beyond Licensee's control. Licensee shall provide to City written notice that the Licensee Improvements have been removed in conformance with this section prior to the expiration of the Removal Period. Failure of Licensee to remove any or all Licensee Improvements prior to expiration or earlier termination of this Agreement shall be construed as holdover. Upon expiration of the applicable Removal Period, the City may cause the Licensee Improvements to be removed and the Licensed Area fully restored at Licensee's sole cost and expense, which shall include, at a minimum, the applicable daily rental rate(s) together with all all labor costs (including ATC staff labor) + a twenty percent (20 %) overhead on all labor.

3.10 Ownership of Improvements. Unless otherwise agreed by the parties in writing, all installations, alterations, additions and improvements made in, on, or to the ATC by Licensee or the City shall be deemed to be property of the City and shall remain upon and be surrendered in good order, condition and repair, ordinary wear and tear excepted, upon expiration or termination of this Agreement. Upon request of the City, Licensee shall remove all or any portion of the improvements made by or on behalf of Licensee to the ATC prior to termination of Licensee's right to possession.

3.11 Condition and Care of Premises. Licensee shall, at its sole cost and expense, keep the Licensed Areas in a working, neat, clean, sanitary, safe condition and repair, and shall keep the Licensed Areas free from trash. Licensee shall not attach to, penetrate (e.g., drill and/or screw holes into walls, structures, etc...), paint, or construct on the roof or any structural walls or other elements of the ATC without the prior written consent of the Manager. Licensee shall make all repairs or replacements thereon or thereto, excluding ordinary wear and tear and items for which the City has assumed maintenance under this Agreement. Further, Licensee shall ensure that all personal property within the ATC is maintained and stored in a neat and orderly manner at all times. ATC staff may conduct a walk-through upon strike for all Licensee Events. In the event any areas of the ATC are not fully restored to a neat, clean, sanitary, and safe condition upon strike, the Manager, or designee, may assess the applicable daily rental fee to Licensee for each applicable area upon twenty-four (24) hours written notice to restore the same.

3.12 Damages and Restoration. Licensee shall immediately notify City of any and all damages resulting from, arising out of, or caused to, the Licensed Area, Common Area, or any other portion of the ATC, to the extent caused by Licensee, or its officers, agents, employees, and invitees. The foregoing shall

include, without limitation, structural damages, electrical damages, damage to walls, windows, doors, flooring, or other improvements or fixtures within the ATC, and damage to City Property (defined below). The City shall have the right to (i) make such repairs as may be reasonably necessary to fully restore all such damage, in which event Licensee shall pay City the cost thereof within fifteen (15) days from the date that City provides written demand for payment, or (ii) require Licensee to make such repairs, in which case Licensee shall be solely responsible for all costs and expenses in connection with the repair of all such damages, and the repairs and/or replacements shall be completed within thirty (30) calendar days following written notice by City to Licensee, or such longer period as may be mutually agreed upon by the parties to complete the repair in a manner reasonably acceptable to City.

3.13 Audits and Records. Licensee shall have its financial statements audited on an annual basis by an independent auditing firm of certified public accountants and shall submit a copy of the auditor's report for the preceding fiscal year with its proposed annual operating budget to the City Manager. The City reserves the right to require a special audit of Licensee's books and records at any time either by the City Manager (or designee) or by an outside independent auditor at the direction of the City Council. The City shall pay all expense of the independent auditor related to any special audit. Licensee agrees to make all necessary books, records and other documents necessary to perform such audit available to the City and its representatives.

3.14 Compliance with Applicable Laws; Nuisances. Licensee shall not use the Licensed Area in any manner that constitutes waste or nuisance, or that violates any local, state or federal statute, law, regulation, rule, or government order, including the Town of Addison Charter and Code of Ordinances. Licensee shall not engage in any conduct that would violate any certificate of occupancy applicable to the ATC or would render void or uncollectible any insurance policy then in force with respect to thereto, or that would in any way increase the premiums payable by City for fire, liability, or any other insurance coverage on the ATC or the contents of any improvements therein. Licensee agrees that it will not use, handle, generate, treat, store or dispose of, or permit the use, handling, generation, treatment, storage or disposal of any hazardous materials in, on, under, around or above the ATC at any time.

3.15 Disclaimer of Warranties. LICENSEE UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT CITY IS GRANTING LICENSEE ACCESS AND USE OF THE ATC, INCLUDING THE ENTIRE PREMISES, IN 'AS IS' 'WHERE IS' CONDITION AND THAT NEITHER CITY NOR ANY AGENT, EMPLOYEE OR OTHER PERSON ACTING ON BEHALF OF THE CITY, HAS MADE ANY, AND THE CITY EXPRESSLY DISCLAIMS EVERY, REPRESENTATION, WARRANTY (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND HABITABILITY), ASSURANCE, GUARANTY, OR PROMISE, EXPRESS OR IMPLIED, CONCERNING THE STATUS OF THE TITLE OR CONDITION OF THE ATC (INCLUDING THE LICENSED AREAS, COMMON AREAS, AND ALL OTHER AREAS AND CITY PROPERTY WITHIN THE PREMISES) WHICH ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND THAT NO AGENT OR EMPLOYEE OF THE CITY, THE MANAGER, OR OTHER PERSON HAS ANY AUTHORITY TO MAKE OR DELIVER ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY, OR PROMISE WHICH IS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.

Article IV Licensee Events

4.1 Licensee Event Schedule. On or before April 1st of each year, Licensee shall provide the Manager a written schedule of all Licensee Events proposed to occur during the following annual term of this Agreement (the "Licensee Schedule"). The Licensee Schedule shall, at a minimum, include all dates, times and areas of the ATC needed for each event. Any exclusions or modifications to the Licensee

Schedule shall be determined at the discretion of the Manager. The Manager shall return the final approved Licensee Schedule to Licensee no later than April 30th. The Manager may, from time to time, approve modifications to the Licensee Schedule upon written request from Licensee. A copy of the approved Licensee Schedule for the current season is attached hereto as **Exhibit B**.

4.2 **Event Space Reservations.** Licensee must reserve all necessary spaces within the ATC in advance of each Licensee Event, including, without limitation, the Main Stage, Studio Theatre, and Lobby. Licensee will further need to reserve all spaces necessary for staging purposes such as auditions. All spaces designated 'Available to Theatre Rental Groups' on **Exhibit A** are available for reservation on a "first come" basis and shall require payment of all required fees and written confirmation from the Manager.

4.3 **Scheduling Other Events.** The parties acknowledge that it is to their mutual benefit to promote the ATC for events and performances consistent with the purposes set forth in this Agreement. The City and Licensee therefore agree to reasonably cooperate and assist the other in scheduling events in the ATC during times when the ATC is available. Notwithstanding, the City shall, in its sole and absolute discretion, have the right to schedule any other events at the ATC, provided that such events do not unreasonably interfere with an approved Licensee Event.

4.4 **Conducting Licensee Events.** Licensee shall ensure that all Licensee Events are conducted in conformance with the following requirements:

- (a) **Rental Fees.** All Licensee Events (whether produced or presented) will require submission of any necessary space rental fees in conformance with Article 6 of this Agreement and the Fee Schedule set forth in **Exhibit C**.
- (b) **Event Staffing.** Licensee shall provide adequate staff to administer and oversee each event from start to finish, including pre-production, rehearsal, load-in and load-out, as applicable.
- (c) **Box Office Operation.** The box office shall be open and manned continuously by Licensee on event days from one hour prior to each event through the intermission of the event.
- (d) **Seating.** Seating operations for all events shall be in compliance with all current ADA rules and regulations, including the City's ADA policy. Further, Licensee shall ensure seating is returned to the standard/basic layout (as directed by the Manager) following strike for each event.
- (e) **Concessions; Alcohol.** Licensee may access and use the concession areas within the ATC for food and beverage sales in connection with Licensee Events solely on the day of the event. Licensee shall not be entitled to use any concession area, equipment, or other service items belonging to the ATC at any other time without the prior written approval of the Manager. Alcoholic beverages may be served in strict conformance with the TABC rules and regulations.
- (f) **Food and Beverages.** Except as provided herein, no food or beverages shall be allowed within the Main Stage and Studio Theatre spaces. The following exceptions shall apply:
 - (i) bottled water with a secure lid may be used anytime;

- (ii) secure covered “sippy cup” designed cups may be used by patrons;
 - (iii) during special events such as the annual Gala fundraiser; and
 - (iv) in the upstairs and downstairs lobby areas for opening receptions and social gatherings.
- (g) *Lobby Events.* Licensee may use the lobby areas for special events with the prior written approval of the Manager, subject to availability.
- (h) *Third-Party Productions.* Productions that will be presented by Licensee but produced by a third-party require prior written approval by the Manager. For the purposes of this section, “Presented by Licensee” refers to third-party (outside) production that will occur at the ATC to which Licensee attaches its name. Prior to the Manager’s approval, Licensee shall provide the Manager a copy of the proposed contract for third-party productions, including a brief description of the production.
- (i) *Special Effects.* Licensee may not permit the use of pyrotechnics; suspension or aerial acts; haze, smoke or any other special effects within the ATC without prior written approval of the Manager. Licensee shall be solely responsible for ensuring all necessary licenses, certifications, insurance or other documentation City deems necessary for such effects have been obtained prior to the event. The City shall not be responsible for any costs, fees, or expenses in connection with the use of special effects for Licensee Events. Smoking or other use of any type of tobacco product is prohibited within the ATC. In the instances where smoking needs to be portrayed as part of a production, only smokeless prop, powder or water based “e-cigarettes” may be used.
- (j) *Temporary Rigging.* Licensee may not allow the use of any temporary rigging (other than existing City-owned rigging within the ATC) which requires ground support or attachment to a structural component of the ATC without the prior written consent of the Manager. Licensee shall provide a detailed rigging plan and/or technical rider describing how the rigging will be used. The City may require the use of a licensed rigging installer and proof of additional insurance policies applicable to the use of the rigging prior to approval, including providing certificates of insurance in compliance with Section 8.2 of this Agreement. Licensee shall be responsible for the complete removal and restoration of the areas where temporary rigging is used. Notwithstanding any provision of this subsection, the City’s consent to Licensee’s installation of any rigging shall not be deemed the City’s approval of the proposed plan or intended use for any specific purpose. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING OUT OF THE INSTALLATION OR USE OF ANY RIGGING (INCLUDING CITY-OWNED RIGGING) IN CONNECTION WITH ANY LICENSEE EVENT.
- (k) *Use of Roof.* No person may attach to, construct on, or penetrate the roof or any structural elements of the ATC without the prior written consent of the City.
- (l) *Complaints; Nuisances.* Licensee will cooperate with City to address and, as necessary, abate any complaint or nuisance arising from an event, including noise complaints associated with the event.
- (m) *Post-Event Cleaning.* Licensee shall be responsible for cleanup after each event and

shall leave all areas of the ATC in a safe, orderly and clean condition upon conclusion of the event. All trash inside the Main Stage or the Studio Theatre shall be placed in the lobby. Licensee shall be responsible for ensuring all persons using the ATC clean up the space each night. Including removing trash, mopping any spills and cleaning any stains on floors seating element and seats

4.5 City Special Events. Licensee acknowledges that the City schedules and produces various special events throughout the year (herein, "City Special Events"), which shall take priority over Licensee Events and all other events held at the ATC. City will promptly notify Licensee of the dates and times of each City Special Event once scheduled. Licensee shall ensure that the Common Area is available for the City's exclusive use during City Special Events. During City Special Events the Manager may, in the City's sole discretion, grant Licensee limited use of the ATC for certain production related work such as rehearsals, builds, and technical work. In such cases the Manager may issue a maximum of ten (10) parking passes to a designated parking area of the City's choosing in connection with the same.

Article V City Responsibilities

5.1 City Authority; Approvals. The City retains general control over the ATC and final authority concerning the management of the ATC. The Manager is authorized to issue and enforce all policies, rules and directives reasonably necessary to the management and operation of the ATC. Where the City's approval is required under this Agreement (for any reason), Licensee shall provide the Manager written notification describing the specific request and such supporting documentation as may deemed necessary by the Manager for the City to respond to the same. The City will typically provide Licensee written notice of its determination within sixty (60) days of the filing of Licensee's notice. Notwithstanding, the Manager, in their sole discretion, may waive the formal notice requirements where appropriate.

5.2 Janitorial Services. The City will provide routine janitorial service within the interior of the ATC on a regular basis, typically being four (4) times per week (generally Monday, Wednesday, Friday and Saturday). The areas to be cleaned will generally include ATC offices along the "office hallway", Boardroom, Lobby, Lobby Hallway to Studio Theatre wood doors, dressing rooms, restrooms, kitchen floor and counter, office in costume shop and greenroom. In addition, the Stone Cottage will be cleaned on Mondays and Fridays and the theatre seats will be steam cleaned once annually. Additional janitorial or cleaning services may be requested by Licensee and performed at Licensee's sole cost.

5.3 Additional Cleaning Services. At the Manager's sole Discretion, the City may provide additional janitorial or cleaning services at the end of each performance run, which may include:

- (a) sanitizing of the seating elements but no cleaning underneath the seats;
- (b) vacuuming and mopping of the performance space; and
- (c) cleaning around any set/obstructions that may remain in the performance space.

5.4 Routine Maintenance & Repairs. Except as provided otherwise in this Agreement, the City will maintain the ATC in a commercially reasonable manner and will be generally responsible for routine maintenance and repairs to the ATC, including, routine maintenance of the buildings, exterior grounds and parking lot, HVAC equipment, and other permanent City-owned structures and improvements (but excluding Licensee Improvements). Notwithstanding the foregoing, Licensee shall be solely responsible for all maintenance or repair required as a result of an act or omission of Licensee, or its contractors, agents, representatives, invitees, and guests.

THE CITY SHALL NOT OBLIGATED TO PERFORM ANY MAINTENANCE OR REPAIRS REQUESTED BY LICENSEE UNLESS LICENSEE HAS NOTIFIED THE MANAGER AND SUBMITTED A COMPLETED A CITY REPAIR REQUEST FORM (the repair request form can be found at <https://addisontexas.net/actc/addison-theatre-centre-repairs-request-form>).

5.5 Utilities. The City will be responsible for providing water, air conditioning, heat, and electricity (the "Included Utilities") to the ATC, however, City shall not liable to Licensee for the quality, quantity, failure, availability, or disruption of the Utilities, including any claims or damages arising out of the same. If Licensee is required to cancel an event as a direct result of the City's failure to provide one or more of the foregoing Utilities in conformance herewith, Licensee may submit a written request for waiver of the Rental Fees incurred for the cancelled event. The Manager may approve or deny the waiver request in the Manager's sole discretion.

Article VI License Fee

6.1. License Fee. Licensee shall pay City license fee for the license granted herein in conformance with the Fee Schedule set forth in Exhibit C (the "License Fee"). The License Fee shall include: (i) the monthly fee for the use of the WTT Administrative Offices, including rental of all City furnishings, (ii) the monthly fee for telephone service, (iii) all space rental fees incurred by Licensee, and (iv) all other costs incurred by or charged to Licensee pursuant to this Agreement.

6.2. Payment Terms. The License Fee shall be due and payable on or before the 15th day of each month for the immediately preceding month (i.e., the first payment for each annual term will be November 15th). Unless the parties agree otherwise, Licensee may not pay any amounts due in cash and will pay all License Fees by check or other means acceptable to City. Licensee must pay the License Fee timely and without demand, deduction, or offset, except as permitted by law or this Agreement. Time is of the essence for the payment of rent (strict compliance with rental due dates is required). If Licensee fails to timely pay any amounts due under this Agreement or if any check of Licensee is not honored by the institution on which it was drawn, City may require Licensee to pay such amount and any subsequent amounts under this Agreement in certified funds. This paragraph does not limit City from seeking other remedies under this Agreement for Licensee's failure to make timely payments with good funds. Regardless of any notation on a check, City may apply funds received from Licensee first to any non-License Fee obligations of Licensee, including but not limited to, late charges, returned check charges, repairs, and then to the License Fee.

6.3. Adjustments to Fee Schedule. The City may, from time to time, modify the fees set forth in the Fee Schedule (Exhibit C) based upon market analysis or as the City deems necessary during the term of this Agreement; provided, that the City shall provide Licensee sixty (60) days written notice prior to the effective date of any such modification, except where the modification is made in connection with the extension the term or other amendment of this Agreement. In addition, the parties may, from time to time, amend the list of furnishing rented to Licensee under this Agreement. In such cases, the License Fee may be modified by mutual agreement of the parties.

Article VII Default; Termination

7.1 Default; Notice to Cure. A party shall be deemed in default under this Agreement if the party is in breach of a material provision of this Agreement (excluding Licensee's obligation to pay the License Fee) and said breach is not cured within thirty (30) days written notice of default by the other party.

In the event the breaching party has notified the other party in writing that it is diligently working to cure the breach and has provided reasonable evidence in support of the same, the breaching party shall not be deemed in default until the sixtieth (60th) day following the non-breaching party's notice of default.

7.2 Termination. This Agreement shall terminate upon any one of the following:

- (a) upon expiration of this Agreement;
- (b) by written agreement of the parties;
- (c) upon ten (10) days written notice by the City, if Licensee fails to timely pay any portion of the License Fee in conformance with this Agreement;
- (d) upon written notice by either party in the event the other party breaches any of the terms or conditions of this Agreement and such breach is not timely cured in conformance with Section 8.1, above;
- (e) upon written notice by City in the event Licensee breaches any of terms or conditions of a Related Agreement and such breach is not timely cured in conformance the terms of such agreement (for purposes of this section, 'Related Agreement' means all current (unexpired) written agreements between Licensee and the City, including, without limitation, all rental agreements and public sponsorship, incentives and/or grants related to Licensee's operations);
- (f) upon written notice by the City, if Licensee (i) becomes insolvent or generally not able pay its debts as such debts become due; (ii) makes a general assignment of all, or a substantial portion of, its assets for the benefit of creditors; (iii) institutes or has instituted against it any proceeding for the liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or (iv) the entry of an order for the appointment of a receiver, trustee or other similar official for it or for any substantial part of its assets, and in each such case the proceeding is not terminated, stayed or set aside within a period of sixty (60) days after it is instituted; or
- (g) upon written notice by either party, if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable.

7.3 Removal of Property Upon Termination. City reserves the right and Licensee does hereby agree that City may store, dispose of, or remove any property of Licensee left in the ATC after the termination of this Agreement at Licensee's risk and expense. Licensee shall be liable for all costs and expenses incurred by City in such disposition, including reasonable charges for storage.

7.4 Restoration of Licensed Area. Within thirty (30) days following the expiration or earlier termination of this Agreement, Licensee shall restore the Licensed Area to substantially the same the condition in which the Licensed Areas existed on the Effective Date of this Agreement, ordinary wear and tear and loss due to other casualty beyond Licensee's control excepted.

7.5 Holdover. If Licensee continues to possess or occupy any portion of the ATC following the expiration of the term, and this Agreement has not been extended or superseded, this Agreement (a) shall be deemed to be a holdover tenancy from month to month but shall not itself constitute a renewal or extension of the term, (b) shall continue from month to month under the terms and conditions set forth herein, and (c) may be terminated by either party upon at least thirty (30) days written notice to the other party. All the terms and covenants of this Agreement apply to all holdover periods.

7.6 Force Majeure. No party shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement (excluding Licensee's obligation to pay the License Fee) due to causes beyond the party's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, a government restriction, quarantine, or mandatory closure order enacted in response to a pandemic or other public health crises, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control (each an event of "Force Majeure"). The party asserting Force Majeure shall give prompt notice to the other party of the prevention of performance as soon as the asserting party is reasonably aware of such prevention and has the burden of demonstrating (i) how and why their performance was so prevented, (ii) the period of time during which they were so prevented from performing (which under the facts may be equal to, or shorter or longer than, the duration of the Force Majeure event itself), and (iii) that the party used reasonable efforts to mitigate and/or eliminate such prevention and resumed performance under this Agreement as soon as reasonably practicable.

Article VIII Insurance

8.1 Insurance Coverage. Licensee shall, during the Term of this Agreement, obtain and maintain insurance coverage required by City, and as set forth below:

- (a) commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate;
- (b) workers' compensation insurance at statutory limits;
- (c) Comprehensive Automobile and Truck Liability Insurance covering owned, hired and non-owned vehicles, with minimum limits of \$1,000,000, each occurrence, for bodily injury, death, and property damage, such insurance to include coverage for loading and unloading hazards; and
- (d) Other such policies and limits as the City may reasonably required during the term of this Agreement.

8.2 Insurance Requirements. All insurance and certificate(s) of insurance required under this article shall be endorsed to contain the following provisions: (i) name the City, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (ii) provide for at least thirty (30) days prior written notice to the City for cancellation or non-renewal of the insurance; (iii) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance; (iv) coverage shall be on a primary basis and non-contributory with any other insurance coverage and/or self-insurance carried by the other party. Licensee shall provide written notice to the City of any material change of, or to, the insurance required herein. All insurance companies providing insurance coverage required by this section shall be authorized to transact business in Texas and rated an "A" by AM Best or other equivalent rating service. Licensee shall submit to the other certificate(s) of insurance evidencing insurance coverage required by this article together with copies of all endorsements, additional insured endorsements, and waiver of subrogation endorsements. City reserves the right, throughout the term of this Agreement, to maintain at City's sole expenses, one or more insurance policies related to the ATC, including general liability insurance for bodily injury, death or property damage, insuring City against all claims, demands, or actions relating to the ATC.

Article IX
Assumption of Liability; Indemnity

9.1 Assumption of Liability. LICENSEE AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM (I) THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER, OR (II) THE OCCUPATION AND USE OF THE ATC PURSUANT TO THIS AGREEMENT, BY LICENSEE OR BY ANY OF ITS OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, MEMBERS, AGENTS, SERVANTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, VOLUNTEERS, CUSTOMERS, AND CONCESSIONAIRES (IN THE CAPACITY AS OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, MEMBER, AGENT, SERVANT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, VOLUNTEER, CUSTOMER, OR CONCESSIONAIRE OF OR FOR LICENSEE), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

9.2 Indemnity. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF LICENSEE PURSUANT TO THIS AGREEMENT. LICENSEE HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY INDEMNITEES") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY INDEMNITEES. LICENSEE AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY INDEMNITEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF LICENSEE, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE NEGLIGENCE OR WILFUL MISCONDUCT OF A CITY INDEMNITEE, IN WHOLE OR IN PART, IN WHICH CASE LICENSEE SHALL INDEMNIFY THE CITY INDEMNITEE TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR, ITS OFFICERS, AGENTS, OR EMPLOYEES AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

9.3 Intellectual Property Indemnity. LICENSEE WARRANTS AND GUARANTEES THAT IN CONNECTION WITH LICENSEE'S EVENTS HELD AT THE ATC, NEITHER THE LICENSEE NOR LICENSEE PERSON WILL INFRINGE ON THE INTELLECTUAL PROPERTY RIGHTS (INCLUDING, BUT NOT LIMITED TO, COPYRIGHT, PATENT, MASK, AND TRADEMARK) OF THIRD PARTIES. LICENSEE COVENANTS, FOR ITSELF AND ALL LICENSEE PERSONS, TO DEFEND, HOLD HARMLESS, AND INDEMNIFY THE CITY INDEMNITEES (DEFINED ABOVE), FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, INJURIES, FINES, PENALTIES, COSTS (INCLUDING COURT COSTS AND ATTORNEYS' FEES), CHARGES, LIABILITY OR EXPOSURE FOR INFRINGEMENT OF OR ON ACCOUNT OF ANY TRADEMARK,

COPYRIGHT, PATENTED OR UNPATENTED INVENTION, PROCESS, ARTICLE, LITERARY OR ARTISTIC WORK ARISING FROM LICENSEE'S USE OR OCCUPANCY OF THE ATC IN CONNECTION WITH THE AGREEMENT, INCLUDING ALL LICENSEE EVENTS, PROGRAMS, AND/OR PERFORMANCES.

9.4 Notices of Claim. Licensee shall promptly advise City in writing of any claim or demand against the City, related to or arising out of Licensee's acts or omissions under this Agreement and shall see to the investigation and defense of such claims or demand at Licensee's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such defense without relieving Licensee of any of its obligations hereunder. Licensee's obligations under this section shall not be limited to the limits of coverage of insurance maintained or required to be maintained by Licensee under this Agreement.

9.5 No Waiver of Immunity. It is expressly understood and agreed that, in the execution of this Agreement, the City does not waive, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR A PERIOD OF FOUR (4) YEARS.

**Article X
Claim Resolution Procedures**

Pursuant to subchapter I, Chapter 271, TEXAS LOCAL GOVERNMENT CODE, Licensee agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Agreement (a "Claim"), the parties will first attempt to resolve the Claim by taking the following steps: (i) A written notice substantially describing the factual and legal basis of the Claim shall be delivered by Licensee to the City within one-hundred eighty (180) days after the date of the event giving rise to the Claim, which notice shall request a written response to be delivered to Licensee not less than fourteen (14) business days after receipt of the notice of Claim; (ii) if the response does not resolve the Claim, in the opinion of Licensee, Licensee shall give notice to that effect to the City whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the Claim; (iii) if those persons cannot or do not resolve the Claim, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the Claim.

**Article XI
Miscellaneous Provisions**

11.1 Notice. All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth on the signature page(s) (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by (a) personal delivery, (b) certified or registered mail (in each case, return receipt requested, postage prepaid), (c) nationally recognized overnight courier (with all fees pre-paid), or (d) e-mail of a PDF document containing the notice. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (i) when received if delivered or given in person, (ii) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (iii) on the next business day after the day the notice or document is provided to a nationally recognized carrier to be delivered as set forth above, or (iv) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is

prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the recipient. For purposes of notification, the addresses of the parties shall be as follows:

11.2 Entire Agreement. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both parties.

11.3 Venue and Governing Law. This Agreement and any of its terms or provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas. Venue for any suit between the parties arising from or related to this Agreement shall be in Dallas County, Texas.

11.4 Severability. The provisions of this Agreement are severable. In the event that any paragraph, section, subdivision, sentence, clause or phrase of this Agreement shall be found to be contrary to the law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Agreement. However, upon the occurrence of such event, either party may terminate this Agreement by giving the other party fifteen (15) days written notice of its intent to terminate.

11.5 Amendments. This Agreement may only be amended by a written instrument signed by authorized representatives of both parties.

11.6 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

11.7 Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of the other party.

11.8 Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed, that each party has had an opportunity to confer with counsel, on the matters contained herein.

11.9 Drafting Provisions. This Agreement shall be deemed to have been drafted equally by all parties. The language of all parts of this Agreement shall be constructed as a whole according to its fair and common meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this Agreement.

11.10 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.

11.11 No Grant of Real Property Interest. The parties hereto understand and agree that this Agreement does grant or convey, and is not intended to grant or convey, an interest in real property. This Agreement shall not be filed by either party in the real property records of Dallas County and nothing in this Agreement shall be construed as a covenant running with the real property upon which the ATC is located.

11.12 Non-Discrimination. During the term of this agreement, Licensee shall not discriminate against any employee or applicant for employment because of race, age, color, sex, religion, ancestry, national origin, place of birth, or handicap.

11.13 No Boycott Israel. Pursuant to Texas Government Code Chapter 2270, Licensee's execution of this Agreement shall serve as verification that Licensee does not presently boycott Israel and will not boycott Israel during the term of this Agreement

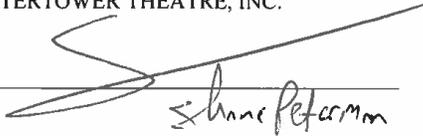
[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY –
SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

TOWN OF ADDISON, TEXAS

WATERTOWER THEATRE, INC.

By: _____
Hamid Khaleghipour
Interim City Manager

By: _____


Date: _____

Date: 10-17-22

Notice Address:

Notice Address:

Town of Addison
Attn: City Manager
P.O. Box 9010
Addison, Texas 75001
E: hkhaleghipour@addisontx.gov

WaterTower Theatre, Inc.
Attn: Shane Peterman
15650 Addison Road
Addison, TX 75001
E: speterman@watertowertheatre.org

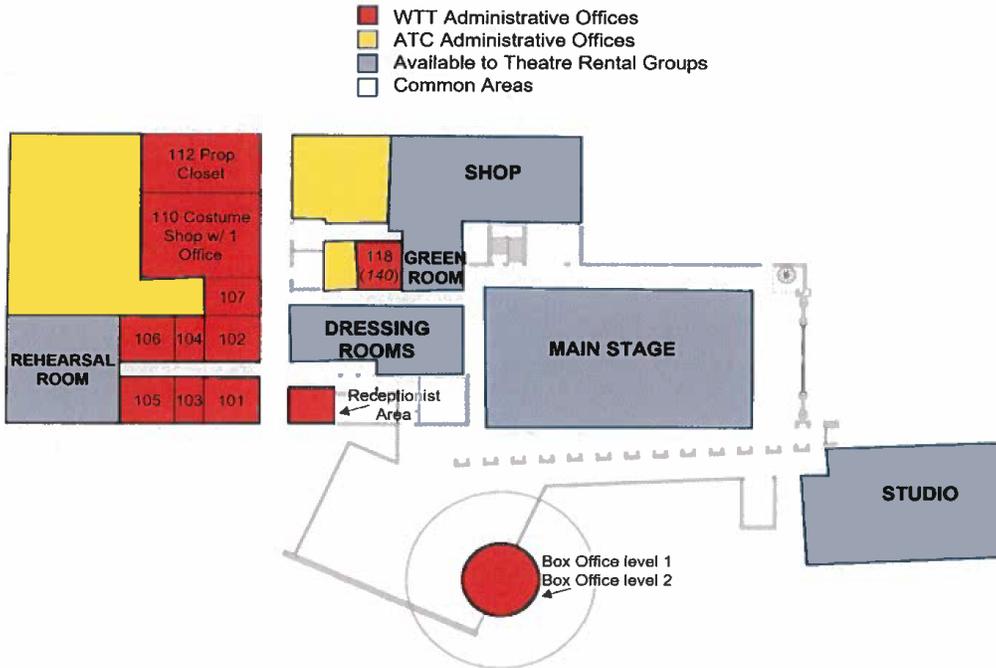
List of Exhibits
(attached)

- | | |
|-----------|---------------------------|
| Exhibit A | Description of the ATC |
| Exhibit B | Master Schedule of Events |
| Exhibit C | Fee Schedule |
| Exhibit D | Licensee Summary |

Exhibit A

DESCRIPTION OF THE ATC

Theatre Map of Space Rented Monthly



NOTES

1. Licensee will be entitled to use such areas of the WTT Administrative Offices (depicted in red above) as may be authorized by City in writing in its sole discretion during the term of this Agreement. The City reserves the right to modify Licensee's access to the foregoing space from time to time, provided, the City will endeavor to provide access to such administrative space as is reasonably necessary for Licensee to conduct its operations in the manner contemplated in this Agreement.
2. Licensee must reserve all necessary spaces within the ATC in advance of each Licensee Event, including, without limitation, the Main Stage, Studio Theatre, and Lobby. Licensee will further need to reserve all spaces necessary for staging purposes such as auditions.
3. All spaces designated 'Available to Theatre Rental Groups' above are available for reservation on a "first come" basis and shall require payment of all required fees and written confirmation from the Manager.
4. The City shall have the right to schedule any other events at the ATC that do not unreasonably interfere with an approved Licensee Event.

Exhibit B

LICENSEE SCHEDULE ⁽¹⁾

2022-2023 Season

<u>ATC SPACE</u>	<u>EVENT TITLE</u>	<u>PERFORMANCE DATES</u>
Main Stage	Workshop: Oregon	10/10/22 - 10/14/22
Main Stage	Show 1: Jesus Christ Superstar ⁽²⁾ 12 Performances	11/30/22 - 12/11/22
	<i>Load In</i>	<i>10/17/22 - 10/31/22</i>
	<i>Rehearsal</i>	<i>11/01/22 - 11/29/22</i>
	<i>Strike</i>	<i>12/12/22 - 12/14/22</i>
Main Stage	Show 2: The Play That Goes Wrong 12 Performances	2/1/23 - 2/12/23
	<i>Load In</i>	<i>1/2/23 - 1/8/23</i>
	<i>Rehearsal</i>	<i>1/9/23 - 1/31/23</i>
	<i>Strike</i>	<i>2/13/23 - 2/15/23</i>
Main Stage	The Gala	3/4/23
	<i>Load In</i>	<i>2/28/23 - 3/3/23</i>
	<i>Strike</i>	<i>3/5/23 - 3/7/23</i>
Main Stage	Show 3: The Manic Monologues 12 Performances	4/19/23 - 4/30/23
	<i>Load In</i>	<i>3/20/23 - 3/27/23</i>
	<i>Rehearsal</i>	<i>3/28/23 - 4/18/23</i>
	<i>Strike</i>	<i>5/1/23 - 5/3/23</i>
Main Stage	Show 4: Goin' Hollywood ⁽³⁾ 12 Performances	7/19/23 - 7/30/23
	<i>Load In</i>	<i>6/12/23 - 6/19/23</i>
	<i>Rehearsal</i>	<i>6/20/23 - 7/18/23</i>
	<i>Strike</i>	<i>7/31/23 - 8/2/23</i>

NOTES

1. *City Special Events*: the City hosts various special events throughout the year that take priority over all other events held at the ATC. City will promptly notify Licensee of the dates and times of each special event. Licensee shall ensure that all common areas are available for the City's exclusive use during the City's special events.
2. *Addison Holiday in the Park* takes place 12/4/22 in Addison Circle Park. While the Addison Theatre Centre is not utilized for this event, expect large amounts of vehicles in the parking lot and surrounding streets on this day.
3. *Addison Kaboom Town'* takes place 7/3/23, with set-up/break down of spaces inside of the Addison Theatre Centre running 7/2/23-7/4/23. The Studio Theatre, 1st and 2nd floor lobbies, Green Room and all Dressing Rooms will be in use by the City during these dates, and WTT will have a limited number of parking passes to access the facility parking lot at that time.

Addison Theatre Centre License Agreement – Exhibit B

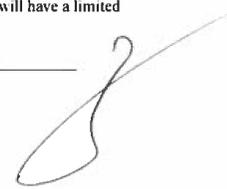


Exhibit C

ATC MASTER FEE SCHEDULE

October 1, 2022 – September 30, 2023

LICENSE FEES

DESCRIPTION	MONTHLY FEE
License Fee	\$1,200.00
Telephone Service Fee	\$400.00
Furniture Rental (<i>see below</i>)	Included
Total Monthly License Fees	<u>\$1,600.00</u>

ATC SPACE RENTAL FEES

DESCRIPTION	USE	DAILY FEE
Main Stage	Performance	\$300.00
	Production	\$200.00
	Dark Days	\$100.00
Studio Theatre	Performance	\$150.00
	Production	\$100.00
	Dark Days	\$50.00
Stone Cottage	Any	\$100.00

FURNITURE RENTAL FEES

DESCRIPTION	LOCATION	MONTHLY FEE
Yellow Table (66")	Room 102	Included
Above-Desk Hutch	Room 111	Included
Black Desk + Hutch	Reception	Included

MISCELLANEOUS

Alarm Code Change (2 free)	\$15.00 <i>per incident</i>
Key Replacement	\$50.00 <i>per key</i>
Food Donation Fee	\$1/pp (\$300 max)

NOTES

1. The License Fees are effective for the current season and subject to increase each subsequent season
2. The Rental Fees are subject to change upon prior notice by City in conformance with Article VI of the License Agreement
3. **Definitions**
Performance Day includes anytime an audience is in attendance or filming occurs, including preview and invited dress
Production Day means any day that includes build, tech, rehearsal, strike, reconfigure space, education, or any other use
Dark Day means any day the space is occupied by Licensee scenery/equipment, or cannot be rented due to Licensee's use

Addison Theatre Centre License Agreement – Exhibit C



Exhibit D

LICENSE SUMMARY
2022 – 2023

REPRESENTATIVES

For Licensee:

For City:

Addison Theatre Centre
Supervisor
Attn: Jack Piland
P: 972-450-6222
E: jpiland@addison.tx.gov

KEY PROVISIONS SUMMARY

Effective Date: October 1, 2022
Expiration Date: September 30, 2023
Renewal Term: The term may be extended for up to four (4) additional one (1) year terms at the City's sole discretion; provided, that Licensee delivers to City its written request to extend on or before June 1st of the then current term. [Article 1]

License Fee: \$1,600 per month [Section 6.1 + Exhibit C]
Payment Terms: The License Fee shall be due and payable on or before the 15th day of each month for the immediately preceding month [Section 6.2]

Permitted Use: Licensee's administrative operations; conducting Licensee Events; sponsoring or hosting educational programs and workshops; hosting fundraising events; any other use with the prior written approval of the Manager [per Article III]

Key Licensee Obligations:

- Licensee shall provide the Manager a written schedule of all Licensee Events on or before April 1st of each year [Section 4.1]
- Licensee shall provide the Manager an inventory of all of personal property of Licensee located in the ATC on or before July 1st of each year [Section 3.6]
- Licensee shall be responsible for timely removing all Licensee Improvements [Section 3.9]
- Licensee shall be responsible for all damage [Section 3.12]
- Licensee shall have its financial statements audited on an annual basis and submit to the City Manager [Section 3.13]
- Licensee will prominently acknowledge the City for its support of Licensee in all appropriate printed materials [Section 3.2]
- Licensee shall restore the ATC to a neat, clean, sanitary, and safe condition upon strike or may be assessed a daily rental fee [Section 3.11]
- Licensee shall immediately notify City of any and all damages [Section 3.12]
- Licensee must obtain City consent for rigging [Section 4.4]

Key City Obligations:

- City will provide routine janitorial service within the interior of the ATC on a regular basis, typically x4 per week [Section 5.2]
- City will provide water, electric and HVAC [Section 5.4]

Improvements: Allowed solely in conformance with [Section 3.9]
Signage: City approval required for signage [Section 3.5]
Reserved Parking: None [Section 3.7]
City Approvals: Where the City's approval is required for any reason, Licensee shall provide written request to the Manager [Section 5.1]
Maintenance Requests: Must be submitted to City via online request form at <https://addisontexas.net/actc/addison-theatre-centre-repairs-request-form>

Addison Theatre Centre License Agreement – Exhibit D



Council Meeting 2023

14.

Meeting Date: 10/25/2022

Department: General Services

Pillars: Excellence in Asset Management

Milestones: Implement the Asset Management Plan in accordance with the Asset Management Policy, utilizing information systems

AGENDA CAPTION:

Consider Action on a **Resolution Approving the Purchase of Nine Vehicles, a Vermeer Chipper and Two Thermal Cameras for the Fire, Police, Parks, Utilities and General Services Departments and Authorizing the City Manager to Execute the Purchase Agreements** in an Amount Not to Exceed \$635,240.43.

BACKGROUND:

An Asset Management System (AMS) is utilized to track the Town's vehicles. Staff reviews and evaluates the condition of the vehicles and equipment on an annual basis to determine which assets warrant replacement.

Purchasing cooperatives solicit competitive bids from many vendors for products and services for their members. Purchasing through a cooperative streamlines the procurement process for public entities resulting in a savings of both administrative time and money. Staff identified the vendors and purchasing cooperatives in the tables below as being able to provide the replacement vehicles needed. BuyBoard, The Interlocal Purchasing Cooperative (TIPS), and the Tarrant County Cooperative are purchasing cooperatives. The Fort Worth Interlocal Agreement (Fort Worth ILA) is an arrangement whereby the Town may make purchases previously bid by that entity.

The Capital Equipment Replacement Fund (CERF) was established to accumulate sufficient resources to replace existing capital rolling stock and equipment that has reached the end of its useful life. Capital Equipment Replacement Fund resources are acquired through charges to operating departments. The charges are calculated using a straight-line depreciation method based on an item's expected life.

Using funds budgeted in the Fiscal Year 20232 CERF, the following vehicles are recommended for replacement based on the AMS and staff condition assessment.

Capital Equipment Replacement Funded Purchase

Item	Department	Estimated Cost	Quoted Cost	Cooperative	Vendor
Thermal Cameras	Fire	\$23,000.00	\$14,601.70	BuyBoard	NAFECO
Ford Interceptor	Fire	\$50,000.00	\$55,932.00	Tarrant County Cooperative	Holiday
Ford Explorer	Police	\$38,000.00	\$38,629.25	TIPS	Silsbee
BMW Motorcycle	Police	\$35,000.00	\$29,130.87	City of Fort Worth ILA	BMW of Dallas
BMW Motorcycle	Police	\$35,000.00	\$29,130.87	City of Fort Worth ILA	BMW of Dallas
Ford F-250 Super Cab	Police	*Insurance Replacement	\$95,366.00	TIPS	Silsbee
Ford F-350	Utilities	\$58,000.00	\$66,441.50	TIPS	Silsbee
Ford Lightning	Utilities	\$50,000.00	\$59,046.25	TIPS	Silsbee
Chevy Bolt EUV	General Services	\$40,000.00	\$33,596.75	TIPS	Silsbee

Department Funded as an Approved Decision Package

Item	Department	Estimated Cost	Quoted Cost	Cooperative	Vendor
Ford F-550 Crew Cab	Parks	\$130,000.00	\$106,814.00	TIPS	Silsbee
Vermeer Brush Chipper	Parks	\$130,000.00	\$106,551.24	TIPS	Vermeer

*This is to replace a vehicle that was considered at total loss in an accident.

** Estimated and quoted price differences are due to changing market conditions.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Vehicle and Equipment Purchases Fiscal Year 2023

Quote - Fire Department Thermal Camera

Quote - Fire Department Interceptor

Quote - Police Department Explorer

Quote - Police Department Motorcycles

Quote - Police Department F-250

Quote - Utilities Department F-350

Quote - Utilities Department Lightning

Quote - General Services Department Bolt

Quote - Parks Department F-550

Quote - Parks Department Brush Chipper

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE PURCHASE OF NINE VEHICLES, A VERMEER CHIPPER AND TWO THERMAL CAMERAS FOR THE FIRE, POLICE, PARKS, UTILITIES AND GENERAL SERVICES DEPARTMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize the purchase of nine (9) vehicles, a Vermeer Chipper, and two thermal Cameras for the Fire, Police, Parks, Utilities and General Services Departments; and

WHEREAS, City staff utilized several different companies, all approved cooperative purchasing providers, to identify preferred vendors and obtain purchase orders for the purchase of the above-referenced vehicle(s) and equipment.

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

SECTION 1. The City Council hereby approves the purchase of the following vehicles and equipment:

<u>Item Description</u>	<u>Vendor</u>	<u>Department</u>	<u>Unit Price</u>	<u>Quantity</u>	<u>Total</u>
Thermal Camera Kit	Nafeco, Inc.	Fire	\$7,300.85	2	\$14,601.70
2023 Ford Interceptor	Holiday Auto Group	Fire	\$55,932.00	1	\$55,932.00
2023 Ford Explorer	Silsbee Ford	Police	\$38,629.25	1	\$38,629.25
BMW Motorcycle	BMW of Dallas	Police	\$29,130.87	2	\$58,261.74
F-250 Super Cab	Silsbee Ford	Police	\$95,366.00	1	\$95,366.00
F-550 Crew Cab	Silsbee Ford	Parks	\$106,814.00	1	\$106,814.00
Vermeer Chipper	Vermeer Texas-Louisiana	Parks	\$106,551.24	1	\$106,551.24
F-350	Silsbee Ford	Utilities	\$66,441.50	1	\$66,441.50
F-150	Silsbee Ford	Utilities	\$59,046.25	1	\$59,046.25

Chevrolet Bolt	Lake Country Chevrolet	General Services	\$33,596.75	1	\$33,596.75
TOTAL					<u>\$635,240.43</u>

SECTION 2. The City Council hereby authorizes the City Manager to execute the purchase orders and other documents necessary for the foregoing purchases.

SECTION 3. 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 25th day of OCTOBER, 2022.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary



NAFECO Inc.
 "North America Fire Equipment Co."
 1515 West Moulton Street
 Decatur, AL 35601
 Office: **800-628-6233**



Bill To:

Addison Fire Department
 PO Box 9010
 Addison, TX 75001

Shipping Address:

Addison Fire Department
 4798 Airport Parkway
 Addison, TX 75001
 (ATTN: Chief Patterson)

Date: 10/14/2022

Customer ID: ADD060
 PO#

Contact	Sales Rep #	Sales Rep.	Ordered By	Sales Quote
Alexander	82	D Stewart	Matt Ferguson 903-821-0171	Good for 60 Days

Line	Item	Qty.	Description	Unit	Total
1	72202-0303TAA	2	FLIR K65 320x240 Thermal Camera Kit, NFPA with In Truck Charger	\$7,280.85	\$14,561.70
2					
3					
4	Shipping				40.00
5				Total	\$14,601.70

Notes: Listed price reflects the price increase in June of 2022

Date	9/8/2022
Estimate #	34498
Estimate By	Mike Hewitt
	mike@defendersupply.com
	903-771-1089



Bill To
Town of Addison P.O. Box 9010 16801 Westgrove Drive Addison, TX 75001

Customer Contact	
Customer Phone	
Customer E-mail	fcalhoun@addisontx.gov

Description	Location	Qty	Price	Total
Pricing based on Tarrant County Cooperative Contract # 2020-174 Through Holiday Ford				
2023 Ford Interceptor Utility 3.3L V6 Direct-Injection Hybrid System, AWD, 10-Speed Auto Trans, Heavy Duty 78-AMP Battery, Heavy Duty 220 AMP Alternator, Battery Saver Feature, 4 Wheel Disc Police Brakes, ABS & Traction Control, Front And Rear Anti-Roll Bars, 245/55R18 AS BSW Police Tires, 18' HD Steel Wheels, Full Size 18' Spare Tire, Heavy Duty Suspension, Power Steering w/EPAS, Front Cloth / 60/40 Rear Vinyl Seats, Power Driver's Seat/6-Way Manual Lumbar adjustment, Red/White Dome Lamp, Black Vinyl Floor Covering, 75-mph Rear-Impact Crash Tested, Comes with two years of Ford Telematics complimentary, Hands Free Bluetooth, 4 remappable steering wheel-mounted switches, Deflective steel anti-stab plates are built into the driver & front-passenger seat backs, Class III trailer tow receiver, Front Headlamp Housing Only, Remappable Steering Wheel with Sync, Dual Power Mirrors, Speed Sensitive Variable Intermittent Wipers, Options: Front Headlamp Housing Only, Driver's Side LED Spotlight.		1	46,523.00	46,523.00T
RED Exterior				
(Purchased Through Holiday Ford).				
Holiday Ford 1009 Highway 82 West Whitesboro, TX 76273				
2 Year Texas State Inspection Certificate		1	7.00	7.00T
Vehicle Dealer Prep		1	130.00	130.00T

Vehicle & Emergency Equipment Total

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

Signature

Date	9/8/2022
Estimate #	34498
Estimate By	Mike Hewitt
	mike@defendersupply.com
	903-771-1089



Bill To
Town of Addison P.O. Box 9010 16801 Westgrove Drive Addison, TX 75001

Customer Contact	
Customer Phone	
Customer E-mail	fcalhoun@addisontx.gov

Description	Location	Qty	Price	Total
<p>Defender Supply INTERCEPTOR UTILITY Unmarked Slicktop Base Package</p> <ul style="list-style-type: none"> - Whelen FST Inner Edge Full Function Dual Color LED Low Profile Visor Light Bar with Full Across Take Down, Progressing Flash Patterns with Slide Switch, Cruise, Low Power (R/W, B/W). - Whelen Core Controller, Rotary Knob Control Head, SYNC Module, OBDII Canport Harness, Output Expansion Module, 100 Watt Speaker and Bracket. Wired and Programmed to Defender Supply Standard. - 4 Whelen ION Tri Color Super LED Light Heads (R/B/W) Mounted in Grill. Take Down, Progressing Flash Patterns with Slide Switch, Cruise and Low Power Capabilities. - 2 Whelen ION Tri Color Super LED Light Heads (R/B/W) Mounted in Rear Side Windows. Alley, Progressing Flash Patterns with Slide Switch, Cruise and Low Power Capabilities. - 2 Whelen ION Tri Color Super LED Light Heads (R/B/W) Mounted on Rear License Plate Bracket. Reverse / Brake Lighting, Progressing Flash Patterns with Slide Switch, Cruise and Low Power Capabilities. - Tail light Flasher Module. - 3 Cargo Area Dome Light (Whelen 3SRCCDCR). - Havis C-VSX-1800-INUT 2020-2021 Ford Interceptor Utility VSX Console with Front Bin, Dual Cup Holder, Arm Rest and 2 Mic Clips. - Defender Supply Wiring Harnesses and Power Distribution Block. - Includes Installation. 		1	6,363.00	6,363.00T

Vehicle & Emergency Equipment Total

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

Signature

Date	9/8/2022
Estimate #	34498
Estimate By	Mike Hewitt
	mike@defendersupply.com
	903-771-1089



Bill To
Town of Addison P.O. Box 9010 16801 Westgrove Drive Addison, TX 75004

Customer Contact	
Customer Phone	
Customer E-mail	fcalhoun@addisontx.gov

Description	Location	Qty	Price	Total
Defender Supply INTERCEPTOR UTILITY Traffic Advisor - 1 Whelen RST Rear Inner Edge Eight Dual Color Module Super LED Full Function Light Stick (R/A, B/A) with Progressing Flash Patterns with Slide Switch, Cruise, Low Power Functions Mounted on Rear Hatch Behind Glass with Vehicle Specific Shroud and Brackets. - 2, T-ION Dual Color Super LED Light Heads (R/B), Mounted Horizontally Under The Hatch on Each Corner, Rear Facing When Open. Includes Installation.		1	896.00	896.00T
Defender Supply INTERCEPTOR UTILITY Rear Pillar Light Package - Includes Whelen RPWD50 Six Super LED Duo Color Light Heads (3x Red, 3x Blue) integrated into a formed Housing Mounted on the Pillar at Each Side of the Rear Window. Includes Installation. Rear Pillar Configuration. RB, RA, RW Driver, RB, BA, BW Passenger.				974.00T
Defender Supply Dual Tone Siren Package for Core. Includes CEXAMP Amp, 100 Watt Speaker, Bracket. Includes Installation.		1	439.00	439.00T
Defender Supply Low Frequency Siren Package for Core. Includes CHWLFE29 Howler Amp, 1 Subwoofer Speaker, Bracket. Includes Installation.		1	600.00	600.00T
NO CUSTOMER SUPPLIED ITEMS: Radio Information for Equip Brackets:				
Texas Government or Municipality - No Sales Tax			0.00%	0.00

Vehicle & Emergency Equipment Total	\$55,932.00
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Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

Signature _____



PRODUCT PRICING SUMMARY

TIPS USA 210907 AUTOMOBILES

VENDOR- Silsbee Ford, 1211 Hwy 96 N., Silsbee TX 77656

End User: TOWN OF ADDISON

Prepared by: RICHARD HYDER

Contact: BRAD BOGANWRIGHT 972.489.7107

Phone: 409.300.1385

Email: SBOGANWRIGHT@ADDISONTX.GOV

Email: RHYDER.COWBOYFLEET@GMAIL.COM

Product Description: FORD EXPLORER BASE

Date: September 7, 2022

A. Bid Item: 16

A. Base Price: \$ **29,912.00**

B. Factory Options

Code	Description	Bid Price	Code	Description	Bid Price
K7B	FORD EXPLORER BASE RWD	\$ 1,495.00			
99H	2.3L ECOBOOST I4	\$ -			
L9	EXTERIOR FORGED GREEN METALLIC	\$ -			
7N	INTERIOR CLOTH BUCKETS	\$ -			
	POWER EQUIPMENT	\$ -			
	REAR VIEW CAMERA	\$ -			

Total of B. Published Options: \$ **1,495.00**

Published Option Discount (5%): \$ **(74.75)**

C. Unpublished Options

Description	Bid Price	Options	Bid Price
PK7B UPGRADE TO 2023	\$ 4,850.00		
SOUND OFF MPOWER R/B GRILL MOUNT X2	\$ 300.00		
SOUND OFF UNDERCOVER R/B REVERSE LAMPS X2	\$ 200.00		
SOUND OFF MPOWER R/B REAR LIC PLATE X2	\$ 300.00	CID FOR POLICE DEPT REPLACING 348	
UNDERCOVER SIREN/SPEAKER	\$ 795.00		
TINT WINDOWS	\$ 195.00		
3 KEYS/FOBS	\$ 125.00		

Total of C. Unpublished Options: \$ **6,765.00**

D. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ **-**

E. Lot Insurance (for in-stock and/or equipped vehicles):

\$ **-**

F. Contract Price Adjustment: _____

\$ **-**

G. Additional Delivery Charge: 304 miles

\$ **532.00**

H. Subtotal:

\$ **38,629.25**

I. Quantity Ordered 1 **x H =**

\$ **38,629.25**

J. Trade in: _____

\$ **-**

K. Total Purchase Price

\$ **38,629.25**

R 1250 RT-P Motor Pricing Form

(2023 Model Year)



September, 16 2022
 Quote good for 45 days
 City of Ft. Worth ILA Contract #19-0129

Color	Option Code
0 Night Black & Alpine White III	753
1 Night Black	716
0 Alpine White III (special order)	751
0 Black Blue (special order +60 days)	754
0 Saphir Blue (special order + 60 days)	755
0 Violet Blue (special order +60 days)	756
0 Glacier Silver Metallic (special order)	N99

Quotation:			Motorcycle
Town of Addison	Option Code	Retail Price	\$21,250.00

Factory Special-Order Options - Plan 90-120 Days for Delivery			
0	Adaptive Headlight (includes 219)	134	\$625.00
0	Keyless Ride w/two transmitters	193	\$375.00
0	Gear Shift Assist Pro	222	\$495.00
0	Ride Modes Pro (includes 18B)	224	\$215.00
0	Chrome Exhaust (includes 19F)	340	\$150.00
0	Additional LED Headlights (driving lights)	562	\$450.00
0	PA Microphone	599	\$595.00
0	High Seat Black	610	\$0.00
0	Low Seat Black	776	\$0.00
0	Enhanced Smart Phone Connectivity	6NS	\$250.00

The Options Below denote Standard Order Deck - Removal is only by Special Order - Option Delete			
1	Heated Seat	518	\$225.00
1	Tire Pressure Monitoring	530	\$225.00
1	Cruise Control (standard feature)	538	\$0.00
1	Weather Protection	649	\$195.00

Additional Labor Operations Provided by Dealer			
1	FMSA-MT-SSE SIDE STAND EXTENSION		\$36.00
1	FMSA-EL-ACP ACC 1-3 CONNECTION PLUG		\$9.50
1	FMSA-EL-RPP RADIO CONNECTION PLUG CODE A		\$10.00
1	FMSA-EL-SCP SPEAKER CONNECTION PLUG		\$9.50
1	FMSA-EL-FFH FORNT FUSED POWER SOCKET HARNESS		\$33.00
1	FMSA-MT-LGAP LIDAR GUN HOLSTER ADAPTER PLATE		\$26.95
1	FMSA-EA-USB FAIRING USB OULET		\$49.00
1	FMSA-EA-LSF FIARING MOUNT POWER SOCKET		\$45.00
1	FMSA-EL-RCP RADAR CONNECTION PLUG		\$9.50
1	FMSA-BTA BLUE TOOTH AMP		\$75.00
			\$0.00
			\$0.00
			\$0.00

Units	Quotation valid for 60 days	Total Price - Page 1	\$22,198.45
1	from date noted below.	Total Price - Page 2	\$3,070.08
		Total Price - Page 3	\$748.34
Date of Quote:		Parts From Other Suppliers - Page 4	\$0.00

	Dealer Basic Assembly / Preparation	\$2,224.00
	Motorcycle Freight	\$890.00
	Total Retail Price per Unit with Options	\$29,130.87
0.00%	State Sales Tax (if applicable)	\$0.00
	Total Retail Price per Unit with Options	\$29,130.87

Note: Prices subject to change without notice. Final price is always determined by the selling authorized BMW Motorcycle dealer.

R 1250 RT-P Motor Pricing Form - Page 2

See Special Notation Comment



Quotation for:
Town of Addison

Blue ID Light Selection (1)					
1	Standard Blue Pod-Mounted ID Lights - SID	63 17 2 361 717		\$0.00	\$0.00
0	Round Blue License Plate ID Lights - RID	71 60 2 452 897		\$0.00	\$0.00
Per	Emergency Warning Lights (10)	BMW P/N	Order #	Retail	Total Retail
5	Red LED-X Light	63 17 2 361 718	5	\$135.00	\$675.00
5	Blue LED-X Light	63 17 2 361 719	5	\$135.00	\$675.00
0	Amber LED-X Light	63 17 2 361 720	0	\$135.00	\$0.00
0	White LED-X Light	63 17 2 361 721	0	\$146.00	\$0.00
0	Green LED-X Light	63 17 2 450 782	0	\$146.00	\$0.00
Rear Duplex Emergency Warning Light (1)					
0	Duplex LED-X Red / Red	63 17 2 361 728	0	\$431.00	\$0.00
0	Duplex LED-X Blue / Blue	63 17 2 361 729	0	\$471.50	\$0.00
1	Duplex LED-X Red / Blue	63 17 2 361 730	1	\$451.50	\$451.50
0	Duplex LED-X Blue / Amber	63 17 2 361 731	0	\$451.50	\$0.00
0	Duplex LED-X Green / Green	63 17 2 450 783	0	\$410.35	\$0.00
0	Duplex LED-X Amber / Amber	63 17 2 450 784	0	\$451.50	\$0.00
Take-Down (4) Alley (2) TS (2) BT (2) Saddlebag Light (1) Red ID (1)					
6	White Torus LED TDL/Alley	63 17 2 361 722	6	\$96.00	\$576.00
2	Auxiliary LED Turn Signals	63 17 2 361 725	2	\$80.29	\$160.58
2	Auxiliary LED Brake/Tail Light	63 17 2 361 726	2	\$70.50	\$141.00
1	Saddlebag LED Lights w/sensor switch	63 17 2 361 727	1	\$179.00	\$179.00
0	Red ID Lights (replacing blue ID lights)	63 17 2 361 724	0	\$134.00	\$0.00
0	Round Blue License Plate ID Light Kit	71 60 2 452 876	0	\$146.50	\$0.00
Dealer Installed Options / Retrofits					
0	Shift Assistant Pro (hardware)	23 41 8 536 884	0	\$804.00	\$0.00
0	Shift Assistant Pro - Enabling Code	77 15 8 395 839	0	\$50.08	\$0.00
0	Ride Modes Pro - Enabling Code	77 53 8 395 840	0	\$250.65	\$0.00
0	Also Requires DTC Enabling Code	77 53 8 395 841	0	\$65.11	\$0.00
0	LED Auxiliary Headlights Nano (order 2)	63 17 9 457 322	0	\$203.00	\$0.00
0	Bolt 6 x 40 (order 2)	63 12 7 699 141	0	\$7.18	\$0.00
0	M6 Hex Nut (order 2)	07 12 9 905 826	0	\$4.36	\$0.00
Requires Activation by Dealer - No Code Needed					
Convenience Options					
0	Extra Ignition Key - No Keyless Ride	51 25 8 540 950	0	\$111.46	\$0.00
0	Extra Ignition Key - Keyless Fob Transmitter	66 12 7 914 594	0	\$390.14	\$0.00
0	Heated Seat - Low	52 53 8 544 786	0	\$740.20	\$0.00
0	Heated Seat - High	52 53 8 544 792	0	\$740.20	\$0.00
0	Tire Pressure Gauge	82 12 0 140 377	0	\$39.00	\$0.00
1	BMW Motorrad Battery Charger (2.5 Ah)	77 02 2 470 951	1	\$212.00	\$212.00
0	Motorcycle Full Cover	71 60 2 450 408	0	\$179.00	\$0.00

Note: Prices subject to change without notice. Always verify accuracy of part pricing before submitting quotations.
Final price is always determined by the selling authorized BMW Motorcycle dealer.

R 1250 RT-P Motor Pricing Form - Page 3



Quotation for:
Town of Addison

Additional Accessories

Qty Per	Item Description	BMW P/N	Order #	Retail	Page 3	Total Retail
Additional Accessories						
Storage Options						
0	Saddlebag Liners (each)	71 60 7 704 109	0	\$172.40		\$0.00
0	Tank Top Bag	77 45 8 543 227	0	\$318.00		\$0.00
Engine Protection						
1	Rocker Cover Protection	77 14 8 406 187	1	\$325.00		\$325.00
1	Sump / Engine Protection Guard (order 1)	11 84 8 532 939	1	\$171.25		\$171.25
5	Fillister Head Screws M6 x 20 (order 5)	07 12 9 908 076	5	\$4.30		\$21.50
5	Grommet (order 5)	13 53 1 341 283	5	\$3.68		\$18.40
5	Bushing (order 5)	11 84 8 544 832	5	\$7.21		\$36.05
1	Bracket front (order 1)	11 84 8 532 937	1	\$73.28		\$73.28
1	Bracket Rear (order 1)	11 84 8 532 940	1	\$91.66		\$91.66
0	C-Clip Nut M6 (have been included w/brackets)	07 14 7 693 887	0	\$3.68		\$0.00
5	Fillister Head Screws M8 x 25 (order 5)	07 12 9 907 382	5	\$2.24		\$11.20

Note: Prices subject to change without notice. Always verify accuracy of part pricing before submitting quotations.

Final price is always determined by the selling authorized BMW Motorcycle dealer.

Additional Accessories From Other Suppliers - Page 4

Qty	Description	PN	Price Each	Total Price
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PRODUCT PRICING SUMMARY

TIPS USA 210907 AUTOMOBILES

VENDOR- Silsbee Ford, 1211 Hwy 96 N., Silsbee TX 77656

End User: TOWN OF ADDISON

Prepared by: RICHARD HYDER

Contact: ROB BOURESTOM 214.325.5760

Phone: 409.300.1385

Email: RBOURESTOM@ADDISONTX.GOV

Email: RHYDER.COWBOYFLEET@GMAIL.COM

Product Description: FORD F250 SUPERCAB PICKUP

Date: September 7, 2022

A. Bid Item: 35

A. Base Price: **\$ 31,386.00**

B. Factory Options

Code	Description	Bid Price	Code	Description	Bid Price
X2A	F250 SUPERCAB 4X2 SRW 8' BED	\$ 1,795.00	18B	RUNNING BOARDS	\$ 445.00
996	6.2L V8 GAS	\$ -	43C	110V/400W OUTLET	\$ 175.00
Z1	EXTERIOR WHITE	\$ -	18A	UPFITTER INTERFACE MODULE	\$ 295.00
AS	INTERIOR VINYL 40/20/40	\$ -			
90L	POWER EQUIPMENT GROUP	\$ 1,100.00			
	BLUETOOTH	\$ -			
	TRAILER TOWING PKG WITH HITCH	\$ -			
52B	TRAILER BRAKE CONTROLLER	\$ 300.00			

Total of B. Published Options: **\$ 4,110.00**

Published Option Discount (5%) **\$ (205.50)**

C. Unpublished Options

Description	Bid Price	Options	Bid Price
PX2A UPGRADE FOR 2023	\$ 10,300.00	AMBER/CLEAR LEDS IN GRILL X2	\$ 240.00
3 KEYS AND FOBS	\$ 150.00	INSTALLATION 16 HOURS	\$ 1,440.00
WINDOW TINT	\$ 195.00		
SOUND OFF AMBER/CLEAR LIGHTBAR W/ ARROW	\$ 1,450.00		
HIDDEN AMBER CLEAR LEDS IN REVERSE LIGHTS	\$ 200.00		
SURFACE MT AMBER/CLEAR LEDS FRONT CORNE	\$ 240.00		
SWITCHBOX CONTROLLER	\$ -		
REAR FLOOD LIGHTS	\$ 250.00		
DEERSKIN ANIMAL CONTROL BODY TO CUST SPE	\$ 44,724.00		

Total of C. Unpublished Options: **\$ 59,189.00**

D. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ -

E. Lot Insurance (for in-stock and/or equipped vehicles):

\$ -

F. Contract Price Adjustment:

\$ -

G. Additional Delivery Charge: 591 miles

\$ 886.50

H. Subtotal:

\$ 95,366.00

I. Quantity Ordered 1 x H =

\$ 95,366.00

J. Trade in:

\$ -

K. Total Purchase Price Including TIPS Fee

\$ 95,366.00



DEERSKIN MANUFACTURING INC.

PO BOX 127 ~ SPRINGTOWN, TX 76082

4078 WEST HWY 199 ~ SPRINGTOWN, TX 76082

PHONE (800)880-6089 FAX (817)523-6685

SALES@DEERSKINMFG.COM



ACCMPS

6 COMPARTMENT CHASSIS MOUNT ANIMAL CONTROL UNIT WITH DEAD ANIMAL COMPARTMENT AND SLIDE OUT LIFT SYSTEM 56" CAB TO AXLE TRUCK/MINIMUM ¾ TON VEHICLE

Rear Storage Compartment:	22"W x 35"H x 8"D
Animal Compartments:	
Front:	28"W x 35"H x 40"D (With Pass Through Divider)
Front Center:	25"W x 26"H x 40"D (With Pass Through Divider)
Rear Center:	25"W x 26"H x 40"D (With Pass Through Divider)

Construction:

- Basic frame is 2x2 welded steel tubing with a Superstructure of 1x1 welded steel tubing
- All steel is hot dipped galvanized before covering
- The ceiling contains 4" foam insulation. The front wall, back wall and bottom contain 1" foam insulation
- The interior and exterior material is 20 gauge stainless steel
- The ceilings consist of .050 aluminum with a roof of 125 aluminum diamond plate
- Doors are made with 12 gauge stainless steel and hinged from the front with a continuous stainless steel hinge
- Doors have positive locking tee handles, keyed alike
- Doors have adjustable louvered aluminum vents with perforated inside covers
- Storage compartment floors are carpeted
- The storage compartment doors are solid (with no vents)
- Units are equipped with LED marker lights, LED stop and tail lights, LED dual backup lights, and four-way flashers
- The body is mounted to the vehicle frame with eight (8) angle brackets



DEERSKIN MANUFACTURING INC.

PO BOX 127 ~ SPRINGTOWN, TX 76082
4078 WEST HWY 199 ~ SPRINGTOWN, TX 76082
PHONE (800)880-6089 FAX (817)523-6685
SALES@DEERSKINMFG.COM

Included Accessories

LED Interior lights are installed in each animal compartment and storage compartment with the switch box mounted in the cab of the vehicle.

2-Swinging partitions are installed in animal compartments and can be opened to create a pass-through compartment between each side of the unit. If a slide out lift system is installed, the swinging partition is omitted in that compartment.

Backup Camera will be installed on the rear of the animal control unit. If your vehicle is not equipped to from the factory with a backup camera monitor, there will be additional charges.

Backup Alarm

5-Secondary Safety Door—These doors are located inside the primary door and are constructed of 125 aluminum with 3/4” holes punched for ventilation and a catch pole cutout.

Top Luggage Rack-This rack is installed on top of unit for additional storage. The rack is constructed of 1 1/2 X 1 1/2 square aluminum tubing welded.

LED Emergency Strobe – LED Mini lightbar strobe installed on front of unit. Strobe is operated by a switchbox in the vehicle cab.

6-Rubber Mats-Constructed of 1/2” thick, chew proof rubber mats to fit the floor of the compartment.

LED Work Lights (2) 4 X 6 LED work lights mounted on the rear of the unit.

Deerskin Lift System-Slide out cage housed in curb side front compartment to assist in lifting large animals. Powered by a 2500# 12 volt, cable winch, the cage lowers to curb height and is capable of lifting 200 pounds.

Dead Animal Box with Lift Gate-Located in the rear center of the unit, with a hydraulic lift gate capable of lifting 1000 pounds. If this is added to the unit, the rear storage becomes 8” deep on each side.

LED Directional Light Bar -Traffic advisor located on the rear of the unit, placed at center top to advise traffic of the vehicle location.

7-Door Props-Mounted to the inside of the primary door, used to hold the door in open position while loading/unloading animals.

Digital Thermometer-Mounted on dash of truck with the probe located inside animal unit to monitor temperature while vehicle is in use.

Air Conditioning System- Unit is 18,900 BTU with add on compressor to truck engine. (Rangers, S-10’s, Toyotas, etc are not adaptable to brackets for added compressors.)

Auxiliary Heating- A 16,000 BTU directional air louvered heater

Price for each unit per above specifications is	\$ 42,974.00
Charge for Installation at Factory	\$ 1,750.00
Shipping Charges	CUSTOMER PICK UP
Total Price for Each Unit	\$ 44,724.00

Quote To
Town of Addison, Tx
C/O Richard Hyder

Jennifer Villasana 09.16.22



PRODUCT PRICING SUMMARY

TIPS USA 210907 AUTOMOBILES

VENDOR- Silsbee Ford, 1211 Hwy 96 N., Silsbee TX 77656

End User: TOWN OF ADDISON

Prepared by: RICHARD HYDER

Contact: ROB BOURESTOM 214.325.5760

Phone: 409.300.1385

Email: RBOURESTOM@ADDISONTX.GOV

Email: RHYDER.COWBOYFLEET@GMAIL.COM

Product Description: FORD F350 SUPERCAB PICKUP

Date: October 13, 2022

A. Bid Item: 37

A. Base Price: \$ **34,983.00**

B. Factory Options

Code	Description	Bid Price	Code	Description	Bid Price
X3A	F350 SUPERCAB 4X2 SRW 8' BED	\$ 2,995.00	67H	HEAVY SERVICE SUSPENSION	\$ 125.00
99T	6.7L V8 DIESEL	\$ 10,495.00	85G	TAILGATE STEP	\$ 375.00
Z1	EXTERIOR WHITE	\$ -			
AS	INTERIOR VINYL 40/20/40	\$ -			
90L	POWER EQUIPMENT GROUP	\$ 1,125.00			
	BLUETOOTH	\$ -			
	TRAILER TOWING PKG WITH HITCH	\$ -			
52B	TRAILER BRAKE CONTROLLER	\$ 300.00			

Total of B. Published Options: \$ **15,415.00**

Published Option Discount (5%): \$ **(770.75)**

C. Unpublished Options

Description	Bid Price	Options	Bid Price
PX3A UPGRADE FOR 2023	\$ 10,300.00	INSTALLATION 9 HOURS	\$ 810.00
3 KEYS AND FOBS	\$ 125.00		
WINDOW TINT	\$ 195.00		
SOUND OFF AMBER/CLEAR/BLUE LIGHTBAR W/ A	\$ 3,345.00	UNIT 718	
HIDDEN AMBER CLEAR LEDS IN REVERSE LIGHTS	\$ 200.00		
SURFACE MT AMBER/CLEAR LEDS FRONT CORNE	\$ 240.00		
SWITCHBOX CONTROLLER	\$ -		
SPRAY IN BEDLINER	\$ 595.00		
RKI HA RACK	\$ 895.00		

Total of C. Unpublished Options: \$ **16,705.00**

D. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ -

E. Lot Insurance (for in-stock and/or equipped vehicles):

\$ -

F. Contract Price Adjustment:

\$ -

G. Additional Delivery Charge: 291 miles

\$ **509.25**

H. Subtotal:

\$ **66,841.50**

I. Quantity Ordered 1 x H =

\$ **66,841.50**

J. Trade in:

\$ -

K. Total Purchase Price Including TIPS Fee

\$ **66,841.50**



PRODUCT PRICING SUMMARY

TIPS USA 210907 AUTOMOBILES

VENDOR- Silsbee Ford, 1211 Hwy 96 N., Silsbee TX 77656

End User: TOWN OF ADDISON

Prepared by: RICHARD HYDER

Contact: BRAD BOGANWRIGHT 972.489.7107

Phone: 409.300.1385

Email: SBOGANWRIGHT@ADDISONTX.GOV

Email: RHYDER.COWBOYFLEET@GMAIL.COM

Product Description: FORD F150 LIGHTNING BEV

Date: September 22, 2022

A. Bid Item: 58

A. Base Price: **\$ 39,974.00**

B. Factory Options

Code	Description	Bid Price	Code	Description	Bid Price
W1E	FORD F150 BEV 4X4 5.5' BED	\$ 1,795.00		FORD CO-PILOT 360	\$ -
99L	98KW BATTERY 230 MILES RANGE	\$ -		SYNC 4	\$ -
YZ	EXTERIOR WHITE	\$ -		J1772 CCS MOBILE POWER CORD	\$ -
VS	VINYL BUCKET SEATS W/ CONSOLE	\$ -		12" DIGITAL SCREEN	\$ -
110A	110A PRO PKG	\$ -		REVERSE SENSING SYSTEM	\$ -
	POWER EQUIPMENT GROUP	\$ -			
	TOW HITCH	\$ -			
	2.4KW EXPORTABLE POWER	\$ -			

Total of B. Published Options: **\$ 1,795.00**

Published Option Discount (5%) **\$ (89.75)**

C. Unpublished Options

Description	Bid Price	Options	Bid Price
PW1E UPGRADE FOR 2023	\$ 12,500.00		
3 KEYS AND FOBS	\$ 125.00		
WINDOW TINT	\$ 195.00		
SOUND OFF AMBER/BLUE/CLEAR LIGHTBAR W/ A	\$ 2,945.00	UTILITIES REPLACING 719	
HIDDEN AMBER CLEAR LEDS IN REVERSE LIGHTS	\$ 200.00		
SURFACE MT AMBER/CLEAR LEDS FRONT CORNE	\$ 240.00		
SWITCHBOX CONTROLLER	\$ -		
INSTALLATION 7 HOURS	\$ 630.00		

Total of C. Unpublished Options: **\$ 16,835.00**

D. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ -

E. Lot Insurance (for in-stock and/or equipped vehicles):

\$ -

F. Contract Price Adjustment:

\$ -

G. Additional Delivery Charge: 304

\$ 532.00

H. Subtotal:

\$ 59,046.25

I. Quantity Ordered 1 x H =

\$ 59,046.25

J. Trade in:

\$ -

K. Total Purchase Price

\$ 59,046.25



PRODUCT PRICING SUMMARY

TIPS USA 210907 AUTOMOBILES

VENDOR- 5426 LAKE COUNTRY CHEVROLET, 2152 N. WHEELER STREET JASPER, TX 75951

End User: TOWN OF ADDISON

Prepared by: RICHARD HYDER

Contact: BRAD BOGANWRIGHT 972.489.7107

Phone: 409.300.1385

Email: SBOGANWRIGHT@ADDISONTX.GOV

Email: RHYDER.COWBOYFLEET@GMAIL.COM

Product Description: CHEVROLET BOLT

Date: September 8, 2022

A. Bid Item: 1FB48 **A. Base Price:** **\$ 30,878.00**

B. Factory Options

Code	Description	Bid Price	Code	Description	Bid Price
1FB48	CHEVROLET BOLT EUV 2LT	\$ 1,295.00		EXTERIOR - WHITE	
	ALL ELECTRIC	\$ -		EPA RANGE ~247 MILES	
	POWER WINDOWS / LOCKS	\$ -	WPA	DRIVER CONFIDENCE PKG	\$ 495.00
	REAR VIEW CAMERA	\$ -			
	BLUETOOTH	\$ -			
K28	11.5 KW HIGH VOLTAGE CHARGING	\$ -			
	MODULE	\$ -			
BAV	ALL WEATHER FLOOR MATS	\$ 175.00			

Total of B. Published Options: **\$ 1,965.00**

Published Option Discount (5%) **\$ (98.25)**

C. Unpublished Options

Description	Bid Price	Options	Bid Price
VEHICLE DELIVERED WITH FULL CHARGE	\$ -		
3 KEYS AND FOBS	\$ 125.00		
WINDOW TINT	\$ 195.00		
		GENERAL SERVICES REPLACING 910	

Total of C. Unpublished Options: **\$ 320.00**

D. Floor Plan Interest (for in-stock and/or equipped vehicles): **\$ -**

E. Lot Insurance (for in-stock and/or equipped vehicles): **\$ -**

F. Contract Price Adjustment: _____ **\$**

G. Additional Delivery Charge: 304 **\$ 532.00**

H. Subtotal: **\$ 33,596.75**

I. Quantity Ordered 1 **x H =** **\$ 33,596.75**

J. Trade in: _____ **\$ -**

K. Total Purchase Price **\$ 33,596.75**



PRODUCT PRICING SUMMARY

TIPS USA 210907 AUTOMOBILES

VENDOR- Silsbee Ford, 1211 Hwy 96 N., Silsbee TX 77656

End User: TOWN OF ADDISON

Prepared by: RICHARD HYDER

Contact: ROB BOURESTOM 214.325.5760

Phone: 409.300.1385

Email: RBOURESTOM@ADDISONTX.GOV

Email: RHYDER.COWBOYFLEET@GMAIL.COM

Product Description: FORD F550 CREW CAB CHASSIS

Date: October 10, 2022

A. Bid Item: 48

A. Base Price: \$ **45,975.00**

B. Factory Options

Code	Description	Bid Price	Code	Description	Bid Price
W5G	FORD F550 4X2 CREW CAB/CHAS 84"CA	\$ 1,995.00	68M	19500# GVWR	\$ 1,155.00
99T	6.7L V8 DIESEL	\$ 10,495.00	872	REARVIEW CAMERA KIT	\$ 415.00
Z1	EXTERIOR WHITE	\$ -	18B	RUNNING BOARDS	\$ 320.00
AS	INTERIOR VINYL 40/20/40	\$ -	63A	UTILITY LIGHTING SYTEM	\$ 160.00
90L	POWER EQUIPMENT GROUP	\$ 1,125.00			
76C	BACKUP ALARM	\$ 140.00			
X8L	4.88 LIMITED SLIP AXLE	\$ 360.00			
52B	TRAILER BRAKE CONTROLLER	\$ 275.00			

Total of B. Published Options: \$ **16,440.00**

Published Option Discount (5%): \$ **(822.00)**

C. Unpublished Options

Description	Bid Price	Options	Bid Price
PW5G UPGRADE	\$ 10,300.00		
HITECH--KNAPHEIDE KFBS-1266 FORESTRY BODY WITH 16 YD CAPACITY, KHA-1520SF-ED ELEC/HYD	\$ 31,654.00		
HOIST, LADDER BOX, AND 21K# REC HITCH			
3 KEYS/FOBS	\$ 150.00		
TINTED WINDOWS	\$ 295.00		
WHELEN AMBER/CLEAR LIGHTBAR W/ ARROW	\$ 1,695.00		
4 CORNER LEDS	\$ 400.00		
CONTROLLER	\$ 195.00		

Total of C. Unpublished Options: \$ **44,689.00**

D. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ -

E. Lot Insurance (for in-stock and/or equipped vehicles):

\$ -

F. Contract Price Adjustment:

\$ -

G. Additional Delivery Charge: 304 miles

\$ **532.00**

H. Subtotal:

\$ **106,814.00**

I. Quantity Ordered 1 x H =

\$ **106,814.00**

J. Trade in:

\$ -

K. Total Purchase Price Including TIPS Fee

\$ **106,814.00**



Vermeer Texas-Louisiana
 3025 State Highway 161
 Irving, TX 75062
 Ph: (972) 255-3500
 vermeertexas.com

Please remit to:
 Vermeer Texas-Louisiana
 Dept # 41351 • PO Box 650823
 Dallas, TX 75265-0823

Ship To: IN STORE PICKUP

Invoice To: TOWN OF ADDISON
 P.O. BOX 9010
 ADDISON TX 75001

Branch 01 - IRVING		
Date 10/04/2022	Time 8:40:04 (O)	Page 1
Account No ADDIS001	Phone No 9724502843	Est No 04 Q04661
Ship Via	Purchase Order QUOTE	
Tax ID No		
JARED DAVIS	Salesperson 145 / 914	

EQUIPMENT QUOTE - NOT AN INVOICE

Description	** Q U O T E **	EXPIRY DATE: 12/01/2022	Amount
Vermeer BC1800XL with 173Hp John Deere tier4final diesel 19" capacity drum style brush chipper High coolant temp, and Low oil pressure auto shutdown Precleaner DEF tank Spring loaded clutch Variable speed dual vertical feed rollers SmartFeed and ECOidle Pintle hitch, infeed curtain, and tree commander remote Lockable battery box, control panel, engine doors, and tool box Heavy duty hydraulic jack 10K electric brake torsion axle Right side controls Right side manual chute with adjustable deflector BuyBoard contract 597-19			106551.24

Subtotal: 106551.24
 Quote Total: 106551.24

Authorization: _____

Thank You For Your Business!

Council Meeting 2023

15.

Meeting Date: 10/25/2022

Department: Infrastructure- Development Services

Pillars: Excellence in Asset Management

Milestones: Implement the Asset Management Plan in accordance with the Asset Management Policy, utilizing information systems

AGENDA CAPTION:

Consider Action on a **Resolution Approving a Contract Agreement Between the Town of Addison and Texas Standard Construction, LTD. for Construction Services for the Town of Addison Rawhide Creek Basin Drainage and ADA Improvements and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$1,903,640.76.

BACKGROUND:

The purpose of this item is to award a construction contract for the Rawhide Creek Basin Drainage and ADA Improvements Project. This project was identified in the Stormwater Master Plan completed by Half and Associates in 2017.

The scope of work for this project includes paving, ADA improvements, storm drainage improvements, utility adjustments, and landscaping.

In January 2021, the City Council authorized a Professional Services Agreement with Criado and Associates, Inc. (Criado) to perform the necessary design for this project. The design was completed in June 2022.

On August 16, 2022, the Town advertised a Request for Proposals (RFP) for Competitive Sealed Proposals (CSP) for Construction Services for the Rawhide Creek Basin Drainage and ADA Improvements Project through CIVCAST as proposal number 22-75. Five (5) sealed proposals were received, ranging in price from \$1,903,640.76 to \$4,135,323.00, and opened by the Town on August 30, 2022. The proposals were evaluated by a committee on price, experience with similar projects, proposed project team, and references. The evaluation results are shown in the table below:

Vendor	Score
Texas Standard Construction	98
Capko Concrete Structures	80.8
Joe Funk Construction	76.2
Maya Underground Contractors	74.3
Atkins Brothers	58

The highest-ranked proposal was submitted by Texas Standard Construction LTD (Texas Standard). The Texas Standard proposal exhibited strong experience in paving and utility projects on a wide variety of scopes and values. Criado checked references and also recommended awarding Texas Standard the contract.

If approved, the construction work is anticipated to commence by the end of November 2022 and is expected to take approximately ten months to complete. The work associated with this project is included and within the overall project budget of \$3,350,000 in the Fiscal Year 2023 Utility – Stormwater Capital Improvement funds.

The project, bid plans, bid specifications, and addendums can be found on the project website at the link below: <https://addisontexas.net/publicworks-engineering/rawhide-creek-basin-drainage-and-ada-improvements>

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Rawhide Creek Drainage Basin and ADA Improvements

Criado Recommendation Letter

Texas Standard Proposal

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONSTRUCTION SERVICES AGREEMENT WITH TEXAS STANDARD CONSTRUCTION LTD. FOR THE CONSTRUCTION OF ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM BROOKWOOD LANE TO WATERSIDE COURT IN AN AMOUNT NOT TO EXCEED \$1,903,640.76; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize an agreement with Texas Standard Construction LTD. for the construction of Addison Rawhide Creek Basin Drainage and ADA Improvements from Brookwood Lane to Waterside Court (the "Project") in conformance with the contract documents for City Bid No. 22-75, which are identified and included by reference in the agenda memorandum accompanying this Resolution.

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

SECTION 1. The City Council hereby approves the construction services agreement between the Town of Addison and Texas Standard Construction LTD. for the above-described Project in an amount not-to-exceed of \$1,903,640.76, a copy of which is attached to this Resolution as **Exhibit A**. 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 **25th** day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

EXHIBIT A

CONSTRUCTION SERVICES AGREEMENT
[ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM
BROOKWOOD LN TO WATERSIDE CT – PROJECT #2022-03-C]
(Bid # 22-75)

This CONSTRUCTION SERVICES AGREEMENT (“Agreement”) is made as of the Effective Date by and between **Texas Standard Construction, Ltd.**, hereinafter called “Contractor”, and the **Town of Addison, Texas**, hereinafter called “City”.

RECITALS

WHEREAS, City desires Contractor to perform certain work and services set forth in Section 1 (the “Scope of Services”), and

WHEREAS, Contractor has expressed a willingness to perform said work and services, hereinafter referred to only as “services”, specified in the Contract Documents and Section 1 of this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, City and Contractor agree as follows:

Section 1. Scope of Services

Upon issuance of a written notice to proceed by City, Contractor agrees to provide to City the necessary services, labor, materials, equipment and supplies to perform the **Addison Rawhide Creek Basin Drainage Improvements** (the “Project”), such services being more fully described herein and pursuant to the plans and specifications identified in the Contract Documents.

Section 2. Term of Agreement

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and shall continue until Contractor completes the services required herein to the satisfaction of City and has been paid in full by City, unless sooner terminated in conformance with this Agreement.

Section 3. Contract Documents

- (a) This Agreement is a part of the “Contract Documents”, which include:
- (1) This Agreement, including all exhibits and addenda hereto;
 - (2) City’s plans, specifications, and all other contract documents for the Project contained in City’s Bid # 22-75;
 - (3) City’s written notice(s) to proceed to the Contractor;
 - (4) Properly authorized change orders;
 - (5) Contractor’s Bid Proposal (“Proposal” and/or “Response”); and
 - (6) Any other materials distributed by the City that relate to the Project.

In the event there exists a conflict between any term, provision and/or interpretation of the Contract Documents, the documents shall take precedent and control in the order listed above in this section (which shall supersede any conflicting provision concerning priority of contract documents contained in the Bid Packet). If discrepancies are found that may impact Contractor’s performance of the services for the Project, it shall be the Contractor’s obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the Project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that

EXHIBIT A

component of the Project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the Project.

Section 4. Contractor Obligations

(a) Performance of Services. To the extent reasonably necessary for Contractor to perform the services under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that Contractor may deem proper to aid or assist in the performance of the services under this Agreement with the prior written approval of City. The cost of such personnel and assistance shall be a reimbursable expense to Contractor only if authorized in writing in advance by City. Unless otherwise agreed, Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the Scope of Services.

(b) Quality Materials. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words that so applied have well known, technical or trade meaning shall be held to refer to such recognized standards. Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all materials, construction, installation and other services furnished by Contractor under this Agreement. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in the installation and construction of the Project components to conform as shown in the Project drawings and specifications.

(c) Additional Services. Payment for extra work shall be as agreed in the work order. Should City require additional services not included under this Agreement, Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by City; and without decreasing the effectiveness of the performance of services required under this Agreement. All minor details of the work not specifically mentioned in the Scope of Services or Contract Documents but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are set forth in this Agreement. Contractor will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the terms "extra work" and "additional services" as used in this Agreement shall be understood to mean and include all work that may be required by City to be done by Contractor to accomplish any alteration or addition to the work as shown on the Project plans and drawings. It is agreed that Contractor shall perform all extra work under the direction of the City's representative when presented with a written work/change order signed by the City's representative, subject, however, to the right of Contractor to require written confirmation of such extra work order by City. No claims for extra services, additional services or changes in the services whatsoever, including any change in pricing or time for performance related to the services will be made by Contractor without first obtaining the City's written agreement and approval of a work/change order reflecting the same.

(d) Independent Contractor. It is understood and agreed by and between the parties that Contractor, while performing under this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with Contractor's actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third-party beneficiary to this Agreement.

(e) Inspection of Records. Contractor grants City and its designees the right to audit, examine or inspect, at City's election, all of Contractor's Records relating to the performance of services under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or

EXHIBIT A

inspection of Contractor's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Contractor agrees to retain Contractor's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "Contractor's Records" shall include any and all information, materials and data of every kind and character generated as a result of the services under this Agreement. City agrees that it will exercise its right to audit, examine or inspect Contractor's Records only during regular business hours. Contractor agrees to allow City and its designees access to all of Contractor's Records, Contractor's facilities and the current or former employees of Contractor, deemed necessary by City or its designee(s), to perform such audit, inspection or examination.

(f) Certification of No Conflicts. Contractor hereby warrants to the City that Contractor has made full disclosure in writing of any existing or potential conflicts of interest related to Contractor's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Contractor hereby agrees immediately to make full disclosure to the City in writing.

(g) No Waiver of City's Rights. Neither City's review, approval or acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor's negligent performance of any of the services furnished under this Agreement.

(h) Rights-of-Access. City will obtain or furnish right-of-access to the Project site for Contractor to perform any required studies, surveys, tests or other necessary investigations in relation to the Scope of Services. Contractor will take all necessary and reasonable precautions to minimize damage to all personal and real property in the performance of such surveys, tests, studies and investigations.

(i) Compliance with Laws. Contractor shall comply with all laws, ordinances, rules and regulations governing Contractor's performance of this Agreement.

Section 5. Payment

(a) Compensation; Method of Payment. City agrees to pay Contractor for all services authorized in writing and properly performed by Contractor in a total amount not to exceed **One million nine hundred three thousand six hundred forty dollars and seventy five cents (\$1,903,640.75)** ("Contract Price"), subject to additions or deletions for changes or extras agreed upon in writing. Unless otherwise provided herein, payment to Contractor shall be monthly based on the Contractor's monthly progress report and detailed monthly itemized statement for services that shows the names of the Contractor's employees, agents, Contractors performing the services, the time worked, the actual services performed, and the rates charged for such services, in a form reasonably acceptable to City. City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services.

(b) Deductions; Withholding. City may deduct from any amounts due or to become due to Contractor any sum or sums owing by Contractor to City. In the event of any breach by Contractor of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against City, or the City's premises, arising out of Contractor's performance under this Agreement, City shall have the right to retain out of any payments due or to become due to Contractor an amount sufficient to completely protect the City from any and all loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by Contractor. Additionally, City may, on account of subsequently discovered evidence, withhold the whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

- (1) defective work not remedied;

EXHIBIT A

- (2) claims filed or reasonable evidence indicating possible filing of claims;
- (3) failure of Contractor to make payments promptly to subContractors or for material or labor which City may pay as an agent for the Contractor; or
- (4) damages to another Contractor or subcontractor.

When the above grounds are removed, or Contractor provides a surety bond or letter of credit satisfactory to City (to be determined in City's sole discretion) which will protect City in the amount withheld because of said grounds, City will release the amounts withheld.

Section 6. Performance Schedule

(a) Time for Performance. Contractor shall perform all services as provided for under this Agreement in a proper, efficient, timely, and professional manner in accordance with City's requirements. The time for performance under this Agreement is **two hundred seventy (270)** calendar days. Accordingly, Contractor shall complete all work related to the Project on or before **two hundred seventy (270)** calendar days following the date of City's written notice to proceed to Contractor.

(b) Extentionis; Written Request Required. No allowance of any extension of time, for any cause whatever (including an event of Force Majeure), shall be claimed by or granted to Contractor, unless (i) Contractor shall have made written request to City for such extension within forty-eight (48) hours after the cause for such extension occurred, and (ii) City and Contractor have agreed in writing that such additional time shall be granted. As used in this section, the term "Force Majeure" shall mean that Contractor's performance of the services under this Agreement is prevented or delayed, in whole or in part, to such an extent that Contractor would not be able to complete the services (or any partial component thereof) within the time for performance set forth herein by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, pandemic, or other specific cause reasonably beyond Contractor's control and not attributable to its malfeasance, neglect or nonfeasance. Should Contractor timely request an extension of time due to an event of force majeure under this section, City and Contractor may agree in writing to suspended Contractor's performance until such disability to perform (other than a payment obligation) is removed; provided, that Contractor shall use commercially reasonable efforts to remove any such causes and resume performance of the services under this Agreement as soon as reasonably practicable.

(c) Costs of Delay. Contractor understands and agrees that time is of the essence of this contract, and that for each day of delay beyond the number of calendar days agreed upon for the completion of the work herein specified and contracted for (after due allowance for such extension of time as may otherwise be provided for extension of time herein), the Owner may withhold permanently from the Contract Price an amount equal to **\$1,000.00** per day, which the parties agree represents a reasonable estimation of the actual costs that would be incurred by the City in the event of such delay. In the event Contractor's performance under this Agreement is delayed or interfered with, regardless of reason, Contractor shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.

Section 7. Ownership of Project; Bill of Sale; No Liens

(a) Title of Ownership. Contractor warrants that title to all services, including all equipment and materials incorporated into the Project, will pass to City no later than the time of final payment. Contractor further warrants that upon payment by City, all services for which payments have been received from City shall be free and clear of liens, claims, security interests or other encumbrances in favor of Contractor or any other person or entity whatsoever.

(b) Assignment; Bill of Sale. Contractor agrees, no later than the time of completion of the Project, to assign to City all manufacturer's warranties relating to equipment, materials and labor used in the

EXHIBIT A

Project and further agrees it will at all times perform the services in a manner that will, to the greatest extent possible, preserve all manufacturer's warranties. If necessary as a matter of law, Contractor may retain the right to enforce directly any such manufacturers' warranties during the one year period following the date of acceptance of the Project by City; provided, that City's rights related to the same shall not be subordinate to Contractor's enforcement rights.

CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND SAVE CITY HARMLESS FROM ALL CLAIMS RELATED TO ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS DESCRIBED HEREIN HAVE BEEN PAID, DISCHARGED OR WAIVED UPON CITY'S WRITTEN REQUEST.

Section 8. Default; Termination; Abandonment

(a) Default by Contractor. Should Contractor fail to comply with any term or condition this Agreement applicable to Contractor, or become disabled and unable to comply with any provisions of this Agreement related to the quality or character of the services or time of performance, Contractor shall be deemed in default of this Agreement. If such default is not corrected within ten (10) days after written notice by City to Contractor, City may, at its sole discretion and without prejudice to any other right or remedy:

- (1) terminate this Agreement and be relieved of any further payment or consideration to Contractor except for all services determined by City to be satisfactorily completed prior to such termination. Payment for work satisfactorily completed shall be for actual costs incurred and non-refundable, including reasonable salaries and travel expenses of Contractor to and from meetings called by City at which Contractor is required to attend, but shall not include any loss of profit of Contractor. City may further proceed to complete the services in any manner deemed proper by City, either by the use of its own forces or by resubletting to others; or
- (2) City may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at Contractor's sole expense.

(b) Suspension or Termination by City. City may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to Contractor. In the event suspension or termination is without cause, payment to Contractor, in accordance with the terms of this Agreement, will be made based on services reasonably determined by City to be satisfactorily performed as of the date of suspension or termination. Such payment will become payable upon delivery of all instruments of service to City and City's acceptance of the same. If City requires a modification of the services under this Agreement, and in the event City and Contractor fail to agree upon such modification(s), City shall have the option of terminating this Agreement and Contractor's services hereunder at no additional cost other than the payment to Contractor in accordance with the terms of this Agreement for the services reasonably determined by City to be properly performed prior to such termination date.

(c) Abandonment. If Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from the City, or if Contractor fails to timely comply with the orders of the City, when such orders are consistent with the Contract Documents, then, and in that case, where a performance bond(s) exists, the surety on the bond(s) may be notified in writing by City and directed to complete the work (at City's sole discretion), and a copy of said notice shall be delivered to Contractor. After receiving said notice of abandonment, Contractor shall not remove from the work any machinery, equipment, tools, materials

EXHIBIT A

or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the City or the surety on the performance bond, or another Contractor in completion of the work; and Contractor shall not receive any rental or credit therefor, having hereby acknowledged that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement. In the event a surety fails to comply with City's written notice provided for herein, then the City may provide for completion of the work in either of the following elective manners:

- (1) the City may employ such labor and use such machinery, equipment, tools, materials and supplies as said City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to Contractor, which shall be deducted and paid by City out of such amounts as may be due, or that may thereafter at any time become due to the Contractor under this Agreement. In case such expense is less than the sum which would have been payable under this Agreement if the same had been completed by the Contractor, then Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Agreement if the same had been completed by said Contractor, then the Contractor and/or its surety (ies) shall pay the amount of such excess to the City; or

- (2) the City may (under sealed bids when and in the manner required by law) let the contract to another Contractor for the completion of the work under substantially the same terms and conditions which are provided in this Agreement. In the case of any increase in cost to the City under the new contract as compared to what would have been the cost under this Agreement, such increase shall be charged to the Contractor and its surety (ies) shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this Agreement, the Contractor and/or its surety (ies) shall be credited therewith.

(d) Remedies Cumulative. The remedies in this section are cumulative and nothing herein shall be deemed a waiver of any other remedy available to the City under this Agreement, including its remedies upon default provided herein above.

Section 9. Insurance

Contractor shall during the term hereof maintain in full force and effect all policies of insurance reasonably required by City and in compliance with the Contract Documents. Contractor's obligation to provide acceptable certificates of insurance is a material condition of this Agreement, and services under this Agreement shall not commence until certificates of insurance have been received, reviewed, and accepted by City. The minimum coverages and limits of liability for the policies of insurance required under this Agreement are maintained by and accessible through the City's purchasing department.

Section 10. Indemnification

(a) Release of liability. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE

EXHIBIT A

OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER.

(b) Contractor's Indemnity Obligation. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY CONTRACTOR'S PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE, IN WHOLE OR IN PART, FROM OR ARE ATTRIBUTED TO THE GROSS NEGLIGENCE OF CITY, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AND/OR ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

(c) Notice of Claim(s). Contractor shall promptly advise City in writing of any claim or demand against the City, related to or arising out of Contractor's acts or omissions under this Agreement and shall see to the investigation and defense of such claims or demand at Contractor's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such defense without relieving Contractor of any of its obligations hereunder.

CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 10 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

Section 11. Notice

All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth below (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or e-mail of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the notice has complied with the requirements of this Section.

Section 12. Sales and Use Taxes

Contractor understands and acknowledges that City is a governmental entity and exempt from the payment of sales and use taxes for certain materials and equipment conveyed to City as part of this Project or otherwise incorporated into the Project. City agrees to provide Contractor such documentation as may otherwise be required by state law to allow Contractor to avoid payment of sales and uses taxes for materials and equipment with respect to the Project to the extent allowed by law.

Section 13. Texas Government Code Verifications

(a) Contractor's execution of this Agreement shall serve as its acknowledgement and written verification that:

EXHIBIT A

- (1) the requirements of Subchapter J, Chapter 552, Government Code, apply to this Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter;
- (2) pursuant to Texas Government Code Chapter 2270, that Contractor's organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement; and
- (3) pursuant to Texas Government Code Chapter 2251, that Contractor's organization does not current discriminate against firearm and ammunition industries and will not for the term of the contract. Discriminating means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with the firearm or ammunition industry or with a person or entity doing business in the firearm or ammunition industry, but does not include an action made for ordinary business purposes.

Section 14. Miscellaneous

(a) Contractor shall not assign or sublet this Agreement, in whole or in part, without the prior written consent of City. (b) Contractor shall comply with all federal, state, county and municipal laws, ordinances, resolutions, regulations, rules, and orders applicable to the services under this Agreement. (c) The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said courts. (d) This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. (e) The exhibits attached hereto, if any, are incorporated herein and made a part hereof for all purposes. (f) Unless expressly provided otherwise herein, this Agreement may only be modified, amended, supplemented or waived by a mutual written agreement of the parties. (g) In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. (h) Any of the representations and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Agreement shall survive termination. (i) This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties. (j) Each party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement. (k) Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY –
SIGNATURES ON FOLLOWING PAGE(S)]

EXHIBIT A

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

For City:

TOWN OF ADDISON, TEXAS

By: _____
Hamid Khaleghipour
Interim City Manager

Date: _____

Notice Address:

Town of Addison
Attn: Hamid Khaleghipour,
Interim City Manager
5300 Belt Line Road
Town of Addison, Texas 75254
E: hkhaleghipour@addisontx.gov

For Contractor:

TEXAS STANDARD CONSTRUCTION, LTD.

By:  _____
Ronald H. Dalton
President

Date: 10-11-2022

Notice Address:

Texas Standard Construction, Ltd.
Attn: Ronald H. Dalton, President
P.O. Box 210768
Dallas, TX 75211
E: ron@texasstandardconstruction.com

Addison Contract ID:
SAMPLE FORM CSA_v1.20220330

CRIADO

Civil Engineering | Land Surveying | Subsurface Utility Engineering | R.O.W. | CE&I

October 10, 2022

Shannon Hicks, PE
Director of Public Works and Engineering Services
16801 Westgrove Dr
Addison, TX 75001

RE: Recommendation of Award for the Addison Rawhide Creek Basin Drainage Improvements from Brookwood Ln to Waterside Ct – Project #2022-01C

Dear Mr. Hicks,

On Tuesday, August 30, 2022 at 2:00 pm, bids were opened for the construction of Addison Rawhide Creek Basin Drainage Improvements from Brookwood Ln to Waterside Ct – Project #2022-01C. There was a total of five (5) bidders with the bid evaluations completed by a panel. The information is as presented below:

Bidder	Price (Max 50 Points)	Experience with Similar Projects (Max 25 Points)	Proposed Project Team (Max 15 Points)	References (Max 10 Points)	Total (Max 100 Points)
Atkins Bros. Inc	23.0	15	10	10	58.0
Capko Concrete Structures LLC	38.8	22	10	10	80.8
Joe Funk Construction, Inc	26.2	25	15	10	76.2
May Underground Construction, LLC	24.3	25	15	10	74.3
Texas Standard Construction, Ltd	50.0	25	13	10	98.0

A bid tabulation is attached to this letter.

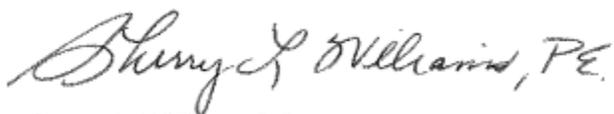
All bidders provided a bid bond, a signed bid form, and acknowledgment of Addendum No. 1 & 2.

Upon examination of the bids, there were no bid irregularities were noted.

Given the above information, we recommend a construction contract be awarded to Texas Standard Construction, Ltd. for of Addison Rawhide Creek Basin Drainage Improvements from Brookwood Ln to Waterside Ct – Project #2022-01C.

If you have any questions, please do not hesitate to contact me at (817) 807-3334.

Sincerely,

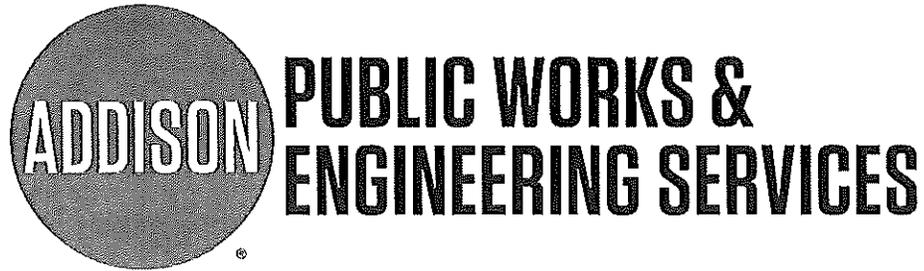


Sherry L. Williams, P.E.
Director of Transportation

BID TABULATION - PROJ. #
 ADDISON RAWHIDE CREEK BASIN DRAINAGE AND PAVING IMPROVEMENTS
 BID NO. 22-75
 BID DATE: 09-19-2022

Pay Item	Bid Item Description	Unit	Total Qty	Average Unit Price	Average Total Bid	Engineer's Estimate			Atkins Bros. Inc			Capko Concrete Structures LLC			Joe Funk Construction Inc			Maya Underground Contractors LLC			Texas Standard Construction LTD		
						Unit Cost	Total Cost	Deviation From Average (%)	Unit Cost	Total Cost	Deviation From Average (%)	Unit Cost	Total Cost	Deviation From Average (%)	Unit Cost	Total Cost	Deviation From Average (%)	Unit Cost	Total Cost	Deviation From Average (%)	Unit Cost	Total Cost	Deviation From Average (%)
GENERAL																							
1	Mobilization (5% Max)	LS	1	\$67,166.67	\$ 67,166.67	\$ 25,000.00	\$25,000.00	37.22%	\$100,000.00	\$100,000.00	148.88%	\$100,000.00	\$100,000.00	148.88%	\$0.00	\$0.00	0.00%	\$130,000.00	\$130,000.00	193.55%	\$48,000.00	\$48,000.00	71.46%
2	Project Sign	EA	2	\$1,690.83	\$ 3,381.67	\$ 750.00	\$1,500.00	44.36%	\$1,000.00	\$2,000.00	59.14%	\$1,000.00	\$2,000.00	59.14%	\$3,900.00	\$7,800.00	230.66%	\$2,200.00	\$4,400.00	130.11%	\$1,295.00	\$2,590.00	76.59%
3	Barricades, Signs, and Traffic Handling	LS	1	\$47,970.83	\$ 47,970.83	\$ 25,000.00	\$25,000.00	52.12%	\$20,000.00	\$20,000.00	41.69%	\$20,000.00	\$20,000.00	41.69%	\$52,325.00	\$52,325.00	109.08%	\$88,500.00	\$88,500.00	184.49%	\$82,000.00	\$82,000.00	170.94%
4	Construction Contingency Allowance (8% Max)	AL	1	\$163,000.00	\$ 163,000.00	\$ 163,000.00	\$163,000.00	100.00%	\$163,000.00	\$163,000.00	100.00%	\$163,000.00	\$163,000.00	100.00%	\$163,000.00	\$163,000.00	100.00%	\$163,000.00	\$163,000.00	100.00%	\$163,000.00	\$163,000.00	100.00%
PAVING																							
5	Remove & Dispose of Existing Pavement	SY	3,498	\$32.92	\$ 115,136.67	\$ 15.00	\$52,470.00	45.57%	\$40.00	\$139,920.00	121.53%	\$52.00	\$181,896.00	157.98%	\$58.50	\$204,633.00	177.73%	\$27.00	\$94,446.00	82.03%	\$4.99	\$17,455.02	15.16%
6	8-Inch Reinforced Concrete Pavement	SY	3,265	\$118.10	\$ 385,591.06	\$ 75.00	\$244,875.00	63.51%	\$250.00	\$816,250.00	211.69%	\$100.00	\$326,500.00	84.68%	\$97.50	\$318,337.50	82.56%	\$103.00	\$336,295.00	87.22%	\$83.09	\$271,288.85	70.36%
7	Remove & Dispose Concrete Sidewalk	SY	1,021	\$24.91	\$ 25,431.41	\$ 9.00	\$9,189.00	36.13%	\$40.00	\$40,840.00	160.59%	\$30.00	\$30,630.00	120.44%	\$45.50	\$46,455.50	182.67%	\$24.00	\$24,504.00	96.35%	\$0.95	\$969.95	3.81%
8	4-Inch Reinforced Concrete Sidewalk	SY	893	\$110.33	\$ 98,526.18	\$ 60.00	\$53,580.00	54.38%	\$260.00	\$232,180.00	235.65%	\$100.00	\$89,300.00	90.64%	\$71.50	\$63,849.50	64.80%	\$105.00	\$93,765.00	95.17%	\$65.49	\$58,482.57	59.36%
9	6-Inch Reinforced Concrete Driveway	SY	233	\$143.80	\$ 33,505.40	\$ 70.00	\$16,310.00	48.68%	\$270.00	\$62,910.00	187.76%	\$125.00	\$29,125.00	86.93%	\$130.00	\$30,290.00	90.40%	\$170.00	\$39,610.00	118.22%	\$97.80	\$22,787.40	68.01%
10	8" Flexible Base	SY	3,500	\$44.14	\$ 154,495.83	\$ 20.00	\$70,000.00	45.31%	\$70.00	\$245,000.00	158.58%	\$25.00	\$87,500.00	56.64%	\$32.50	\$113,750.00	73.63%	\$85.00	\$297,500.00	192.56%	\$32.35	\$113,225.00	73.29%
11	6" Monolithic Curb	LF	1,460	\$26.49	\$ 38,670.53	\$ 20.00	\$29,200.00	75.51%	\$90.00	\$131,400.00	339.79%	\$10.00	\$14,600.00	37.75%	\$26.00	\$37,960.00	98.16%	\$9.00	\$13,140.00	33.98%	\$3.92	\$5,723.20	14.80%
12	Stabilized Construction Entrance	EA	1	\$4,673.33	\$ 4,673.33	\$ 3,500.00	\$3,500.00	74.89%	\$5,000.00	\$5,000.00	106.99%	\$2,000.00	\$2,000.00	42.80%	\$4,875.00	\$4,875.00	104.32%	\$10,500.00	\$10,500.00	224.68%	\$2,165.00	\$2,165.00	46.33%
13	Remove and Dispose Masonry Mailbox	EA	2	\$739.67	\$ 1,479.33	\$ 1,500.00	\$3,000.00	202.79%	\$1,000.00	\$2,000.00	135.20%	\$500.00	\$1,000.00	67.60%	\$845.00	\$1,690.00	114.24%	\$450.00	\$900.00	60.84%	\$143.00	\$286.00	19.33%
14	Remove and Relocate Masonry Mailbox	EA	2	\$2,977.67	\$ 5,955.33	\$ 2,500.00	\$5,000.00	83.96%	\$6,000.00	\$12,000.00	201.50%	\$1,500.00	\$3,000.00	50.38%	\$1,950.00	\$3,900.00	65.49%	\$3,600.00	\$7,200.00	120.90%	\$2,316.00	\$4,632.00	77.78%
15	Barrier Free Ramp	EA	11	\$3,602.50	\$ 39,627.50	\$ 2,000.00	\$22,000.00	55.52%	\$8,000.00	\$88,000.00	222.07%	\$4,000.00	\$44,000.00	111.03%	\$1,625.00	\$17,875.00	45.11%	\$3,000.00	\$33,000.00	83.28%	\$2,990.00	\$32,890.00	83.00%
STORM DRAINAGE																							
16	Remove and Dispose of Existing 18" RCP	LF	54	\$39.97	\$ 2,158.11	\$ 20.00	\$1,080.00	50.04%	\$50.00	\$2,700.00	125.11%	\$15.00	\$810.00	37.53%	\$58.50	\$3,159.00	146.38%	\$95.00	\$5,130.00	237.71%	\$1.29	\$69.66	3.23%
17	Remove and Dispose of Existing 24" RCP	LF	50	\$47.22	\$ 2,361.10	\$ 20.00	\$1,000.00	42.36%	\$50.00	\$2,500.00	105.90%	\$17.00	\$850.00	36.01%	\$65.00	\$3,250.00	137.67%	\$130.00	\$6,500.00	275.34%	\$1.29	\$64.50	2.73%
18	Remove and Dispose of Existing 42" RCP	LF	484	\$64.30	\$ 31,120.39	\$ 20.00	\$9,680.00	31.11%	\$80.00	\$38,720.00	124.42%	\$23.00	\$11,132.00	35.77%	\$71.50	\$34,606.00	111.20%	\$190.00	\$91,960.00	295.50%	\$1.29	\$624.36	2.01%
19	Remove and Dispose of Existing 48" RCP	LF	325	\$49.47	\$ 16,076.13	\$ 20.00	\$6,500.00	40.43%	\$90.00	\$29,250.00	181.95%	\$25.00	\$8,125.00	50.54%	\$84.50	\$27,462.50	170.83%	\$76.00	\$24,700.00	153.64%	\$1.29	\$419.25	2.61%
20	Remove and Dispose of Existing Conc Inlet	EA	3	\$2,126.67	\$ 6,380.00	\$ 1,500.00	\$4,500.00	70.53%	\$6,000.00	\$18,000.00	282.13%	\$1,000.00	\$3,000.00	47.02%	\$2,600.00	\$7,800.00	122.26%	\$1,300.00	\$3,900.00	61.13%	\$360.00	\$1,080.00	16.93%
21	Remove and Dispose of Existing Conc Inlet Apron	SY	9	\$481.92	\$ 4,337.25	\$ 600.00	\$5,400.00	124.50%	\$2,000.00	\$18,000.00	415.01%	\$100.00	\$900.00	20.75%	\$97.50	\$877.50	20.23%	\$51.00	\$459.00	10.58%	\$43.00	\$387.00	8.92%
22	Construct Conc Inlet Apron	SY	10	\$192.83	\$ 1,928.33	\$ 100.00	\$1,000.00	51.86%	\$300.00	\$3,000.00	103.72%	\$200.00	\$2,000.00	70.57%	\$195.00	\$1,950.00	101.12%	\$90.00	\$900.00	46.67%	\$272.00	\$2,720.00	141.05%
23	Trench Safety	LF	2,072	\$6.83	\$ 14,155.21	\$ 4.00	\$8,288.00	58.55%	\$10.00	\$20,720.00	146.38%	\$2.00	\$4,144.00	29.28%	\$13.00	\$26,936.00	190.29%	\$9.00	\$18,648.00	131.74%	\$2.99	\$6,195.28	43.77%
24	18-Inch Class III RCP	LF	88	\$124.25	\$ 10,934.00	\$ 125.00	\$11,000.00	100.60%	\$88.00	\$7,744.00	70.82%	\$118.00	\$10,384.00	94.97%	\$110.50	\$9,724.00	88.93%	\$240.00	\$21,120.00	193.16%	\$64.00	\$5,632.00	51.51%
25	24-Inch Class III RCP	LF	922	\$161.25	\$ 148,672.50	\$ 155.00	\$142,910.00	96.12%	\$152.00	\$140,144.00	94.26%	\$110.00	\$101,420.00	68.22%	\$162.50	\$149,825.00	100.78%	\$302.00	\$278,444.00	187.29%	\$86.00	\$79,292.00	53.33%
26	36-Inch Class III RCP	LF	334	\$265.75	\$ 88,760.50	\$ 200.00	\$66,800.00	75.26%	\$204.00	\$68,136.00	76.76%	\$295.00	\$98,530.00	111.01%	\$318.50	\$106,379.00	119.85%	\$425.00	\$141,950.00	159.92%	\$152.00	\$50,768.00	57.20%
27	42-Inch Class III RCP	LF	12	\$436.00	\$ 5,232.00	\$ 230.00	\$2,760.00	52.75%	\$300.00	\$3,600.00	68.81%	\$400.00	\$4,800.00	91.74%	\$412.00	\$4,944.00	101.38%	\$1,050.00	\$12,600.00	240.83%	\$194.00	\$2,328.00	44.50%
28	48-Inch Class III RCP	LF	66	\$396.25	\$ 26,152.50	\$ 280.00	\$18,480.00	70.66%	\$375.00	\$24,750.00	94.64%	\$430.00	\$28,380.00	108.52%	\$539.50	\$35,607.00	136.15%	\$540.00	\$35,640.00	136.28%	\$213.00	\$14,058.00	53.75%
29	48-Inch HDPE (Smooth Walls)	LF	143	\$359.92	\$ 51,468.08	\$ 180.00	\$25,740.00	50.01%	\$600.00	\$85,800.00	166.71%	\$300.00	\$42,900.00	83.35%	\$357.50	\$51,122.50	99.33%	\$423.00	\$60,489.00	117.53%	\$299.00	\$42,757.00	83.07%
30	5'x3' Class C Conc RCB (Precast)	LF	507	\$645.58	\$ 327,310.75	\$ 275.00	\$139,425.00	42.60%	\$621.00	\$314,847.00	96.19%	\$500.00	\$253,500.00	77.45%	\$1,235.00	\$626,145.00	191.30%	\$824.00	\$417,768.00	127.64%	\$418.50	\$212,179.50	64.83%
31	10-Foot Concrete Curb Inlet	EA	7	\$9,420.58	\$ 65,944.08	\$ 7,000.00	\$49,000.00	74.31%	\$10,000.00	\$70,000.00	106.15%	\$10,000.00	\$70,000.00	106.15%	\$15,762.50	\$110,337.50	167.32%	\$8,036.00	\$56,252.00	85.30%	\$5,725.00	\$40,075.00	60.77%
32	12'x10' Junction Box Structure	EA	1	\$35,364.00	\$ 35,364.00	\$ 25,000.00	\$25,000.00	70.69%	\$25,000.00	\$25,000.00	70.69%	\$30,000.00	\$30,000.00	84.83%	\$52,325.00	\$52,325.00	147.96%	\$47,000.00	\$47,000.00	132.90%	\$32,859.00	\$32,859.00	92.92%
33	4'x4' Storm Water Manhole	EA	3	\$7,836.50	\$ 23,509.50	\$ 7,000.00	\$21,000.00	91.41%	\$15,000.00	\$45,000.00	191.41%	\$5,000.00	\$15,000.00	63.80%	\$5,850.00	\$17,550.00	74.65%	\$9,350.00	\$28,050.00	119.31%	\$4,819.00	\$14,457.00	61.49%
34	5'x5' Storm Water Manhole	EA	1	\$9,665.50	\$ 9,665.50	\$ 9,600.00	\$9,600.00	99.32%	\$18,000.00	\$18,000.00	186.23%	\$6,000.00	\$6,000.00	62.08%	\$7,345.00	\$7,345.00	75.99%	\$9,350.00	\$9,350.00	96.74%	\$7,698.00	\$7,698.00	79.64%
35	6'x6' Storm Water Manhole	EA	3	\$13,828.50	\$ 41,485.50	\$ 10,000.00	\$30,000.00	72.32%	\$12,000.00	\$36,000.00	195.25%	\$9,000.00	\$27,000.00	65.08%	\$8,775.00	\$26,325.00	63.46%	\$19,000.00	\$57,000.00	137.40%	\$9,196.00	\$27,588.00	66.50%
36	StormTrap Detention System	LS	1	\$371,850.50	\$ 371,850.50	\$ 260,000.00	\$260,000.00	69.92%	\$100,000.00	\$100,000.00	26.89%	\$360,000.00	\$360,000.00	96.81%	\$587,574.00	\$587,574.00	158.01%	\$625,000.00	\$625,000.00	168.08%	\$298,529.00	\$298,529.00	80.28%
37	Storm Water Pollution Prevention Plan (SW3P) - Including Maintenance, Inlet Protection, and Erosion Control	LS	1	\$29,204.17	\$ 29,204.17	\$ 5,000.00	\$5,000.00	17.12%	\$50,000.00	\$50,000.00	171.21%	\$10,000.00	\$10,000.00	34.24%	\$46,475.00	\$46,475.00	159.14%	\$13,900.00	\$13,900.00	47.60%	\$49,850.00	\$49,850.00	170.69%
38	Television Inspection	LF	2,072	\$3.91	\$ 8,098.07	\$ 2.00	\$4,144.00	51.17%	\$6.00	\$12,432.00	153.52%	\$2.00	\$4,144.00	51.17%	\$7.80	\$16,161.60	199.57%	\$3.00	\$6,216.00	76.76%	\$2.65	\$5,490.80	67.80%
WATER/WASTEWATER																							
39	Concrete Casing Around Sanitary Sewer	EA	2	\$5,661.67	\$ 11,323.33	\$ 1,500.00	\$3,000.00	26.49%	\$2,000.00	\$4,000.00	35.33%	\$3,000											

ORIGINAL



SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR THE CONSTRUCTION OF

**ADDISON RAWHIDE CREEK
BASIN DRAINAGE AND ADA IMPROVEMENTS
FROM BROOKWOOD LN TO WATERSIDE CT
Project # 2022-01C**

**TOWN OF ADDISON, TEXAS
PUBLIC WORKS AND ENGINEERING SERVICES
BID NUMBER 22-75**

AUGUST 2022

PREPARED BY

**CRIADO & ASSOCIATES
4100 SPRING VALLEY ROAD, SUITE 1001
DALLAS, TX. 75244
PHONE: 972-392-9092**



ADDENDUM NO. 1

RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS

**TOWN OF ADDISON, TEXAS
PUBLIC WORKS AND ENGINEERING SERVICES
BID NUMBER 22-75**

08/18/2022



TO: All Plan Holders of Record

This Addendum forms part of the Contract Documents and modifies the Contract Documents and Specifications, as noted below. Acknowledge receipt of the Addendum in the space provided on the Proposal Form and on the outer envelope of the Proposal. Failure to acknowledge receipt of this Addendum may subject the Bidder to disqualification.

This Addendum consists of 2-pages and 2-attachements.

CHANGES TO BID PACKAGE

1. Section AB - Advertisement for Bids
 - a. Updated "Proposal" to "Bid". Void previous and replace attached page: AB-2.
2. Section IB - Instructions to Bidders
 - a. Updated "Proposal" to "Bid". Void previous and replace attached pages: IB-2 to IB-10.
 - b. Added "Scoring Criteria" to H. EVALUATION CRITERIA AND AWARDS OF THE PROPOSAL. Refer to replacement above.
3. Section PF - Proposal Form
 - a. Updated Bid Item No. 53 "UNIT" from "EA" to "AL" (for Allowance). Also, updated Bid Item No. 53 "UNIT PRICE", "BID AMOUNT", and "TOTAL (BASE BID)" to reflect the \$3,500 Allowance. Void previous and replace attached page: PF-5.
 - b. Updated "Proposal" to "Bid". Void previous and replace attached page: PF-6.
4. Section GTC- General Terms and Conditions
 - a. Updated "Proposal" to "Bid". Void previous and replace attached pages: GTC-1 to GTC-3, GTC-8 to GTC-9, and GTC-12.
5. Section SP - Special Provisions
 - a. Updated "Proposal" to "Bid". Void previous and replace attached pages: SP-3, and SP-8, SP-23 to SP-24, SP-27, SP-50 to SP-51, and SP-60 to SP-61.
 - b. Removed "Bid Item No. 53" description, due to "Allowance". Void previous and replace attached pages: SP-21 to SP-67. Insert attached page SP-68. Also, refer to replacement above.



6. Void and Replace Bid Item Tab excel form with form name “Project 2202-01C, Bid No. 22-75 Bid Items_A-01”.

CHANGES TO PLAN SET

1. VOID PREVIOUS AND REPLACE ATTACHED PLAN SHEET: 2 with the plan sheet attached. Updated Bid Item No. 53 “UNIT” from “EA” to “AL” (for Allowance). Any revisions have been noted on each sheet.
2. VOID PREVIOUS AND REPLACE ATTACHED PLAN SHEET: 41 with the plan sheet attached. Updated “SD LINE ‘B’ Profile from STA 12+48.35 to END. Any revisions have been noted on each sheet.

END OF ADDENDUM NO. 1



ADDENDUM NO. 2

RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS

**TOWN OF ADDISON, TEXAS
PUBLIC WORKS AND ENGINEERING SERVICES
BID NUMBER 22-75**

08/27/2022



Sherry Lynn Williams, P.E.

TO: All Plan Holders of Record

This Addendum forms part of the Contract Documents and modifies the Contract Documents and Specifications, as noted below. Acknowledge receipt of the Addendum in the space provided on the Proposal Form and on the outer envelope of the Proposal. Failure to acknowledge receipt of this Addendum may subject the Bidder to disqualification.

This Addendum consists of 2-pages and no attachments.

QUESTIONS RECEIVED ON CIVCAST PRIOR TO DEADLINE FOR QUESTIONS ON WEDNESDAY, AUGUST 24, 2022 AT 05:00 PM CST

Q1. Can you please provide an engineer's estimate on this project. Thank you

Answer: N/A

Q2. Where will the bid results be posted for those of us unable to attend the bid opening?

Answer: Yes

Answer: Yes they will be uploaded to Civcast

Q3. Hello, line B starting at 12+48.35. Profile notes indicates 22 LF of 30" RCP but plan view shows 24" all the way to the curb inlet. Can you please clarify? Thank you

Answer: Should be 24" RCP not 30". See Addendum No. 1.

Q4. Hope I didn't miss a note but what is the purpose of including sheet 45 in the plan set? Will our project affect their primary access? Thank you

Answer: No, this project will not affect their primary access.



Q5. Bid item 49: Element Bollards will require electrical wiring. Do we know where or how far the nearest power source is? Is there an existing pedestal? Will one be required? Just trying to find what we are needing to carry to include power source. Thank you.

Answer: There is a Jbox that connects power to the existing bollards and the nearby electrical panel located south near the junction of the trails.

Q6. Bid item 53 Trail signage indicates TBD. City website refers to plans and so do the specifications. Can you provide more details on this? If not, will there be an allowance amount you need bidder to carry? Thanks

Answer: An allowance for \$3500 will be used for this item. See Addendum No. 1.

Q7. Bid Item 52, sku 1004 has multiple options. Please indicate how many stations are required for this bid item, thank you.

Answer: See Sheet 54 for detailed information

Q8. Note #4 on TCP indicate temporary paving requirement. Will the Town/Engineer allow Flexbase (TXDOT Item 247) as a suitable temporary driving surface until actual paving can be installed?

Answer: Yes, but no longer than 10 business days unless otherwise approved by the Engineer and must be maintained to ensure a drivable surface.

Q9. Assuming the lane closure on top on Marsh lane is for delivery of Stormtrap and related equipment, will city allow removal/trimming of trees/canopy that are NOT shown on demo plan to allow access?

Answer: City will work with contractor to determine a path to move in the equipment and tree trimming by an arborist would be allowed. Removal of a few hackberry trees could be approved if there was no other way to get equipment to the site.

END OF ADDENDUM NO. 2



PUBLIC WORKS & ENGINEERING SERVICES

TOWN OF ADDISON, TEXAS

MAYOR

Joe Chow

COUNCIL MEMBERS

Kathryn Wheeler (Mayor Pro Tempore)

Lori Ward (Deputy Mayor Pro Tempore)

Tom Braun

Darren Gardner

Guillermo Quintanilla

Eileen Resnik

INTERIM CITY MANAGER

Hamid Khaleghipour

DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES

Shannon Hicks, P.E.

CAPITAL/DEVELOPMENT PROJECTS MANAGER

Wilson Kakembo, PE

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SECTION AB

ADVERTISEMENT FOR BIDS

ADVERTISEMENT FOR BIDS

1. The Town of Addison is requesting submission for proposals for the Bid of the Addison Rawhide Creek Basin Drainage and ADA Improvements from Brookwood Ln to Waterside Ct. **Proposals will be accepted until 2:00 p.m., Tuesday, August 30, 2022** at the Finance Building, 5350 Belt Line Rd., Dallas, Texas 75254 – Attention Purchasing Department, at which time responders names and proposals will be publicly read aloud. Late proposals will not be considered. The plans, specifications, quantities, pre-proposal time and date, and other information are available on www.civcastusa.com. The plans, specifications, and quantities for the work to be done are also on file with Public Works & Engineering Services Department, Town of Addison, 16801 Westgrove Drive, Addison, Texas 75001, and such plans, specifications, and quantities may be examined without charge. The Town of Addison reserves the right to waive any formalities, to reject any and all proposals, and to select the proposal deemed most advantageous to the Town of Addison.
2. The Contractor shall identify his proposal on the outside of the envelope by writing the words **PUBLIC WORKS AND ENGINEERING SERVICES BID NUMBER 22-75, ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM BROOKWOOD LN TO WATERSIDE CT**

PAPER PROPOSALS SHALL BE REQUIRED.
3. Proposals shall be accompanied by a bid bond in an amount not less than five percent (5%) of the total maximum bid from a reliable surety company licensed by the State of Texas to act as a Surety and be listed on the current U.S. Treasury Listing of Approved Sureties, or a Binder of Insurance executed by a surety company licensed by the State of Texas to act as a surety or its authorized agent as a guarantee that the bidder will enter into a contract and execute a Performance Bond and Payment Bond within ten (10) days after notice of award of contract to him.
4. Plans, specifications and bidding documents may be downloaded from www.civcastusa.com. The Town of Addison is a "free buyer", meaning that prospective bidders need only a free registration to sign up for plan updates. Bidders assume all risk for acquiring specs and/or plans from third party sites and plan rooms, as only www.civcastusa.com will be directly updated by Addison.
5. The right is reserved by the Mayor and the City Council as the interests of the City may require to reject any or all proposals and to waive any formality in proposals received and to select the proposal deemed most advantageous to the City.
6. The Bidder (Proposer) must supply all the information required by the Proposal Form.
7. A Performance Bond, Labor and Material Payment Bond, and Maintenance Bond will be required by the Owner; each Bond shall be in the amount of 100% of the total contract amount. Bonds shall be issued by a surety company licensed by the State of Texas to act as a Surety and be listed on the current U.S. Treasury Listing of Approved Sureties.
8. The Bidder (Proposer) must supply all the information required by the Bidder Qualification Statement.
9. **Pre-proposal meeting will be held on Tuesday, August 16, 2022 at 2:00 p.m. in the Town of Addison Service Center 1st Floor Large Conference Room located at 16801 Westgrove Drive, Addison, TX 75001. All perspective bidders are strongly encouraged to attend. A site visit will follow this meeting.**

- 10. For information on bidding or work to be performed, please submit all questions on Civcast at www.civcastusa.com . All questions must be received by 5:00 p.m. on Wednesday, August 24, 2022. All questions received by this deadline will be answered by 5:00 p.m. on Monday, August 26, 2022.**
- 11. The project consists of constructing storm drain improvements and ADA upgrades to sidewalks, driveways and ramps in accordance with the plans and specifications. The project also includes an underground detention and landscape improvements near Brookwood Lane.**
- 12. Advertise:**
 - 1st Advertisement: August 9, 2022**
 - 2nd Advertisement: August 16, 2022**
 - 3rd Advertisement: August 23, 2022**

SECTION IB

INSTRUCTIONS TO BIDDERS

INSTRUCTIONS TO BIDDERS

- A. PROJECT: ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM BROOKWOOD LN TO WATERSIDE CT.,** in the Town of Addison. The proposals will be evaluated as stated in Section "O" of these Instructions to Bidders.
- 1. PROJECT DESCRIPTION:** The project consists of constructing storm drain improvements and ADA upgrades to sidewalks, driveways and ramps in accordance with the plans and specifications. The project also includes an underground detention and landscape improvements near Brookwood Lane.
- B. PROPOSALS:** Proposals must be in accordance with these instructions in order to receive consideration.
- C. DOCUMENTS:** Bidding Documents include the Project Manual (consisting of the Advertisement for Bids, these Instructions to Bidders, Proposal Forms, Reference Form, Contract Agreement, Performance Bond, Payment Bond, Maintenance Bond, Contractor's Affidavit of Bills Paid, General Provisions, Special Provisions, Project Sign, and Technical Specifications), a Waiver of Lien, Drawings, and Addenda which may be issued by the Town of Addison during the bidding period. Bidding Documents may be viewed and/or obtained under the terms and conditions set forth in the Advertisement for Bids, Section AB of this Project Manual.
- D. EXAMINATION OF DOCUMENTS AND SITE:** Bidders shall carefully examine the Bidding Documents and the construction site to obtain firsthand knowledge of the scope and the conditions of the Work. Each Contractor, Subcontractor and Sub-subcontractor, by submitting a proposal to perform any portion of the Work, represents and warrants that he has examined the Drawings, Specifications (Project Manual) and the site of the Work, and from his own investigation has satisfied himself as to the scope, accessibility, nature and location of the Work; the character of the equipment and other facilities needed for the performance of the Work; the character and extent of other work to be performed; the local conditions; labor availability, practices and jurisdictions; and other circumstances that may affect the performance of the Work. No additional compensation will be allowed by the Owner for the failure of such Contractor, Subcontractor or Sub-subcontractor to inform himself as to conditions affecting the Work.
- E. INTERPRETATION OF DOCUMENTS:** If any person contemplating submitting a proposal for the proposed Contract is in doubt as to the meaning of any part of the Drawings, Specifications (Project Manual) or other proposed Contract Documents, he may submit questions to the Town of Addison, no later than 5:00 p.m. on Wednesday, August 24, 2022. All questions received by this deadline will be answered by 5:00 p.m. on Monday, August 26, 2022. Bidders should act promptly and allow sufficient time for a reply to reach them before preparing their proposals. Any interpretation or clarification will be in the form of an Addendum duly issued. No alleged verbal interpretation or ruling will be held binding upon the Owner.

- F. SUBSTITUTIONS:** Conditions governing the submission of substitutions for specific materials, products, equipment and processes are in the Special Provisions. Requests for substitutions must be received by the Town of Addison seven (7) calendar days prior to the established proposal date.
- G. ADDENDA:** Interpretations, clarifications, additions, deletions and modifications to the Documents during the bidding period will be issued in the form of Addenda and a copy of such Addenda will be released through www.civcastusa.com. It will be the responsibility of each person who has been issued a set of bid documents to secure all Addenda from www.civcastusa.com. Addenda will be a part of the Bidding Documents and the Contract Documents, and receipt of them shall be acknowledged in the Bid Form. All such interpretations and supplemental instructions will be in the form of written addenda to the contract documents which, if issued, will be released through www.civcastusa.com, not later than three (3) calendar days prior to the date fixed for the opening of proposals. If any bidder fails to acknowledge the receipt of such addenda in the space provided in the bid form, his proposal will nevertheless be construed as though the receipt of such addenda had been acknowledged.
- H. EVALUATION CRITERIA AND AWARDING OF THE PROPOSAL:** For best value, the Final Request for Proposal and award will not only look for the lowest bidder, the proposals will be scored by an evaluation committee consisting of Town staff, using criteria and associated weights.
- The Town may consider more factors than just price in awarding a contract in accordance with the requirements for competitive bidding under the Local Government Code Section 252.043. The criteria that will be considered are:
 - the price;
 - the offeror's experience and reputation;
 - the quality of the offeror's goods or services;
 - the impact on the ability of the Town to comply with rules relating to historically underutilized businesses;
 - the offeror's safety record;
 - the offeror's proposed personnel;
 - whether the offeror's financial capability is appropriate to the size and scope of the project; and
 - any other relevant factor specifically listed in the request for proposals, proposals, or qualifications.
 - Scoring Criteria:
 - 50% Price
 - 25% Experience with Similar Projects
 - 15% Proposed Project Team
 - 10% References (within the last 5-years)
- I. COMPLETION TIME:** The selected contractor shall use the time period between the awarding of the contract at Town Council and the date of Notice to Proceed to submit materials and shop drawings for approval by **CRIADO & Associates, Inc. Criado &**

Associates, Inc. shall review and return these submittals in the most expedient manner possible to accommodate immediate material ordering.

- a. Upon receiving Notice to Proceed, the selected contractor shall have **270 calendar days** to construct the project and achieve substantial completion. Substantial completion for this project includes the following items:
 - i. Preliminary Punchlist walk-through with the Town performed;
- b. After substantial completion is reached, the contractor shall have **an additional 20 calendar days** to achieve 100% final completion. Final completion for this project shall include:
 - i. Punchlist items completed and approved by the Town;
 - ii. Site clean-up;
 - iii. Submittal of Record Drawings; and
 - iv. Execution of Maintenance Bond.

J. PREPARATION OF PROPOSALS: Prices quoted shall include all items of cost, expense, taxes, fees and charges incurred by, or arising out of, the performance of the work to be performed under the Contract. Proposals shall be submitted in duplicate and shall be signed in ink. Any proposal on other than the required form will be considered informal and may be rejected. Erasures or other changes in a proposal must be explained or noted over the initials of the bidder. Proposals containing any conditions, omissions, unexplained erasures and alterations, or irregularities of any kind may be rejected as informal. The prices should be expressed in words and figures or they may be deemed informal and may be rejected. In case of discrepancy between the price written in the proposal and that given in the figures, the price in writing will be considered as the proposal. In the case of a discrepancy between a unit price and its extension, the unit price will govern. Failure to submit all requested information will make a proposal irregular and subject to rejection. Proposals shall be signed with name typed or printed below signature, and, if a partnership, give full name of all partners. Where bidder is a corporation, proposals must be signed with the legal name of the corporation followed by the name of the state of incorporation and the legal signature of an officer authorized to bind the corporation to a contract.

NOTE: AN ELECTRONIC SPREADSHEET IS POSTED ON CIVCAST FOR CONTRACTORS CONVENIENCE TITLED "BID SCHEDULE BID 22-75". THIS SPREADSHEET MAY BE USED IN LIEU OF THE MANUAL HANDWRITTEN PROPOSAL FORM IN THE SPECIFICATIONS AND SHALL BE ATTACHED TO THE PROPOSAL AND MADE PART OF THE CONTRACT DOCUMENTS. USING THE SPREADSHEET OPTION SHALL NOT AMEND OR MODIFY ANY WORDING IN THE PROPOSAL FORM OR THE PLANS AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR CONFIRMING THAT THE SPREADSHEET ADEQUATELY CONVEYS THEIR PROPOSAL.

SUBMITTAL OF PROPOSALS: Sealed proposals will be received at the time, date and place stated in the Advertisement for Bids. Proposals shall be made on unaltered Proposal Forms furnished by the Town of Addison. Bidders shall submit proposals in an opaque, sealed envelope addressed to the Owner and plainly mark on the outside of the envelope the name

and address of the bidder. The envelopes shall also be marked with the following project description:

PUBLIC WORKS AND ENGINEERING SERVICES BID NUMBER 22-75

**ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM
BROOKWOOD LN TO WATERSIDE CT**

The Bid Bond must be completed and signed by each bidder and submitted with the proposal. Submit Proposals by mail or in person prior to the time for receiving proposals set forth in the Advertisement for Bids issued by the Town.

Electronic bidding on www.civcastusa.com will not be considered for this project. The Town of Addison uses www.civcastusa.com to distribute bids and proposals. There will be NO COST to the contractor for standard bids or proposals. Bid number 22-75 is considered a standard proposal. For Cooperative Bids and Reverse Auctions ONLY, the successful contractor/supplier agrees to pay www.civcastusa.com a transaction fee of one percent (1%) of the total amount of all contracts for goods and/or services. Cooperative Bids and Reverse Auctions will be clearly marked on the bid documents. To assure that all contractors/suppliers are treated fairly, the fee will be payable whether the bid/proposal is submitted electronically, or by paper means. Refer to www.civcastusa.com for further information.

- K. MODIFICATION AND WITHDRAWAL OF PROPOSALS:** Prior to the time set for proposal opening, proposals may be withdrawn or modified. Proposals may be modified only on the official bid form and must be signed by a person legally empowered to bind the bidder. No bidder shall modify, withdraw, or cancel his proposal or any part thereof for sixty (60) calendar days after the time agreed upon for the receipt of proposals.
- L. DISQUALIFICATION:** The Owner reserves the right to disqualify proposals, before or after the opening, upon evidence of collusion with intent to defraud or other illegal practices relating to this proposal upon the part of the bidder.
- M. SUBMISSION OF POST-PROPOSAL INFORMATION:** Upon notification of acceptance, the selected bidder shall, within twenty-four (24) hours, submit the following:
1. A designation of the portions of the Work proposed to be performed by the bidder with his own force.
 2. A list of names of the Subcontractors or other persons or organizations, including those who are to furnish materials and equipment fabricated to a special design proposed for such portions of the Work as may be designated in the Bidding Documents or as may be requested by the Town of Addison. The bidder will be required to establish to the satisfaction of the Owner the reliability and responsibility of the proposed Subcontractors and suppliers to furnish and perform the Work.
 3. Other information as required.
- N. AWARD:** The Owner reserves the right to accept any or to reject any proposals without compensation to bidders and to waive irregularities and informalities. The Town of Addison

Public Works & Engineering Services Department, in making its recommendation, will consider the following elements:

1. Whether the bidder is a contractor with experience in the type of work involved.
2. Whether the bidder has adequate plant, equipment and personnel to perform the work properly and expeditiously.
3. Whether the bidder has a suitable financial status and reputation for meeting obligations incident to work of the kind specified.
4. Whether the bidder has complied with the terms and conditions.

Alternate items may or may not be awarded. Addition or deletion of other items or schedules will be governed by the *Standard Specifications for Public Works Construction – North Central Texas, November 2017, 5th Edition*, (Latest Version) (hereinafter called SSPWC) Item 104.2 "Change or Modification of Contract".

- O. EXECUTION OF THE CONTRACT:** The successful bidder will be required to enter into a contract with the Owner within ten (10) days of notice by the Owner that his proposal has been accepted. Failure to enter into a contract within the established time limit shall be considered grounds for forfeiture of the bid bond.
- P. CONSTRUCTION SCHEDULE:** It is the Owner's desire to have the project completed and operational in as short a time as possible. The number of calendar days for completion of the project will begin with the date specified in the Notice to Proceed. The Notice to Proceed will be issued in a manner to facilitate a smooth construction of the project. The Contractor shall begin construction within ten (10) calendar days of the issuance of the Notice to Proceed.
- Q. COST PLUS TIME BIDDING:** N/A
- R. FORM OF CONTRACT:** The contract for the construction of the project will be drawn up by the Owner. A sample form of agreement is included in the Contract Agreement Section.
- S. BONDS:** A Performance Bond, a Labor and Material Payment Bond and a Maintenance Bond will be required by the Owner. The Performance Bond and Payment Bond shall name the Town of Addison, and others as directed by the Town, as joint obligees. Sample forms have been included in the Performance Bond, Payment Bond, and Maintenance Bond sections. (Contractor shall confirm the legal names of obligees prior to execution of Bonds.)
- T. BID SECURITY:** Proposals shall be accompanied by a bid bond in an amount not less than five percent (5%) of the total maximum bid from a reliable surety company licensed by the State of Texas to act as a Surety and be listed on the current U.S. Treasury Listing of Approved Sureties, or a Binder of Insurance executed by a surety company licensed by the State of Texas to act as a surety or its authorized agent as a guarantee that the bidder will enter into a contract and execute a Performance Bond and Payment Bond within ten (10) days after notice of award of contract to him.
- U. RESOLUTIONS:** If the bidder is a corporation, a copy of the resolution empowering the person submitting the proposal to bind the bidder must be included with the proposal.

V. CONSTRUCTION STAKING: Construction staking and re-staking will not be provided by the Owner. Benchmarks and Horizontal Control are shown on the plans. There is no separate bid item for staking, therefore, the contractor must include value for staking in the various bid items as subsidiary to the contract. Any staking or re-staking that is required shall be the responsibility of the Contractor and shall be at no cost to the Owner.

W. FINAL PAYMENT: The general provisions for Final Payment shall be as stated in Item 109.5.4 of the SSPWC including all Amendments and Additions. Prior to final payment the Contractor shall provide the Owner with the following items:

1. A Contractor's Affidavit of Bills Paid in accordance with Section BP.
2. A Consent of Surety Company to Final Payment.
3. A complete set of record plans which indicate all construction variations from the original construction documents in accordance with the Special Provisions.
4. A Two (2) years Maintenance Bond in accordance with Section MB.
5. Acknowledgement that the project has been reviewed and accepted by TDLR.

X. PREVAILING WAGE RATES: Wage rates paid on this project shall not be less than specified in the schedule of general prevailing rates of per diem wages as attached in the Special Provisions.

Y. PRIORITY OF CONTRACT DOCUMENTS: In case of conflict between contract documents, priority of interpretation shall be in the following order: signed agreement; performance and payment bonds; proposal; special provisions (or conditions); technical specifications; general provisions; advertisement for bids; project drawings; *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* adopted by the Texas Department of Transportation June 1, 2004; Standard Specifications for Public Works Construction (NCTCOG, October 2017) ,(Latest Version); Town of Addison Standard Drawings. This priority list shall take precedence over Item 105.1.1 of the SSPWC.

Information and Instruction Form

RESPONSES THAT DO NOT CONTAIN THIS COMPLETED FORM MAY NOT BE COMPLIANT

Section I Company Profile

Name of Business: *TEXAS STANDARD CONSTRUCTION, LTD.*
Business Address: *5511 W. Ledbetter Dr.
Dallas, TX 75236*
Contact Name: *Ronald H. Dalton*
Phone#: *214-330-5229*
Fax#: *214-330-5254*
Email: *ron@texasstandardconstruction.com*

Name(s) Title of Authorized Company Officers:
Ronald H. Dalton, President
Sheila K. Coffee, Office Manager
Federal ID #: *75-2931256* W-9 Form: A W-9 form will be required from the successful bidder.
DUN #: *84-398-0272*

Remit Address: If different than your physical address:

*P.O. Box 210768
Dallas, TX 75211*

Section II Instructions to Bidders

Electronic Bids: The Town of Addison uses Civcast to distribute and receive bids and proposals. There will be **NO COST** to the Contractor/Supplier for Standard bids or proposals. For **Cooperative Bids and Reverse Auctions ONLY**, the successful contractor/supplier agrees to pay Civcast a transaction fee of one percent (1%) of the total amount of all contracts for goods and/or services. **Cooperative Bids and Reverse Auctions** will be clearly marked on the bid documents. To assure that all contractors/suppliers are treated fairly, the fee will be payable whether the bid/proposal is submitted electronically, or by paper means. Refer to www.civcastusa.com for further information.

Contractor/Supplier Responsibility: It is the contractor/suppliers responsibility to check for any addenda or questions and answers that might have been issued before proposal closing date and time. Contractors/Suppliers

ADDENDUM NO. 1 - VOID PREVIOUS AND REPLACE WITH THIS SHEET

will be notified of any addenda and Q&A if they are on the invited list, they view the proposal, or add themselves to the watch list.

Acknowledgement of Addenda: #1 #2 #3 #4 #5

Delivery of Proposals: For delivery of paper proposals our physical address is:

Town of Addison

5350 Beltline Road

Dallas, TX 75254

Attn: Purchasing Department

Contractor/Supplier Employees: No Contractor/Supplier employee shall have a direct or indirect financial interest in any contract with the town, or be directly or indirectly financially interested in the sale of land, materials, supplies or services to the town.

Deliveries: All deliveries will be F.O.B. Town of Addison. All Transportation Charges paid by the contractor/supplier to Destination.

Payment Terms: A Prompt Payment Discount of % is offered for Payment Made Within Days of Acceptance of Goods or Services. If Prompt Payments are not offered or accepted, payments shall be made 30 days after receipt and acceptance of goods or services or after the date of receipt of the invoice whichever is later.

Delivery Dates: Delivery Dates are to be specified in Calendar Days from the Date of Order.

Bid Prices: Pre-Award bid prices shall remain Firm and Irrevocable for a Period of 120 Days.

Exceptions: Contractor/Supplier does not take Exception to Bid Specifications or Other Requirements of this Solicitation. If neither exceptions box is checked, default shall be "No Exceptions"

Contractor/Supplier take the following Exception(s) to the Bid Specifications or Other Requirements of this Solicitation (Explain in Detail). If box checked but no exceptions are listed, default shall be "No Exceptions"

Historically Underutilized Business (HUB): It is the policy of the Town of Addison to involve HUBs in the procurement of goods, equipment, services and construction projects. Prime Contractors/Suppliers are encouraged to provide HUBs the opportunity to compete for sub-contracting and other procurement opportunities. A listing of HUBs in this area may be accessed at the following State of Texas Website.
<http://www.window.state.tx.us/procurement/cmb1/cmb1hub.html>.

HUB Owned Business Yes No Include a current copy of your HUB certification with your response or insert Certification number _____ and expire date _____.

ADDENDUM NO. 1 - VOID PREVIOUS AND REPLACE WITH THIS SHEET

Other Government Entities: Would bidder be willing to allow other local governmental entities to participate in this contract, if awarded under the same Terms and Conditions? Yes No

Bid Bond: Is Bid Bond attached if applicable? Yes No

Termination: The town at any time after issuance of this agreement, by 30 days written notice, has the absolute right to terminate this agreement for cause or convenience. Cause shall be the contractor/supplier's refusal or failure to satisfactorily perform or complete the work within the time specified, or failure to meet the specifications, quantities, quality and/or other requirements specified in the contract/purchase order. In such case the supplier shall be liable for any damages suffered by the town. If the agreement is terminated for convenience, the supplier has no further obligation under the agreement. Payment shall be made to cover the cost of material and work in process or "consigned" to the town as of the effective date of the termination.

Bidder Compliance: Bidder agrees to comply with all conditions contained in this Information and Instruction Form and the additional terms and conditions and specifications included in this request. The undersigned hereby agrees to furnish and deliver the articles or services as specified at the prices and terms herein stated and in strict accordance with the specifications and conditions, all of which are made a part of your offer. Your offer is not subject to withdrawal after the award is made.

The Town of Addison reserves the right to reject all or part of the offer and to accept the offer considered most advantageous to the town by item or total proposal.

The Town of Addison will award to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the Town.

I hereby certify that all of the information provided in sections I and II are true and accurate to the best of my knowledge.

Signature: _____
Date: _____

Michael A. Wilson
PRESIDENT
8-29-2022

Title: *President*

Signature certifies no changes have been made to the content of this solicitation as provided by the Town of Addison.

10/17/17



Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

The Texas Ethics Commission was required to adopt rules necessary to implement that law, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's website. The commission adopted the Certificate of Interested Parties form (Form 1295) on October 5, 2015. The commission also adopted new rules (Chapter 46) on November 30, 2015, to implement the law.

Filing Process

On January 1, 2016, the commission made available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract.

The governmental entity or state agency must notify the commission, using the commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from the governmental entity or state agency.

Information regarding how to use the filing application will be available on this site by January 1, 2016. https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm, please follow Instructional Video for Business Entities.

COVID-19 QUESTIONNAIRE

1. Have you experienced any of the following symptoms in the past 48 hours:

- Fever or Chills
- Cough
- Shortness of Breath or Difficulty Breathing
- Fatigue
- Muscle or Body Aches
- Headache
- New Loss of Taste or Smell
- Sore Throat
- Congestion or Runny Nose
- Nausea or Vomiting
- Diarrhea

2. Within the past 14 days, have you been in close physical contact (6 feet or closer for a cumulative total of 15 minutes) with:

- Anyone who is known to have laboratory-confirmed COVID-19?
or
- Anyone who has any symptoms consistent with COVID-19?

3. Are you isolating or quarantining because you may have been exposed to a person with COVID-19 or are worried that you may be sick with COVID-19?

4. Are you currently waiting on the results of a COVID-19 test?

PLEASE LET THE TOWN STAFF MEMBER KNOW IF "YES" TO ANY OF THESE QUESTIONS.

SECTION PF-1
PROPOSAL FORM

PROPOSAL FORM

August 30th, 202~~0~~²

TO: The Honorable Mayor and Town Council
Town of Addison, Texas

Gentlemen:

The undersigned bidder, having examined the plans, specifications and contract documents, and the location of the proposed work, and being fully advised as to the extent and character of the work, proposes to furnish all equipment and to perform labor and work necessary for completion of the work described by and in accordance with the Plans, Specifications and Contract for the following prices, to wit:

Signed by: *[Handwritten Signature]*
PRESIDENT 8-30-2022

ACKNOWLEDGMENT OF ADDENDA:

The Bidder acknowledges receipt of the following addenda:

Addendum No. 1 08/18/2022 RP.

Addendum No. 2 08/27/2022 RP.

Addendum No. 3 _____

The following pages contain all bid items for:

BID SCHEDULE – ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS
FROM BROOKWOOD LN TO WATERSIDE CT
BID NUMBER 22-75

TOWN OF ADDISON
ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS
FROM BROOKWOOD LN TO WATERSIDE CT
PROJECT # 2022-01C
BID NO. 22-75
UNIT PRICES

ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	BID AMOUNT
BASE BID						
<i>General</i>						
1		Mobilization (5% Max)	LS	1	\$48,000.00	\$48,000.00
2		Project Sign	EA	2	\$1,295.00	\$2,590.00
3		Barricades, Signs, and Traffic Handling	LS	1	\$82,000.00	\$82,000.00
4		Construction Contingency Allowance Owner Approval	AL	1	\$163,000.00	\$163,000.00
<i>Paving</i>						
5		Remove & Dispose of Existing Pavement	SY	3,498	\$4.99	\$17,455.02
6		8-Inch Reinforced Concrete Pavement	SY	3,265	\$83.09	\$271,288.85
7		Remove & Dispose Concrete Sidewalk	SY	1,021	\$0.95	\$969.95
8		4-Inch Reinforced Concrete Sidewalk	SY	893	\$65.49	\$58,482.57
9		6-Inch Reinforced Concrete Driveway	SY	233	\$97.80	\$22,787.40
10		8" Flexible Base	SY	3,500	\$32.35	\$113,225.00
11		6" Monolithic Curb	LF	1,460	\$3.92	\$5,723.20
12		Stabilized Construction Entrance	EA	1	\$2,165.00	\$2,165.00
13		Remove & Dispose Mansony Mailbox	EA	2	\$143.00	\$286.00
14		Remove & Relocate Masonry Mailbox	EA	2	\$2,316.00	\$4,632.00
15		Barrier Free Ramps	EA	11	\$2,990.00	\$32,890.00
<i>Storm Drainage</i>						
16		Remove & Dispose of Existing 18" RCP	LF	54	\$1.29	\$69.66
17		Remove & Dispose of Existing 24" RCP	LF	50	\$1.29	\$64.50
18		Remove & Dispose of Existing 42" RCP	LF	484	\$1.29	\$624.36
19		Remove & Dispose of Existing 48" RCP	LF	325	\$1.29	\$419.25
20		Remove & Dispose of Existing Curb Inlet	EA	3	\$360.00	\$1,080.00
21		Remove & Dispose of Existing Conc Inlet Apron	SY	9	\$43.00	\$387.00
22		Construct Conc Inlet Apron	SY	10	\$272.00	\$2,720.00

**TOWN OF ADDISON
ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS
FROM BROOKWOOD LN TO WATERSIDE CT
PROJECT # 2022-01C
BID NO. 22-75
UNIT PRICES**

ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	BID AMOUNT
BASE BID						
23		Trench Safety	LF	2,072	\$2.99	\$6,195.28
24		18-Inch Class III RCP	LF	88	\$64.00	\$5,632.00
25		24-Inch Class III RCP	LF	922	\$86.00	\$79,292.00
26		36-Inch Class III RCP	LF	334	\$152.00	\$50,768.00
27		42-Inch Class III RCP	LF	12	\$194.00	\$2,328.00
28		48-Inch Class III RCP	LF	66	\$213.00	\$14,058.00
29		48-Inch HDPE (Smooth Walls)	LF	143	\$299.00	\$42,757.00
30		5'x3' Class C Conc RCB (Precast)	LF	507	\$418.50	\$212,179.50
31		10-Foot Concrete Curb Inlet	EA	7	\$5,725.00	\$40,075.00
32		12'x10' Junction Box Structure	EA	1	\$32,859.00	\$32,859.00
33		4'x4' Storm Water Manhole	EA	3	\$4,819.00	\$14,457.00
34		5'x5' Storm Water Manhole	EA	1	\$7,698.00	\$7,698.00
35		6'x6' Storm Water Manhole	EA	3	\$9,196.00	\$27,588.00
36		Storm Trap Detention System	LS	1	\$298,529.00	\$298,529.00
37		Storm Water Pollution Prevention Plan (SW3P) - Including Maintenance, Inlet Protection, and Erosion Control	LS	1	\$49,850.00	\$49,850.00
38		Television Inspection	LF	2,072	\$2.65	\$5,490.80
Water/Wasterwater						
39		Concrete Casing Around Sanitary Sewer	EA	2	\$3,995.00	\$7,990.00
40		Adjustment to Water Valve	EA	2	\$612.00	\$1,224.00
41		Water Main Lowering	EA	2	\$12,950.00	\$25,900.00
42		8" Water Main Crossing (By Open Cut)	EA	2	\$9,950.00	\$19,900.00
43		12" Water Main Crossing (By Open Cut)	EA	1	\$15,600.00	\$15,600.00
44		Furnish & Install 1" Standard Water Service	EA	9	\$1,492.00	\$13,428.00

TOWN OF ADDISON
ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS
FROM BROOKWOOD LN TO WATERSIDE CT
PROJECT # 2022-01C
BID NO. 22-75
UNIT PRICES

ITEM NO.	SPEC. NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	BID AMOUNT
BASE BID						
<i>Landscaping</i>						
45		Block Sod	SY	2,050	\$5.10	\$10,455.00
46		Top Soil (4" Depth)	SY	2,050	\$3.68	\$7,544.00
47		Remove Trees	EA	7	\$520.00	\$3,640.00
48		Irrigation (Replace Sprinkler Heads)	EA	1	\$200.00	\$200.00
49		Standard Town Bollard	EA	5	\$2,165.00	\$10,825.00
50		Bench	EA	2	\$2,485.00	\$4,970.00
51		Trash Receptacle	EA	1	\$2,982.00	\$2,982.00
52		Pet Waste Station	EA	1	\$1,939.00	\$1,939.00
53		Town Standard Trail Signage	AL	1	\$3,500.00	\$3,500.00
54		Steel Edging	LF	355	\$8.40	\$2,982.00
55		Wrought Iron Gate (4' W x 4' H)	EA	2	\$1,750.00	\$3,500.00
56		Canopy Tree	EA	2	\$1,285.00	\$2,570.00
57		Ornamental Tree	EA	3	\$692.00	\$2,076.00
58		5 Gallon Shrub	EA	150	\$29.30	\$4,395.00
59		3 Gallon Shrub	EA	16	\$28.49	\$455.84
60		1 Gallon Shrub	EA	2,171	\$4.98	\$10,811.58
61		Soil Prep/Mulch	SF	8,860	\$1.05	\$9,303.00
62		Irrigation	SF	8,860	\$1.90	\$16,834.00
TOTAL (BASE BID) =						\$1,903,640.76

- NOTES: 1. All items, labor, materials, equipment, facilities, incidentals and work required for construction of the project are to be provided and installed by the Contractor as part of the project and payment for the cost of such shall be included in the price bid for the construction of the project.
2. Prices must be shown in words and figures for each item listed in the Proposal. In the event of discrepancy, the words shall control.
3. Materials, which are "tax exempt", are those items which are physically incorporated into the facilities constructed for the Town of Addison, as set forth in the Special Provisions. Materials include, but are not limited to purchased items such as water pipe, sanitary sewer pipe, storm drain pipe, etc.

Services, which are "not tax exempt", are those items which are used by the Contractor but are not physically incorporated into the Town of Addison's facility and/or items which are consumed by construction, as set forth in the Special Provisions. Services include, but are not limited to, items such as supplies, tools, skill and labor, the purchase, rental or lease of equipment, etc.

Ronald H. Dalton - President

Name of Person Signing Proposal

Handwritten Signature

Signature of Person Signing Proposal

P.O. Box 210768, Dallas, TX 75211

Address

214-330-5229 / 214-330-5254

Telephone No.

Fax No.

75-2931256

T.I.N. (Tax Identification or Employer's Number)

If BIDDER is:

AN INDIVIDUAL

By _____
(Individual's Name)

(Seal)

doing business as _____

Business address: _____

Phone No. _____

A PARTNERSHIP, Ltd.

By Texas Standard Construction, Ltd.
(Firm Name)

(Seal)

TSC Management
(General Partner)

doing business as Texas Standard Construction, Ltd.

Business address: 5511 W. Ledbetter Dr., Dallas, TX 75236

Mailing: P.O. Box 210768, Dallas, TX 75211

Phone No. 214-330-5229

A CORPORATION

By _____
(Corporation Name)

(State of Incorporation)

By _____
(Name of Person Authorized to Sign)

(Title)

(Corporate Seal)

Attest _____
(Secretary)

Business address: _____

Phone No. _____



A JOINT VENTURE

By _____
(Name)

(Address)

By _____
(Name)

(Address)

(Each joint venture must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.)

SECTION BB
BID BOND

BID BOND

Bidder shall submit a bid bond equal to five percent (5%) of the bid price. Failure to submit a bid bond when required may deem the bid non-responsive. Bid Bonds may be submitted electronically with the executed original provided immediately upon request.

 **AIA** Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

Texas Standard Construction, Ltd.
P.O. Box 210768
Dallas, TX 75211

SURETY:

(Name, legal status and principal place of business)

Great Midwest Insurance Company
800 Gessner Rd, Ste. 600
Houston, TX 77024-4538

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

Town of Addison
5350 Belt Line Rd.
Dallas, TX 75254

BOND AMOUNT: FIVE PERCENT (5%) of Total Amount Bid

PROJECT:

(Name, location or address, and Project number, if any)

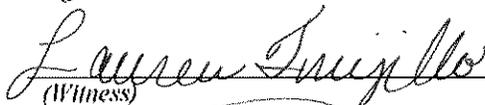
Addison Rawhide Creek Basin Drainage and ADA Improvements from Brookwood to Waterside Brookwood Lane to Waterside Ct., Addison, TX Project Number, if any: 22-75

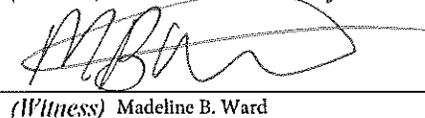
The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

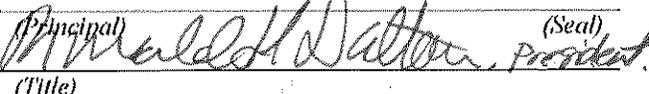
When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 29th day of August, 2022


(Witness)


(Witness) Madeline B. Ward

Texas Standard Construction, Ltd.


(Principal) *(Seal)*
(Title) President

Great Midwest Insurance Company


(Surety) *(Seal)*
(Title) Sean McCauley, Jr., Attorney In Fact

POWER OF ATTORNEY

Great Midwest Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that GREAT MIDWEST INSURANCE COMPANY, a Texas Corporation, with its principal office in Houston, TX, does hereby constitute and appoint:

Sean McCauley, Jr., Claudia Nuñez, Benjamin K. Farley, Sam Duckett, Katie Rooney, Jeff Scott, Bridget Truxillo

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of GREAT MIDWEST INSURANCE COMPANY, on the 1st day of October, 2018 as follows:

Resolved, that the President, or any officer, be and hereby is, authorized to appoint and empower any representative of the Company or other person or persons as Attorney-in-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed Ten Million dollars (\$10,000,000.00), which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed in the Company's sole discretion and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, GREAT MIDWEST INSURANCE COMPANY, has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 11th day of February, 2021.

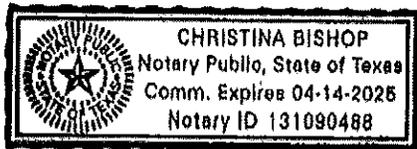


GREAT MIDWEST INSURANCE COMPANY

BY [Signature] Mark W. Haushill President

ACKNOWLEDGEMENT

On this 11th day of February, 2021, before me, personally came Mark W. Haushill to me known, who being duly sworn, did depose and say that he is the President of GREAT MIDWEST INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



BY [Signature] Christina Bishop Notary Public

CERTIFICATE

I, the undersigned, Secretary of GREAT MIDWEST INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Houston, TX this 29th Day of August, 2022.



BY [Signature] Leslie K. Shaunty Secretary

WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

Texas Department of Insurance



Certificate No. 15063

Company No. 07-005785

Certificate of Authority

THIS IS TO CERTIFY THAT

GREAT MIDWEST INSURANCE COMPANY

HOUSTON, TEXAS

has complied with the laws of the State of Texas applicable thereto and is hereby authorized to transact the business of

Fire; Allied Coverages; Inland Marine; Ocean Marine; Aircraft--
Liability & Physical Damage; Accident; Health; Workers' Compensation &
Employers' Liability; Employers' Liability; Automobile--Liability &
Physical Damage; Liability other than Automobile; Fidelity & Surety;
Glass; Burglary & Theft; Forgery; Boiler & Machinery; Credit and
Reinsurance on all lines authorized to be written on a direct basis

insurance within the state of Texas. This Certificate of Authority shall be in full force and effect until it is revoked, canceled or suspended according to law.



IN TESTIMONY WHEREOF, witness my hand and seal of
office at Austin, Texas, this

20th day of December A.D. 2010

MIKE GEESLIN
COMMISSIONER OF INSURANCE

BY

A handwritten signature in black ink, appearing to read "Godwin Ohaechehi".

Godwin Ohaechehi, Director
Company Licensing & Registration

SECTION BQS

BIDDER QUALIFICATION STATEMENT

SECTION BQS

ALL BIDDERS ARE NOTIFIED THAT THE FOLLOWING QUALIFICATION STATEMENT MUST BE COMPLETED AND SUBMITTED WITH THE BID PROPOSAL

CONTRACTOR'S QUALIFICATIONS

The Contractor shall show that he has experience with similar projects that require working on water, sanitary sewer, and storm sewer construction and/or relocation projects working in confined areas in close proximity to many physical features (such as: fences, carports, utility poles, guy lines, gas lines and meters, water lines, sewer manholes and cleanouts, etc.) which will require the Contractor to plan his work efforts and equipment needs with these limitations in mind. The Contractor shall submit a complete list of ALL Municipal and Similar Non-Municipal current and completed projects for the past three (3) years for review. This list shall include the names of supervisors and type of equipment used to perform this work.

BIDDERS QUALIFICATION STATEMENT

**PUBLIC WORKS AND ENGINEERING SERVICES BID NUMBER 22-75, ADDISON
RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM
BROOKWOOD LN TO WATERSIDE CT**

Contractor: Texas Standard Construction, Ltd.

Indicate One: Sole Proprietor Partnership, ^{Ltd.} Other
 Corporation Joint Venture

Name: Ronald H. Dalton Partner: TSC Mangt.

Title: President Title: _____

Address: P.O. Box 210768 Address: P.O. Box 210768

City: Dallas City: Dallas

State & Zip: TX 75211 State & Zip: TX 75211

Phone: 214-330-5229 Phone: 214-330-5229

State and Date of Incorporation, Partnership, Ownership, Etc. Texas 1983

Location of Principal Office: 5511 W. Ledbetter Dr., Dallas, TX 75236

Contact and Phone at Principal Office: Ron Dalton - 214-330-5229

Liability Insurance Provider and Limits of Coverage: See attached Hanover Casualty Company

Workers Compensation Insurance Provider: See attached Texas Mutual Insurance

Surety (Performance and Payment): Great Midwest Insurance Company

Address: 800 Gessner Rd., Ste: 600, Houston, TX 77024-4538

Contact and Phone: Sean McCawley Jr. 214-989-7047



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/30/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Sleeper Sewell Insurance 12400 Coit Road, Suite 1100 Dallas TX 75251-2039		CONTACT NAME: Molly Fortenberry PHONE (A/C No. Ext): (972) 419-7500 FAX (A/C No.): (972) 419-7555 E-MAIL ADDRESS: molly.fortenberry@sleepersewell.com															
INSURED Texas Standard Construction LTD P O Box 210768 Dallas TX 75211-0768		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Hanover Casualty Company</td> <td>41602h</td> </tr> <tr> <td>INSURER B: Allmerica Financial Benefit Insurance (</td> <td>41840</td> </tr> <tr> <td>INSURER C: Hanover Insurance Company</td> <td>22292h</td> </tr> <tr> <td>INSURER D: Travelers Prop Cas Ins Co Amer</td> <td>25674</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER	NAIC #	INSURER A: Hanover Casualty Company	41602h	INSURER B: Allmerica Financial Benefit Insurance (41840	INSURER C: Hanover Insurance Company	22292h	INSURER D: Travelers Prop Cas Ins Co Amer	25674	INSURER E:		INSURER F:	
INSURER	NAIC #																
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INSURER B: Allmerica Financial Benefit Insurance (41840																
INSURER C: Hanover Insurance Company	22292h																
INSURER D: Travelers Prop Cas Ins Co Amer	25674																
INSURER E:																	
INSURER F:																	

COVERAGES CERTIFICATE NUMBER: 21/22 ALS REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			ZLDH44436801	12/20/2021	12/20/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employee Benefits ea empl \$ 1,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			AWDH43790901	12/20/2021	12/20/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP-Basb \$ 5,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			URDH44438901	12/20/2021	12/20/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
D	Excess Liability			EX8S94477721NF	12/20/2021	12/20/2022	Excess Liability 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
 Kevin Edwards/MOLLY *Kevin L. Edwards*



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/13/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Fortis Insurance Partners 9300 Wade Blvd, Suite 101 Frisco, TX 75035 License #: 1502298	CONTACT NAME: Diane Pruitt	FAX (A/C, No): (214)423-2240
	PHONE (A/C, No, Ext): (214)423-3120	E-MAIL ADDRESS: dpruitt@clausainsurance.com
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Texas Mutual Insurance		22945
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Texas Standard Construction Ltd
DBA Texas Standard Construction
PO Box 210768
Dallas, TX 75211

COVERAGES CERTIFICATE NUMBER: 00004307-1610646 REVISION NUMBER: 19

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR L-TR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	AUTOMOBILE LIABILITY ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY					EACH OCCURRENCE \$ AGGREGATE \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N N/A	000 1289663	07/06/2022	07/06/2023	X PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

(PDP)

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Superintendent and Backup Superintendent: (Work Resume - attach additional sheets.) (Safety Record - attached additional sheets; if needed show all verified safety violations.) The superintendent shall be able to communicate in English and not operate any equipment and have not had any verified job safety violations in the past five years. Any variations shall be reviewed by the OWNER for approval or denial. A job site shall be shut down if proper supervision is not provided.

Superintendent Name

Allen Hamilton

Backup Superintendent Name

Ralph Cantu

Safety Record - List ALL Verified Violations for Superintendent and Backup Superintendent with explanation, date and action taken to correct future safety violations:

Superintendent

None

Backup Superintendent

None

Total Number of Employees to be Associated with this Job: 45

Managerial 5 Administrative 5 Professional 2

Skilled 22 Semi-Skilled 28 Other 25

Percentage of work to be done by Bidder's Employees (Based on Dollars Bid): 100%



Texas Standard Construction, Ltd.

08/30/2022

City of Garland

**REF: Addison Rawhide Creek Basin Drainage and Improvements from Brookwood Ln to
Waterside Ct
Project #2022-01C**

Field Superintendent

Ralph Cantu, Onsite Superintendent – (972) 480-2718

Steve Cooper, Superintendent – (214) 532-6467

Allen Hamilton, Superintendent – (214) 808-0838

Ron Dalton, President – (214) 502-6059

Type(s) of work to be done by Bidder's Employees (examples: concrete paving, structural concrete, waterlines, sanitary sewer lines, storm pipe, storm inlets, excavation, lime, bridge fencing, etc.)

Remove and replace all RCP, remove and replace all concrete, excavate, all structural related concrete/pavement items, and all landscape. all related work/pay items for Addison Rawhide Creek Project.

Access to Tools and Equipment: Percent Owned 100% Percent Rented

Number of Years in Business as a Contractor on Above Types of Works: 39 yrs.

Type(s) of Work to be done by Sub-Contractors

Include Name, Address, and Phone Number of Sub-Contractor.

Use additional sheets if needed.

Type of Work

Sub-Contractor

None

List Equipment to be used on this project (Make/Model/Age of Major Equipment) Any Equipment not listed shall be reviewed by the OWNER for approval or rejection prior to use of Equipment on this project. (Use additional sheets if necessary)

Type of Equipment

Make

Model

Age (years)

See attached.

**Texas Standard Construction, Ltd.
Equipment/Rolling Stock Schedule
Heavy Equipment**

8/29/2022
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Unit #	Year	Manufacturer	Model	Description	Serial #
705	2008	Bobcat	S330	Skid Steer Loader w/bucket, Aux. Hyd.	A02012015
431	2010	Bobcat	S300	Skid Steer Loader w/bucket, Aux Hyd.	A5GP36807
600	2010	Bobcat	S330	Skid Steer Loader w/bucket, Aux. Hyd.	A5HA35605
418	2014	Bobcat	S70	Skid Steer Loader w/bucket E-CAB, Aux. Hyd.	B38V11102
0	2012	Broce	RJT350	Street Sweeper Broom, E-CAB	407534
319	2014	Broce	CRT350	Street Sweeper Broom, E-CAB	408995
0	2015	Broce	RJT350	Street Sweeper Broom, E-CAB	409174
309	2015	Broce	RJT350	Street Sweeper Broom, E-CAB	409047
0	1983	Caterpillar	623B	Motor Scraper	46P01899
436	1996	Caterpillar	RR250	Recycler/Reclaimer	6ED00430
558	1996	Caterpillar	SS250	Soil Stabilizer	6DD00388
328	2002	Caterpillar	SS250B	Soil Stabilizer	5GR00235
344	2002	Caterpillar	RM250C	Soil Stabilizer/Reclaimer	CATRM250JAWG00245
563	2005	Caterpillar	RM-250C	Soil Stabilizer/Reclaimer	CATRM250PAWG00386
332	2005	Caterpillar	365CL	Hydraulic Excavator w/bucket	CAT0365CPMCS00232
325	2005	Caterpillar	CP563E	Vibratory Padfoot Compactor 6 Cyl., Diesel, Dozer, 84" Drum, A/C Cab,	CATCP563KCNT00975
602	2005	Caterpillar	345CL	Hydrostatic Drive, 23.1x26	CAT0345CKPJW00491
0	2006	Caterpillar	365CL	Hydraulic Excavator w/bucket	CAT0365CTMCS00276
0	2006	Caterpillar	320CLU	Hydraulic Excavator w/bucket	CAT0320CTPAC00961
0	2006	Caterpillar	365CL	Hydraulic Excavator w/bucket	MCS00317
339	2006	Caterpillar	CP563E	Vibratory Padfoot Compactor	CATCP563ECNT01196
348	2006	Caterpillar	330DL	Hydraulic Excavator w/bucket	CAT0330DCB6H00109
626	2006	Caterpillar	385CL	Hydraulic Excavator w/bucket	CAT0385CLEDA00258
350	2007	Caterpillar	321C LCR	Hydraulic Excavator w/bucket	CAT0321CVMCF01123
542	2007	Caterpillar	345CL	Hydraulic Excavator w/bucket	CAT0345CLPJW02023
307	2008	Caterpillar	CP433E	Vibratory Padfoot Compactor	CATCP433PASN00914
322	2008	Caterpillar	330DL	Hydraulic Excavator w/bucket	CAT0330DCMWP02555
422	2008	Caterpillar	320 DLRR	Hydraulic Excavator w/bucket	CAT0320DVXCK00265
631	2008	Caterpillar	320DLRR	Hydraulic Excavator w/bucket	CAT0320DAXCK00364
441	2009	Caterpillar	320DLRR	Hydraulic Excavator w/bucket	CAT0210DPXCK00504

**Texas Standard Construction, Ltd.
Equipment/Rolling Stock Schedule
Heavy Equipment**

8/29/2022
2:52 PM

Unit #	Year	Manufacturer	Model	Description	Serial #
326	2010	Caterpillar	336DL	Hydraulic Excavator w/bucket	CAT0336DTW3K00769
423	2010	Caterpillar	320D LRR	Hydraulic Excavator w/bucket	CAT0320DAXCK00509
444	2010	Caterpillar	336DL	Hydraulic Excavator w/bucket	CAT0336DTW3K01226
341	2011	Caterpillar	345DL	Hydraulic Excavator w/bucket	CAT0345DTEEH01125
0	2012	Caterpillar	CS533E	Vibratory Smooth Roller	CATCS533VBZE02780
340	2013	Caterpillar	CS44	Tandem Vibratory Smooth Compactor	CAT0CS44CM4C00428
546	2013	Caterpillar	CB24XT	Tandem Vibratory Smooth Compactor	CAT0CB24E24002503
300	2015	Caterpillar	924K	Wheel Loader w/QC bucket, Aux. Hyd.	CAT0924KEPWR03991
313	2007	Caterpillar	345CL	Hydraulic Excavator w/bucket	CAT0345CAPJW01453
0	2004	Cimiline	110D	Hot Pour Rubber Joint Sealer	4110169
0	2010	CZM	EX70K	Crawler Excavator Foundation Drill	L5K-00102
0	2017	Hamm	HD10CVV	Tandem Vibratory Smooth Compactor	H1994766
0		John Deere	5045E	Farm Tractor Loader 4x4, 50hp, Equipped with ROPS, Front Loader W/GP Bucket, 3 pt. hitch, PTO	104730
0	2008	Komatsu	PC228USLC-3	Excavator w/bucket, Aux. Hyd.	KMTPC161H02041204
610	2009	Takeuchi	TB180FR	Midi Excavator, E-CAB, A/C Aux. Hyd., Thumb w/Hyd. Blade	178400443
302	2007	Takeuchi	TB153FR	Excavator w/bucket, Aux. Hyd./Thumb w/Hyd. Blade	158301623
320	2011	Takeuchi	TB153FR	Midi Excavator w/bucket, Aux. Hyd., Hyd. Blade	158301123
311	2011	Takeuchi	TB180FR	Midi Excavator w/bucket, Aux. Hyd., Hyd. Blade	178400653
561	2013	Takeuchi	TB285	Midi Excavator w/bucket, E-CAB, Aux. Hyd., Hyd. Blade	185001288
638	2013	Takeuchi	TB180FRCR	Midi Excavator, E-CAB, Aux. Hyd./Thumb, w/Hyd. Blade	178400850
0	2015	Takeuchi	TB280FR	Midi Excavator w/bucket, E-CAB, Aux. Hyd., Hyd. Blade	178500029
316	2013	Takeuchi	TB180FR	Midi Excavator, E-CAB, A/C, Aux. Hyd. Thumb, W/Hyd. Blade	178401101
406	2016	Takeuchi	TL12 2 Spd	Skid Steer Track Loader E-CAB w/bucket, Aux. Hyd.	201202506
407	2016	Takeuchi	TL12 2 Spd	Skid Steer Track Loader E-CAB w/bucket, Aux. Hyd.	201202642
408	2016	Takeuchi	TL12 2 Spd	Skid Steer Track Loader E-CAB w/bucket, Aux. Hyd.	201202428
323	2017	Takeuchi	TL12R2-CRRP	Skid Steer Track Loader E-CAB w/bucket, Aux. Hyd.	412100190
0	2012	Vermeer	D16X20	Series II Crawler Directional Drill	1VR6170S4C1000602
0	2014	Broce	KR-350	Sweeper, equipped with EROPS, air, push blade, sweeper, water system	409843

Texas Standard Construction, Ltd. Equipment/Rolling Stock Schedule Heavy Equipment

Unit #	Year	Manufacturer	Model	Description	Serial #
		Grove	RT530E	Rough Terrain Crane 4X4, powered by Cummins, 6 cylinder diesel engine, EROPS, 4-section 95ft. telescoping boom, single winch, PAT DS350 LMI system, hook block, 20.5-25 tires.	220914
		Caterpillar	963LGP	Crawler Loader powered by Cat diesel engine, equipped with EROPS, heat, 4 in 1 front bucket, 22in. Pads	220914
				Hydraulic Excavator powered by Cat diesel engine, equipped with Cab, air, rearview camera, pattern changer, front blade, combination auxiliary hydraulics, 18in. Steel tracks w/rubber pads, new digging ducket w/hydraulic thumb	FJX08918
	2017	Caterpillar	308E2CR		
		New Holland	T5040	Unused agricultural tractor 4x4 powered by diesel engine, 85hp, equipped with ROPS, 12 speed forward, 12 speed reverse, 2 hydraulic remotes, 3 pt. hitch, PTO, 12.4 R24 front rubber, 18.4R30 rear, front and rear weights.	134
				Hydraulic Excavator powered by Cat diesel engine, equipped with Cab, air, heat, 12ft 10in stick, 34in pads, hydraulic coupler, digging bucket, long undercarriage.	CAT0330DAMWV02856
	2008	Caterpillar	330D		
	2008	Caterpillar	324D	Hydraulic Excavator powered by Cat diesel engine, equipped with Cab, air, heat, digging bucket, long undercarriage. H6490	CAT0324DTJJG01128
	2016	Caterpillar	924K	Wheel Loader	CAT0924KLHJF00768
	2016	Caterpillar	924K	Wheel Loader	CAT0924KCHJF00765
	2020	Caterpillar	262D3	Skid Steer	202045
	2020	Caterpillar	262D3	Skid Steer	202043
	2021	Caterpillar	259D3	Rubber Tracked Skid Steer	JCW915656
	2016	Hamm	HD13VV	Asphalt Roller	13893
	2019	Hamm	D16X20	Asphalt Roller	2359
	2009	Mauldin	1550C	Asphalt Paver	2055
	2006	Caterpillar	D5NLGP	Pipe Layer	AKD01959

List of ALL Municipal and Similar Non-Municipal current and completed projects for the past three (3) years. (Use additional sheets if necessary.)

1. Project: Please see attached.

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

2. Project: _____

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____



Texas Standard Construction, Ltd.

August 30, 2022

COMPLETED CONTRACT REFERENCE SCHEDULE

**CITY OF DALLAS, DEPARTMENT OF PUBLIC WORKS,
320 Jefferson Blvd., Dallas, TX 75203**

- | | | |
|-----|---|------|
| 1) | Contact: Gbenro Oyekanmi, P.E., 214-948-4490, \$988,473.37
Street Reconstruction Group 12-464, PB12S418, PB12S423 | 2018 |
| 2) | Contact: Gbenro Oyekanmi, P.E., 214-948-4490, \$3,196,267.75
Street Reconstruction Group 12-624, PB12S308, PB12S312 | 2018 |
| 3) | Contact: Lap Trinh, 214-948-4258, \$2,006,959.57
Colorado Blvd. / Beckley Ave. Sidewalk Enhancements PB06P791 | 2018 |
| 4) | Contact: Lap Trinh/Mortina Hill, 214-948-4032, \$6,782,507.00
Bishop Avenue from Jefferson Blvd. to 8 th St., PB12S390 | 2015 |
| 5) | Contact: Mortina Hill, 214-948-4032, \$2,058,475.32
Jefferson Blvd. Improvements from Beckley Ave. to Commerce, PB12S295 | 2014 |
| 6) | Contact: Liong So, P.E./Gbenro Oyekanmi, P.E., 214-948-4490, \$3,774,688.96
Goodnight Ln. Phase I from Joe Field Rd. to Royal Ln. | 2016 |
| 7) | Contact: Horacio Pizzarello, P.E., 214-948-5350, \$7,186,508.92
N. Beckley Ave. to Commerce, PB98N972 | 2014 |
| 8) | Contact: Lap Trinh, 214-948-4258, \$1,068,126.95
Adams Avenue Tenth St. to Davis St., PB12S600 | 2017 |
| 9) | Contact: Jesse Dillard, P.E., 214-670-4197, \$14,431,638.09
Street Group 06-618, Riverfront Blvd. / Continental Ave.
PB06U783, PB06U215 | 2015 |
| 10) | Contact: Lap Trinh, 214-948-4258, \$5,040,612.46
Cadiz St. from Riverfront Blvd. to S. Lamar St., PB06U778 | 2018 |
| 11) | Contact: Wilkens Engmann, P.E., 214-948-4001, \$1,664,669.27
Superior St. from W. Clarendon to Catherine, PB12S4 | 2014 |
| 12) | Contact: Lonnie Geiger, P.E., 214-948-4126, \$460,000.00
White Rock Creek Silt Removal, SDMFC006 | 2016 |

- 13) Contact: Bogumil Nosek, P.E., 214-346-6235, \$2,738,420.73 2016
Victory Ave. & N. Houston St. Conversion to Two Way Traffic
- 14) Contact: Liong So, P.E./Gbenro Oyekanmi, P.E., 214-948-4490, \$730,723.60 2016
East Dallas Veloway Phase II, PB06P692
- 15) Contact: Cornelio Rivera P.E., 214-948-4679, \$1,844,062.09 2015
Sylvan Ave. from IH30 to Ft. Worth Ave., PB03P345
- 16) Contact: Wilken Engmann, RPLS, 214-948-4001, \$3,731,436.20 2015
Street Group 06-456 Polk St., PB06U764, PB06U765
- 17) Contact: Jaime Gomez, P.E., 214-948-4617, \$2,827,689.55 2014
Street Group 06-450, Westmount / Marcell, PB06U281, PB06U304
PB06U293, PB06U305
- 18) Contact: Jaime Gomez, P.E., 214-948-4617, \$1,360,431.14 2013
Greenville Avenue Reconstruction, PB06U737
- 19) Contact: Syed Muntajibuddin, P.E./Gbenro Oyekanmi, P.E. , 214-948-4490, 2011
\$4,407,506.72, Street Group 06-622, Fordham Rd. /Southwell St., PB06U328,
PB06U345
- 20) Contact: Syed Muntajibuddin, P.E./Gbenro Oyekanmi, P.E., 214-948-4520, 2013
\$2,153,896.73, Street Group 06-619, Titan Dr. /Pulaski St., PB06U349,
PB06U339
- 21) Contact: Jaime Gomez, P.E., 214-948-4617, \$345,882.30 2013
Congo St. from S. Carroll Ave. to Bank St., PBNIP015
- 22) Contact: Mathew Ittoop, P.E., 214-948-4669, \$159,298.55 2012
Sidewalk & Partial St. Reconstruction at DART Crossings
- 23) Contact: Lap Trinh, 214-948-4258, \$152,785.24 2012
Herbert St. – Canada Dr. to Toronto St., PBCD0003
- 24) Contact: Kassem Elkhalil, P.E., Matthew Ittoop, P.E., 214-948-4126 2012
\$729,954.95, Ranier St. /Woodway St., 06-451
- 25) Contact: Cecila Rutherford, P.E., 214-948-4631, \$270,817.00 2012
Fair Oaks Bridge Improvements
- 26) Contact: Matthew Ittoop, P.E., 214-948-4669, \$606,645.75 2012
Riseden Dr., Winding Rose Trail
- 27) Contact: David Recht, P.E., 214-670-7748, \$446,794.60 2012
Hi-Line Sustainable Development Infrastructure, Phase 2
- 28) Contact: Yousuf Bawany, P.E./Gbenro Oyekanmi, P.E., 214-948-4490, 2012
\$103,929.00, Vista View Storm Sewer Drainage Relocation, PBSWM0061
- 29) Contact: Wilson Kakembo, P.E./Gbenro Oyekanmi, P.E., 214-948-4490, 2012
\$164,458.87, Alley Paving & Drainage Improvements Grp. 06-1124

- 30) Contact: Samir Goel, P.E., 214-948-5350, \$567,556.75 2011
Street Petition Group #06-448, Bagley St./Goodman St.
- 31) Contact: Milton Brooks, P.E., 214-948-4250, \$238,652.39 2011
Culvert Improvements, Coombs Creek, Rugged Branch,
PB03R694, PB03R716
- 32) Contact: Thomas Morris, P.E., 214-948-4680, \$301,465.00 2011
Stedman Paving Petition, PB06U303
- 33) Contact: James Dowdy, 214-948-4287, Kassem Elkhilil, P.E., 2011
214-948-4126 West Dallas Sidewalk Group, \$461,717.52
- 34) Contact: Syed Muntijaddin, P.E./Gbenro Oyekanmi, P.E. 214-948-4490, 2011
\$506,010.02, Erosion Control 06-800
- 35) Contact: Wade Brooks, P.E. /John Levitt, P.E. 214-638-0500 2010
\$2,939,875.00, Dallas Love Field Airport
Tom Braniff Drive Improvements, Phase I, II & III.
- 36) Contact: Liong So, P.E./Gbenro Oyekanmi, P.E., 214-948-4490 2010
\$1,756,081.39, Bridge Rehabilitation Group 09-01
- 37) Contact: Lap Trinh, 214-948-4258, \$902,829.00 2010
Elm Street from Akard Street to Ervay Street
- 38) Contact: Barbara Reading, P.E., 214-948-4244, \$2,889,332.50 2009
Dallas City Center Streets, N/S Streets, Streetscape Extension 2009
- 39) Contact: Jay Macaulay, AIA, 214-948-4529, \$392,091.50 2008
Street and Streetscape at Colorado & Zang
- 40) Contact: Pankaj Shah, AIA, 214-948,4554, \$2,256,522.80 2007
Fire Station Storm Water Phase II
- 41) Contact: Kassam Elkhilil, P.E. 214-948-4126, \$195,865.00 2006
Thomas/Tolbert Street Improvements
- 42) Contact: Bob Durham, 214-948-4522, \$104,500.00 2006
Farmers Market Drainage Improvements
- 43) Contact: Maria Betancourt, E.I.T., 214-948-4631, \$523,530.00 2006
State Thomas TIF Westside Streetscape Improvements
- 44) Contact: Maria Betancourt, E.I.T., 214-948-4631, \$224,582.00 2006
City Place TIF West Village, Streetscape Improvements
- 45) Contact: Milton Brooks, P.E., 214-948-4250, \$139,000.00 2006
Manus Drive Erosion Control, #PB03R707
- 46) Contact: Maria Betancourt, E.I.T., 214-948-4032, \$335,000.00 2006
Blue Ridge Blvd., #PB03R41

- 47) Contact: Chad Kopecki, 214-948-4258, \$590,000.00 2005
San Jose Avenue, #PB3R459
- 48) Contact: Ashok Patel, P.E., 214-948-4124, \$390,000.00 2005
La Barba Circle, #PB03R295
- 49) Contact: Maria Betancourt, E.I.T, 214-948-4631, \$217,000.00 2004
Woodside Plaza Phase IVC, #PB001277
- 50) Contact: Maria Betancourt, E.I.T., 214-948-4631, \$210,000.00 2004
Gables Ravello Streetscape, #PB001294
- 51) Contact: Mufid Abdulqader, P.E., 214-948-4015, \$340,000.00 2001
Alley Group 98-1112, Contract #PB98N623 and N640
- 52) Contact: Melvin Haley, 214-957-9741, \$1,389,000.00 2001
Concrete. Base Repairs Group 4-2000, PB001199
- 53) Contact: Milton Brooks, P.E., 214-948-4250, \$895,000.00 2000
Thomas Ave., Hugo St. and Ellis St. Improvements, #PB001155
- 54) Contact: Kassem Elkhilil, P.E., 214-948-4126, \$152,000.00 1999
Huff Trail / Redstart Ln. Alley Reconstruction, #PB98N647

CITY OF DALLAS, DWU, 2121 Main St. Room 300, Dallas, TX 75201

- 1) Contact: Jun Battad, PM, 214-948-4257, \$5,300,000.00 2006
Various Street Cut Repairs, Resolution #03-1149
- 2) Contact: Michael York, PM, 214-948-4251, \$2,104,280.00 1999
Various Street Cut Repairs, #98-439, 98-440
- 3) Contact: Haroon Abdoh, P.E. 214-948-4308, \$5,651,049.10 2021
Trinity Skyline Trail from Sylvan Ave. to Campion Trail

CITY OF DALLAS, PARK & RECREATION, Rm. 6FN, City Hall, Dallas, TX 75201

- 1) Contact: Richard Ritz, 214-670-4104, \$718,595.00 2019
Moss Glen Park Site Improvements
- 2) Contact: Richard Stauffer, P.E., 214-670-4105, \$670,341.50 2009
Valley View Park
- 3) Contact: Thom Hubacek, 214-670-4995, \$140,250.00 2009
Pike Park
- 4) Contact: Sugie Dotson, 214-670-4282, \$290,427.00 2008
Coombs Creek Trail Improvements
- 5) Contact: John Reynolds, 214-670-5454, \$124,592.00 2006
Northwood Park
- 6) Contact: Richard Ritz, 214-670-4104, \$37,500.00 2006
K.B. Polk Park

- | | | |
|-----|--|------|
| 7) | Contact: Richard Ritz, 214-670-4104, \$150,000.00
B.B. Owen Park | 2006 |
| 8) | Contact: Richard Ritz, 214-670-4104, \$189,000.00
Five Mile Creek, Erosion Control Improvements #04-2035 | 2004 |
| 9) | Contact: Richard Stauffer, P.E., 214-670-4105, \$1,388,790.00
White Rock Lake – E. Lawther Dr. Reconstruction | 2002 |
| 10) | Contact: Wayne Tarpley, \$166,000.00
Deerpath Shelter and Fence | 2000 |
| 11) | Contact: Bruce Thornton, 214-670-8823
Merrifield Park Paving Improvements, \$90,000.00 | 2000 |

CITY OF DESOTO, 211 E. Pleasant Run Rd., DeSoto, TX 75115

- | | | |
|----|---|------|
| 1) | Contact: Corey Lawson, 972-230-6917, \$185,222.50
Faith Bible Church Parking Lot Renovations | 2014 |
| 2) | Contact: Corey Lawson, 972-230-6917, \$1,411,463.52
2013 Repair & Replacement Phase II, Water/Wastewater Street Improvements | 2013 |
| 3) | Contact: Corey Lawson, 972-230-6917, \$1,268,195.58
2013 Repair & Replacement Phase I, Water/Wastewater Street Improvements | 2013 |
| 4) | Contact: M. Renee Johnson, Managing Director, 972-230-9625, \$69,250.00
Windmill Hill Nature Trail Modifications | 2008 |
| 5) | Contact: Tom Johnson, P.E., 972-274-2489 \$652,512.40
Phase II Storm Drainage Improvements @ 4 locations. | 1999 |
| 6) | Contact: Elizabeth Quilici, P.E., 972-230-7309, \$6,123,005.49
Chattey Road Improvements | 2022 |

CITY OF DUNCANVILLE, 203 E. Wheatland Rd., Duncanville, TX 75116

- | | | |
|----|--|------|
| 1) | Contact: Steve Miller, P.E., 972-780-5000, \$870,800.00
North Branch Tributary of Mauk Branch | 1999 |
|----|--|------|

CITY OF GRAND PRAIRIE, 300 W. Main St., Grand Prairie, TX 75116

- | | | |
|----|--|------|
| 1) | Contact: George Fanous, P.E., 972-237-8143, \$639,647.59
Miscellaneous Wastewater Replacements, W.O. #617.120 | 2020 |
| 2) | Contact: George Fanous, P.E., 972-237-8143, \$1,993,701.59
Main St. and Jefferson Area Storm Drain Improvements, W.O. #614.52 | 2017 |
| 3) | Contact: George Fanous, P.E., 972-237-8143, \$428,704.36
Fargo Outfall Rehabilitation, W.O. #612-118 | 2017 |
| 4) | Contact: Shirang Golhar, P.E., 2314-951-0807, \$306,217.50
2013 Outfall Rehabilitation & Improvements, W.O. #613.51 | 2014 |

- 5) Contact: Bradley Erickson, 972-237-8472, \$325,024.00 2011
Drainage Improvements at Various Locations

CITY OF MEQUITE, 1515 N. Galloway Ave., Mesquite, TX 75149

- 1) Contact: James Palmer, P.E., John Helton, 214-517-8817, \$219,669.50 2011
Oates Drive Bridge Repair

CITY OF RICHARDSON, PUBLIC WORKS, 411 W. Arapaho Rd., Richardson, TX 75080

- 1) Contact: Brad Bernard, P.E., 972-744-4279, \$38,753.00 2012
Cottonwood Park Lake Spillway Improvements
- 2) Contact: Greg Dismore, 972-744-4471, \$50,000.00 2012
Various Water Meter Taps
- 3) Contact: Jim Dulac, P.E., 972-744-4273, \$120,531.00 2010
Spring Creek Drainage Crossing at Sherrill Park
- 4) Contact: Padma Patla, P.E., 972-744-4276, \$742,080.00 2008
Arapaho Road Screening Wall
- 5) Contact: Jim Dulac, P.E., 972-744-4273, \$43,940.79 2006
Nantucket @ Melrose Emergency Erosion & Sewer Repair
- 6) Contact: Jim Dulac, P.E., 972-744-4273, \$354,000.00 2004
Beltline / Plano Rd. Intersection Improvement, PO#041850
- 7) Contact: Henry Drexel, P.E., 972-744-4100, \$404,000.00 2003
2001 Erosion Repair Project Phase II #94-02
- 8) Contact: Eric Hemphill, P.E., 972-744-4286, \$1,034,000.00 2002
Intersection Improv. Arapaho @ Greenville Ave., #54-01
- 9) Contact: Henry Drexel, P.E., 972-744-4100, \$560,000.00 2002
Transportation Sys. Improve. Project #2,3,7, & 23 - #65-01
- 10) Contact: Eric Hemphill, P.E., 972-744-4286, \$352,000.00 2002
2002 Hazardous Sidewalk Repair Phase I, #121-01
- 11) Contact: Stewart Hempel, AIA, 972-744-4286, 109,686.25 2001
Southwest Entry Features
- 12) Contact: Stewart Hempel, AIA, 972-744-4286, \$434,150.00 2000
Marlborough Square/Yale Place

DALLAS COUNTY COMMUNITY COLLEGE DISTRICT

- 1) Contact: Khasion W. Reed, E.I.T. 972-860-4002, \$707,594.00 2010
Vincent Price 972-860-4601
Brookhaven College Parking Lot Expansion #11782

TRINITY RIVER AUTHORITY OF TEXAS, 5300 S. Collins St., Arlington, TX 76018

- 1) Contact: Kelly Logsdon, 817-493-5151, \$420,676.00
Frazier Dam Rehabilitation / Erosion 2009

CITY OF LANCASTER, 211 N. Henry, Lancaster, TX 75146

- 1) Condemed Resident Demolition, \$65,000.00 2006

THE COLONY, PUBLIC WORKS, 5572 N. Colony Blvd., The Colony, TX 75056

- 1) Contact: Abel Saldana, P.E., 972-625-2741, \$800,000.00 1999
Concrete Pavement Improvements Contact #67-99-03

NORTH DALLAS TOLLWAY AUTHORITY, 5900 W. Plano Pkwy. #100, Plano, TX 75093

- 1) Contact: Mike Dillow, 214-224-2139, \$117,355.50 2007
Stream 6D3 Drainage
- 2) Contact: Mark Bouma, P.E., 214-461-2000, \$1,791,000.00 2001
Widening of Mainlane Toll Plaza #2, Section VII, DNT-362

CITY OF PLANO, PUBLIC WORKS, P.O. Box 860358, Plano, TX 75086

- 1) Contact: Steve Spencer, P.E., 972-769-4140, \$1,334,278.00 2006
2003-2004 Arterial Concrete, Project. #54-90
- 2) Contact: Steve Spencer, P.E., 972-769-4140, \$629,000.00 2004
2003-2004 Residential Slab Replacement
- 3) Contact: James E. Caswell, P.E., 972-941-7152 2004
Pitman Creek Erosion Control, CIP #70107

DFW INTERNATIONAL AIRPORT, 3200 E. Airfield Dr., DFW Airport, TX 75261

- 1) DFW O & M Channel Maintenance, \$208,000.00 2006
Contact: Dennis Purcell, 972-574-0217 Contract # 9001771
- 2) North Foreign Trade Zone Ductbank, \$434,949.32 2005
Contact: Robert Hernandez, 972-574-6610, cell 972-948-6993
Contract #9001723
- 3) Contact: Joe Lovelady, 972-948-7246, 972-574-8762, \$1,031,685.00 2005
DFW Channel Rehabilitation, Contract #9001732

DALLAS COUNTY, 509 Main St., Records Building 6th Floor, Dallas, TX 75201

- 1) Contact: Abel V. Saldana, P.E., CFM, 214-653-6240, \$705,262.00 2017
Wilmer Pecan Street Paving Improvements, Project No. 6-CD03-M
- 2) Contact: Irvin Griffin, P.E., 214-653-6164, \$340,000.00 2005
CMAQ Intersection Project, #2001-111-1536

- 3) Contact: Tewodros Andargie, P.E., CFM, 214-653-6435, \$7,812,064.89 2019
Wintergreen Road, Project No. 47302

UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER

- 1) Contact: Cheryl Sewell, 214-648-2012, \$912,912.00 2002
O'Donnell Memorial Grove

**UPPER TRINITY RIVER REGIONAL WATER DISTRICT, 900 N. Kealy Ave.,
Lewisville, TX 75067**

- 1) Contact: Kurt J. Staller, P.E., 972-219-1228, \$2,800,663.00 2019
Water Main Relocations and Modifications FM 720

ARMY AIRFORCE EXCHANGE

- 1) Contact: Grace-Perez Martinez, 214-638-0500, \$293,875.00 2006
Parking Lot Expansion

**VALWOOD IMPROVEMENT AUTHORITY, 1430 Valwood Pkwy., Suite 160,
Carrollton, TX 75006**

- 1) Contact: Pat Canuteson, 214-803-3492, \$546,351.60 2007
Levee Improvements Project – Phase 1

CURRENT CONTRACT REFERENCE SCHEDULE

CITY OF CEDAR HILL, 285 Uptown Blvd., Cedar Hill, TX 75104

- 1) Contact: Steve Shell, P.E., 214-587-6148, \$232,067.93
Drainage Improvements to Serve the Parkerville EST Overflow

CITY OF COLLEYVILLE, 100 Main Street, Colleyville, TX 76034

- 1) Contact: Cory Lawson, Const. Manager, 817-503-1093, \$533,111.02
Project 5: Quails Path Sanitary Sewer Line Replacement

CITY OF CELINA, 405 W. Walnut Street, Celina, TX 75009

- 1) Contact: Jonathan Gan, Const. Engineer, 214-871-3311, \$597,966.65
The Outer Loop EBFR/Light Farms Way Connection

II. Supervision List:

Ronald H. Dalton, President -	Managed TSC jobs for 39 years.
Sam Dalton, Vice-President -	Managed TSC jobs for 39 years.
Steve Cooper, Superintendent -	Supervision for 32 years.
Tomas Hernandez, Superintendent -	Supervision for 29 years.
Allen Hamilton, Project Manager -	Managed TSC jobs for 7 years.
Texas Master License Electrician -	Master Electrician for 32 years.
Sherman Griffin, Project Estimator -	Estimator for 41 years.

General Liability Insurance Information:

Sleeper Sewell Insurance Agency
Molly Fortenberry
12400 Coit Rd. Ste. 1100
Dallas, Texas 75251
972-419-7500

Sincerely,



Ronald H. Dalton, President

08-30-2022

Date

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

3. Project: _____

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

4. Project: _____

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

5. Project: _____

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

6. Project: _____

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

7. Project: _____

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

8. Project: _____

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

9. Project: _____

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

10. Project: _____

Current Status: _____

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _____

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _____

Project Description: _____

Owner/Agency: _____

Year Built: _____ Contract Price: _____

Contact Person: _____ Phone: _____

Trade references (List Company, Address, Contact Person, and Phone):

Bank References (List Institution, Address, Contact Person, and Phone)

Claims and Suits (if the answer to any of the following questions is yes, please attached details):

1. Has your organization ever failed to complete any work awarded to it? No
2. Are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or officers? None
3. Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? No
4. Within the last five (5) years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? No

I, Ronald H. Dalton, being duly sworn deposes and says that the information

provided herein is true and sufficiently complete so as not to be misleading.

Date this 30th day of August, 2022.

Name of Organization: Texas Standard Construction, Ltd.

By: Muraloff Dalton PRESIDENT

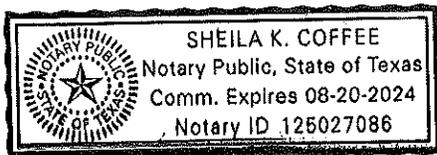
Title: President

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME the undersigned authority, on this day personally appeared Ronald H. Dalton, President, known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 30th day of August 2022.



Sheila K. Coffee
Notary Public in and for Dallas County, Texas

SECTION CSA

CONSTRUCTION SERVICES AGREEMENT

CONSTRUCTION SERVICES AGREEMENT
[ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM
BROOKWOOD LN TO WATERSIDE CT - PROJECT #2022-03-C]
(Bid # 22-75)

This CONSTRUCTION SERVICES AGREEMENT ("Agreement") is made as of the Effective Date by and between _____, hereinafter called "Contractor", and the **Town of Addison, Texas**, hereinafter called "City".

RECITALS

WHEREAS, City desires Contractor to perform certain work and services set forth in Section 1 (the "Scope of Services"), and

WHEREAS, Contractor has expressed a willingness to perform said work and services, hereinafter referred to only as "services", specified in the Contract Documents and Section 1 of this Agreement.

NOW, THEREFORE, for and in consideration of the covenants and promises made one to the other herein, City and Contractor agree as follows:

Section 1. Scope of Services

Upon issuance of a written notice to proceed by City, Contractor agrees to provide to City the necessary services, labor, materials, equipment and supplies to perform the _____ (the "Project"), such services being more fully described herein and pursuant to the plans and specifications identified in the Contract Documents.

Section 2. Term of Agreement

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and shall continue until Contractor completes the services required herein to the satisfaction of City and has been paid in full by City, unless sooner terminated in conformance with this Agreement.

Section 3. Contract Documents

(a) This Agreement is a part of the "Contract Documents", which include:

- (1) This Agreement, including all exhibits and addenda hereto;
- (2) City's plans, specifications, and all other contract documents for the Project contained in City's Bid # 22-75;
- (3) City's written notice(s) to proceed to the Contractor;
- (4) Properly authorized change orders;
- (5) Contractor's Bid Proposal ("Proposal" and/or "Response"); and
- (6) Any other materials distributed by the City that relate to the Project.

In the event there exists a conflict between any term, provision and/or interpretation of the Contract Documents, the documents shall take precedent and control in the order listed above in this section (which shall supersede any conflicting provision concerning priority of contract documents contained in the Bid Packet). If discrepancies are found that may impact Contractor's performance of the services for the Project, it shall be the Contractor's obligation to seek clarification as to which requirements or provisions

control before undertaking any work on that component of the Project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the Project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the Project.

Section 4. Contractor Obligations

(a) Performance of Services. To the extent reasonably necessary for Contractor to perform the services under this Agreement, Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that Contractor may deem proper to aid or assist in the performance of the services under this Agreement with the prior written approval of City. The cost of such personnel and assistance shall be a reimbursable expense to Contractor only if authorized in writing in advance by City. Unless otherwise agreed, Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the Scope of Services.

(b) Quality Materials. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words that so applied have well known, technical or trade meaning shall be held to refer to such recognized standards. Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all materials, construction, installation and other services furnished by Contractor under this Agreement. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in the installation and construction of the Project components to conform as shown in the Project drawings and specifications.

(c) Additional Services. Payment for extra work shall be as agreed in the work order. Should City require additional services not included under this Agreement, Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by City; and without decreasing the effectiveness of the performance of services required under this Agreement. All minor details of the work not specifically mentioned in the Scope of Services or Contract Documents but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are set forth in this Agreement. Contractor will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the terms "extra work" and "additional services" as used in this Agreement shall be understood to mean and include all work that may be required by City to be done by Contractor to accomplish any alteration or addition to the work as shown on the Project plans and drawings. It is agreed that Contractor shall perform all extra work under the direction of the City's representative when presented with a written work/change order signed by the City's representative, subject, however, to the right of Contractor to require written confirmation of such extra work order by City. No claims for extra services, additional services or changes in the services whatsoever, including any change in pricing or time for performance related to the services will be made by Contractor without first obtaining the City's written agreement and approval of a work/change order reflecting the same.

(d) Independent Contractor. It is understood and agreed by and between the parties that Contractor, while performing under this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with Contractor's actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. There is no intended third-party beneficiary to this Agreement.

(e) Inspection of Records. Contractor grants City and its designees the right to audit, examine or inspect, at City's election, all of Contractor's Records relating to the performance of services under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or inspection of Contractor's Records may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Contractor agrees to retain Contractor's Records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "Contractor's Records" shall include any and all information, materials and data of every kind and character generated as a result of the services under this Agreement. City agrees that it will exercise its right to audit, examine or inspect Contractor's Records only during regular business hours. Contractor agrees to allow City and its designees access to all of Contractor's Records, Contractor's facilities and the current or former employees of Contractor, deemed necessary by City or its designee(s), to perform such audit, inspection or examination.

(f) Certification of No Conflicts. Contractor hereby warrants to the City that Contractor has made full disclosure in writing of any existing or potential conflicts of interest related to Contractor's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Contractor hereby agrees immediately to make full disclosure to the City in writing.

(g) No Waiver of City's Rights. Neither City's review, approval or acceptance of, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable to City in accordance with applicable law for all damages to City caused by Contractor's negligent performance of any of the services furnished under this Agreement.

(h) Rights-of-Access. City will obtain or furnish right-of-access to the Project site for Contractor to perform any required studies, surveys, tests or other necessary investigations in relation to the Scope of Services. Contractor will take all necessary and reasonable precautions to minimize damage to all personal and real property in the performance of such surveys, tests, studies and investigations.

(i) Compliance with Laws. Contractor shall comply with all laws, ordinances, rules and regulations governing Contractor's performance of this Agreement.

Section 5. Payment

(a) Compensation; Method of Payment. City agrees to pay Contractor for all services authorized in writing and properly performed by Contractor in a total amount not to exceed _____ (\$_____) ("Contract Price"), subject to additions or deletions for changes or extras agreed upon in writing. Unless otherwise provided herein, payment to Contractor shall be monthly based on the Contractor's monthly progress report and detailed monthly itemized statement for services that shows the names of the Contractor's employees, agents, Contractors performing the services, the time worked, the actual services performed, and the rates charged for such services, in a form reasonably acceptable to City. City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services.

(b) Deductions; Withholding. City may deduct from any amounts due or to become due to Contractor any sum or sums owing by Contractor to City. In the event of any breach by Contractor of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against City, or the City's premises, arising out of Contractor's performance under this Agreement, City shall have the right to retain out of any payments due or to become due to Contractor an amount sufficient to completely protect the City from any and all loss, damage or expense therefrom, until the breach, claim

or lien has been satisfactorily remedied or adjusted by Contractor. Additionally, City may, on account of subsequently discovered evidence, withhold the whole or part of any payment to such extent as may be necessary to protect itself from loss on account of:

- (1) defective work not remedied;
- (2) claims filed or reasonable evidence indicating possible filing of claims;
- (3) failure of Contractor to make payments promptly to subContractors or for material or labor which City may pay as an agent for the Contractor; or
- (4) damages to another Contractor or subcontractor.

When the above grounds are removed, or Contractor provides a surety bond or letter of credit satisfactory to City (to be determined in City's sole discretion) which will protect City in the amount withheld because of said grounds, City will release the amounts withheld.

Section 6. Performance Schedule

(a) Time for Performance. Contractor shall perform all services as provided for under this Agreement in a proper, efficient, timely, and professional manner in accordance with City's requirements. The time for performance under this Agreement is _____ () calendar days. Accordingly, Contractor shall complete all work related to the Project on or before _____ () calendar days following the date of City's written notice to proceed to Contractor.

(b) Extentionis; Written Request Required. No allowance of any extension of time, for any cause whatever (including an event of Force Majeure), shall be claimed by or granted to Contractor, unless (i) Contractor shall have made written request to City for such extension within forty-eight (48) hours after the cause for such extension occurred, and (ii) City and Contractor have agreed in writing that such additional time shall be granted. As used in this section, the term "Force Majeure" shall mean that Contractor's performance of the services under this Agreement is prevented or delayed, in whole or in part, to such an extent that Contractor would not be able to complete the services (or any partial component thereof) within the time for performance set forth herein by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, pandemic, or other specific cause reasonably beyond Contractor's control and not attributable to its malfeasance, neglect or nonfeasance. Should Contractor timely request an extension of time due to an event of force majeure under this section, City and Contractor may agree in writing to suspended Contractor's performance until such disability to perform (other than a payment obligation) is removed; provided, that Contractor shall use commercially reasonable efforts to remove any such causes and resume performance of the services under this Agreement as soon as reasonably practicable.

(c) Costs of Delay. Contractor understands and agrees that time is of the essence of this contract, and that for each day of delay beyond the number of calendar days agreed upon for the completion of the work herein specified and contracted for (after due allowance for such extension of time as may otherwise be provided for extension of time herein), the Owner may withhold permanently from the Contract Price an amount equal to \$ _____ per day, which the parties agree represents a reasonable estimation of the actual costs that would be incurred by the City in the event of such delay. In the event Contractor's performance under this Agreement is delayed or interfered with, regardless of reason, Contractor shall not be entitled to any increase in fee or price, or to damages or additional compensation as a consequence of such delays.

Section 7. Ownership of Project; Bill of Sale; No Liens

(a) Title of Ownership. Contractor warrants that title to all services, including all equipment and materials incorporated into the Project, will pass to City no later than the time of final payment. Contractor further warrants that upon payment by City, all services for which payments have been received from City shall be free and clear of liens, claims, security interests or other encumbrances in favor of Contractor or any other person or entity whatsoever.

(b) Assignment; Bill of Sale. Contractor agrees, no later than the time of completion of the Project, to assign to City all manufacturer's warranties relating to equipment, materials and labor used in the Project and further agrees it will at all times perform the services in a manner that will, to the greatest extent possible, preserve all manufacturer's warranties. If necessary as a matter of law, Contractor may retain the right to enforce directly any such manufacturers' warranties during the one year period following the date of acceptance of the Project by City; provided, that City's rights related to the same shall not be subordinate to Contractor's enforcement rights.

CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND SAVE CITY HARMLESS FROM ALL CLAIMS RELATED TO ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND SUPPLIERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS DESCRIBED HEREIN HAVE BEEN PAID, DISCHARGED OR WAIVED UPON CITY'S WRITTEN REQUEST.

Section 8. Default; Termination; Abandonment

(a) Default by Contractor. Should Contractor fail to comply with any term or condition this Agreement applicable to Contractor, or become disabled and unable to comply with any provisions of this Agreement related to the quality or character of the services or time of performance, Contractor shall be deemed in default of this Agreement. If such default is not corrected within ten (10) days after written notice by City to Contractor, City may, at its sole discretion and without prejudice to any other right or remedy:

- (1) terminate this Agreement and be relieved of any further payment or consideration to Contractor except for all services determined by City to be satisfactorily completed prior to such termination. Payment for work satisfactorily completed shall be for actual costs incurred and non-refundable, including reasonable salaries and travel expenses of Contractor to and from meetings called by City at which Contractor is required to attend, but shall not include any loss of profit of Contractor. City may further proceed to complete the services in any manner deemed proper by City, either by the use of its own forces or by resubletting to others; or
- (2) City may, without terminating this Agreement or taking over the services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at Contractor's sole expense.

(b) Suspension or Termination by City. City may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to Contractor. In the event suspension or termination is without cause, payment to Contractor, in accordance with the terms of this Agreement, will be made based on services reasonably determined by City to be satisfactorily performed as of the date of suspension or termination. Such payment will become payable upon delivery of all instruments of service to City and

City's acceptance of the same. If City requires a modification of the services under this Agreement, and in the event City and Contractor fail to agree upon such modification(s), City shall have the option of terminating this Agreement and Contractor's services hereunder at no additional cost other than the payment to Contractor in accordance with the terms of this Agreement for the services reasonably determined by City to be properly performed prior to such termination date.

(c) Abandonment. If Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from the City, or if Contractor fails to timely comply with the orders of the City, when such orders are consistent with the Contract Documents, then, and in that case, where a performance bond(s) exists, the surety on the bond(s) may be notified in writing by City and directed to complete the work (at City's sole discretion), and a copy of said notice shall be delivered to Contractor. After receiving said notice of abandonment, Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the City or the surety on the performance bond, or another Contractor in completion of the work; and Contractor shall not receive any rental or credit therefor, having hereby acknowledged that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement. In the event a surety fails to comply with City's written notice provided for herein, then the City may provide for completion of the work in either of the following elective manners:

- (1) the City may employ such labor and use such machinery, equipment, tools, materials and supplies as said City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to Contractor, which shall be deducted and paid by City out of such amounts as may be due, or that may thereafter at any time become due to the Contractor under this Agreement. In case such expense is less than the sum which would have been payable under this Agreement if the same had been completed by the Contractor, then Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Agreement if the same had been completed by said Contractor, then the Contractor and/or its surety (ies) shall pay the amount of such excess to the City; or
- (2) the City may (under sealed bids when and in the manner required by law) let the contract to another Contractor for the completion of the work under substantially the same terms and conditions which are provided in this Agreement. In the case of any increase in cost to the City under the new contract as compared to what would have been the cost under this Agreement, such increase shall be charged to the Contractor and its surety (ies) shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this Agreement, the Contractor and/or its surety (ies) shall be credited therewith.

(d) Remedies Cumulative. The remedies in this section are cumulative and nothing herein shall be deemed a waiver of any other remedy available to the City under this Agreement, including its remedies upon default provided herein above.

Section 9. Insurance

Contractor shall during the term hereof maintain in full force and effect all policies of insurance reasonably required by City and in compliance with the Contract Documents. Contractor's obligation to provide acceptable certificates of insurance is a material condition of this Agreement, and services under this Agreement shall not commence until certificates of insurance have been received, reviewed, and

accepted by City. The minimum coverages and limits of liability for the policies of insurance required under this Agreement are maintained by and accessible through the City's purchasing department.

Section 10. Indemnification

(a) Release of liability. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF CONTRACTOR PURSUANT TO THIS AGREEMENT. CONTRACTOR HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER.

(b) Contractor's Indemnity Obligation. CONTRACTOR AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, REASONABLE ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY CONTRACTOR'S PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF CONTRACTOR, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE, IN WHOLE OR IN PART, FROM OR ARE ATTRIBUTED TO THE GROSS NEGLIGENCE OF CITY, IN WHICH CASE CONTRACTOR SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO CONTRACTOR AND/OR ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS AS DETERMINED BY A COURT OR OTHER FORUM OF COMPETENT JURISDICTION).

(c) Notice of Claim(s). Contractor shall promptly advise City in writing of any claim or demand against the City, related to or arising out of Contractor's acts or omissions under this Agreement and shall see to the investigation and defense of such claims or demand at Contractor's sole cost and expense; provided, that City, at its option and at its own expense, may participate in such defense without relieving Contractor of any of its obligations hereunder.

CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 11 SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

Section 11. Notice

All notices required by this Agreement shall be in writing and addressed to the parties at the addresses set forth below (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or e-mail of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the notice has complied with the requirements of this Section.

Section 12. Sales and Use Taxes

Contractor understands and acknowledges that City is a governmental entity and exempt from the payment of sales and use taxes for certain materials and equipment conveyed to City as part of this Project or otherwise incorporated into the Project. City agrees to provide Contractor such documentation as may otherwise be required by state law to allow Contractor to avoid payment of sales and uses taxes for materials and equipment with respect to the Project to the extent allowed by law.

Section 13. Texas Government Code Verifications

(a) Contractor's execution of this Agreement shall serve as its acknowledgement and written verification that:

- (1) the requirements of Subchapter J, Chapter 552, Government Code, apply to this Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter;
- (2) pursuant to Texas Government Code Chapter 2270, that Contractor's organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement; and
- (3) pursuant to Texas Government Code Chapter 2251, that Contractor's organization does not current discriminate against firearm and ammunition industries and will not for the term of the contract. Discriminating means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with the firearm or ammunition industry or with a person or entity doing business in the firearm or ammunition industry, but does not include an action made for ordinary business purposes.

Section 14. Miscellaneous

(a) Contractor shall not assign or sublet this Agreement, in whole or in part, without the prior written consent of City. (b) Contractor shall comply with all federal, state, county and municipal laws, ordinances, resolutions, regulations, rules, and orders applicable to the services under this Agreement. (c) The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said courts. (d) This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. (e) The exhibits attached hereto, if any, are incorporated herein and made a part hereof for all purposes. (f) Unless expressly provided otherwise herein, this Agreement may only be modified, amended, supplemented or waived by a mutual written agreement of the parties. (g) In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. (h) Any of the representations and obligations of the parties, as well as any rights and benefits of the parties pertaining to a period of time following the termination of this Agreement shall survive termination. (i) This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties. (j) Each party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement. (k) Subject to the provisions regarding assignment, this Agreement shall be binding on and

inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY --
SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

For City:

TOWN OF ADDISON, TEXAS

For Contractor:

[CONTRACTOR ENTITY NAME]

By: _____

Hamid Khaleghipour
Interim City Manager

By: _____

Date: _____

Date: _____

Notice Address:

Town of Addison
Attn: Hamid Khaleghipour,
Interim City Manager
5300 Belt Line Road
Town of Addison, Texas 75254
E: hkhaleghipour@addisontx.gov

Notice Address:

Attn: _____

E: _____

Addison Contract ID:
SAMPLE FORM CSA_v1.20220330

SECTION PrB
PERFORMANCE BOND

PERFORMANCE BOND

STATE OF TEXAS }
COUNTY OF DALLAS }

WHEREAS, _____ as principal ("Contractor") and _____, a corporation organized under the laws of _____ and being duly authorized to do business in the State of Texas, as surety ("Surety") (whether one or more), do hereby expressly acknowledge themselves to be held and bound to pay to the Town of Addison, Texas, a home-rule municipality organized and operating under the Constitution and laws of the State of Texas (the "Town"), its successors and assigns, and to all persons, firms, subcontractors and corporations who may furnish materials or labor under the contract as more fully described below, the sum of _____ Dollars in the lawful currency of the United States of America (\$) for the payment of which Contractor and Surety are liable to the Town, jointly and severally; and

WHEREAS, Contractor has this day entered into a written contract with the Town to build and construct _____

which contract and the plans and specifications therein mentioned (collectively referred to hereinafter as the "Contract") are hereby expressly incorporated into and made a part hereof as though set forth at length; and

WHEREAS, this bond is given pursuant to Chapter 2253 of the Texas Government Code;

NOW, THEREFORE, if Contractor shall well, truly and faithfully perform all of the undertakings, duties, terms, conditions and agreements of the Contract; shall satisfy all claims and demands incurred under the Contract; shall fully indemnify and hold the Town harmless; shall reimburse and repay the Town for any outlay or expense which the Town may incur in making good any default, and shall promptly make payment to all persons, firms, subcontractors and corporations who may furnish materials or labor under the Contract, then this obligation shall be void; otherwise to remain in full force and effect. The obligations of Contractor and Surety under this bond apply both to the original Contract and to any extension or modification of the Contract and Surety agrees that no change, extension of time, addition, expansion or other modification of the Contract, the work to be done under the Contract, or the plans and specifications which are a part of the Contract shall in any manner affect the obligations of Surety under this bond, and Surety waives notice of any such change, extension of time, addition, expansion or other modification. The obligations of Contractor and Surety under this bond are performable and payable in Dallas County, Texas such that exclusive venue for any legal action pertaining to this bond shall lie in Dallas County, Texas. By their signatures below, the persons signing this bond warrant and represent that they are, respectively, duly authorized to sign on behalf of Contractor and Surety.

EXECUTED this the ____ day of _____, 2____.

CONTRACTOR:

SURETY: 1

By: _____

By: _____

Title: _____

Title: _____

ACKNOWLEDGMENTS
[Contractor]

STATE OF TEXAS }
COUNTY OF DALLAS }

Before me _____ (insert the name of the officer) on this day _____ personally appeared _____ known to me (or proved to me on the oath of _____) or through _____ (description of identity card or other document) to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2____.

Notary Public in and for the State of Texas
My Commission Expires: _____

Typed or Printed Name of Notary

[Surety]

STATE OF TEXAS }
COUNTY OF DALLAS }

This instrument was acknowledged before me on the ____ day of _____, 2____ by _____ who is the _____ of the Surety, on behalf of Surety.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2____.

Notary Public in and for the State of Texas

Typed or Printed Name of Notary

My Commission Expires: _____

1 Please see attached contact sheet for Surety and the Texas Department of Insurance.

Payment and Performance Bond Contact Sheet

(1) Claims:

All notices of claims shall be sent to the surety at the following address:

(Name of surety)

(Mailing address)

(Physical address)

(Phone number)

(2) Texas Department of Insurance Contact Number:

The address and contact information of the surety may otherwise be obtained by contacting the Texas Department of Insurance at the following toll free telephone number:

1-800-252-3439.

SECTION PyB
PAYMENT BOND

PAYMENT BOND

STATE OF TEXAS }
COUNTY OF DALLAS }

WHEREAS, _____, as principal ("Contractor") and _____, a corporation organized under the laws of _____ and being duly authorized to do business in the State of Texas, as surety ("Surety")(whether one or more), do hereby expressly acknowledge themselves to be held and bound to pay to the Town of Addison, Texas, a home-rule municipality organized and operating under the Constitution and laws of the State of Texas (the "Town"), its successors and assigns, and to all persons, firms, subcontractors and corporations who may furnish materials or labor under the contract as more fully described below, the sum of _____ Dollars in the lawful currency of the United States of America (\$ _____) for the payment of which Contractor and Surety are liable to the Town, jointly and severally; and

WHEREAS, Contractor has this day entered into a written contract with the Town to build and construct _____

which contract and the plans and specifications therein mentioned (collectively referred to hereinafter as the "Contract") are hereby expressly incorporated into and made a part hereof as though set forth at length; and

WHEREAS, this bond is given pursuant to Chapter 2253 of the Texas Government Code;

NOW, THEREFORE, if Contractor shall promptly make payment to all persons, firms, subcontractors and corporations who may furnish materials or labor under the Contract, then this obligation shall be void; otherwise to remain in full force and effect. The obligations of Contractor and Surety under this bond apply both to the original Contract and to any extension of time or modification of the Contract and Surety agrees that no change, extension of time, addition, expansion or other modification of the Contract, the work to be done under the Contract, or the plans and specifications which are a part of the Contract shall in any manner affect the obligations of Surety under this bond, and Surety waives notice of any such change, extension of time, addition, expansion or other modification. The obligations of Contractor and Surety under this bond are performable and payable in Dallas County, Texas such that exclusive venue for any legal action pertaining to this bond shall lie in Dallas County, Texas. By their signatures below, the persons signing this bond warrant and represent that they are, respectively, duly authorized to sign on behalf of Contractor and Surety.

EXECUTED this the _____ day of _____, 2_____.

CONTRACTOR:

SURETY: 1

By: _____

By: _____

Title: _____

Title: _____

ACKNOWLEDGMENTS
[Contractor]

STATE OF TEXAS }
COUNTY OF DALLAS }

Before me _____ (Insert the name of the officer) on this day _____ personally appeared _____ known to me (or proved to me on the oath of _____) or through _____ (description of identify card or other document) to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2_____.

Notary Public in and for the State of Texas
My Commission Expires: _____

Typed or Printed Name of Notary

[Surety]

STATE OF TEXAS }
COUNTY OF DALLAS }

This instrument was acknowledged before me on the _____ day of _____, 2_____ by _____ who is the _____ of the Surety, on behalf of Surety.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2_____.

Notary Public in and for the State of Texas
My Commission Expires: _____

Typed or Printed Name of Notary

1 Please see attached contact sheet for Surety and the Texas Department of Insurance

Payment and Performance Bond Contact Sheet

(1) Claims:

All notices of claims shall be sent to the surety at the following address:

(Name of surety)

(Mailing address)

(Physical address)

(Phone number)

(2) Texas Department of Insurance Contact Number:

The address and contact information of the surety may otherwise be obtained by contacting the Texas Department of Insurance at the following toll free telephone number:

1-800-252-3439.

SECTION MB
MAINTENANCE BOND

MB 1

MAINTENANCE BOND - TWO YEAR

STATE OF TEXAS

COUNTY OF DALLAS

WHEREAS, _____ as principal ("Contractor") and _____ a corporation organized under the laws of _____ and being duly authorized to do business in the State of Texas, as surety ("Surety") (whether one or more), do hereby expressly acknowledge themselves to be held and bound to pay to the Town of Addison, Texas, a home-rule municipality organized and operating under the Constitution and laws of the State of Texas (the "Town"), its successors and assigns the sum of _____ Dollars in the lawful currency of the United States of America (\$) for the payment of which Contractor and Surety are liable to the Town, jointly and severally; and

WHEREAS, Contractor has this day entered into a written contract with the Town to build and construct which contract and the plans and specifications therein mentioned (collectively referred to hereinafter as the "Contract") are hereby expressly incorporated into and made a part hereof as though set forth at length; and

WHEREAS, under the Contract it is provided that the Contractor will maintain and keep in good repair all work to be performed and done under the Contract for a period of two (2) years from and after its date of final completion and written acceptance by the Town, and to do and perform all necessary work and repair any defective condition, it being understood that the purpose of this maintenance bond is to insure all warranties, express or implied, made or given by the Contractor to the Town and to cover all defective, inadequate or non-conforming conditions arising by reason of any materials or labor installed, provided, constructed or performed by the Contractor and in case the Contractor shall fail to correct any such conditions it is agreed that the Town may make such corrections and charge the cost of making those corrections against the Contractor and the Surety on this obligation, and the Contractor and Surety shall be subject to the liquidated damages provided in the contract, the plans and the specifications for each day's failure on its part to comply with the terms and provisions of the Contract;

NOW, THEREFORE, if the Contractor shall keep and perform its obligation to maintain the work and keep the work in repair for the full maintenance period of two (2) years as herein provided, then these presents shall be null and void and have no further effect, but if default shall be made by Contractor in the performance of its obligations, then these presents shall have full force and effect, and the Town shall have and recover from the Contractor and its Surety damages in the premises as provided and it is further understood and agreed that this obligation shall be a continuing one against the Contractor and the Surety and that successive recoveries may be had hereon for successive breaches until the full amount of this bond shall have been exhausted; and it is further understood that the obligation under this bond to maintain the work shall continue throughout the maintenance period and shall not be changed, diminished, or in any other manner affected during the term of this bond. The obligations of Contractor and Surety under this bond apply both to the original Contract and to any extension or modification of the Contract and Surety agrees that no change, extension of time, addition, expansion or other modification of the Contract, the work to be done under the Contract, or the plans and specifications which are a part of the Contract shall in any manner affect the obligations of Surety under this bond, and Surety waives notice of any such change, extension of time, addition, expansion or other modification. The obligations of Contractor and Surety under this bond are performable and payable in Dallas County, Texas such that exclusive venue for any legal action pertaining to this bond shall lie in Dallas County, Texas. By their signatures below, the persons signing this bond warrant and represent that they are, respectively, duly authorized to sign on behalf of Contractor and Surety.

EXECUTED this the ____ day of _____, 2____.
CONTRACTOR: _____ SURETY: _____

By: _____ By: _____
Printed Name: _____ Printed Name: _____
Title: _____ Title: _____

Address of Principal: _____ Address of Surety: _____

ACKNOWLEDGMENTS
[Contractor]

STATE OF TEXAS
COUNTY OF DALLAS

Before me _____ (insert the name of the officer) on this day _____ personally appeared _____ known to me (or proved to me on the oath of _____) or through _____ (description of identity card or other document) to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2____.
Notary Public in and for the State of Texas _____ Typed or Printed Name of Notary
My Commission Expires: _____ [Surety]

STATE OF TEXAS
COUNTY OF DALLAS

This instrument was acknowledged before me on the ____ day of _____, 2____ by _____ who is the _____ of the Surety, on behalf of Surety.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2____.
Notary Public in and for the State of Texas _____ Typed or Printed Name of Notary
2-4-13 2 yr

SECTION BP

CONTRACTOR'S AFFIDAVIT OF BILLS PAID

CONTRACTOR'S AFFIDAVIT OF BILLS PAID

STATE OF TEXAS

COUNTY OF DALLAS

Personally, before me the undersigned authority, on this day appeared _____ who, being
duly sworn, on oath, says that he is a legal representative of _____
(full name of Contractor as in contract)

and that the contract for the construction of the project, designated as

**ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM
BROOKWOOD LN TO WATERSIDE CT**

PUBLIC WORKS AND ENGINEERING SERVICES BID NUMBER 22-75

has been satisfactorily completed and that all bills for materials, apparatus, fixtures, machinery and labor used in connection with the construction of this project have, to the best of my knowledge and belief, been fully paid.

Signature

Title

Sworn to and subscribed before me this _____ day of _____, 202_.

Notary Public in and for

County, Texas

Instructions:

If the contractor is an individual, he shall sign the affidavit. If the contractor is a partnership, any partner may sign the affidavit. If the contractor is a corporation, a person authorized by the by-laws or by the Board of Directors shall sign the affidavit. If the Contractor is a joint-venture of individuals, any of the individuals may sign the affidavit. If the Contractor is a joint-venture of partnerships, or of individuals and partnerships, the affidavit may be signed by the individual or any partner of any partnership. If the contractor is a joint-venture in which a corporation is a party, separate affidavits must be executed in the name of the joint-venture: one by each corporation and one by each individual or partnership. Signatures for corporations should be by a duly authorized officer. If signature is by another, a showing of authority to sign must accompany the affidavit.

SECTION GP

GENERAL PROVISIONS

GENERAL PROVISIONS

The General Provisions of the Contract shall be as stated in the *Standard Specifications for Public Works Construction – North Central Texas, 5th Edition (2017)*, under Division 100, "General Provisions," Items 101.1 through 109.6 inclusive, as amended or supplemented and except as modified by the Special Provisions or Instructions to Bidders.



Town of Addison
GENERAL TERMS AND CONDITIONS

By submitting an Offer in response to the Solicitation, the Contractor/Seller (hereafter called Seller) agrees the Contract/Purchase Order shall be governed by the following terms and conditions for goods and services.

1. **Applicability:** These General Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the Town of Addison's Request for Proposal (collectively, "Terms and Conditions") are applicable to Contracts/Purchase Orders issued by the Town of Addison (hereinafter referred to as the "Town" or "Buyer") and the Seller (herein after referred to as the "Seller"). Any deviations must be in writing and signed by a representative of the Town's Purchasing Department and the Seller. No terms and conditions contained in the Seller's Proposal, Invoice or Statement shall modify the Terms and Conditions. If there is a conflict between the Terms and Conditions and Seller's response to the Town's request for bids or proposals documents (including the provisions of the Seller's form of contract/purchase order), the Terms and Conditions will take precedence and control.

2. **Official Solicitation Notification:** The Town utilizes the following for official notifications of solicitation opportunities: www.civcastusa.com and the Dallas Morning News of Dallas County. These are the only forms of notification authorized by the Town for notifications of solicitation opportunities. The Town is not responsible for receipt of notifications or information from any source other than those listed. It shall be the Seller's responsibility to verify the validity of all solicitation information received from any source other than the Town. There will be NO COST to the Seller for using Civcast to respond to Town of Addison solicitations.

3. **Seller to Package Goods:** Seller shall package goods in accordance with good commercial practice. Each shipping container, shall be clearly and permanently marked as follows: (a) Seller's name and address; (b) consignee's name, address and purchase order or purchase change order number; (c) container number and total number of containers, e.g., "box 1 of 4 boxes"; and (d) number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided and agreed to in writing by Buyer. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Town's count or weight shall be final and conclusive on shipments not accompanied by packing list. Unless otherwise stated in the Town's solicitation, all goods will be new, not used, rebuilt, reconditioned or recycled, will be in first class condition, and will be in containers suitable for site.

4. **Shipment Under Reservation Prohibited:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

5. **Title and Risk of Loss:** Title and risk of loss of the goods will not pass to the Town until the Town actually receives, takes possession of, and inspects and accepts the goods at the point or points of delivery.

6. Delivery Terms and Transportation Charges: Goods shall be shipped F.O.B. point of delivery; prices bid and quoted shall be F.O.B. point of delivery, and shall include all freight, delivery and packaging costs. Town shall have the right to designate what method of transportation shall be used to ship the goods. Town assumes and shall have no liability for goods damaged while in transit and or delivered in a damaged condition or that otherwise don't conform to the Terms and Conditions. Seller shall be responsible for and handle all claims with carriers, and in case of damaged or non-conforming goods shall ship replacement goods immediately upon notification by the Town of the same, and the Town may return such damaged or non-conforming goods at Seller's sole cost and expense, including costs and expense for freight, delivery, packaging, and shipping.

7. Right of Inspection and Rejection; Backorders: The Town shall have the right, and expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the goods at delivery before accepting them, and to reject defective or non-conforming goods. Backorders delayed beyond a reasonable period of time, as determined by the Town Purchasing Manager, may be cancelled by the Town without liability of any kind whatsoever, and payment will not be made for such cancellations.

8. Acceptance of Incomplete or Non-Conforming Goods: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming goods, Town prefers to accept such goods, Town may do so. Seller shall pay all claims, costs, losses and damages attributable to Town's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, Town may deduct such amounts as are necessary to compensate Town for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to Town by Seller.

9. Substitution: Every delivery of goods by the Seller must comply with all provisions of this proposal including the specifications, delivery schedule, quantity and quality, and the Terms and Conditions. Any delivery which does not conform to the Buyer's requirements shall constitute a breach of contract. Seller does not have authorization to make or tender substitute goods unless it is agreed to in writing by the Buyer and signed by an authorized representative of Buyer.

10. Payment:

(a) All proper invoices received by the Town will be paid within thirty (30) days of the Town's receipt and acceptance of the goods or of the invoice, whichever is later, unless other terms are specified on the face of the purchase order in the original printing. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of one percent per month or the maximum lawful rate; except, if payment is not timely made for a reason for which the Town may withhold payment hereunder, interest shall not accrue until ten (10) days after the grounds for withholding payment have been resolved.

(b) If partial shipments or deliveries are authorized by the Town, Seller will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

(c) The Town may withhold or set off the entire payment or part of any payment otherwise due Seller to such extent as may be necessary on account of: (i) delivery of defective or non-conforming goods by Seller, or (ii) failure of the Seller to submit proper invoices with all required attachments and supporting documentation, or (iii) failure of Seller to deliver quantity of goods ordered (payment will be made for actual quantities delivered).

(d) The Town's payment obligations are payable only and solely from funds appropriated, budgeted, and available for the purpose of this purchase. The absence of appropriated and budgeted or other lawfully available funds shall render the Contract/Purchase Order null and void to the extent funds are not appropriated and budgeted or available and any goods delivered but unpaid shall be returned to Seller. The Town shall provide the Seller written notice of the failure of the Town to make an adequate appropriation and budget for any fiscal year to pay the amounts due under the Contract/Purchase Order, or the reduction of any appropriation to an amount insufficient to permit the Town to pay its obligations under the Contract/Purchase Order.

11. Invoicing: Send ORIGINAL INVOICE to address indicated on the purchase order. If invoice is subject to cash discounts the discount period will begin on the day invoices are received. So that proper cash discount may be computed, invoice should show amount of freight as a separate item, if applicable; otherwise, cash discount will be computed on total amount of invoice.

12. Taxes - Exemption: All quotations are required to be submitted LESS Federal Excise and State Sales Taxes. Tax Exemption Certificate will be provided by the Town for the successful Seller

13. Warranty - Price:

(a) Seller warrants the prices quoted in its proposal are no higher than Seller's current prices on orders by others for like goods under similar terms of purchase.

(b) Seller certifies that the prices in Seller's proposal have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

(c) In the event of any breach of this warranty, the prices of the items will be reduced to Seller's current prices on orders by others, or in the alternative, the Town may cancel this Contract/Purchase Order without liability to Seller of any kind whatsoever. In addition to any other remedy available, the Town may deduct from any amounts owed to Seller, or otherwise recover, any amounts paid for items in excess of Seller's current prices on orders by others for like goods under similar terms of purchase.

14. Warranty – Title: Without limiting any provision of law, Seller warrants that it has good and indefeasible title to all goods furnished hereunder, and that the goods are free and clear of all liens, claims, security interests and encumbrances. **Seller shall indemnify and hold the Town harmless from and against all adverse title claims to the goods.**

15. Warranty (goods): If goods are sold and furnished to Seller in connection with these Terms and Conditions, Seller represents and warrants that the goods sold and furnished to the Town will be (i) free from defects in design, manufacture, materials and workmanship, (ii) be of merchantable quality and fit for ordinary use, (iii) be in full conformance with Buyer's specifications, drawings and data, with Seller's samples or models furnished in connection herewith, with Seller's express warranties, and with the terms and conditions of the Town's solicitation, and (iv) conform to all applicable Federal, State, and local laws, ordinances, rules, regulations, codes, and to all applicable standards and industry codes and standards. These warranties are in addition to all others given to the Buyer by the Seller or by law. Seller shall not limit, disclaim, or exclude these warranties or any implied warranties, and any attempt to do so shall render this Contract/Purchase Order voidable at the option of the Buyer, and any such limitations, disclaim, or exclusions shall be void and without force or effect.

Unless otherwise specified in a Contract/Purchase Order and approved by the Town in writing, the warranty period shall be at least one year from the date of acceptance of the goods or from the date of acceptance of any replacement goods. If during the warranty period, one or more of the above warranties are breached, Seller shall promptly upon receipt of demand either repair the defective or non-conforming goods, or replace the non-conforming or defective goods with fully conforming and non-defective goods, at the Town's option and at no additional cost to the Town. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by Seller. The Town shall endeavor to give Seller written notice of the breach of warranty within thirty (30) days of discovery of the breach of warranty, but failure to give timely notice shall not impair the Town's rights hereunder.

If Seller is unable or unwilling to repair or replace defective or non-conforming goods as required by Town, then in addition to any other available remedy, Town may reduce the quantity of goods it may be required to purchase under the Contract/Purchase Order from Seller, and purchase conforming goods from other sources. In such event, Seller shall pay to Town upon demand the increased cost, if any, incurred by the Town to procure such goods from another source.

If Seller is not the manufacturer, and the goods are covered by a separate manufacturer's warranty, Seller shall transfer and assign such manufacturer's warranty to Town. If for any reason the manufacturer's warranty cannot be fully transferred to Town, Seller shall assist and cooperate with Town to the fullest extent to enforce such manufacturer's warranty for the benefit of Town.

16. Warranty (services): If services are provided to Seller in connection with these Terms and Conditions, Seller represents and warrants that all services to be provided to the Town will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of this Contract/Purchase Order, and all applicable Federal, State and local laws, ordinances, rules, regulations and codes. These warranties are in addition to all others given to the Buyer by the Seller or by law. Seller shall not limit, disclaim, or exclude these warranties or any implied warranties, and any attempt to

do so shall render this Contract/Purchase Order voidable at the option of the buyer, and any such limitations, disclaimer, or exclusions shall be void and without force or effect.

Unless otherwise specified in the Contract/Purchase Order, the warranty period shall be at least one year from the date of final acceptance of the services by the Town. If during the warranty period, one or more of the above warranties are breached, Seller shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the Town. All costs incidental to such additional performance shall be borne by the Seller. The Town shall endeavor to give the Seller written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the Town's rights under this section.

If the Seller is unable or unwilling to perform its services in accordance with the above standard as required by the Town, then in addition to any other available remedy, the Town may reduce the amount of services it may be required to purchase under the Contract/Purchase Order from the Seller, and purchase conforming services from other sources. In such event, the Seller shall pay to the Town upon demand the increased cost, if any, incurred by the City to procure such services from another source.

17. Right to Assurance: Whenever one party to the Contract/Purchase Order in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of this Contract/Purchase Order.

18. Default: Seller shall be in default under this Contract/Purchase Order if Seller (a) fails to fully, timely and faithfully perform any of its material obligations under this Contract/Purchase Order (whether or not an obligation is "material" shall be determined by the Town), (b) fails to provide adequate assurance of performance as provided for herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (d) makes a material misrepresentation in Seller's offer or response to Buyer's solicitation, or in any report or deliverable required to be submitted by Seller to the Town.

19. Termination for Cause or Convenience: The Town, at any time, by 30 days written notice to the Seller, has the absolute right to terminate this Contract/Purchase Order, in whole or in part, for cause or for convenience (that is, for any reason or for no reason whatsoever). "Cause" means the Seller's refusal or failure to perform or complete its obligations under this Contract/Purchase Order within the time specified and to the Town's satisfaction, or failure to meet the specifications, quantities, quality and/or other requirements specified in the Contract/Purchase Order. If the Town terminates this Contract/Purchase Order for cause, the Seller shall be liable for any damages suffered by the Town. If the agreement is terminated for convenience, the Seller has no further obligation under this Contract/Purchase Order. Upon receipt of a notice of termination, Seller shall promptly cease all further work pursuant to the Contract/Purchase Order, with such exceptions, if any, specified in the notice of termination. Payment shall be made to cover the cost of goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

20. Delay: Town may delay scheduled delivery or other due dates by written notice to Seller if the Town deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract/Purchase Order, the Town and the Seller shall negotiate an equitable adjustment for costs incurred by Seller in the Contract/Purchase Order price and execute an amendment to the Contract/Purchase Order. Seller must assert its right to an adjustment within thirty (30) days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse Seller from delaying the delivery as notified. For purposes of these Terms and Conditions, "days" means calendar days.

21. **SELLER'S INDEMNITY OBLIGATION; INSURANCE**: See attached Town of Addison minimum requirements.

22. Gratuity: Town may, by written notice to Seller, cancel this Contract/Purchase Order without liability to Town if it is determined by Town that any gratuity, in the form of entertainment, gifts, or otherwise, was offered or given by Seller, or any officer, employee, agent or representative of Seller, to any officer, employee, or representative of Town with a view toward securing a contract or securing favorable treatment with regard to the awarding or amending, or the making or any determinations with respect to the performance of, a contract. In the event this Contract/Purchase Order is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Seller in providing such gratuities.

23. Notices: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under this Contract/Purchase Order shall be in writing and shall be deemed delivered upon being hand-delivered or upon three (3) business days after postmarked if sent by U.S. Postal Service certified or registered mail, return receipt requested. Notices to Seller shall be sent to the address as specified by Seller. Notices to the Town shall be addressed to Town at 5300 Belt Line Road, Dallas, Texas 75254 and marked to the attention of the Town Finance Director.

24. No Warranty By Town Against Infringement: Seller represents and warrants to the Town that: (i) Seller shall provide the Town good and indefeasible title to all goods being sold and/or supplied to the Town, and (ii) such goods in accordance with the specifications in this Contract/Purchase Order will not infringe, directly or indirectly, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of such goods and the Seller does not know of any valid basis for any such claims. The Town's specifications regarding the goods shall in no way diminish Seller's warranties or obligations under this paragraph, and the Town makes no warranty that the production, development, or delivery of goods according to the specifications will not give rise to such a claim or will not will not impact such warranties of Seller, and in no event will Town be liable to Seller, its officers, employees, or agents (together, "Seller Parties") for indemnification or otherwise if Seller Parties or any of them is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will or may result, Seller shall promptly notify Town of that opinion. If Seller in good

faith ascertains, prior to production of the goods, that production of the goods according to the specifications will result in infringement or the like, this Contract/Purchase Order will be null and void, and neither Town nor Seller shall have any liability one to the other.

25. Assignment and Successors: The successful Seller shall not assign, transfer, pledge, subcontract, or otherwise convey (collectively, "assign" or "assignment"), in any manner whatsoever, any rights, duties, obligations, or responsibilities of Seller under or in connection with this Contract/Purchase Order, in whole or in part, without the prior written consent of the Town of Addison (and any such assignment without the prior written consent of the Town shall be null and void). Any person or entity to whom Seller assigns any right, duty or obligation shall, as a condition of such assignment, agree to comply with and abide by all provisions of this Contract/Purchase Order, and Seller shall promptly give the Town a true and correct copy of such agreement.

This Contract/Purchase Order shall be binding upon and inure to the benefit of the City and the Seller and their respective successors and authorized assigns, provided however, that no right or interest in the Contract/Purchase Order shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. This Contract/Purchase Order does not and is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to this Contract/Purchase Order.

26. Waiver; Rights, Remedies: All waivers must be in writing and signed by the waiving party. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

27. Modifications: This contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Seller invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of this Contract/Purchase Order.

28. Independent Contractor: Seller shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of the Town. Seller shall have exclusive control of, and the exclusive right to control, the details of its operations hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants.

29. Interpretation: This Contract/Purchase Order is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in this Contract/Purchase Order. Although the Contract/Purchase Order may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in this contract, the UCC definition shall control, unless otherwise defined in this Contract/Purchase Order.

30. Competitive Pricing: It is the intent of the Town to consider Interlocal Cooperative Agreements and State/Federal contracts in determining the best value for the Town.
31. Interlocal Agreement: Successful bidder (Seller) agrees to extend prices for the goods and/or services to be provided by Seller described in this Contract/Purchase Order to all entities that have entered into or will enter into joint purchasing interlocal cooperation agreements with the Town. The Town is a participating member of several interlocal cooperative purchasing agreements. As such, the Town has executed interlocal agreements, as permitted by law, including under Chapter 791 of the Texas Government Code, with certain other political subdivisions, authorizing participation in a cooperative purchasing program. The successful bidder (Seller) may be asked by the Town to provide products/services based upon the bid price to any other participant to a cooperative purchasing agreement, and the Seller agrees to do so (such provision will be pursuant to an agreement between Seller and such other participant, and the Town will have no liability or responsibility in connection therewith).
32. Right to Audit: The city shall have the right to examine and audit after reasonable notice any and all books and records, in any form or format whatsoever (including electronic), of Seller that may relate to this Contract/Purchase Order including, without limitation, the performance of Seller, its employees, agents, and subcontractors. Such books and records will be maintained in accordance with generally accepted accounting principles and shall, upon request and at the Town's request, be made available at a location designated by the Town. Seller shall, except for copying costs, otherwise bear all costs of producing such records for examination and copying by the Town. Unless otherwise agreed by the Town, such books and records must be made available to the Town within five business days after the Seller's receipt of a written notice from the Town requesting the same. The provisions of this paragraph shall survive the termination of this agreement. Seller shall retain all such books and records for a period of three (3) years after final payment on this Contract/Purchase Order or until all audit and litigation matters that the Town has brought to the attention of the Seller are resolved, whichever is longer. The Seller agrees to refund to the Town any overpayments disclosed by any such audit. The Seller shall include a similar audit right on behalf of the Town in all subcontractor agreements entered into in connection with this Contract/Purchase Order.
33. Correspondence: The Bid number must appear on all correspondence and inquiries pertaining to the Request for Proposal or to quotes. The Purchase Order number must appear on all invoices or other correspondence relating to the Contract/Purchase Order.
34. Easement Permission: The contractor shall not enter or use private property except as allowed by easements shown on the contract documents or if the contractor obtains specific written permission from the property owner.
35. Alternates - Samples: If bidding on other than the item solicited by the Town, Seller's proposal must identify the item's Trade Name, Manufacturer's Name and/or Catalog Number, and certify the item offered is equivalent to the item solicited by the Town. Descriptive literature must be submitted with alternate brands. Samples shall be furnished free of expense to the Town and if requested, may be returned at bidder's expense.

36. Error - Quantity: Proposals must be submitted in units of quantity specified, extended, and totaled. In the event of discrepancies in extension, the unit prices shall govern.
37. Acceptance: The right is reserved to the Town to accept or reject all or part of the proposal, and to accept the offer considered most advantageous to the Town by line item or total proposal.
38. Term Contracts: Except as otherwise provided herein, prices must remain firm for the entire Contract/Purchase Order period, including any periods of extension or renewal. At the time of any renewal or extension of the Contract/Purchase Order, the Town or the Seller may request a price adjustment based upon the economy. All requests for a price adjustment must include detailed documentation and rationale to support the requested adjustment. The party to whom a request for price adjustment is made may, in its sole discretion, accept or reject the request. Any price adjustment must be mutually agreed upon in writing by the parties, and shall be effective for the applicable renewal term.
39. Term Contract Quantities: The quantities (if any) in the request for proposal are estimated requirements and the Town reserves the right to increase or decrease the quantities or cancel any item to be furnished. The successful bidder (Seller) shall have no claim against the Town for anticipated profits for quantities diminished or deleted.
40. Term Contract Shipments: The Seller will make shipments under this Contract/Purchase Order only when requested and only in the quantities requested. Seller shall comply with minimum shipments or standard packaging requirements (if any) included in the Contract/Purchase Order.
41. Contract Renewal Options: In the event a clause for option to renew for an additional period is included in the request for proposal, all renewals will be based solely upon the option and agreement between the Town and the Seller. Either party dissenting will terminate the Contract/Purchase Order in accordance with its initial specified term.
42. Electronic Signature – Uniform Electronic Transactions Act: The Town adopts Texas Business and Commerce Code Chapter 322, Uniform Electronic Transactions Act, allowing individuals, companies, and governmental entities to lawfully use and rely on electronic signatures.
43. Funding Out Clause: This Contract/Purchase Order may be terminated by the Town without notice and without penalty or liability in the event that (1) the Town lacks sufficient funds for this Contract/Purchase Order; (2) funds for this Contract/Purchase Order are not appropriated and/or budgeted by the City Council of the Town; and (3) funds for this Contract/Purchase Order that are or were to be provided by grant or through a third party are withheld, denied or are otherwise not available to the Town.
44. Dispute Resolution: Pursuant to subchapter I, Chapter 271, Texas Local Government Code, Seller agrees that, prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this Contract/Purchase Order (a "Claim"), the parties will first attempt to resolve the Claim by taking the following steps: (i) A written notice substantially describing the factual and legal basis of the Claim shall be delivered by the Seller to the Town

within one-hundred eighty (180) days after the date of the event giving rise to the Claim, which notice shall request a written response to be delivered to the Seller not less than fourteen (14) business days after receipt of the notice of Claim; (ii) if the response does not resolve the Claim, in the opinion of the Seller, the Seller shall give notice to that effect to the Town whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in a effort to resolve the Claim; (iii) if those persons cannot or do not resolve the Claim, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the Claim.

45. Disclosure of Certain Relationships: Chapter 176 of the Texas Local Government Code requires that any person, as defined in the statute, considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the Records Administrator of the Town not later than the 7th business day after the later of (a) the date the person (i) begins discussions or negotiations to enter into a contract with the local governmental entity, or (b) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity, or (b) the date the person becomes aware (i) of an employment or other business relationship with a local government officer, or a family member of the officer, described by the statute, or (ii) that the person has given one or more gifts described in the statute. 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. The questionnaire may be found at www.ethics.state.tx.us/forms/CIQ.pdf By submitting a response to this request, Seller represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

46. Force Majeure: To the extent either the Town or Seller shall be wholly or partially prevented or delayed from the performance of this Contract/Purchase Order or of any obligation or duty under this Contract/Purchase Order placed on such party, by reason of or through work strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, court judgment, act of God, or other specific cause reasonably beyond the party's control and not attributable to its malfeasance, neglect or nonfeasance, then in such event, such party shall give notice of the same to the other party (specifying the reason for the prevention) and the time for performance of such obligation or duty shall be suspended until such disability to perform is removed.

47. BAFO: During evaluation process Town reserves the right to request a best and final offer upon completion of negotiations.

48. Silence of Specifications: The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

49. Applicable Law: This agreement shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted by the State of Texas

(excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction), as effective and in force on the date of this Contract/Purchase Order, without regard to its conflict of laws rules or the conflict of law rules of any other jurisdiction. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive or any other relief from any competent authority as contemplated herein.

50. Venue: This Contract/Purchase Order is performable in Dallas County, Texas, and venue for any suit, action, or legal proceeding under or in connection with this Contract/Purchase Order shall lie exclusively in Dallas County, Texas. Seller submits to the exclusive jurisdiction of the courts in Dallas County, Texas for purposes of any such suit, action, or proceeding hereunder, and waives any claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that proceeding is improper.

51. Cost of Response: Any cost incurred by the Seller in responding to the Request for Proposal is the responsibility of the Seller and cannot be charged to the Town.

52. Prohibition Against Personal Interest in Contracts: No Town of Addison officer or employee shall have a direct or indirect financial interest in any contract with the Town, or be directly or indirectly financially interested in the sale of land, materials, supplies or services to the Town.

53. Prior or Pending Litigation or Lawsuits: Each Seller must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Seller or in which the Seller has been judged guilty or liable.

54. Severability: The invalidity, illegality, or unenforceability of any provision of this Contract/Purchase Order shall in no way affect the validity or enforceability of any other portion or provision of this Contract/Purchase Order. Any void or invalid provision shall be deemed severed from this Contract/Purchase Order and the balance of the Contract/Purchase Order shall be construed and enforced as if the Contract/Purchase Order did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract/Purchase Order to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract/Purchase Order from being void should a provision which is the essence of the Contract/Purchase Order be determined to be void.

55. Headings; "Includes": The headings of this Contract/Purchase Order are for convenience of reference only and shall not affect in any manner any of the terms and conditions hereof. The words "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

56. Conflict: When there is a conflict between the purchase order (including, without limitation, these Terms and Conditions) and the Seller's invoice, this purchase order shall prevail.

57. Response Contractual Obligation; Waiver: This response, submitted documents, and any negotiations, when properly accepted by the Town, shall constitute a contract equally binding between the successful Seller and the Town. No different or additional terms will become part of this Contract/Purchase Order except as properly executed in an addendum or change order. **By submitting a proposal, Seller waives any claim it has or may have against the Town, its officials, officers, employees, and agents, arising out of or in connection with the administration, evaluation, or recommendation of any proposal, acceptance or rejection of any proposal, and the award of a contract.**

58. No Waiver of Immunity. Notwithstanding any other of this Contract/Purchase Order, nothing in this Contract/Purchase Order shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the Town, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

59. No Boycotting Israel. The entity contract with the Town of Addison does not boycott Israel and will not boycott Israel during the term of the contract. Reference HB 89 as it relates to Chapter 2270 of the Texas Government Code. Boycott Israel means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

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SECTION SP
SPECIAL PROVISIONS

SPECIAL PROVISIONS

1. **SCOPE OF WORK:** The Work to be performed under the provisions of these Contract Documents shall consist of furnishing all materials, labor, equipment, supplies and appurtenances; providing all construction, plant, equipment and tools; performing all necessary labor and supervision; and the construction complete, including all Work appurtenant thereto, the proposed improvements for: **ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM BROOKWOOD DR TO WATERSIDE CT.**

2. **GENERAL:** This Work shall conform to the requirements of the Contract Documents as listed in the Contract Agreement. These Contract Documents are intended to be complementary. The Contractor shall do all work as provided in the Contract Documents shall do such additional Extra work as may be considered necessary to complete the work in a satisfactory and acceptable manner. The Contractor shall furnish all labor, tools, materials, machinery, equipment, and incidentals necessary to the satisfactory prosecution and completion of the Work.

3. **EXAMINATION OF SITE:** The Contractor acknowledges that he has investigated and satisfied itself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, or similar physical conditions at the site, conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Contractor acknowledges that he has inspected the site of the Work and is familiar with the soil conditions to be encountered. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Town of Addison assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Town and the Engineer of Record (**Criado & Associates, Inc.**).

4. **SPECIFICATIONS:** Construction improvements shall be governed by the following published specifications and details (except as modified by these Special Provisions):

Standard Specification for Construction and Maintenance of Highways, Streets, and Bridges, Texas Department of Transportation (Latest Edition); Standard Specifications for Public Works Construction, North Central Texas - North Central Texas Council of Governments (Latest Edition); Town of Addison Standard Construction Details;

The Contractor shall keep copies of applicable Specifications on the Project site at all times.

Where reference is made to specifications compiled by other agencies, organizations or departments, such referenced specifications are hereby made a part of the Project Specifications.

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Portions of TxDOT standards and specifications, latest editions, shall be incorporated into this contract by specific reference in the contract plans and specifications. In the event of conflict with other documents, TxDOT standards and specifications shall govern for construction materials and methods. In the event of conflict with other documents, Town of Addison contract documents shall govern for contract procedures and measurement and payment.

5. **SUBSURFACE INVESTIGATION:** Subsurface exploration to ascertain the nature of soils, including the amount of rock, if any, is the responsibility of any and all prospective Bidders. It shall be the responsibility of the Bidders to make such subsurface investigations as he deems necessary to determine the nature of the material to be encountered. Some preliminary subsurface exploration has been performed by the Town of Addison and the Engineer, and is provided to the Contractor in the Contract Documents. This information is provided only as preliminary and all proposals shall be based on information obtained by the Contractor. The Town of Addison and the Engineer disclaim any responsibility for the accuracy, true location and extent of the soils information that has been prepared by others. They further disclaim responsibility for interpretation of that data by Bidders, as in projecting soil bearing values, rock profiles, soils stability and the presence, level and extent of underground water.

6. **HISTORICAL, SCIENTIFIC AND ARCHAEOLOGICAL DISCOVERIES:** Contractor shall immediately give an oral and written report to the Town of Addison of the discovery of any articles of historical, scientific, or archaeological significance. Contractor shall take all necessary steps to preserve the article and shall cease operations, which would affect the find until otherwise directed by the Town of Addison but continue with all other unaffected operations. The future operations of Contractor with respect to the discovery, including disposition of the articles, shall be decided by the Town of Addison. The Town of Addison shall have sole and exclusive title to any discovered articles.

The Town of Addison shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for performing any part of the work under the Contract, whether or not changed as a result of conditions, an equitable adjustment will be made and the Contract modified in writing accordingly.

No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed unless Contractor has given the written notice required. No request by Contractor for an equitable adjustment of the Contract for differing site conditions will be allowed or shall be made after final payment under the Contract.

ENVIRONMENTAL REQUIREMENTS: In addition to requirements set forth in other sections of the Contract, including the Plans and Specifications, Contractor shall ensure that the requirements of this Section are fulfilled and incorporated into its procedures and processes as well as those of any Subcontractors. All materials utilized by Contractor on the Project shall comply with all applicable local, state and federal laws and regulations.

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- A. Contractor is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials. If Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Town of Addison in writing.
1. The term "Hazardous Materials" means any substance or compound, whether solid, liquid or gaseous: (i) which is listed, defined or regulated as a "hazardous substance", "hazardous waste", "extremely hazardous waste", "solid waste", "toxic substance", "hazardous substance", "hazardous material" or "regulated substance" or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; or (ii) which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, lead, or motor fuel or other volatile organic compounds; or (iii) which causes or poses a threat to cause a contamination or nuisance on the Project Site or any adjacent property, or (iv) which causes or poses a threat to cause a hazard to the environment or to the health, safety or welfare of persons on or about the Project Site.
 2. The term "Environmental Law" means any federal, state or local law, statute, guidance or policy statement, ordinance, code, rule, regulation, license, authorization, decision, order, injunction or decree, which pertains to health, safety or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or aboveground tanks) and shall include without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Occupational Health and Safety Act, the Toxic Substances Control Act, the Texas Water Code and the Texas Solid Waste Disposal Act and any other state or federal environmental statutes.
- B. If the material or substance was on the site prior to the issuance of the Notice to Proceed, the Town of Addison shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been remediated to levels required by the Texas Commission on Environmental Quality. When the material or substance has been remediated, Work in the affected area shall resume upon written direction of the Town of Addison.
- C. Except as provided in Subparagraph B., Contractor (with the Town of Addison's prior written approval of the laboratory) shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, the Town of Addison shall determine whether Contractor or the Town of Addison shall have the

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substance remediated to levels required by the Texas Commission on Environmental Quality. When the material or substance has been remediated, Work in the affected area shall resume upon written direction of the Town of Addison. The Contract time shall not be extended and the Contract Price shall not be increased, unless the material or substance to be remediated were not introduced to the Work Site by Contractor, and Contractor shall then pay for (or reimburse the Town of Addison for) the testing and remediation.

- D. The Town of Addison shall not be responsible under this Section for materials or substances Contractor brings or introduces to the Project Site. Contractor shall be responsible for the fault or negligence in the use and handling of materials or substances of Contractor, Subcontractor, Sub-subcontractor, or anyone directly or indirectly employed by any of them.
- E. Contractor shall indemnify the Town of Addison and its affiliates for any and all damages incurred by the Town of Addison as a result of Contractor's actions with respect to all applicable state and federal environmental laws related to materials or substances Contractor brings to the Project Site, including but not limited to fines, penalties, costs of remediation and reasonable attorney's fees. No time extension shall be granted for breach of this provision.
- F. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project Site any Hazardous Materials, except in accordance with applicable environmental laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Materials into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water unless required by the Contract Documents. In the event Contractor engages in any of the activities prohibited in this Section or fails to stop Work as provided in this Section, to the fullest extent permitted by law, Contractor hereby indemnifies and holds the Town of Addison, its affiliates and their respective officers, agents, employees and tenants harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Section or Contractor's failure to stop Work as required. Contractor shall obtain from manufacturers and furnish to the Town of Addison Materials Safety Data Sheets (OSHA Form 20) for all materials incorporated into the Project by Contractor. The Town of Addison hereby agrees that, as between the Town of Addison and Contractor, the Town of Addison will be responsible for Hazardous Materials on site which existed prior to Contractor performing Work on the Project Site or which are introduced to the Project Site by the Town of Addison, except as provided in this Section. Contractor will not be considered the generator of Hazardous Materials on site which existed prior to Contractor performing Work on the Work Site or which are introduced to the Project Site by the Town of Addison. If the Hazardous Materials were on the Project Site prior to Contractor's presence on the Project Site or were introduced to the Project Site by the Town of Addison, then, if appropriate, the Town of Addison will make an equitable adjustment to the Contract.

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- G. Include in all construction subcontracts exceeding \$100,000, the following requirement: "Contractor is responsible for compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 505 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency regulations."
 - H. No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed unless Contractor has given the written notice required.
 - I. No request by Contractor for an equitable adjustment of the Contract for Hazardous Materials will be allowed or shall be made after final payment under the Contract.
7. **COMPLIANCE WITH LAWS:** The Contractor shall familiarize himself with the nature and extent of the Specifications, Plans, Project Site conditions, traffic and safety requirements, and shall fully comply with all local, state and federal laws, including all codes, ordinances, rules and regulations applicable to this Contract and the Work to be done hereunder, which exist, or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment. The Contractor shall comply with all federal, state and local laws, rules and regulations of every kind and nature applicable to the performance of its Work hereunder and shall hold the Town of Addison and the Engineer harmless therefrom. No plea of ignorance or misunderstanding thereof will be considered.
8. **PERMITS, LICENSES. AND REGULATIONS:** Permits and licenses for the prosecution of the Work shall be secured and paid for by the Contractor. Any required permit fees will still be paid by the Contractor. Wherever the Work under this contract requires the obtaining of permits from the Town of Addison or other public authorities, duplicate copies of such permits shall be furnished to the Engineer by the Contractor hereunder before the Work covered thereby is started. **NO WORK WILL BE ALLOWED TO PROCEED BEFORE SUCH PERMITS ARE OBTAINED.**
9. **RIGHTS-OF-WAY AND EASEMENTS:** Rights-of-way and permanent easements, dedicated to the Town of Addison, **will be** secured for this Project and made a part of thereto. The Contractor shall obtain a right-of-way permit from the Town of Addison prior to beginning Work. When working within the public rights-of-way and easements, the Contractor shall at all times observe and comply with all Federal and State Laws, and Town of Addison ordinances and regulations which in any way affect the conduct of the Work or its operations, and shall observe and comply with all orders, laws, ordinances and regulations which exist, or which may be enacted later by bodies having jurisdiction or authority for such enactment. No plea of misunderstanding or ignorance thereof will be considered. The Contractor and his Sureties shall indemnify and save harmless the Town of Addison, the Engineer and all of their officers, agents, and employees against any and all claims or liability arising from or based on the violation of any such law, ordinance, regulation, or order, whether it be by itself or its employees.

It shall be the responsibility of the Contractor, prior to the initiation of construction on easements through private property, to inform the property owner of its intent to begin construction. Before beginning construction in areas of public dedication, the Contractor

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shall inform the agency having jurisdiction in the area forty-eight (48) hours prior to initiation of the Work. All easements shall be cleaned up after use and restored to their original conditions or better.

10. **RESTRICTED WORK HOURS:** Per the Town of Addison Building Regulations, "It shall be unlawful for a person, firm or corporation to excavate, erect, build, construct, alter, repair or demolish any building or structure which has been issued or which is required to be issued a building permit by the Town of Addison between the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday, and between the hours of 7:00 p.m. and 8:00 a.m. on Saturday and Sunday, if such activity is performed within a residential, apartment, or townhouse zoned area, or within three hundred (300) feet of an occupied residence, except in cases of urgent necessity or in the interest of public safety and convenience, and then only by permit of the City Manager."
11. **COMPLIANCE WITH IMMIGRATION LAWS:** Contractor shall take all steps necessary to ensure all of the Contractor's employees are authorized to work in the United States as required by the Immigration Reform and Control Act of 1986.
12. **NON-DISCRIMINATION POLICY:** It is the policy of the Town of Addison to afford all people an equal opportunity to bid on any contract being let by the Town. The Town of Addison has a policy that prohibits discrimination against any person because of race, color, sex, or national origin, in the award or performance of any contract. The Town of Addison will require its employees, agents, and Contractors to adhere to this policy.
13. **ANTITRUST LAWS:** The Contractor hereby assigns to the Town of Addison any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. Sec. 1, et seq. (1973).
14. **ABANDONMENT:** The Town of Addison reserves the right to abandon, without obligation to the Contractor, any part of the Project, or the entire Project, at any time before the Contractor begins any construction Work authorized by the Town of Addison. In case of total abandonment of the Project, the Contract becomes void. The Town of Addison may abandon portions of the Project at any time during the Project duration. In case of such partial abandonment, the Contractor shall not be due any payment for lost or unrealized profits on the abandoned portions of the Project.
15. **DISCREPANCIES:** If the Contractor, in the course of the Work, finds any discrepancy between the Contract Documents and the physical conditions of the Project, or any errors or omissions in Plans or in the layout as given by survey points and instructions, or if it appears that any Plan, Specification or other Contract Document is or may not be in compliance with any building code or other requirement of any governmental body, he shall immediately inform the Town of Addison and the Engineer in writing, and the Town of Addison and the Engineer shall promptly verify the same. Any Work done after such discovery, until authorized, will be done at the Contractor's risk.

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16. **PREPARATION OF STORM WATER POLLUTION PREVENTION PLAN:** A Storm Water Pollution Prevention Plan (SW3P) will be required for this project, the area disturbed on this project during construction exceed 1 acre.

This specification is not all inclusive of the requirements for an SW3P. The Contractor shall comply with all requirements of the TCEQ TPDES permit and the local authorities' storm water ordinance and/or regulations.

17. **ADDENDA:** Bidders desiring further information, or interpretation of the Plans and Specifications, must make written request for such information to the Engineer (not later than four (4) working days prior to the date set for the Proposal opening. The ability to ask questions will close at **5:00 PM, Wednesday, August 24, 2022**. Answers to all such requests will be issued in the form of Addenda and a copy of such Addenda will be released through www.civcastusa.com. It will be the responsibility of each person who has been issued as set of Bidding Documents to secure all Addenda from www.civcastusa.com. Addenda will be bound with and made a part of the Contract Documents. No other explanation or interpretation will be considered official or binding. Should a Bidder find discrepancies in, or omissions from, the Plans, Specifications or Contract Documents, or should it be in doubt as to their meaning, it shall at once notify the Engineer in writing in order that a written addendum may be sent to all Bidders.
18. **PAY ITEMS:** Pay items provided are intended to be all-inclusive of the Work required on this Project. Work required by the Plans or Specifications but not provided with a specific pay item shall be considered incidental to other items of Work. Final payment to the construction Contractor shall not be made until all Work has been finally completed and verified in accordance with the construction contract, Plans and Specifications and have been finally accepted by the Town of Addison.
19. **QUANTITIES:** The quantities in the Bid Items are approximate and may represent quantities in excess of those actually installed. Final Payment will be based on the actual quantities installed and paid in accordance with the applicable Specifications.
20. **BID ITEMS / REFERENCE SPECIFICATIONS:** The requirements of NCTCOG standard specifications for Public Works construction 5th edition dates 2017 or latest edition, and TxDOT standard specifications for construction and maintenance of highways, streets, and bridges, dated 2004 or latest edition, shall apply as described.
21. **BID ITEMS DESCRIPTIONS:**

SECTION A – GENERAL

Bid Item No. 1 - MOBILIZATION (5% MAX)

This item shall cover the lump sum cost for all charges for labor and for moving supplies, construction equipment and materials to the project site at the beginning of the project and for removing the same equipment and related supplies upon completion of the project, and for site cleanup. See **Special Provisions No. 27 for details for payment for this line Item.**

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Bid Item No. 2 - PROJECT SIGN

This item shall consist of the installation of a project sign in the locations approved by the OWNER. Each sign shall be constructed in accordance with the details found in Section PS of the Specification, details and notes as shown.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 3 - BARRICADES, SIGNS, AND TRAFFIC HANDLING

This item shall include the lump sum cost for installation, maintenance, relocation, and removal of all traffic signs (street name, directional, informational or regulatory), barricades, temporary signs, temporary pavement markings (except those identified in the permanent pavement marking bid items), traffic control plan and all other traffic control measures necessary to provide for the safe travel of vehicles and pedestrians through, along, or around the construction site and for the protection of the workers on the project. All barricades and warning signs will conform to those sections of the Texas Manual on Uniform Traffic Control Devices, latest edition, as amended by the Texas Department of Transportation. See **Special Provisions No. 50 and 51 for additional information.**

Partial payment of the Lump Sum bid shall be limited as follows:

1. When 5% of the *adjusted contract amount is earned, 25% of the Lump Sum bid shall be paid.
2. When 25% of the *adjusted contract amount is earned, 50% of the Lump Sum bid shall be paid. Previous payments under this item will be deducted from this amount.
3. When 50% of the *adjusted contract amount is earned, 75% of the Lump Sum bid shall be paid. Previous payments under this item will be deducted from this amount.
4. When all work under the contract is completed by the Contractor and accepted by the City, 100% of the Lump Sum bid shall be paid.
5. An overrun of the contract quantity will not be allowed under any circumstances unless the quantity is added by an approved change order.

Additional Notes - If the Contractor fails to provide properly maintain barricades, signs, and traffic control devices in compliance with the specifications, the Contractor will be considered in non-compliance with this item and payment may be delayed for this item.

Bid Item No. 4 - CONSTRUCTION CONTINGENCY ALLOWANCE OWNER APPROVAL

This item will be used at the Owner's discretion to cover any unexpected costs associated with performing the work.

Measurement and payment shall be made on the basis of price bid per allowance (AL) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work as directed by the engineer.

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SECTION B – PAVING

Bid Item No. 5 – REMOVE & DISPOSE OF EXISTING PAVEMENT

This item shall consist of the removal and disposal of pavement at the locations shown in the drawings. Existing pavement shall be removed in accordance with appropriate specifications, details, and notes.

Measurement and payment shall be made on the basis of price bid per square yard (SY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 6 – 8-INCH REINFORCED CONCRETE PAVEMENT

This item shall consist of installation of reinforced concrete pavement at the locations shown in the drawings. Concrete pavement shall be installed in accordance with project specification, details, and notes.

Measurement and payment shall be made on the basis of price bid per square yard (SY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 7 – REMOVE & DISPOSE CONCRETE SIDEWALK

This item shall consist of the removal and disposal of sidewalk and ADA ramps at the locations shown in the drawings. Existing sidewalk and ADA ramps shall be removed in accordance with appropriate specifications, details, and notes.

Measurement and payment shall be made on the basis of price bid per square yard (SY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 8 – 4-INCH REINFORCED CONCRETE SIDEWALK

This item shall consist of installation of 4” reinforced concrete sidewalks at the locations shown in the drawings. Reinforced concrete sidewalk shall be installed in accordance with project specification, details, and notes.

Measurement and payment shall be made on the basis of price bid per square yard (SY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 9 – 6-INCH REINFORCED CONCRETE DRIVEWAY

This item shall consist of installation of reinforced concrete driveway(s) at the locations shown in the drawings. Concrete driveway(s) shall be installed in accordance with project specification, details, and notes.

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Measurement and payment shall be made on the basis of price bid per square yard (SY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 10 - 8" FLEXIBLE BASE

This item shall consist of installation of flexible base pavement at the locations shown in the drawings. Concrete pavement shall be installed in accordance with project specification, details, and notes.

Measurement and payment shall be made on the basis of price bid per square yard (SY) completed and accepted in final position and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work. No additional payment will be made for thickness or width exceeding that shown on the typical section or provided on the plans.

Bid Item No. 11 - 6" MONOLITHIC CURB

This item shall consist of installation of 6" mono curb at the locations shown in the drawings. Monolithic curb shall be installed in accordance with project specification, details, and notes.

Measurement and payment shall be made on the basis of price bid per linear foot (LF) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 12 – STABILIZED CONSTRUCTION ENTRANCE

This item shall consist of installation of stabilized construction entrance as needed to prevent soil from the project tracked on adjacent roadways. Stabilized construction entrance shall be installed in accordance with project specification, standards, and notes.

Measurement and payment shall be made on the basis of price bid per each (EA) to include placement, maintenance and removal of construction entrance. No additional compensation will be paid for the replacement but shall be considered subsidiary to the bid item. and shall be total compensation for furnishing all materials, tools, equipment, labor, and maintenance throughout the length of the project and any other incidentals necessary to complete the work.

Bid Item No. 13 – REMOVE AND DISPOSE MASONRY MAILBOX

This item shall consist of the removal and disposal of masonry mailbox(es) at the locations shown in the drawings. Existing masonry mailbox(es) shall be removed and backfilled to match existing elevations and promote positive drainage in accordance with appropriate specifications, details, and notes. Salvageable bricks may be used on the project as approved.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

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Bid Item No. 14 – REMOVE & RELOCATE MASONRY MAILBOX

This item shall consist of the removal and relocation of masonry mailbox(es) at the locations shown in the drawings. Existing masonry mailbox(es) shall be removed with the intention to reuse all components and relocate in accordance with appropriate specifications, details, and notes. Masonry mailbox(es) shall be accessible at all times during construction to the United States Postal Service and its patrons. Original location shall be backfilled to match existing elevations and promote positive drainage.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation maintaining accessibility and for furnishing all materials (including new bricks), tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 15 – BARRIER FREE RAMPS

This item shall consist of installation of barrier free ADA ramps of the type shown at the locations shown in the drawings. Barrier free ADA ramps shall be installed in accordance with project specification, details, and notes.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Section C – STORM DRAINAGE

Bid Item No. 16 – REMOVE AND DISPOSE OF EXISTING 18" RCP

Bid Item No. 17 – REMOVE AND DISPOSE OF EXISTING 24" RCP

Bid item No. 18 – REMOVE AND DISPOSE OF EXISTING 42" RCP

Bid Item No. 19 – REMOVE AND DISPOSE OF EXISTING 48" RCP

This item shall consist of the removal, disposal and grouting or placing flowable backfill as need to close off any abandoned pipe of existing any size reinforced concrete pipe at the locations shown in the drawings. Existing reinforced concrete pipe shall be removed in accordance with appropriate specifications, details, and notes.

Measurement and payment shall be made on the basis of price bid per linear feet (LF) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 20 – REMOVE AND DISPOSE OF EXISTING CURB INLET

This item shall consist of the removal and disposal of curb inlets at the locations shown in the drawings. Existing curb inlets shall be removed in accordance with appropriate specifications, details, and notes.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 21 – REMOVE AND DISPOSE OF EXISTING CONC INLET APRON

This item shall consist of the removal and disposal of concrete inlet apron at the locations shown in the drawings. Existing curb inlets shall be removed in accordance with appropriate specifications, details, and notes.

Measurement and payment shall be made on the basis of price bid per square yard (SY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 22 – CONSTRUCT CONC INLET APRON

This item shall consist of the installation of the concrete inlet apron at the locations shown in the drawings. Concrete inlet apron shall be installed in accordance with appropriate specifications, details, and notes.

Measurement and payment shall be made on the basis of price bid per square yard (SY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 23 – TRENCH SAFETY

This work includes preparing a job specific trench safety plan and installing the proper shoring and/or bracing to adequately provide a safe trench for all storm sewer improvements, in compliance with current regulations and requirements of the United States Department of

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Labor Occupational Safety and Health Administration (OSHA). The CONTRACTOR shall have a Trench Safety Plan prepared, signed, and sealed by a professional engineer and provided to the ENGINEER prior to the start of construction. The preparation of the trench safety plan, as required by these specifications, will not be paid for directly but shall be considered subsidiary to this pay item.

Measurement and payment for work performed and materials furnished related to the preparation of a trench safety plan and the installation of a trench safety systems, as provided herein, shall be made on the basis of the price bid per linear foot (LF) of centerline of trench exceeding a depth of 4-ft and shall be total compensation for furnishing and/or operating all labor, materials, tools, equipment and other incidentals necessary to complete the work.

Bid Item No. 24 – 18-INCH CLASS III RCP

Bid Item No. 25 – 24-INCH CLASS III RCP

Bid Item No. 26 – 36-INCH CLASS III RCP

Bid Item No. 27 – 42-INCH CLASS III RCP

Bid Item No. 28 – 48-INCH CLASS III RCP

This item shall consist of installation of reinforced concrete pipe of the type and size shown at the locations shown in the drawings. Reinforced concrete pipe shall be installed in accordance with project specification, details, and notes.

Measurement and payment shall be made on the basis of price bid per linear feet (LF) of centerline of pipe and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 29 – 48" HDPE (SMOOTH WALLS)

This item shall consist of installation of HDPE (Smooth walls) pipe of the type and size shown at the locations shown in the drawings. HDPE (Smooth walls) pipe shall be installed in accordance with project specification, details, and notes.

Measurement and payment shall be made on the basis of price bid per linear feet (LF) of centerline of pipe and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 30 – 5' x 3' CLASS C CONC RCB (PRECAST)

This item shall consist of installation of reinforced concrete box of size shown at the locations shown in the drawings. reinforced concrete box shall be installed in accordance with project specification, details, and notes. Pre-Cast Only shall be permitted unless authorized in writing by the Town of Addison representative.

Measurement and payment shall be made on the basis of price bid per linear feet (LF) of centerline of box and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

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Bid Item No. 31 – 10-FOOT CONCRETE CURB INLET

This item shall consist of construction of curb inlets of the size shown at the locations shown in the drawings. Curb inlets shall be constructed in accordance with project specification, details, and notes.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 32 – 12' x 10' JUNCTION BOX STRUCTURE

This item shall consist of construction and installation of junction box structure size shown at the locations shown in the drawings. Junction box structure shall be constructed in accordance with project specification, details, and notes.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 33 – 4' x 4' STORM WATER MANHOLE

Bid Item No. 34 – 5' x 5' STORM WATER MANHOLE

Bid Item No. 35 – 6' x 6' STORM WATER MANHOLE

This item shall consist of installation of storm water manhole size shown at the locations shown in the drawings. Storm water Manhole shall be constructed in accordance with project specification, details, and notes. Pre-Cast Only shall be permitted unless authorized in writing by the Town of Addison representative.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 36 – STORMTRAP DETENTION SYSTEM

This item shall consist of construction and installation of StormTrap Detention System as shown in the drawings. Detention System shall be constructed in accordance with project specification, details, and notes. No alternative system shall be used unless approved by a representative of the Town of Addison.

Additional quantities considered subsidiary to this item are as follows:

Excavation – 1, 090 CY

Overdig Excavation – 337 CY

Concrete Pad – 4, 388 SF

Backfill (Filling Overdig with ¾" stone to top of roof slab) – 360 CY

Measurement and payment shall be made on the basis of price bid per lump Sum (LS) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

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Bid Item No. 37 – STORM WATER POLLUTION PREVENTION PLAN (SWP3) – INCLUDING MAINTENANCE, INLET PROTECTION, AND EROSION CONTROL

This pay item shall consist of furnishing, installing, maintaining and removing erosion controls throughout the duration of the project in accordance with the Texas Commission on Environmental Quality's (TCEQ) permitting procedures and requirements for construction projects that disturb five (5) or more acres. Under the Texas Pollution Discharge Elimination System (TPDES) general construction permit TXR 150000, the operator with control of construction plans and specifications (OWNER) and the operator with day-to-day operational control (CONTRACTOR) are required to obtain a permit for the discharge of storm water runoff. The CONTRACTOR shall be required to prepare and implement a single comprehensive site-specific Storm Water Pollution Prevention Plan (SWP3) for the entire construction site. The CONTRACTOR shall: (1) sign the SWP3, (2) submit an NOI for the Town of Addison & CONTRACTOR if required, and (3) post a site notice as part of the permit. The SWP3 must describe and ensure the implementation of best management practices that will be used to reduce, to the maximum extent possible, the pollutants and storm water discharges associated with the construction activity and ensure compliance with the terms and conditions of the permit. The SWP3 must clearly indicate which operator is responsible for satisfying each shared requirement of the SWP3. The SWP3 shall be subject to approval by the OWNER and must be retained on-site during the term of the construction. Notice must be posted if the SWP3 is retained off-site.

A Texas Registered Professional Engineer must sign and seal the Erosion Control Plan (ECP) submitted as part of the SWP3. The CONTRACTOR shall submit a Notice of Termination for Town of Addison and CONTRACTOR upon completion of the project if required.

This work shall also include the installation and maintenance of, unless specified otherwise:

- Silt fence;
- Erosion Control logs;
- Storm Inlet Protection;
- Soil Retention Blankets;
- Stabilized construction entrance/exit;
- Staged inlet protection;
- Any additional erosion control measures required by the SWP3.

Measurement and payment shall be made on the basis of the price bid per lump sum (LS) for preparation and implementation of the SWP3. This includes any necessary revisions to the Erosion Control Plan throughout the term of construction and the installation, sequencing, removing and maintenance of structural control measures throughout the duration of construction and along its entire stretch. Payment shall be total compensation for furnishing all labor, materials, tools, and equipment necessary to complete the work. Payment shall be evenly prorated throughout the term of construction on a monthly basis, based on amount bid and time bid.

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Bid Item No. 38 – TELEVISION INSPECTION

This item shall require the Contractor to provide the Owner with video inspection and recording of all new drainage systems in the format required by the Owner and in accordance with specification in the plans. Video inspection shall be performed after the subgrade installation and before concrete placement. Any television inspection required due to contractor's error shall not be paid directly but shall be considered subsidiary to the bid item.

Measurement of television inspection shall be by the linear foot (LF) of centerline of pipe and/or box culverts and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

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SECTION D – WATER/WASTERWATER

Bid Item No. 39 – CONCRETE CASING AROUND SANITARY SEWER

The concrete casing shall be a flowable fill installed at the locations shown on the plans, in accordance with the plan details, Town Details, and Town of Addison Wastewater System Requirements. Flowable fill shall have a compressive strength between 50-psi and 150-psi at 28 days to allow for the possibility of future utility excavation.

Measurement of concrete casing shall be by the each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 40 – ADJUSTMENT TO WATER VALVE

This work includes the adjustment of the water valve at locations shown on the plans and shall be completed per specifications, details and notes.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work, including all excavation, embedment and backfill.

Bid Item No. 41 – WATER MAIN LOWERING

This work includes the furnishing and installation of the lowering of the water main at the locations shown in the plans and the Town of Addison Standard Construction Details. Proposed water line shall comply with AWWA C900 and proposed fittings shall comply with AWWA C151. Payment shall include furnishing, hauling and laying of pipe shown on the plans, trench excavation, and backfilling, including embedment material as specified, replacement of topsoil, protecting or replacing existing structures or utilities, testing, disposal of surplus materials, and cleaning up and maintenance. Payment shall include any and all extra precautions or construction requirements necessary to adequately protect and support existing utilities. Payment for the pipelines shall include all costs required to have utility companies repair any damage inflicted to their lines by the CONTRACTOR and any cleanup, property damages, fines, etc. resulting from damage inflicted to any utility line by the CONTRACTOR.

Embedment for water lines shall be per Town of Addison standard construction details.

All fittings associated with the proposed water line lowering installation, as indicated in the plans, shall be considered incidental to this pay item.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work, including all excavation, embedment and backfill.

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Bid Item No. 42 – 8” WATER MAIN CROSSING (BY OPEN CUT)

This work includes the furnishing and installation of the crossing of the water main at the locations shown in the plans and the Town of Addison Standard Construction Details. Proposed water line and fittings shall comply with AWWA C151. Payment shall include furnishing, hauling and laying of pipe shown on the plans, trench excavation, and backfilling, including embedment material as specified, replacement of topsoil, protecting or replacing existing structures or utilities, testing, disposal of surplus materials, and cleaning up and maintenance. Payment shall include any and all extra precautions or construction requirements necessary to adequately protect and support existing utilities. Payment for the pipelines shall include all costs required to have utility companies repair any damage inflicted to their lines by the CONTRACTOR and any cleanup, property damages, fines, etc. resulting from damage inflicted to any utility line by the CONTRACTOR.

Embedment for water lines shall be per Town of Addison standard construction details.

All fittings associated with the proposed water line crossing installation, as indicated in the plans, shall be considered incidental to this pay item.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work, including all excavation, embedment and backfill. Measurement and payment will be in accordance with **Item 509.6.** of the SSPWC..

This item consists of approximately 55 Linear Feet of 8" Water Main Crossing to be installed by Open Cut in accordance with **Item 509.3.** of the SSPWC.

WC-3B = 8" Water Main Crossing (By Open Cut)

WC-4 = 8" Water Main Crossing (By Open Cut)

Bid Item No. 43 – 12” WATER MAIN CROSSING (BY OPEN CUT)

This work includes the furnishing and installation of the crossing of the water main at the locations shown in the plans and the Town of Addison Standard Construction Details. Proposed water line and fittings shall comply with AWWA C151. Payment shall include furnishing, hauling and laying of pipe shown on the plans, trench excavation, and backfilling, including embedment material as specified, replacement of topsoil, protecting or replacing existing structures or utilities, testing, disposal of surplus materials, and cleaning up and maintenance. Payment shall include any and all extra precautions or construction requirements necessary to adequately protect and support existing utilities. Payment for the pipelines shall include all costs required to have utility companies repair any damage inflicted to their lines by the CONTRACTOR and any cleanup, property damages, fines, etc. resulting from damage inflicted to any utility line by the CONTRACTOR.

Embedment for water lines shall be per Town of Addison standard construction details.

All fittings associated with the proposed water line crossing installation, as indicated in the plans, shall be considered incidental to this pay item.

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Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work, including all excavation, embedment and backfill. Measurement and payment will be in accordance with **Item 509.6.** of the SSPWC.

This item consists of approximately 80 Linear Feet of 12" Water Main Crossing to be installed by Open Cut in accordance with **Item 509.3.** of the SSPWC.

WC-3A = 12" Water Main Crossing (By Open Cut)

Bid Item No. 44 – FURNISH AND INSTALL 1" STANDARD WATER SERVICE

This work includes the furnishing and installation of the 1" standard water service at the locations shown in the plans and the Town of Addison Standard Construction Details. Proposed water line shall comply with AWWA C900. Payment shall include furnishing, hauling and laying of pipe shown on the plans, trench excavation, and backfilling, including embedment material as specified, replacement of topsoil, protecting or replacing existing structures or utilities, testing, disposal of surplus materials, and cleaning up and maintenance. Payment shall include any and all extra precautions or construction requirements necessary to adequately protect and support existing utilities. Payment for the pipelines shall include all costs required to have utility companies repair any damage inflicted to their lines by the CONTRACTOR and any cleanup, property damages, fines, etc. resulting from damage inflicted to any utility line by the CONTRACTOR.

Embedment for water lines shall be per Town of Addison standard construction details.

All fittings associated with the installation of the 1" standard water service, as indicated in the plans, shall be considered incidental to this pay item.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work, including all excavation, embedment and backfill.

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SECTION E – LANDSCAPING

Bid Item No. 45 – BLOCK SOD

This work includes the furnishing and installation of block sod as shown on the plans and in accordance with the specifications, details and notes. These pay items shall be inclusive of all items necessary to complete the installation.

Measurement and payment shall be made on the basis of the price per bid square yard (SY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 46 – TOP SOIL (4” DEPTH)

This work includes the furnishing and installation of topsoil (4” depth) as shown on the plans and in accordance with the specifications, details and notes. These pay items shall be inclusive of all items necessary to complete the installation.

Measurement and payment shall be made on the basis of the price per bid square yard (SY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 47 – REMOVE TREES

This item shall consist of the removal and disposal of existing trees at the locations shown in the drawings. Existing trees shall be removed in accordance with appropriate specifications, details, and notes.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 48 – IRRIGATION (REPLACE SPRINKLER HEADS)

This item shall consist of the removal and replacement of existing sprinklers as needed throughout the project. Sprinklers will be replaced in kind or an approved equal. Sprinklers shall be replaced in accordance with appropriate specifications, details, and notes. All work is to be accomplished by or directly supervised at all times by an on-site Irrigator currently licensed by the State of Texas.

Measurement and payment shall be made on the basis of price bid per each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 49 – STANDARD TOWN BOLLARD

Bid Item No. 50 – BENCH

Bid Item No. 51 – TRASH RECEPTACLE

Bid Item No. 52 – PET WASTE STATION

This work includes the furnishing and installation of standard town bollard(s), bench(es), trash receptacle(s), and pet waste station(s) as shown on the plans and in accordance with the

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Town of Addison Specifications and requirements, details and notes. These pay items shall be inclusive of all items necessary to complete the installation.

Measurement and payment shall be made on the basis of the price per bid each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 53 – TOWN STANDARD TRAIL SIGNS

This work includes the furnishing and installation town standard trail signs as determined by Town of Addison Parks and Recreation. These pay items shall be inclusive of all items necessary to complete the installation.

Measurement and payment shall be made on the basis of price bid per allowance (AL) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work as directed by the engineer.

Bid Item No. 54 – STEEL EDGING

This work includes the furnishing and installation of steel edging as shown on the plans and in accordance with the specifications, details and notes. These pay items shall be inclusive of all items necessary to complete the installation.

Measurement and payment shall be made on the basis of the price per bid linear foot (LF) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 55 – WROUGHT IRON GATE (4' W X 4' H)

This work includes the furnishing and installation of wrought iron gates to provide access from Marsh Lane to Redding Trail. Location to be determined in field. These pay items shall be inclusive of all items necessary to complete the installation.

Measurement and payment shall be made on the basis of the price per bid each (EA) gate installed and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 56 – CANOPY TREE

Bid Item No. 57 – ORNAMENTAL TREE

Bid Item No. 58 – 5 GALLON SHRUB

Bid Item No. 59 – 3 GALLON SHRUB

Bid Item No. 60 – 1 GALLON SHRUB

This work includes the furnishing and installation of canopy and ornamental trees and 1-, 3- or 5-gallon shrubs as shown on the plans and in accordance with the specifications, details and notes. These pay items shall be inclusive of all items necessary to complete the installation.

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Measurement and payment shall be made on the basis of the price per bid each (EA) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 61 – SOIL PREP/MULCH

This work includes the furnishing and installation of soil prep and/or mulch at locations shown on the plans and in accordance with the specifications, details and notes. These pay items shall be inclusive of all items necessary to complete the installation.

Measurement and payment shall be made on the basis of the price per bid square foot (SF) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

Bid Item No. 62 – IRRIGATION

This work includes the furnishing and installation of the irrigation system as shown on the plans and in accordance with the specifications, details and notes. These pay items shall be inclusive of all items necessary to complete the installation. All work is to be accomplished by or directly supervised at all times by an on-site Irrigator currently licensed by the State of Texas.

Measurement and payment shall be made on the basis of the price per bid square foot (SF) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

22. **SUBSIDIARY WORK:** Any and all Work specifically governed by documentary requirements for the Project, such as conditions imposed by the Plans or these Special Provisions, in which no specific item for bid has been provided for in the Proposal, shall be considered as a subsidiary item of Work, the cost of which shall be included in the various bid items in the Proposal. Costs of CCTV, permits, inspection fees, traffic control, construction staking, surface restoration and cleanup are general items of Work which fall in the category of subsidiary Work. Any repairs or replacement of items damaged during demolition or as a result of new construction will be considered subsidiary. Limits of all Work requiring repair will be determined by the Town of Addison staff or the inspector. Extreme care should be taken during all demolition and construction operations.
23. **QUALIFICATION OF PROPOSALS:** The Town of Addison reserves the right to reject any and all Proposals, to waive any and all informalities not involving price, time or changes in the Work, and the right to disregard all nonconforming, non-responsive, unbalanced, or conditional Proposals. The Town reserves the right to reject the Proposal of any Bidder if the Town believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Proposals is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the Town. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolve in favor of the correct sum.

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To be considered responsive, the apparent two lowest Bidders are required to submit the Statement of Experience per Section BQS "Bidder Qualification Statement" within 5 days.

The apparent low two Bidders will be notified by the Engineer to request the information.

AWARD AND EXECUTION OF CONTRACT: For the purpose of award, each proposal submitted shall consist of three parts whereby the correct summation of the products of the estimated quantities shown in the proposal, multiplied by their bid unit prices for the following parts:

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Bidders must fill bid proposal for all base bids and all additive alternates. The method of Award will be based on the lowest qualified bidder for all base bids plus any combination of the additive alternates depending on the availability of funds.

The Town reserves the right to accept whichever proposal is determined to be in the best interest of the public and to reject all proposals.

All payments will be based on actual quantities and bid unit prices.

- 24. EXPLANATION OF CONTRACT TIME:** The term "Contract Time" as used in this Provision will mean the **270** calendar days (approx. 9 months) for substantial completion of the Work of the Contract from the date the Contract was executed. The term "calendar day" as used in this Article will mean every day shown on the calendar. Calendar days will be consecutively counted from commencement of Contract Time (issuance of a Notice to Proceed) regardless of weather, weekends, and holidays, suspensions of Contractor's operations, delays or other events as described herein.

In the event of a catastrophic event (i.e., war, invasion, riot, declared state of emergency, national strike, or other situations as declared by the Town of Addison) directly and substantially affecting the Contractor's operations on the Contract, the Contractor and the Town shall agree as to the number of calendar days to extend the Contract Time. In the event the Contractor and Town are unable to agree to the number of calendar days to extend the Contract Time, the Town shall unilaterally determine the number of calendar days to extend the Contract Time reasonably necessary and due solely to such catastrophic event and the Contractor shall have no right whatsoever to contest such determination, save and except that the Contractor establishes that the number of calendar days determined by the Town were arbitrary or without any reasonable basis.

Should the Contractor fail to complete the Contract on or before expiration of the Allowable Contract Time, as adjusted in accordance with the special provisions No. 78 of liquidated damage, the Town shall deduct from the moneys due the Contractor the Daily Value for each calendar day completion exceeds the Allowable Contract Time. The term "Allowable Contract Time" as used in this Article shall mean the Original Contract Time

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plus adjustments pursuant to the statements above. This deduction shall be the disincentive for the Contractor's failing to timely complete the Contract. **This shall be strictly enforced.**

25. **COPIES OF PLANS FURNISHED:** One (1) copy of 24" x 36" and one (1) electronic copy of the Plans shall be furnished to the successful Contractor, at no charge, for construction purposes.
26. **PRE-CONSTRUCTION CONFERENCE:** The successful Contractor, Engineer, and Town of Addison shall meet for a pre-construction conference before any of the Work begins on this Project. At this time, details of sequencing of the Work, contact individuals for each party, testing requirements, submittals, traffic control, time sensitive completion of the project and pay requests will be covered. Prior to the meeting, the Contractor shall prepare schedules showing the sequencing and progress of their Work and its effect on others. A final composite schedule will be prepared during this conference to allow an orderly sequence of Project construction.

Prior to the start of construction, Contractor shall video the construction area and property adjacent to construction in the presence of the City Inspector. The format shall be DVD. The video shall be narrated. The Contractor shall furnish the Town of Addison a copy of the video in DVD format prior to commencement of Project. This shall be subsidiary to Project.

27. **MOBILIZATION:** Mobilization and Demobilization includes the movement of all labor, equipment and supplies, establishment of facilities necessary for work, and other work and operations which must be performed and cost no directly attributable to other pay items, excluding bidding costs, which must be incurred in order to enable the Contractor to begin work on other contract items. And this item includes all work for removing all equipment and supplies and project site cleanup.

Payment

- Partial Payments of the Lump Sum bid for Mobilization shall be limited as follows:
- When 1% of the *adjusted contract amount is earned, 50% of the Mobilization Lump Sum or 5% of the total contract amount shall be paid, whichever is less. Previous payments under this item will be deducted from this amount.
- When 5% of the *adjusted contract amount is earned, 75% of the Mobilization Lump Sum or 10% of the total contract amount shall be paid, whichever is less. Previous payments under this item will be deducted from this amount.
- When 10% of the *adjusted contract amount is earned, 90% of the Mobilization Lump Sum or 25% of the total contract amount shall be paid, whichever is less. Previous payments under this item will be deducted from this amount.
- When all work under the contract is completed by the Contractor and accepted by the Town, 100% of the Mobilization Lump Sum will be paid

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- 28. GENERAL SEQUENCE OF CONSTRUCTION:** Prior to the start of Work, the Contractor shall develop a detailed construction and sequence of construction schedule using the critical path method (CPM) and submit to the Town of Addison and Engineer for approval. The CPM shall reflect all definable features of Work and activities that shall cause minimum interference with traffic along, across and adjacent to the Project during construction. If the schedule or sequence becomes unworkable or unsatisfactory as Work proceeds, adjustments shall be made. During all phases of construction access to all existing businesses must be maintained at all times unless otherwise authorized in writing by the Town of Addison. Erosion control devices must be properly installed and maintained during all stages of construction.
1. The project schedule shall be prepared using Microsoft Project, Primavera P6 or other as approved by the OWNER. Electronic files in the scheduling software native format and PDF copies shall be included with all schedule submittals.
 2. The Original Project Schedule submitted prior to construction and approved by the OWNER shall become the basis for measuring progress and evaluating whether the project is on schedule (Baseline schedule for the project). Once approved by the OWNER, the Original Project Schedule shall not be changed.
 3. There shall be at a minimum one schedule Activity for each major bid item in the proposal. Many bid items will need to consist of multiple Activities.
 4. The length of this project is such that many Activities or Sets of activities will be repeated for various stages of construction and segments of the roadway. Any repeated Activity must clearly identify the location and/or stage of construction.
 5. The schedule must be based on clearly defined Activities, phases of construction and any project milestones. Schedule limits must be easily field verified.
 6. All Activities must have Predecessor and Successor activities (except start and finish milestones). Independent or open-ended activities shall not be included.
 7. The schedule must clearly identify relationship between Predecessor and Successor activities as "start-to-start", "start-to-finish", or "finish-to-finish".
 8. Negative lag times shall not be permitted.
 9. Activities with a duration of twenty days or greater shall be broken into sub-activities. (For example, if the activity for "Install Water Line A" has a duration of 21 days, it should be divided into sub-activities such as "Install Water Line A, Sta 0+00 to 15+00", etc.)
 10. Monthly schedule updates shall include actual start and completion dates for completed and ongoing Activities. Original Project Schedule dates must be shown for tracking purposes.
 11. For activities behind schedule, a Recovery Plan must be submitted detailing how project will be brought back within schedule. This may include such measures as adding work crews, leasing additional equipment, or engaging subcontractors. Fragments or copies of the revised schedule reflecting proposed changes shall be used to document proposed plan revisions and their schedule impacts. Any additional costs resulting from Recovery Plan measures shall be at the contractor's sole expense.
 12. Activity durations reflected in the original schedule cannot be reduced without a Recovery Plan description reflecting what additional resources or actions will be implemented justifying the schedule change.

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The Contractor must comply with all work area restrictions as indicated in the Plans unless specifically authorized in writing by the Town of Addison.

29. **PROJECT REPRESENTATIVE:** The Town of Addison, the Engineer, the Contractor(s), and any applicable public utilities shall designate a single individual within their organization to act as liaison for the Project. This individual shall be aware of the day-to-day activities on the Project, have authority to make decisions binding on the party, and serve as single point for coordination of activities with the other team members. The Contractor's representative must be available to meet and discuss construction related issues on site or at the Town's offices within 20 minutes of a request during working hours and throughout the entire construction period. Upon repeated failure of attendance at requested meetings, Contractor will be required to have a Project representative on-site at all times.
30. **COORDINATION WITH OTHERS:** In the event that other Contractors are doing Work in the same area simultaneously with this Project, the Contractor shall coordinate his proposed construction with that of the other Contractors. The Town of Addison and/or the Engineer shall mediate any disputes, and the Contractors shall comply with their decisions.
31. **INSURANCE:** Each insurance policy that the Contractor must furnish in accordance with these contract documents shall name the Town of Addison and the Engineer as additional insured. Contractor shall include in their proposal package, a copy of their certificate of insurance showing compliance to the limits established by the Town of Addison.
- 1.0 The Contractor shall agree to furnish and maintain continuously during the period of this agreement, any renewals or extension, insurance coverage meeting all of the following requirements:
- 1.1 Commercial General Liability Insurance at minimum combined single limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, which coverage shall include Products/Completed Operations, and XCU Hazards. Coverage for product/completed operations must be maintained for at least two (2) years after the construction Work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. Contractual Liability must be included.
- 1.2 Workers Compensation Insurance at statutory limits, including employer's liability coverage at minimum limits of \$1,000,000 each occurrence-each accident, \$1,000,000 by disease-each occurrence and \$1,000,000 by disease aggregate
- 1.3 Commercial Automobile Liability Insurance at minimum combined single limits of \$1,000,000 per occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

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- 1.4 Umbrella Liability at minimum limits of \$1,000,000 each-occurrence \$4,000,000 aggregate with respect to primary commercial general liability, automobile liability and employer's liability policies.
- 1.5 Any Subcontractor(s) hired by the Contractor shall 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.
- 1.6 A comprehensive general liability insurance form may be used in lieu of a commercial general liability form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 each-occurrence, combined single limit and coverage must include a broad form comprehensive general liability endorsement, products/completed operations, XCU hazards and contractual liability.
- 2.0 With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:
 - 2.1 The Town shall be named as an additional insured with respect to general liability and automobile liability.
 - 2.2 All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
 - 2.3 A waiver of subrogation in favor of the Town of Addison shall be contained in the workers compensation and all liability policies.
 - 2.4 All insurance policies shall be endorsed to require the insured to immediately notify the Town of Addison of any material changes in the insurance coverage.
 - 2.5 All insurance policies shall be endorsed to the effect that the Town will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
 - 2.6 All certificates shall be mailed to Town of Addison, Purchasing Dept., P.O. Box 9010, Addison, Texas 75001 or emailed to purchasing@addisontx.gov.
 - 2.7 All insurance policies, which name the Town as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
 - 2.8 Required limits may be satisfied by any combination of primary and umbrella liability insurances.

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- 2.9 Contractor may maintain reasonable and customary deductibles, subject to approval by the Town.
- 3.0 All insurance shall be purchased from an insurance company who meets the following requirements:
 - 3.1 Must be issued by a carrier, which is rated "A-" VII or better by A.M. Best's Key Rating Guide.
 - 3.2 Licensed and admitted doing business in the State of Texas and is a subscriber to the Texas Guaranty Fund.
- 4.0 All insurance must be written on forms filed with and approved by the Texas State Board of Insurance. Certificates of insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:
 - 4.1 Set forth all endorsements and insurance coverages according to requirements and instruction contained herein.
 - 4.2 Shall specifically set forth the notice-of-cancellation or termination provisions to the Town.
- 5.0 Upon request, Contractor shall furnish the Town of Addison with certified copies of all insurance policies.

WORKERS' COMPENSATION INSURANCE COVERAGE:

A. Definitions.

Certificate of Coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission (the "TWCC"), or a coverage agreement (TWCC-81, TWCC-82, TWCC-83 or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Project, for the duration of the Project.

Duration of the Project - includes the time from the beginning of the Work on the Project until the Contractor's/person's Work on the Project has been completed and accepted by the governmental entity.

Persons Providing Services on the Project ("Subcontractor" in Section 406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, Subcontractors, leasing companies, motor carriers, Town-operators, employees of any such entity or employees of any entity which furnishes persons

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to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on property reporting of classification codes and payroll amounts and filing of any coverage agreement, which meets the statutory requirements of Texas Labor Code, 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
- C. The Contractor must provide a certificate of coverage to the Town of Addison prior to being awarded the contract.
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Town of Addison, showing that the coverage has been extended.
- E. The Contractor shall obtain from each person providing services on the Project, and provide to the Town of Addison:
 - (1) a certificate of coverage, prior to that person beginning Work on the Project, so that the Town of Addison will have on file certificates of coverage showing coverage for all persons providing services on the Project; and,
 - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- F. The Contractor shall retain all required certificates of coverage on file for the duration of the Project and for one year thereafter.
- G. The Contractor shall notify the Town of Addison in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- H. The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide Services on a Project to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the

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- statutory requirements of Texas Labor Codes 401.011 (44) for all its employees providing services on the Project, for the duration of the Project;
- (2) provide to the Contractor, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - (4) obtain from each person with whom it contracts, and provide to the Contractor;
 - a. a certificate of coverage, prior to the other person beginning Work on the Project; and,
 - b. a new certificate of coverage showing extension of the coverage period, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
 - (5) retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
 - (6) notify the Town of Addison in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 - (7) contractually require each other person with whom it contracts to perform as required by paragraphs (1) - (7) with the certificate of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Town of Addison that all employees of the Contractor who will provide services on the Project will be covered by worker's compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TWCC's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Town of Addison to declare the

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contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Town.

The following is the form of notice of workers' compensation coverage prescribed by the TWCC. Pursuant to Section 110.110 (d) (7), this notice must be printed with a title in at least 30-point bold type, and text in at least 19-point nominal type, and shall be in both English and Spanish and any other language common to the worker population.

REQUIRED WORKERS' COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction Project must be covered by workers' compensation insurance. This includes persons providing, hauling or delivering equipment or materials, or providing labor or transportation or other service related to the Project, regardless of the identity of their employer or status as an employee.

"Call the Texas Workers' Compensation Commission (TWCC) at (512) 440-3789 to receive further information on the legal requirements for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

32. **RESOLUTION OF DISPUTES:** The parties hereby covenant and agree that in the event of any controversy, dispute, or claim, of whatever nature arising out of, in connection with or in relation to the interpretation, performance or breach of this Contract, including but not limited to any claims based on contract, tort or statute, before filing a lawsuit, the parties agree to submit the matter to Alternative Dispute Resolution pursuant to the laws of the State of Texas. The parties shall select a third party arbitrator or mediator from the current list of neutrals on file with the Alternative Dispute Resolution Administrator of the Dallas County District Courts or other mutually agreeable mediator or arbitrator. All forms of Alternative Dispute Resolution may be used except binding arbitration. The proceedings shall be conducted in accordance with the laws of the State of Texas.

33. **SHOP DRAWINGS:** The Contractor shall provide, review, approve and submit all shop drawings, product data and samples required by the Town of Addison, the Engineer and the Contract Documents in accordance with Item 1.28 of the Standard Specifications for Public Works Construction, North Central Texas Council of Governments. The Contractor shall electronically submit shop drawing for review to Kimley-Horn, who will review, comment and forward to the Town of Addison for acceptance.

Shop drawings shall include all items to be installed in the Project, including but not limited to:

- | | | |
|--|---|--|
| <input type="checkbox"/> Concrete Mix Designs | <input type="checkbox"/> Traffic Control Plan | <input type="checkbox"/> Water Main Pipe/Fitting |
| <input type="checkbox"/> Storm Sewer Pipe | <input type="checkbox"/> Manholes & Vaults | <input type="checkbox"/> Valves & Boxes |
| <input type="checkbox"/> Sanitary Sewer Pipe/Fitting | <input type="checkbox"/> Backfill Materials | |

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34. **PROJECT VIDEO:** Prior to the start of construction, Contractor shall video the construction area and property adjacent to construction in the presence of the City Inspector. The format shall be DVD. The video shall be narrated. The Contractor shall furnish the Town of Addison a copy of the video in DVD format prior to commencement of Project. This effort shall be considered as subsidiary to the various bids items for this Project (See Section 19).
35. **SAMPLES AND TESTS OF MATERIALS:** The Town of Addison shall designate and pay an independent testing laboratory to furnish testing for this Project. Random testing will be provided by the independent lab as necessary for compliance with the Specifications. The Contractor shall coordinate construction with the testing lab and the Town of Addison, and shall provide assistance to the testing labs by providing excavation, access, trench safety, materials for testing and any other Work required to insure all testing requirements are met. Work performed to accommodate testing will be a subsidiary item and no extra payment will be authorized. All costs for the field quality control testing shall be paid for by the Town of Addison, except for any and all re-testing, which shall be paid by the Contractor and such cost shall be deducted from monthly pay requests. As a guide, the Contractor shall be responsible for providing any test required by the Specifications.

All samples and tests shall be performed in accordance with the Standard Specifications for Public Works Construction, North Central Texas Council of Governments (5th Addition) as amended or supplemented.

36. **INSPECTION:** The Town of Addison and the Engineer reserve the right to inspect, test, measure or verify the construction Work for this Project as they deem necessary to ascertain that the Work is being accomplished in accordance with the standards and requirements set forth in the Contract Documents. Notwithstanding such reviews, the Contractor will be held responsible for the finished Work and any acceptance of the Work by the Town or governmental agencies will not relieve the Contractor from responsibility for the Work. The Town reserves the right to place full-time construction inspectors at the site of the Work. Costs for inspection services will be paid by the Town of Addison. The Contractor shall provide assistance to the Town of Addison and the Engineer by providing excavation, trench safety, or other Work necessary to facilitate inspection activities, and shall give sufficient notice well in advance of pending construction activities for scheduling of inspection services.

If the Specifications, the Town's instructions, laws, ordinances, or any public authority require any Work to be specially tested, the Contractor shall give the Town timely notice of its readiness for testing, and if the testing is by an authority other than the Town, of the date fixed for such testing. Tests by the Town shall be made promptly, and where practicable at the source of supply.

37. **ACCESS ROUTES, STAGING AREAS AND STORAGE AREAS:** All haul roads and access routes and the location of job site trailers, staging areas, and storage areas shall be subject to the approval of the Town and the Engineer. The Contractor shall be responsible for obtaining a staging area for storage of equipment and materials and for employee parking. The Contractor is responsible for maintaining and repairing all roads and other

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facilities used during construction. Upon completion of the Project all existing roads and other disturbed areas shall be left in a condition equal to that at the time the Contractor commences Work on this Project.

38. **PROPERTY ACCESS:** Access to adjacent commercial property shall be maintained at all times unless otherwise directed by the Engineer and/or Town of Addison. Contractor shall also maintain sufficient access throughout the Project limits to the existing buildings and businesses during construction operations.
39. **PLANT, PROCEDURES, METHODS AND EQUIPMENT:** The Contractor shall determine the methods to be employed, the procedures to be followed, and equipment to be used on the Work under this contract, subject to the requirements of these Specifications and approval of the Engineer and Town of Addison. Only adequate and safe procedures, methods and equipment shall be used.

The Contractor shall so arrange his Work and provide such plant and equipment as is necessary in order to meet the progress requirements of the approved time schedule and to complete the Work within the period of time as specified in the Contract. Only such materials and equipment as are necessary for the construction of the Work under this contract shall be placed, stored or allowed to occupy any space at the site of the Work.

It is expressly agreed that the acceptance or approval of any order of procedure, methods or equipment submitted or employed by the Contractor shall not in any manner relieve the Contractor of responsibility for the safety, maintenance and repairs of any Work, or for the construction maintenance and safety of the Work hereunder, or from any liability whatsoever on account of any procedure or method employed by the Contractor.

Where the Work under this contract requires permits from the Town of Addison, the State of Texas, or other public authorities, duplicate copies of such permits shall be furnished to the Engineer by the Contractor before the Work covered thereby is started. **NO WORK WILL BE ALLOWED TO PROCEED BEFORE REQUIRED PERMITS ARE OBTAINED AND DISTRIBUTED.**

40. **PARKING OF CONSTRUCTION EQUIPMENT:** During all other periods of time when the Contractor's or their sub-contractors equipment is not being actively used on the construction Work, the Contractor shall park the equipment at locations which are approved by the Town of Addison. The Contractor shall provide adequate barricades, markers and lights to protect the Town of Addison, the Engineer, the public and other Work. All barricades, lights, and markers must meet the requirements of the Town of Addison, State and Federal regulations.
41. **ZONING REQUIREMENTS:** During the construction of this Project, the Contractor shall comply with the present zoning requirements of the Town of Addison in the use of vacant property for storage purposes.
42. **IN PUBLIC ROADS AND PRIVATE DRIVES:** No public road shall be entirely closed overnight, unless approved by the Town of Addison. It shall be the responsibility of the Contractor to build and maintain all weather bypasses and detours, if necessary, and to

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properly light, barricade and mark all bypasses and detours that might be required on and across the roads involved in the Work included in this Contract.

The Contractor shall make every effort to complete construction and allow immediate access to adjacent property at driveway entrances located along the roadways. Towns or tenants of improvements where access and/or entrance drives are located shall be notified at least twenty-four (24) hours prior to the time the construction will be started at their driveways or entrances and informed as to the length of time driveways will be closed. Contractor shall at all times maintain at least one point of access into all properties, unless obtaining written permission from property owner to do otherwise with such written permission being provided to the Town's inspector.

The Contractor shall be responsible for all road and entrance reconstruction and repairs and maintenance of same for a period of two years from the date of Town of Addison's acceptance of the Work. In the event the repairs and maintenance are not made immediately to the satisfaction of the Town, and it becomes necessary for the Town to make such repairs, the Contractor shall reimburse the Town for the cost of such repairs.

The Contractor shall, at all times, keep a sufficient width of the roadway clear of dirt and other material to allow the free flow of traffic. The Contractor shall assume any and all responsibility for damage, personal or otherwise, that may be caused by the construction along roads and private drives.

43. **HAULING ON TOWN OF ADDISON STREETS:** The Contractor shall receive approval of its haul routes and type of equipment to be used prior to beginning construction. The Contractor shall be responsible for maintaining the cleanliness of existing paved roadways and shall provide equipment and manpower for that purpose.
44. **EXISTING POWER POLES & GUY WIRES:** The Contractor shall have the responsibility of coordinating with the proper authorities for the bracing, replacing or relocating of all utility poles and guy wires which interfere with the Work on this Project prior to beginning its construction operations. The Contractor will also be responsible for all damage to poles, guy wires, etc. that are damaged or destroyed by Contractor's operations.
45. **SAFETY RESTRICTIONS - WORK NEAR HIGH VOLTAGE LINES:** The contractor is responsible for the site safety of the project. Contractor shall follow governing regulatory requirements when working near high voltage lines, including but not limited to, OSHA 1926 and Town of Addison requirements.
46. **PROTECTION OF EXISTING UTILITIES AND STRUCTURES:** The location and dimensions shown on the Plans relative to existing utilities and subsurface structures are based on the best records and/or field information available and are not guaranteed by the Town of Addison or the Engineer to be accurate as to location and depth. It shall be the Contractor's responsibility to verify locations of adjacent and conflicting utilities sufficiently in advance of its activities in order that he may negotiate such restrictive locations with the Town of Addison of the conflicting utility and/or make local adjustments

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to provide adequate clearances. The Contractor shall take all necessary precautions in order to protect all utilities and services encountered, whether or not they are indicated on the Plans. All damage to utilities resulting from Contractor's operations shall be restored at its expense. The Town of Addison and the Engineer assume no responsibility for failure to show any or all of these utilities or structures on the Plans, or to show them in their exact locations. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for Extra Work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate changes in the lines or grades, or requires the building of special Work, provisions for which are not made in the Plans, in which case, provisions in these Specifications for Extra Work shall apply.

- 47. PUBLIC UTILITIES AND OTHER PROPERTY TO BE CHANGED:** In case it is necessary to change or move the property of a public utility, such property shall not be moved or interfered with until authorized by the Town of Addison or the Engineer. The right is reserved for the Owner of public utilities to enter upon the limits of the Project for the purpose of making such changes or repairs of their property that may be made necessary by performance of the Contract. The Contractor shall be responsible for coordination with the Town of Addison and the Engineer, and all utility companies whose utility lines or streets may be affected by the proposed improvements. The Contractor shall observe the following:
- a. Prior to any excavation, the Contractor shall determine the locations of all existing water, gas, sewer, electric, telephone, telegraph, television, pipelines and other underground utilities and structures.
 - b. After commencing Work, the Contractor shall use every precaution to avoid interference with existing underground and surface utilities and structures and protect them from damage.
 - c. Where the locations of existing underground and surface utilities and structures are indicated, these locations are generally approximate, and all items which may be encountered during the Work are not necessarily indicated. The Contractor shall determine the exact locations of all items indicated, and the existence and locations of all items not indicated.
 - d. The Contractor shall repair or pay for all damage caused by its operations to all existing utility lines, public property, and private property, whether it is below ground or above ground, and he shall defend and settle in total the cost of all lawsuits which may arise as a result of its operations.
 - e. To avoid unnecessary interferences or delays, the Contractor shall coordinate all utility removals, replacements and construction with the appropriate utility company, and then request written authorization from the Town of Addison or the Engineer. The Town of Addison and the Engineer will not be liable for damages due to delay as a result of the above.

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48. **MAINTENANCE AND REPAIRS:** The Contractor shall maintain and keep in good repair all Work contemplated under these Plans, Specifications, and Plans which shall include the maintenance and repair of all existing streets, storm sewer crossings, utility crossings, temporary crossings for access to adjacent property, barricades, lights, and danger signals, and all Work which is necessary for the well-being of the general public. In the event the Contractor fails in its obligations to properly maintain the Work, the Town of Addison shall make such repairs as are necessary and the cost of such repairs shall be deducted from payment due the Contractor.
49. **PROTECTION OF WORK:** During performance and up to date of final acceptance, the Contractor shall be under the absolute obligation to protect the finished Work against damage, loss or injury. In the event of damage, loss or injury, the Contractor shall promptly replace or repair such Work, whichever the Town of Addison shall determine to be preferable. The obligation to deliver finished Work in strict accordance with the contract prior to final acceptance shall be absolute and shall not be affected by the Town of Addison's approval of or failure to prohibit means and methods of construction used by the Contractor. All risk of loss or damage to the Work shall be borne solely by the Contractor until final acceptance of all Work by the Town of Addison, as evidenced by the Town of Addison's issuance of a certificate of acceptance.
50. **PUBLIC CONVENIENCE AND SAFETY:** In accordance with generally accepted construction practices, the Contractor shall be solely and completely responsible for conditions of the Project site, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal Work hours.

Materials stored about the Work site shall be so placed, and the Work shall at all times be so conducted, as to cause no greater obstruction to the traveling public than is considered necessary by the Town of Addison. The materials excavated shall be placed so as not to endanger the Work or prevent free access to all fire hydrants, water valves, gas valves, manholes (telephone, telegraph or electrical conduits, and sanitary sewers) and fire alarm or police call boxes in the vicinity.

The Town of Addison reserves the right to remedy any neglect on the part of the Contractor as regards to the public convenience and safety which may come to the Town of Addison's attention, after 24 hours notice in writing to the Contractor, save in cases of emergency, when the Town of Addison shall have the right to remedy any neglect without notice; and, in either case, the cost of such Work done by the Town of Addison shall be deducted from the monies due or to become due the Contractor. The Contractor shall notify the Town of Addison and the Engineer when any street is to be closed or obstructed. The Contractor shall provide for emergency vehicle access at all times.

Where the Work passes over or through private property, the Town of Addison shall provide such right-of-way. The Contractor shall notify the proper representatives of any public utility, corporation, company or individual, not less than 48 hours in advance of Work which might damage or interfere with the operation of their property along or adjacent to the Work. The Contractor shall be responsible for all damage or injury to

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property of any character (except such as may be required by the provisions of the Contract Documents, or caused by agents or employees or the Town of Addison) by reason of any negligent act or omission on the part of the Contractor, its employees, agents or Subcontractors, or at any time due to defective Work or materials, or due to its failure to reasonably or properly prosecute the Work, and said responsibility shall not be released by the fact that the Work shall have been completed and accepted.

When and where any such damage or injury is done to public or private property on the part of the Contractor, he shall restore or have restored at its own cost and expense such property to a condition similar or equal to that existing before such damage was done, by repairing, rebuilding or otherwise restoring as he may be directed, or he shall make good such damage or injury in a manner acceptable to the property Town of Addison and the Engineer. In case of failure on the part of the Contractor to restore such property or make good such damage or injury, the Town of Addison may, upon 48 hour written notice under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof shall be deducted from any monies due or to become due to the Contractor under this contract; or where sufficient contract funds are unavailable for this purpose, the Contractor or its surety shall reimburse the Town of Addison for all such costs.

51. **PROTECTION OF PERSONS AND PROPERTY:** The Contractor shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise necessary to protect the Work and persons and property while said persons or property are approaching, leaving or within the Work site or any area adjacent to said Work site. No separate compensation shall be paid to the Contractor for the installation or maintenance of any protective measures, warning devices, barricades, lights, signs, or any other precautionary measures required by law or otherwise necessary for the protection of persons or property.

The Contractor shall assume all responsibilities to the general public in connection with the general public's immediate approach to and travel through the Work site and the area adjacent to said Work site.

Where the Work is in or adjacent to any street, alley, sidewalk, public right-of-way or public place, the Contractor shall at its own cost and expense provide such flagmen and watchmen and furnish, erect and maintain such warning devices, barricades, lights, signs, and other precautionary measures for the protection of persons or property as may be prudent or necessary, or as required by law. The Contractor's responsibility for providing and maintaining flagmen, watchmen, warning devices, barricades, signs and lights and other precautionary measures shall not cease until the Project shall have been completed and accepted by the Town of Addison, and shall cease when the Town of Addison notifies the Contractor in writing of final Project acceptance.

If the Town of Addison discovers that the Contractor has failed to comply with applicable federal or state laws (by failing to furnish the necessary flagmen, warning devices, barricades, lights, signs or other precautionary measures for the protection of persons or

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property), the Town of Addison may order the Contractor to take such additional precautionary measures as required by law to protect persons and property. In addition, the Contractor shall be held responsible for all damages to the Work and other public or private property due to the failure of warning devices, barricades, signs, lights or other precautionary measures in protecting said property; and whenever evidence is found of such damage, the Town of Addison may order the damaged portion immediately removed and replaced by and at the cost and expense of the Contractor.

52. **TRAFFIC CONTROL:** It shall be the responsibility of the Contractor to provide traffic control during the construction as required by the State of Texas, the Town of Addison, and in accordance with the following additional requirements:
- a. The Contractor shall be required to furnish barricades, flares, flagmen, etc., for the protection of the public, employees and the Work.
 - b. The Contractor shall prosecute its Work in such a manner as to create a minimum of interruption to traffic along adjacent roadways.
 - c. The unit price bid under the appropriate bid item of the proposal shall cover all cost for providing signage, markings, lighting, barricades, flagmen and other devices and personnel required for traffic control during construction of the Project.
 - d. The Contractor shall not remove any regulatory sign, instructional sign, warning sign, street name sign or any other sign or signal which currently exists.
 - e. **The Contractor shall provide a comprehensive Traffic Control Plan to the Town of Addison for review, comment, and approval.** In the event the planned sequence of work is different in any way from that sequence of work provided for in the plans or where additional details are required to be reviewed and approved by Addison prior to any further work is performed. The Traffic Control Plan shall be designed in accordance with established standards and regulations and signed and sealed by a professional engineer, registered in the State of Texas. The plan should reflect the Contractor's proposed construction phasing and methodology and include the design layout for all proposed detour and traffic situations. This effort is paid by lump sum in bid item A-31.
53. **BARRICADES, WARNING SIGNS, DETOURS AND SEQUENCE OF CONSTRUCTION:** Throughout the construction operations, streets and intersections will remain open to traffic by constructing the Work in stages. All streets, driveways, adjacent business and alleys shall remain open to traffic as far as is practicable.
- A. **General Construction:** The Contractor shall plan its Work sequence in a manner that will cause minimum interference with aircraft operations during construction operations. Before beginning Work on this Project, the Contractor shall submit, for approval by the Town of Addison, a plan of construction operations outlining in detail a sequence of Work to be followed; setting out the method of handling traffic on streets, roads and driveways along, across and adjacent to the Work. If at any time during the construction, the Contractor's proposed plan of operation for

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handling traffic does not provide for safe comfortable movement, the Contractor shall immediately change its operations to correct the unsatisfactory conditions.

Ditches across the traffic lanes will be kept covered with a portable traffic-bearing surface at all times unless Work in the ditch is in progress. Only one lane of traffic may be closed at a time when Work is in progress in a ditch.

- B. Safety: The Contractor shall provide, construct and maintain barricades and signs at locations set out in the Plans and in the Special Provisions in accordance with the Texas Manual on "Uniform Traffic Control Devices for Streets and Highways". In addition, he shall provide and maintain such other barricades and signs as deemed necessary by the Town or the Engineer, and provide and maintain, between sunset and sunrise, a sufficient number of lights at barricades and points of danger for the protection of vehicular and pedestrian traffic.

Barricades shall be placed in such a manner as not to interfere with the sight distance of drivers entering the street from side streets.

The Contractor shall keep traveled surfaces used in its hauling operation clear and free of dirt or other material.

The Contractor shall provide and maintain qualified flagmen at such points and for such periods of time as may be required to provide for the safety and convenience of public travel and Contractor's personnel.

54. EXCAVATION SAFETY SYSTEMS:

The Work performed under this section of the Specifications consists of providing trench safety systems consisting of shoring, sheeting, trench shield, and/or laid back slopes to meet the trench safety requirements of the Occupational Safety and Health Administration (O.S.H.A.), as required for this Project and specified herein.

- A. General: Trench safety systems shall be provided by the Contractor as provided in Subpart P - Excavation, Trenching and Shoring, Part 1926 of the Code of Federal Regulations which describes safety and health regulations as administered by the U.S. Department of Labor Occupational Safety and Health Administration (O.S.H.A.). The standards specified by the O.S.H.A. Regulations shall be the minimum allowed on this Project. It shall be the responsibility of the Contractor to design and install adequate trench safety systems for all trenches excavated on this Project.

The Contractor shall furnish to the Town for review, prior to beginning construction activity, a Trench Safety Plan for the entire Project. The trench safety plan must be prepared and sealed by a Professional Engineer registered in the State of Texas. In addition, all trench safety systems utilized in this Project must be designed by a Professional Engineer registered in the State of Texas. The Contractor shall be totally responsible for the safety of all persons involved in the construction of this Project.

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- B. Core Borings: Any core borings and soil data furnished by the Town are for the convenience of the Contractor. The Contractor shall be responsible for any additional soil or geotechnical information required. The Contractor shall be responsible for properly designed trench safety systems to be utilized for any type of subsurface condition found on this Project. The furnishing of soil information by the Town of Addison in no way relieves the Contractor of this obligation. If no core borings or soil data are furnished by the Town, it shall be the Contractor's responsibility to obtain whatever geotechnical information required for preparation of trench safety systems.
- C. Inspections: In addition to the inspections of the trench and trench safety systems required of the Contractor by the O.S.H.A. Regulations, the Town may further inspect the Work. The Town shall have the right to reject any trench safety systems which he finds to be inadequate, and the Contractor shall immediately improve the system to comply with this specification.
- D. Measurement and Payment: Measurement and payment of Trench Safety Systems shall be based on the actual linear footage of the pipe installed on the Project. The payment shall be full compensation for all planning, engineering, materials, equipment, fabrications, installation, recovery and all incidental Work required.
- 55. TRENCH EXCAVATION, BACKFILL AND COMPACTION**: Trench excavation, backfill and compaction of water and sewer utility trenches shall be in accordance with Town of Addison Standards and with details shown on the Construction Plans.
- A. Trench Excavation: If the stated maximum trench widths are exceeded, either through accident or otherwise, and if the Engineer determines that the design loadings of the pipe will be exceeded, the Contractor will be required to support the pipe with an improved trench bottom. The expense of such remedial measures shall be entirely the Contractor's own. All trenching operations shall be confined to the width of permanent rights-of-way, permanent easements and any temporary construction easements. All excavation shall be in strict compliance with the Trench Safety Systems Special Condition of this document.
- B. Trench Backfill: Trenches shall be backfilled above the top of the embedment material with approved backfill material per Town of Addison Standards for the appropriate pipe size, pipe material, depth, and soil condition.
- C. Compaction: All trenches under proposed or existing pavement shall be compacted to within a range of 95% to 100% Standard Proctor Density. Trenches which lie outside limits of pavement shall be compacted to a minimum of 90% Standard Proctor Density (ASTM D-698).
- 56. TRENCH WALLS**: The Contractor shall use shoring or a drag box in those areas where it is required to protect existing improvements. This shall be subsidiary to the linear foot cost of the pipe and not a separate pay item.

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57. **SUSPENSION OF WORK RELATED TO DANGER:** In addition to the other remedies for suspension of the Work as provided for in the General Provisions and Special Provisions, the Town of Addison has the authority to suspend all work immediately if, in the Town of Addison's opinion, there is imminent danger to workers or the general public. If there is no imminent danger to workmen or the general public, but trench conditions are not in compliance with Federal Regulations 29 C.F.R. 1926.650-1926.652, the Town of Addison shall warn the Contractor who shall then immediately order all workmen in and adjacent to the trench away from the area. The Contractor must then bring the trench into compliance with the regulations. If the Contractor does not make the required corrections, all work on the Contract shall cease and the Town of Addison will issue a letter of Temporary Suspension of Work. The only work authorized after issuance of this letter is work approved by the regulations. Other work shall not be permitted until the Town of Addison issues a letter of Release of Temporary Suspension of Work. The Contractor shall not be entitled to additional compensation, an extension of time or payment of damages as a result of a temporary suspension of work under this provision.
58. **PROPERTY LINES AND MONUMENTS:** The Contractor shall protect all property corner markers, and when any such markers or monuments are in danger of being disturbed, they shall be properly referenced and if disturbed shall be reset at expense of the Contractor.
59. **CONSTRUCTION STAKING:** Construction staking will not be provided by the Town of Addison or Engineer. This item will be performed by the Contractor and shall be subsidiary to other bid items. The Contractor will also be responsible for maintaining stakes. If re-staking is required for any reason, it will be the Contractor's responsibility, including associated costs.

All construction staking shall be done under the supervision of a Registered Professional Land Surveyor registered in the State of Texas. The Contractor shall submit copies of cut sheets and field books for the construction of all paving, water, wastewater, and stormwater improvements to the Town of Addison for review prior to construction of the improvements. The information on the cut sheets and field books shall include but not be limited to the following:

- a. Heading to include date, contract number, Project name, surveying firm, Contractor, and construction plan sheet number.
- b. Location, description of street/line and street/line name, number, letter, etc. designation.
- c. Benchmark Data: Location, description, and elevation.
- d. Slope or percent of grade of each curb line or utility line.
- e. Stations at 50 foot intervals and including all PC, PT, PI, PVC, PVI, PVT, PRC, grade changes, etc.

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- f. Offset description including distance to center line or back of curb and direction of offset; left, right, east, west, etc.
 - g. Cut to subgrade, pavement, top of curb, or flowline of the street or utility being staked.
 - h. Clarifying remarks such as top of curb, gutter, pavement, subgrade, manhole, cleanout, valve, tee, cross, fire hydrant, wastewater lateral, water service, etc.
 - i. Cut sheets shall be signed by a Texas Registered Professional Land Surveyor.
60. **DURING CONSTRUCTION:** During construction of the Work, the Contractor shall, at all times, keep the site of the Work and adjacent premises as free from material, debris and rubbish as is practicable and shall remove same from any portion of the site if, in the opinion of the Town of Addison or the Engineer, such material, debris or rubbish constitutes a nuisance or is objectionable. In case of failure on the part of the Contractor to maintain a clean site, the Town of Addison may, upon 24 hour written notice, clean the site, and the cost thereof shall be deducted from any monies due or to become due to the Contractor under its contract; or where sufficient contract funds are unavailable for this purpose, the Contractor or its surety shall reimburse the Town of Addison for all such costs.
61. **CONSTRUCTION TRAFFIC OVER PIPE LINES:** The design of the new pipes and the design of the existing pipe have been taken into account and provided for highway live loads. It is apparent, however, that certain construction vehicles could exceed this highway load condition under shallow bury conditions. It will be the responsibility of the Contractor to protect both the new line and the existing lines from these possibly excessive loads. The Contractor shall not at any time cross the existing or new pipe with a truck delivering new pipe to the site. Any damage to the existing or new pipe will be repaired or replaced by the Contractor to the satisfaction of the Town of Addison.

In locations where it is not permissible to cross the existing or proposed pipes without additional protection, the Contractor may elect to provide additional protection of the pipes, such as steel plates, so that more frequent crossings of the pipes are allowed. It still is, however, the responsibility of the Contractor to repair any damage to the existing or proposed lines if the damage results from any phase of its construction operation.

62. **CONTRACTOR'S CONTINUING OBLIGATION:** Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the Town of Addison, nor the issuance of a certificate of Substantial Completion, nor any payment by Town of Addison to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Town of Addison, nor any act of acceptance by Town of Addison nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by the Town of Addison pursuant to final payment nor any correction of defective Work by Town of Addison will constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

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63. **IRRIGATION AND SPRINKLER REPAIR:** The Contractor shall maintain all existing irrigation systems within the limits of the Project during the duration of the contract, if necessary. The Contractor shall employ a licensed irrigator who is responsible for the repair or replacement of any damage to irrigation lines, valves, controllers, sprinklers, wiring and appurtenances which are damaged during construction. **This repair is subsidiary to the various other items bid. The Contractor will be responsible for any vegetation that dies as a result of damage to the irrigation system and replace it with equal vegetation at its own cost.**
64. **REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK:** All Work which has been rejected or condemned shall be repaired; or if it cannot be repaired satisfactorily, it shall be removed and replaced at the Contractor's expense. Defective materials shall be immediately removed from the Work site. Work done without line and grade having been provided; Work done beyond the line or not in conformity with the grades shown on the Plans or as provided, Work done without proper inspection; or any Extra or unclassified Work done without written authority and prior agreement in writing as to prices, shall be at the Contractor's risk and will be considered unauthorized, and at the option of the Town of Addison may not be measured and paid for and may be ordered removed at the Contractor's expense. Upon failure of the Contractor to repair satisfactorily or to remove and replace, if so directed, rejected, unauthorized or condemned Work or materials immediately after receiving notice from the Town of Addison, the Town will, after giving written notice to the Contractor, have the authority to cause defective Work to be remedied or removed and replaced, or to cause unauthorized Work to be removed and to deduct the cost thereof from any monies due or to become due the Contractor.
65. **DISPOSITION AND DISPOSAL OF MATERIALS:** All materials to be removed from the site including refuse and other debris shall become the property of the Contractor and shall be disposed of outside the limits of the Project. Contractor shall also comply with all applicable laws governing the spillage of debris while transporting to a disposal site.
66. **CLEAN-UP FOR FINAL ACCEPTANCE:** The Contractor shall make a final cleanup of all parts of the Work before acceptance by the Town of Addison. This cleanup shall include removal of all objectionable rock and other construction materials, and in general preparing the site of the Work in an orderly manner and appearance.
67. **TV INSPECTION OF SANITARY SEWER/STORM SEWER:** Part of the final inspection of the wastewater systems on this Project shall include a closed circuit TV survey of the completed pipe installation, exclusive of services, and all imperfections in the installed facility revealed by the TV survey shall be remedied by the Contractor prior to acceptance of the Project as complete. All TV survey Work, including furnishing of necessary personnel, equipment and material shall be performed by the Contractor.
68. **TESTING REQUIREMENTS:** Testing shall be conducted in accordance with Town of Addison Specifications except as modified in the Special Provisions, Technical Specifications, or as on the plans. The Town of Addison will provide random testing. The Contractor shall coordinate construction with the Town of Addison, and shall provide assistance to the testing labs by providing trench safety, excavation, or other work to insure

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all testing requirements are met. Work performed to accommodate testing will be a subsidiary item and no extra payment will be authorized. All retesting shall be at the expense of the Contractor. As a general guide, the Contractor shall be responsible for providing the following tests:

- a. Density and associated tests on embedment and backfill.
- b. Compressive strength tests on concrete.
- c. Gradation soil tests on backfill as may be required.
- d. Pressure test, bacteriological tests for disinfection of water lines,
- e. Mandrel test for gravity sewer pipeline
- f. Vacuum test for SSMH for water tightness.
- g. Providing test results from manufacturer and as specified in Town of Addison Specifications (NTCOG).

69. **SILICONE JOINT SEALANT:** Silicone joint sealant must be used in all instances where joint sealant applies to Portland Cement Concrete pavement and curbs. Payment for the use of silicone joint throughout this Project will in all cases be subsidiary to this contract at no extra cost.

70. **CLAIMS FOR DAMAGES OR INJURY:** General Provision Item 1.24.3 - SMALL CLAIMS FOR DAMAGE OR INJURY is amended to read as follows: "If any person files a claim against the Town of Addison or Contractor for personal injury or property damage resulting from, arising out of, or caused by, the operations of the Contractor, or any Work within the limits of the Project, the Contractor must either submit to the Town of Addison, a duly executed full release within thirty (30) days from the date of written claim, or immediately report the claim to its liability insurance carrier for their action in adjusting the claim. If the Contractor fails to comply with this provision within the stipulated time limit, it will be automatically deemed that the Contractor has appointed the Town as it's irrevocably Attorney-In-Fact authorizing the Town to report the claim directly with the liability insurance carrier. This provision is in and of itself a Power-of-Attorney from the Contractor to the Town which authorizes the Town to take said action on behalf of the Contractor without the necessity of the execution of any other document. If the Contractor fails to comply with the provisions of this item the Town, at its own discretion, may terminate this contract or take any other actions it deems appropriate. Any payment or portion thereof due the Contractor, whether it is a final payment, progress payment, payment out of retainage or refund payment may be withheld by the Town as is authorized by Item 109.4. Bankruptcy, insolvency or denial of liability by the insurance carrier shall not exonerate the Contractor from liability.

As a result of the additional Work created to Town of Addison due to un-responded claims for damages by Contractor to third parties, Contractor shall incur penalties for failure to abide by this Special Provision.

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Contractor shall respond to the claimant in writing regarding the status of the claim, including whether Contractor disputes the claim, wishes to settle, or will notify its liability insurance carrier regarding the claim. Contractor will be assessed a penalty by the Town of \$75.00 per claim, for its failure to respond to the claimant as described above within thirty days of its written notice of claim by the Town.

To ensure Contractor compliance, the Town of Addison shall be notified, by copied correspondence of responses or settlement by Contractor.”

71. **WAIVER OF CLAIMS:** The making and acceptance of final payment will constitute:
- A. A waiver of all claims by Town of Addison against Contractor, except claims arising from unsettled Liens, from defective Work appearing after final inspection or failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by Town of Addison of any rights in respect of Contractor’s continuing obligations under the Contract Documents.
 - B. A waiver of all claims by Contractor against Town of Addison other than those previously made in writing and still unsettled.
72. **MECHANICS AND MATERIALMEN’S LIEN:** The Contractor shall be required to execute a release of mechanics and materialmen’s liens upon receipt of payment and shall ensure that the Project remains free and clear of all liens related to the Work. The Contractor shall have all liens removed by obtaining releases acceptable to the Town of Addison or shall bond around such liens by obtaining a discharge of all liens.
73. **CONTRACTOR’S AFFIDAVIT OF BILLS PAID:** The Contractor shall be required to execute the form provided in Section BP prior to the acceptance of the Project.
74. **PRODUCT RECORD DOCUMENTS:** The Contractor shall maintain record Plans and legibly annotate shop drawings to record changes made after review. A red felt-tip marking pen shall be used for all recording.

Maintenance of Documents: The Contractor shall maintain at the job site one record copy of the Contract Plans, Specifications, Shop Drawings, Change Orders, other modification to the Contract, field test records and other documents submitted by Contractor in compliance with specification requirements. These documents shall be maintained at the job site apart from documents used for construction. These documents are not to be used for construction purposes. The documents shall be maintained in clean, legible condition. The documents shall be made available at all times for inspection by the Town.

Recording: Each document shall be labeled Project Record Copy in 2-inch high printed letters. The record documents shall be kept current. No Work shall be covered until required information has been recorded.

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Contract Plans: The appropriate drawing shall be legibly marked to record, where applicable:

- a. Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements.
- b. Field changes of dimension and detail made during construction process.
- c. Changes made by Change Order or Supplemental Agreement.
- d. Details not on original Contract Plans.
- e. Manufacturer, trade name, catalog number and supplier of each product and item of equipment actually installed.
- f. Changes made by Change Order or Supplemental Agreement.
- g. Other matters not originally specified.

Shop Drawing: The Contractor shall maintain the Shop Drawings as record drawings and legibly annotate shop drawings to record changes made after review.

Submittal: At the completion of the Project, the Contractor shall deliver record Plans to the Town. The transmittal letter shall be accompanied, in duplicate, with:

- a. Date, Project title and number.
- b. Contractor's name and address.
- c. Title and number of each record document.
- d. Certification that each document as submitted is complete and accurate.
- e. Signature of Contractor or its authorized representative.

75. **OWNERSHIP OF WORK AND MATERIALS:** All Work performed by Contractor pursuant to the Contract shall be the property of the Town of Addison. The Town of Addison shall own all construction, and any data, documents, plans, specifications, working papers, computer programs, photographs, or other material produced by Contractor pursuant to the Contract, and Contractor hereby assigns and transfers to the Town of Addison any and all copyrights for such material. To the extent that such programs used are internal, proprietary programs used by Contractor in the performance of the Work, Contractor will provide the Town of Addison such access to the programs as is necessary for the Town of Addison to be able to use the products and documents generated by the program, but Contractor is not required to transfer the copyrights or other intellectual property rights to the program to the Town of Addison. As security for partial, progress, or other payments, title to work for which such payments are made shall pass to the Town of Addison at the time of the payment. To the extent that title has not previously been vested in the Town of Addison by reason of payments, full title shall pass to the Town of Addison at delivery of the Work at the location specified in the Contract.

Unincorporated Work to which the Town of Addison has received title by reason of progress, partial or other payments shall be segregated from other Contractor or Subcontractor materials and clearly identified as the Town of Addison property. The

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Contractor shall be responsible for all materials until they have been incorporated into the Work and the Work has been finally accepted by the Town of Addison. The title transferred as above shall in each case be good, and free and clear of any and all security interests, liens, or other encumbrances. The Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any way that would result in any lien, security interest, charge, or claim upon or against said items. The transfer of title as provided above shall not imply acceptance by the Town of Addison, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to such items.

The Contractor shall insert provisions in its subcontracts sufficient to ensure compliance with the content of this Section.

76. **DRAWINGS AND OTHER DATA:** All documents developed by Contractor in the performance of the Contract shall become the sole property of the Town of Addison and may be used by the Town of Addison on any other project without additional compensation to Contractor. Use by the Town of Addison of these documents on other projects does not confer any liability on Contractor.

The Town of Addison shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. § 201(b). With respect thereto, Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design related patent and copyright laws. All design drawings, as-built drawings and specifications, in any form, shall contain a copyright mark of the Town of Addison.

77. **TOWN OF ADDISON APPROVAL:** This Project is subject to final approval and acceptance by the Town of Addison. Final approval acceptance will not be given until the punch list items are completed to the Town's satisfaction and as-built Plans are given to the Town of Addison.
78. **USE OF EXPLOSIVES:** The use of explosives by the Contractor to complete the Work shall be prohibited.
79. **POWER FOR CONSTRUCTION:** The Contractor shall contract with the local power provider and make the necessary arrangements for securing power required for the construction, including power required for temporary offices. There will be no separated pay item for connection into the existing power system or for the power required for construction purposes.
80. **LIQUIDATED DAMAGES:** If the Contractor fails to complete the Work within the time specified in the contract, the Contractor shall pay liquidated damages to the Town of Addison in the amount of \$ 1,000 for each calendar day of delay until the Work is completed or accepted.
81. **CONTRACT DELAY:** The parties anticipate that delays may be caused by or arise from any number of events during the course of the Contract, including, but not limited to, Work performed, disruptions, permitting issues, actions of subcontractors, suppliers, or other

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contractors, actions by third parties, weather, weekends, holidays, or other such events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not extend the Contract time for completion. Further, any and all costs or impacts whatsoever incurred by the Contractor in accelerating the Work to overcome or absorb such delays or events in an effort to complete the Contract prior to expiration of the Contract time to complete, regardless of whether the Contractor does so or not, shall be the sole responsibility of the Contractor in every instance.

82. **SUBCONTRACTORS:** No subcontract shall relieve Contractor of any of Contractor's obligations or liabilities under the Contract. Contractor shall be fully responsible and liable for the acts or omissions of all Subcontractors, including persons directly or indirectly employed by them, their guests and invitees. Contractor shall have sole responsibility for managing and coordinating the operations of its Subcontractors, including the settlement of disputes with or between them. Nothing contained in the Contract shall be deemed to create a contractual relationship between any Subcontractor, and the Town of Addison.

Contractor shall provide to the Town of Addison one (1) copy of all executed subcontracts associated with the Contract, including any changes or modifications to the subcontracts, within three (3) days of their execution. No Subcontractor shall be permitted to perform work associated with the subcontract until the Subcontractor (or Contractor on the Subcontractor's behalf) is in compliance with the insurance requirements specified elsewhere in the Contract and has furnished satisfactory evidence of insurance to the Town of Addison.

83. **PAYMENTS TO SUBCONTRACTORS:** Contractor shall comply with the provisions of applicable laws and regulations relating to Contractor's relations with Subcontractors. Payments by Contractor to Subcontractors associated with the Town of Addison Contracts are subject to the time periods established in the Texas "Prompt Payment Act", contained in Chapter 2251 of the Texas Government Code.

All persons employed in the performance of the Work under the Contract, or any subcontracts hereunder, shall be paid not less than the general rates of per diem, holiday, and overtime wages prevailing in the locality of the Work of a similar character as detailed in the Special Provisions. Failure to comply with this provision shall subject Contractor to the penalties prescribed in Chapter 2258 of the Texas Government Code, as amended.

Contractor will include in each subcontract for property or services entered into by Contractor and a Subcontractor, including a supplier, for purposes of performing the Work under the Contract a payment clause that obligates Contractor to pay the Subcontractor for satisfactory performance under its subcontract within seven (7) days out of such amounts as are paid to Contractor by the Town of Addison under the Contract. A false certification to the Town of Addison under the provisions of the Payments clause may be a principal offense in violation of Section 37.10 of the Texas Penal Code.

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- 84. USE OF COMPLETED PORTIONS OF THE WORK:** Whenever, as determined by the Town of Addison, any portion of the Work performed by Contractor is in a condition suitable for use, and the best interests of the Town of Addison requires such use the Town of Addison may take possession of or use such portion of the Work. Such use by the Town of Addison shall in no case be construed as final acceptance and shall neither relieve Contractor of any of its responsibilities under the Contract, nor act as a waiver by the Town of Addison of any of the conditions thereof. Contractor shall not be liable for the cost of repairs, rework, or renewals, which may be required due to ordinary wear and tear resulting from such use. However, if such use increases the cost or delays the completion of remaining portions of the Work, Contractor shall notify the Town of Addison in writing as required by the Contract and shall be entitled to such additional compensation or extension of time, or both, as determined in accordance with the Contract.

If in the course of such use, the Work proves to not be in compliance with the Contract, the Town of Addison shall have the right to continue such use until such portion of the Work can, without injury to the Town of Addison, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials, as necessary for such portions of the Work to comply with the Contract. Contractor shall correct the Work as soon as practical, but not later than one (1) month after notification by the Town of Addison.

Contractor shall not use any permanently incorporated materials unless such use is approved in writing by the Town of Addison. Where Contractor's request is granted for the use of certain materials, Contractor shall properly use and maintain and, upon completion of its use and at its own expense, recondition such materials to the satisfaction of the Town of Addison.

- 85. COMPLETE AGREEMENT:** The Contract (including Attachments, the Special Provisions, other documents and manuals incorporated herein) is the full and complete agreement between the Town of Addison and Contractor with respect to the subject matter herein and supersedes any and all prior agreements between the parties hereto.
- 86. WAIVER:** The waiver by the Town of Addison of the breach of any provision of the Contract by Contractor shall in no way impair the right of the Town of Addison to enforce the provision for any subsequent breach thereof. All remedies provided hereunder are cumulative and are in addition to all other remedies available at law or in equity.
- 87. EXECUTION OF THE CONTRACT:** The Contract may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of the Contract may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

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- 88. DEFINITIONS:** The following definitions are added to the General Provisions and Special Provisions:

BIDDER: Any person, persons, partnership, company, firm, association, or corporation acting directly or through a duly authorized representative submitting a proposal for the work contemplated.

PROJECT: The Town of Addison's overall objective and endeavor of which the Contract forms a part and ultimately creates, which encompasses all Contract Documents constructed to final completion and final acceptance.

TOWN ENGINEER (ENGINEER): Town Engineer or his/her authorized representative with the Town of Addison located at 16801 Westgrove Drive, Addison, Texas 75001.

CONSULTANT ENGINEER (DESIGN ENGINEER): The consultant engineer of record is Sherry L. Williams, PE (Texas Registered PE #87940 with Criado & Associates, Inc. located at 4100 Spring Valley Road, Dallas, TX 75244.

WORKING DAY: A working day is defined as a calendar day not including Saturdays, Sundays, or legal holidays authorized in the list prepared by the City of Dallas for contract purposes, in which weather or other conditions not under the control of the Contractor shall permit the performance of the principal units of work underway for a continuous period of not less than 7 hours between 7 A.M. and 6 PM. A principle unit of work shall be that unit which controls completion time of the contract. Nothing in this definition shall be construed as prohibiting the Contractor from working on Saturdays, if the Contractor so desires and permission of the Town of Addison has been granted. Work on Sundays shall not be permitted except in cases of extreme emergency and then only with the written permission of the Town of Addison. If Saturday or Sunday work is permitted, working time shall be charged on the same basis as weekdays. Where the working time is expressed as calendar days or a specific date, the concept of working days shall no longer be relevant to the contract.

- 89. MODIFICATIONS TO THE LANGUAGE OF THE GENERAL PROVISIONS:** The General Provisions are modified as follows:

- A. Add the following words to the General Provisions before the word "Certificates" found on the fifth line of Section 103.4.1:

"When permitted by law,"

- B. Delete the sentence "A model Certificate of Insurance is illustrated in Model Form A.6 in Appendix A." beginning on the eleventh line of Section 103.4.1 of the General Provisions and replace with the following:

"Certificates of Insurance shall be provided on a state approved form."

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- C. Delete the following sentence beginning on the second line of the fifth subparagraph of Section 104.2.1 of the General Provisions:

“The foregoing notwithstanding, the total original Contract amount shall not be increased more than 25 percent; the CONTRACTOR, by submission of a proposal and execution of the Contract, is deemed to consent to the OWNER’S right to reduce the total original Contract amount by more than 25 percent.”

- D. Add the following word before the word “decide” found on the second line of Section 105.7.1 of the General Provisions:

“initially”

- E. Add the following word after the word “work” found on the sixth line of Section 105.7.1 of the General Provisions:

“, subject to the agreement of the Owner”

- F. Delete the following sentence beginning on the sixth line of Section 105.7.1 of the General Provisions:

“Engineer shall determine the amount and quality of work performed and materials furnished, and Engineer’s decision and estimates shall be final.”

- G. Delete Section 105.9.3 of the General Provisions titled “Inspection Overtime” in its entirety.

- H. Delete Section 107.3 of the General Provisions titled “Indemnification” in its entirety and replace with the following:

“THE CONTRACTOR AGREES TO INDEMNIFY, SAVE, PROTECT, DEFEND, AND HOLD HARMLESS THE OWNER, ITS AFFILIATES AND THEIR OFFICERS, DIRECTORS, AGENTS, INVITEES, AND EMPLOYEES (“INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL LIABILITY, COST, DAMAGE, EXPENSES, FINES AND ALL REASONABLE LEGAL FEES AND COURT COSTS, CLAIMS, LOSSES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION AGAINST THE INDEMNIFIED PARTIES, WHETHER OR NOT CAUSED IN PART BY ANY ACT OR OMISSION OF A PERSON OR ENTITY INDEMNIFIED HEREUNDER, OR WHETHER LIABILITY IS IMPOSED UPON SUCH PERSON OR ENTITY, FOR ANY LOSS, INJURY, DAMAGE OR DEATH ARISING FROM OR OUT OF THE CONTRACTOR’S ACTS

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OR OMISSIONS, INCLUDING, BUT NOT LIMITED TO CONTRACTOR'S NEGLIGENT OR GROSSLY NEGLIGENT PERFORMANCE OF THE WORK; NEGLIGENT OR GROSSLY NEGLIGENT USE OR MISUSE OF OWNER'S PROPERTY; NEGLIGENT OR INTENTIONAL ACTIONS, ERRORS OR OMISSIONS AND THOSE OF ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS OR SUBCONTRACTORS; VIOLATION OF ANY FEDERAL, STATE OR MUNICIPAL LAWS, REGULATIONS AND/OR ORDINANCES; CONTRACTOR'S OR ITS SUBCONTRACTOR'S USE OF PROPERTY, EQUIPMENT, VEHICLES, OR MATERIALS; DEFECTIVE WORKMANSHIP; NEGLIGENT OR GROSSLY NEGLIGENT USE OR MISUSE OF UTILITIES; OR SUBCONTRACTORS', EMPLOYEES', AGENTS', OFFICERS', OR DIRECTORS' NEGLIGENCE OR INTENTIONAL TORTS. IT IS THE EXPRESS INTENT OF CONTRACTOR TO INDEMNIFY THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR JOINT AND/OR CONCURRENT NEGLIGENCE AND/OR SOLE NEGLIGENCE. IN THE EVENT OF FAILURE BY THE CONTRACTOR TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION PARAGRAPH, EACH OF THE INDEMNIFIED PARTIES, AT ITS OPTION, AND WITHOUT RELIEVING CONTRACTOR OF ITS OBLIGATIONS HEREUNDER, MAY SO PERFORM, BUT ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, OR ANY OF THEM, AND UNTIL REIMBURSED BY CONTRACTOR SHALL BEAR INTEREST, AT THE RATE OF INTEREST PROVIDED TO BE PAID ON JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

IN THE EVENT THIS CONTRACT RELATES TO A PROJECT OTHER THAN A SINGLE FAMILY HOUSE, TOWNHOUSE, DUPLEX, OR LAND DEVELOPMENT DIRECTLY RELATED THERETO OR A PUBLIC WORKS PROJECT OF A MUNICIPALITY THEN THE INDEMNITY PROVISIONS INCLUDED HEREIN SHALL BE LIMITED SUCH THAT SUBCONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY, HOLD HARMLESS OR

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DEFEND CONTRACTOR OR ANY THIRD PARTIES AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF AN INDEMNIFIED PARTY, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNIFIED PARTY, OTHER THAN SUBCONTRACTOR OR ITS AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER EXCEPT THAT SUBCONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF SUBCONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF ANY TIER.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE INDEMNITY PROVISIONS INCLUDED HEREIN SHALL BE LIMITED SUCH THAT CONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY, HOLD HARMLESS OR DEFEND OWNER OR ANY THIRD PARTIES AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE INDEMNIFIED PARTIES, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNIFIED PARTIES, OTHER THAN CONTRACTOR OR ITS AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER EXCEPT THAT CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTIES AGAINST ANY CLAIMS FOR THE BODILY INJURY OR DEATH OF AN EMPLOYEE OF CONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF ANY TIER.”

- I. Add the following language after Section 103.3.1.4 of the General Provisions:

“103.3.1.5. Maintenance Bond. A good and sufficient bond in an amount not less than **100-percent** of the approximate total of the Contract, as evidenced by the proposed tabulation, or conditioned on the full and proper maintenance and repair of the Work to be done and performed for a period of one year from the date of final acceptance of the Work and the Contractor will do all necessary backfilling that may arise on account of sunken conditions in ditches, or otherwise, and do and perform the necessary Work and repair any defective condition growing out of or

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arising from the improper laying or construction of same, or on account of any breaking of same caused by the Contractor in construction of same, or on account of any defect arising in any of the Work laid or constructed by the Contractor or on account of improper excavation or backfilling, it being understood that the purpose of this Section is to cover all defective conditions arising by reason of defective materials, Work, or labor performed by the Contractor.”

J. Add the following language after Section 104.2.5. of the General Provisions:

“104.2.6. Change Orders. A Change Order is a written instrument and signed by the Owner, Contractor and Engineer stating their agreement upon all of the following:

- (1) the change in the Work;
- (2) the amount of the adjustment, if any, in the Contract Sum; and
- (3) the extent of the adjustment, if any, in the Contract Time.

In the event the Contractor proposes a Change Order, the Contractor shall provide sufficient detail for such Change Order to allow analysis and review by the Engineer.

Agreement on any Change Order shall constitute final agreement on the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

The Contractor, upon receipt of written notification by the Owner or the Engineer of a proposed item or change in Work, shall prepare as soon as possible a Change Order on the form provided by the Owner. If the Change Order is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Order accordingly and resubmit the revised Change Order to the Owner and Engineer.”

K. Delete the language in Section 105.2.1 of the General Provisions and replace it with the following language:

“105.2.1. WORKMANSHIP: If the OWNER notifies the CONTRACTOR in writing of defective work, the CONTRACTOR shall correct the deficiencies within five (5) calendar days of the

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Notice at no additional cost to the OWNER. If the defective work is not corrected within five (5) calendar days, or the CONTRACTOR is not making satisfactory progress (in the opinion of the OWNER) to correct the deficiencies, the OWNER may withhold future payments for All Work until the defective work has been corrected to the satisfaction of the OWNER.”

- L. Add the following language after Section 105.10 of the General Provisions:

“105.10.2. GUARANTEE AFTER COMPLETION: Unless otherwise specified in the technical section of these specifications, the CONTRACTOR shall, after test and acceptance, and for a period of one year from date of final written acceptance by the OWNER or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the Contract Documents, rebuild, repair, or replace any and all items which have proven defective due to unsatisfactory material and/or workmanship. Upon written notice from the OWNER, the CONTRACTOR shall immediately make any repairs that may be ordered, or such repairs will be made by the Owner at the expense of the CONTRACTOR or the CONTRACTOR’S Surety. In case of an emergency where delay would cause serious loss or damage, the Owner may undertake to have the defects repaired without previous notice. The expense of all repairs, including all emergency repairs, shall be borne by the CONTRACTOR or the CONTRACTOR’S Surety, at no cost to the Owner. This obligation shall survive termination of the Contract.

105.10.3. OFFSET PROGRESS PAYMENTS: OWNER may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to OWNER from Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise and regardless of whether or not the debt due to OWNER has been reduced to judgment by a court.

105.10.4. FINAL ACCEPTANCE AND PAYMENT: This Project is subject to final inspection and final acceptance by the Owner. Whenever the Work provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, including, but not limited to compliance with North Central Texas Council of Governments Standard Specifications for Public Works Construction, November 2017 Section 202.6.4.6., the CONTRACTOR shall notify the OWNER that the Work is ready for final inspection. The OWNER will then make such final inspection and if the work is satisfactory and in accordance with the

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specifications and contract documents, the OWNER shall issue a certificate of acceptance to the CONTRACTOR and submit a request to accept the Work performed by the CONTRACTOR and payment of a final estimate under the terms of which the OWNER will release 100% of the retainage, plus the unpaid portions of the final estimate as the OWNER deems advisable.

Whenever the improvements provided for by the Contract shall have been completely performed on the part of the Contractor, as evidenced in the certificate of acceptance, and all required submissions provided to the OWNER, a final estimate showing the value of the Work shall be prepared by the OWNER as soon as the necessary measurements and computations can be made. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. The amount of this final estimate, less any sums that have been previously paid, deducted or retained under the provisions of the contract, shall be paid the CONTRACTOR within 30 days after the final acceptance by the OWNER, provided the CONTRACTOR has furnished to the OWNER a consent of Surety and satisfactory evidence that all indebtedness connected with the Work and all sums of money due for any labor, materials, apparatus, fixtures, or machinery furnished for and used in the performance of the Work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment. This requirement is not intended and shall not be construed to recognize subcontractors for the purpose of privity of contract, and no third party benefit rights shall be obtained through these provisions for final payment. The acceptance by the CONTRACTOR of the final payment as aforesaid shall operate as and shall be a release to the OWNER from all claims or liabilities under the Contract, including all subcontractor claims, for anything done or furnished or relating to the Work under the Contract or for any act or neglect of said OWNER relating to or connected with the Contract.

All warranties and guarantees shall commence from the date of the certificate of acceptance. No interest shall be due the CONTRACTOR on any partial or final payment, or on the retainage.

105.10.5. RIGHT TO AUDIT CONTRACTOR'S RECORDS: By execution of the Contract, CONTRACTOR grants the OWNER the right to audit, at Owner's election, all of CONTRACTOR'S records and billings relating to the performance of the Work under the Contract. CONTRACTOR agrees to retain such records for a minimum of three (3) years following completion of the Work under this Contract. OWNER agrees that it will exercise the right to audit only at reasonable hours."

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- M. Add the following language after Section 107.6 of the General Provisions:

“107.6.1. COMPENSATION AND ACKNOWLEDGEMENT OF WORK: The CONTRACTOR shall receive and accept compensation, as herein provided, as full payment for furnishing all labor, tools, material, equipment and incidentals; for performing all Work contemplated and embraced under the Contract; for all loss or damage arising out of the nature of the Work, or from the action of the elements; for any unforeseen defects or obstruction which may arise or be encountered during the prosecution of the Work and before its final acceptance by the OWNER; for all risks of whatever description connected with the prosecution of the Work; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the Work as herein specified; for any infringement of patents, trademarks or copyrights; and for completing the Work in an acceptable manner according to the Plans and Specifications.”

- N. Add the following language after Section 107.12 of the General Provisions:

“107.12.1. COOPERATION OF THE CONTRACTOR: The CONTRACTOR shall give to the work the consistent attention necessary to facilitate the progress thereof, and the CONTRACTOR shall cooperate with the OWNER, and with other CONTRACTORS in every way possible.

The OWNER and the OWNER’S representatives shall at all times have free access to the Work whenever it is in preparation or progress and the contractor shall provide safe, convenient and proper facilities for such access and inspection.”

- O. Delete Section 107.5 of the General Provisions and replace it with the following:

“107.5. VENUE AND CHOICE OF LAW

The Owner, the Contractor, and the Contractor’s sureties agree that this Contract shall be performed in Dallas, Dallas County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Dallas County, Texas. The terms and provisions of the Contract Documents shall be construed in accordance with the laws and court decisions of the State of Texas.”

- P. Delete the following language (which is the first paragraph) from Section 109.5.1. of the General Provisions:

“Between the 25th day and the last day of each month, the Owner shall make an approximate estimate of the value of the work done during the month under the specifications. Whenever the said

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estimate or estimates of work done since the last previous estimate exceeds \$100 in amount, a percentage of such estimate sum shall be paid the Contractor on or before the 15th day of the month next following. The monthly estimate may include acceptable nonperishable materials delivered to the work; such payment shall be allowed on the same percentage basis of the net invoice value as provided hereinafter. The percent retained by the owner shall normally be up to 10 percent at completion, unless otherwise stated. At the midpoint, or at any subsequent time, if the owner determines that the progress of the Contract is satisfactory in all respects, it may at its discretion cease to retain additional funds until the completion of the project, or until progress ceases to be satisfactory. The owner shall make the sole determination in this matter.”

Q. Add the following language after Section 109.5.1. of the General Provisions:

“109.5.1.1. Applications for Payment. Applications for progress payment (“Application for Payment”) will be submitted no more often than monthly and shall be submitted on the dates set forth in the Agreement. Each Application for Payment shall be (1) sworn to and notarized, (2) supported by such data substantiating the Contractor’s right to payment as the Owner or Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents, and (3) submitted by the Contractor for review to the Engineer in form and substance as mandated by the Owner. The Contractor’s Application for Payment shall be segregated and detailed in a manner satisfactory to the Owner.

In each Application for Payment, the Contractor shall certify that such Application for Payment represents a just estimate of portion of the Work that is complete as of the last day covered by the Application for Payment and shall also certify by sworn affidavit as follows:

‘There are no known mechanics’ or materialmen’s liens outstanding at the date of this Application, all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of this Application for Payment, there is no known basis for filing of any mechanics’ or materialmen’s liens on the Work, and waivers from all subcontractors and materialmen have been or, at the time of payment, will be obtained in such form as to constitute an effective waiver of lien under the applicable laws of the State of Texas.’

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109.5.1.2. Lien Waivers. Concurrent with each Application for Payment, the Contractor shall execute and furnish a waiver and release of its lien rights current through the effective date of such Application for Payment conditioned upon receipt of the payment that is the subject of the application. Beginning with the second Application for Payment, the Contractor shall also deliver with each such Application as a condition precedent to payment thereof, waivers of lien from each of the Subcontractors, Sub-subcontractors, and suppliers current through the effective date of the previous Application of Payment. The Contractor shall also execute and obtain any other reasonable forms as the Owner may require in order to assure an effective waiver and release of mechanics' and materialmen's liens in compliance with the laws of the State of Texas. The Contractor shall, if any Subcontractor, Sub-subcontractor or supplier refuses to furnish a release in full, furnish a bond satisfactory to the Owner to indemnify against any lien."

R. Section NCTTOG 109.5 of General Provision - Retainage Summary Table:

NCTCOG 109.5.2	
Amount of Contract	% Retainage
\$25,000.00 and less	15%
\$25,000.01 - \$400,000.00	10%
\$400,000.01 or more	5%

90. **CONTRACTOR REPRESENTATIONS:** By entering into the Contract, the Contractor makes the following representations to the Town of Addison:

- A. Contractor has examined and carefully studied the Bidding Documents and the related data identified in the Bidding Documents.
- B. The Contractor has visited the Project site where the goods are to be installed or services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, or the furnishing of goods and services, if required to do so by the Bidding Documents, or if, in the Contractor's judgment, any local condition may affect cost, progress, or the furnishing of goods and services.
- C. The Contractor is familiar with and is satisfied as to all Laws and Regulations in effect as of the date of the proposal that may affect cost, progress, and the furnishing of goods and services.
- D. The Contractor has carefully studied, considered, and correlated the information known to the Contractor; information commonly known to sellers of similar goods

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doing business in the locality of the Project site where the goods will be installed or where services will be provided; information and observations obtained from the Contractor's visits, if any, to the Project site where the goods will be installed or services will be provided; and any reports and drawings identified in the Bidding Documents regarding the Project site where the goods will be installed or where services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of the Contractor's obligations under the Bidding Documents.

- E. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that the Contractor has discovered in the Bidding Documents, and the written resolution (if any) thereof by the Engineer is acceptable to the Contractor.
 - F. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing the goods and services for which the proposal is submitted
 - G. The Contractor acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of proposals, and final payment for all unit price bid items will be based on actual quantities, determined as provided in the Contract Documents. The Contractor also acknowledges that each unit price includes an amount considered by the Contractor to be adequate to cover the Contractor's overhead and profit for each separately identified item.
91. **PREVAILING WAGE RATES:** Wage rates paid on this Project shall not be less than specified in the schedule of general prevailing rates of per diem wages as set forth below in the Davis Bacon Act General Decision No. TX130035:

General Decision Number: TX20210025 01/01/2021

Superseded General Decision Number: TX20200025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least

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\$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021
* SUTX2011-007	08/03/2011

Rates Fringes

CONCRETE FINISHER (Paving and Structures).....\$ 14.12

ELECTRICIAN.....\$ 19.80

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 13.16

Structures.....\$ 13.84

LABORER

Asphalt Raker.....\$ 12.69

Flagger.....\$ 10.06

Laborer, Common.....\$ 10.72

Laborer, Utility.....\$ 12.32

Pipelayer.....\$ 13.24

Work Zone Barricade Servicer.....\$ 11.68

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 15.32

Asphalt Paving Machine.....\$ 13.99

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Broom or Sweeper.....	\$ 11.74
Concrete Pavement Finishing Machine.....	\$ 16.05
Concrete Saw.....	\$ 14.48
Crane Operator, Lattice Boom 80 Tons or Less.....	\$ 17.27
Crane Operator, Lattice Boom over 80 Tons.....	\$ 20.52
Crane, Hydraulic 80 Tons or Less.....	\$ 18.12
Crawler Tractor.....	\$ 14.07
Excavator, 50,000 pounds or less.....	\$ 17.19
Excavator, over 50,000 pounds.....	\$ 16.99
Foundation Drill , Truck Mounted.....	\$ 21.07
Foundation Drill, Crawler Mounted.....	\$ 17.99
Front End Loader 3 CY or Less.....	\$ 13.69
Front End Loader, over 3 CY.....	\$ 14.72
Loader/Backhoe.....	\$ 15.18
Mechanic.....	\$ 17.68
Milling Machine.....	\$ 14.32
Motor Grader, Fine Grade....	\$ 17.19
Motor Grader, Rough.....	\$ 16.02
Pavement Marking Machine....	\$ 13.63
Reclaimer/Pulverizer.....	\$ 11.01
Roller, Asphalt.....	\$ 13.08
Roller, Other.....	\$ 11.51
Scraper.....	\$ 12.96
Small Slipform Machine.....	\$ 15.96
Spreader Box.....	\$ 14.73

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Servicer.....\$ 14.58

Steel Worker (Reinforcing).....\$ 16.18

TRUCK DRIVER

Lowboy-Float.....\$ 16.24

Off Road Hauler.....\$ 12.25

Single Axle.....\$ 12.31

Single or Tandem Axle Dump Truck.....\$ 12.62

Tandem Axle Tractor with Semi Trailer.....\$ 12.86

Transit-Mix.....\$ 14.14

WELDER.....\$ 14.84

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

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A four-letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example:

PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination

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- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

92. **NO BOYCOTT ISRAEL:** Pursuant to Texas Government Code Chapter 2270, Contractor's execution of this Agreement shall serve as verification that the Contractor does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

END OF GENERAL DECISION

PROJECT: ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM BROOKWOOD DR TO WATERSIDE CT

SPECIAL PROVISIONS

Note: The series of numbers shown after the description are for the North Central Texas Council of Governments (NCTCOG) Standard Specifications for Public Works Construction, Fifth Edition (November 2017- Current Edition)), or technical specifications number provided with this document.

SP.1 PROJECT

The project covered by these specifications consists of the furnishing and installation of all material, supplies, appurtenances, equipment and labor and any other necessary items required to construct, test and complete, ready for use and operation by the Owner. Final clean up before acceptance by the Owner is included as a part of the project.

SP.2 NCTCOG CONSTRUCTION SPECIFICATIONS

NCTCOG shall be utilized for these areas:

- Site Protection & Preparation Division 200
- Roadway Construction Division 300
- Roadway Maintenance & Rehabilitation Division 400
- Underground Construction and appurtenances Division 500
- Conduit and Appurtenances Division 600
- Structures Division 700
- Misc. Construction & Materials Division 800

The specifications included with this document govern if there are any discrepancies between them and the listed specifications.

SP.3 DISPOSAL OF SURPLUS MATERIAL

The Town will have first rights-of-refusal for existing equipment that will be disposed. Surplus material not required for other parts of the work and not otherwise specifically covered by the drawings or specifications shall become the property of the Contractor for proper disposal by him.

SECTION PS
PROJECT SIGN

PROJECT SIGN

1. Quantity

Two (2) Project Designation signs will be constructed and installed on the project site as directed by the Owner. It will be the responsibility of the Contractor to maintain the sign in a presentable condition at all times during construction. Maintenance will include painting and repairs as directed by the City Engineer or his appointee. The locations of the signs will be given to the Contractor by the Town of Addison at the Pre-Construction Conference.

2. Material

Sign shall be constructed of 3/4-inch thick smooth finish fir plywood (Grade A-C, exterior or better).

Sign will be securely mounted to 6" x 6" square posts. Nuts and bolts will not protrude from face of sign. Posts will be mounted to a support system that will provide adequate stabilization to ensure the sign will not fall over in heavy winds. Sand bags or other techniques may be necessary to protect sign.

3. Dimensions

Size of sign will be four feet tall and six feet wide. The height and arrangement of the lettering shall be in accordance with the attached detail.

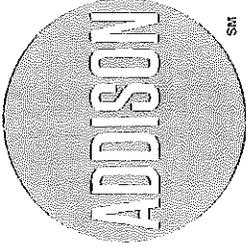
4. Paint

Sign will be one-sided and will have a white background. Text will be black, except for the word "Addison!" which will be a blue color approved by the City Engineer. The paint will be an outdoor paint and will be maintained throughout the project in proper order. The quality of the paint, painting, and lettering on the signs shall be approved by the City Engineer or his appointee.

5. Payment

Project Signs will be a separate pay item. This will include all labor, equipment, tools, and incidentals necessary to complete and install the work.

The Town of



**PLEASE PARDON THE TEMPORARY
INCONVENIENCE DURING THIS PROJECT**

“PROJECT NAME”

CONTRACTOR: _____

ESTIMATED COMPLETION DATE: XXXX

AN ADDISON PROJECT

FOR MORE INFORMATION, PLEASE CALL (972) 450-2871

SECTION TS

TECHNICAL SPECIFICATIONS

ROADWAY, DRAINAGE and WATER/WASTERWATER
SPECIFICATIONS

Technical Specification – NCTCOG – November 2017
(Not included in this spec book)

Division 200	Site Protection and Preparation
201	Site Protection
202	Temp. Erosion, Sedimentation and Water Pollution Prevention
203	Site Preparation
204	Landscaping
Division 300	Roadway Construction
301	Subgrade, Subbase and Base Preparation
302	Asphalt Pavement
303	Portland Cement Concrete Pavement
304	Paving Units
305	Miscellaneous Roadway Construction
Division 400	Roadway Maintenance and Rehabilitation
401	Crack Sealing
402	Pavement Cut, Excavation and Repair
403	Asphaltic Pavement Repair
404	Surface Treatments
Division 500	Underground Construction and Appurtenances
501	Underground Conduit Materials
502	Appurtenances
503	Trenchless Installations
504	Open Cut- Backfill
505	Open Cut- General Conduit Installation
506	Open Cut Water Conduit Installation
507	Open Cut- Wastewater Conduit Installation
508	Open Cut – Stormwater Conduit Installation

509 Crossings

Division 600

Conduit and Appurtenance Rehabilitation

601 Pipeline Rehabilitation

602 Rehab Manholes or Underground Vaults

Division 700

Structures

701 General Structures

702 Concrete Structures

703 Steel Structures

704 Piling

Division 800

Miscellaneous Construction and Materials

801 Barriers, Warning and Detour Signs and Fences

802 Steps and Retaining Walls

804 Painting and Other Protective Trtmts and Pavement Markings

LANDSCAPING SPECIFICATIONS

SECTION 12 93 00

SITE FURNISHINGS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. This Section includes the following:

1. Trash receptacles.
2. Benches.
3. Town Standard Bollard
4. Pet Waste Station

- B. Related Sections include the following:

1. Division 32 Section "Pedestrian Concrete & Surface Paving" for concrete footings and slabs.

1.3 SUBMITTALS

- A. Product Data: For each type of product indicated.

- B. Samples for Verification: For each type of exposed finish required, prepared on Samples of size indicated below.

1. Size: Not less than 6-inch- long linear components and 4-inch- square sheet components.

- C. Product Schedule: For site furnishings. Use same designations indicated on Drawings.

- D. Maintenance Data: For site furnishings to include in maintenance manuals.

1.4 QUALITY ASSURANCE

- A. Source Limitations: Obtain each type of site furnishing through one source from a single manufacturer.

PART 2 - PRODUCTS

2.1 TRASH RECEPTACLE

A. 36 Gallon Trash Receptacle

1. By: Victor Stanley or Approved equal
2. Item: S-42
3. Color: Black
4. Install: Surface Mount per manufacturer's specifications

2.2 BENCH

A. 6' Bench

1. By: Victor Stanley or approved equal
2. Item: RB-28
3. Color: Black
4. Install: Surface Mount per manufacture's specifications

2.3 TOWN STANDARD BOLLARD

A. Town Standard Bollard

1. By Lumen Pulse
2. Item: Element Bollard
3. Color: Textured Bronze
4. Install: Per Manufacturer's specifications
5. Light: LED Light Color 57K

2.4 PET WASTE STATION

A. Pet Waste Station

1. By: Mutt Mitt
2. Type: #1004
3. Install: per manufacturer's specifications
4. Color: Green

2.5 FABRICATION

- A. Metal Components: Form to required shapes and sizes with true, consistent curves, lines, and angles. Separate metals from dissimilar materials to prevent electrolytic action.
- B. Welded Connections: Weld connections continuously. Weld solid members with full-length, full-penetration welds and hollow members with full-circumference welds. At exposed connections, finish surfaces smooth and blended so no roughness or unevenness shows after finishing and welded surface matches contours of adjoining surfaces.
- C. Pipes and Tubes: Form simple and compound curves by bending members in jigs to produce uniform curvature for each repetitive configuration required; maintain cylindrical cross section of member throughout entire bend without buckling, twisting, cracking, or otherwise deforming exposed surfaces of handrail and railing components.
- D. Exposed Surfaces: Polished, sanded, or otherwise finished; all surfaces smooth, free of burrs, barbs, splinters, and sharpness; all edges and ends rolled, rounded, or capped.
- E. Factory Assembly: Assemble components in the factory to greatest extent possible to minimize field assembly. Clearly mark units for assembly in the field.

2.6 FINISHES, GENERAL

- A. Comply with NAAMM's "Metal Finishes Manual for Architectural and Metal Products" for recommendations for applying and designating finishes.
- B. Appearance of Finished Work: Variations in appearance of abutting or adjacent pieces are acceptable if they are within one-half of the range of approved Samples. Noticeable variations in the same piece are not acceptable. Variations in appearance of other components are acceptable if they are within the range of approved Samples and are assembled or installed to minimize contrast.

2.7 STEEL AND GALVANIZED STEEL FINISHES

- A. Baked-Enamel, Powder-Coat Finish: Manufacturer's standard, baked, polyester, powder-coat finish complying with finish manufacturer's written instructions for surface preparation, including pretreatment, application, baking, and minimum dry film thickness.

2.8 EXECUTION

2.9 EXAMINATION

- A. Examine areas and conditions, with Installer present, for compliance with requirements for correct and level finished grade, mounting surfaces, installation tolerances, and other conditions affecting performance.
 - 1. Proceed with installation only after unsatisfactory conditions have been corrected.

2.10 INSTALLATION, GENERAL

- A. Comply with manufacturer's written installation instructions unless more stringent requirements are indicated. Complete field assembly of site furnishings where required.
- B. Unless otherwise indicated, install site furnishings concurrent to the paving.
- C. Install site furnishings level, plumb, true, and securely anchored at locations indicated on Drawings.
- D. Post Setting: Set cast-in support posts in concrete footing with smooth top, shaped to shed water. Protect portion of posts above footing from concrete splatter. Verify that posts are set plumb or at correct angle and are aligned and at correct height and spacing. Hold posts in position during placement and finishing operations until concrete is sufficiently cured.

2.11 CLEANING

- A. After completing site furnishing installation, inspect components. Remove spots, dirt, and debris. Repair damaged finishes to match original finish or replace component.

END OF SECTION 129300

SECTION 32 92 00

TURF AND GRASSES

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Sod.

1.2 DEFINITIONS

- A. Finish Grade: Elevation of finished surface of planting soil.
- B. Planting Soil: Native or imported topsoil, manufactured topsoil, or surface soil modified to become topsoil; mixed with soil amendments.
- C. Subgrade: Surface or elevation of subsoil remaining after completing excavation, or top surface of a fill or backfill immediately beneath planting soil.
- D. Subsoil: All soil beneath the topsoil layer of the soil profile and typified by the lack of organic matter and soil organisms.

1.3 SUBMITTALS

- A. Product Data: For each type of product indicated.
- B. Product certificates.
- C. Soil tests per 1.4B.
- D. Planting Schedule: Indicating anticipated planting dates for each type of planting.

1.4 QUALITY ASSURANCE

- A. Installer's Field Supervision: Require Installer to maintain an experienced full-time supervisor on Project site when planting is in progress.
- B. Topsoil Analysis: Contractor shall furnish soil analysis from 5 different locations shown on the planting plans. Test shall be performed by a qualified soil-testing laboratory, such as the Texas A&M Extension service.
 1. Test Location #1-5: Report suitability of topsoil for pasture use. State-recommended quantities of nitrogen, phosphorus, and potash nutrients to meet the intended use.

1.5 MAINTENANCE SERVICE

A. Initial Lawn Maintenance Service: Provide full maintenance by skilled employees of landscape Installer. Maintain as required in Part 3. Begin maintenance immediately after each area is planted and continue until acceptable lawn is established, but for not less than the following periods:

1. Sodded Lawns: 40 days from date of Substantial Completion.

PART 2 - PRODUCTS

2.1 SOD

A. Solid sod where indicated on drawings.

2.2 TOPSOIL

A. Topsoil: On site soil, stripped prior to mass grading.

1. Topsoil Source: Reuse surface soil stockpiled on-site. Clean surface soil of roots, plants, sod, stones, clay lumps, and other extraneous materials harmful to plant growth. Contractor shall provide soil test of stockpiled topsoil. If the reuse of soil stockpiled on site does not apply, the contractor shall import manufactured topsoil at no additional cost to the Town.

2.3 ORGANIC SOIL AMENDMENTS

A. Compost: Well-composted, stable, and weed-free organic matter, pH range of 5.5 to 8; moisture content 35 to 55 percent by weight; 100 percent passing through 1/2-inch sieve; soluble salt content of 5 to 10 decisiemens/m, Living Earth or approved equal.

2.4 FERTILIZER

A. Slow-Release Fertilizer: Granular or pelleted fertilizer consisting of 50 percent water-insoluble nitrogen, phosphorus, and potassium in the following composition:

1. Composition: 20 percent nitrogen, 10 percent phosphorous, and 10 percent potassium, by weight.

PART 3 - EXECUTION

3.1 LAWN PREPARATION

A. Newly Graded Topsoil: Finish grade by removing stones larger than 1 inch in any dimension and sticks, roots, rubbish, and other extraneous matter and legally dispose of them off Owner's property.

B. Finish Grading: Grade planting areas to a smooth, uniform surface plane with loose, uniformly fine texture. Grade to within plus or minus 1/2 inch of finish elevation. Roll and

rake, remove ridges, and fill depressions to meet finish grades. Limit finish grading to areas that can be planted in the immediate future.

- C. Moisten prepared lawn areas before planting if soil is dry. Water thoroughly and allow surface to dry before planting. Do not create muddy soil.
- D. Before planting, restore areas if eroded or otherwise disturbed after finish grading.

3.2 SOD INSTALLATION

- A. Sod: Roll sod over the areas identified on the plans with staggered joints. Use a manual roller drum following first watering. Use fine sand to fill joints and re-roll after the first week of watering.

3.3 LAWN MAINTENANCE

- A. Maintain and establish lawn by watering, fertilizing, weeding, mowing, trimming, replanting, and other operations. Roll, re-grade, and replant bare or eroded areas and re-mulch to produce a uniformly smooth lawn. Provide materials and installation the same as those used in the original installation.
- B. Mow only the Bermuda and St. Augustine Sod areas for maintenance. Other areas are to be cared for until established without mowing. For those areas mowed, mow lawn as soon as top growth is tall enough to cut. Repeat mowing to maintain specified height without cutting more than 1/3 of grass height. Remove no more than 1/3 of grass-leaf growth in initial or subsequent mowings.

3.4 SATISFACTORY TURF

- A. Satisfactory Sod: Fully rooted, evenly colored sod without visible sod joints that has been mowed at least twice.
- B. Use specified materials to reestablish lawns that do not comply with requirements and continue maintenance until lawns are satisfactory.

END OF SECTION 329200

SECTION 32 93 00

PLANTS

PART 1 - GENERAL

1.1 SUMMARY

A. Section Includes:

1. Trees.
2. Ornamental Grasses.
3. Shrubs.
4. Ground Cover.

1.2 DEFINITIONS

- A. Backfill: The earth used to replace or the act of replacing earth in an excavation.
- B. Finish Grade: Elevation of finished surface of planting soil.
- C. Planting Soil: Native or imported topsoil, manufactured topsoil, or surface soil modified to become topsoil; mixed with soil amendments.
- D. Subgrade: Surface or elevation of subsoil remaining after completing excavation, or top surface of a fill or backfill, before placing planting soil.
- E. Subsoil: All soil beneath the topsoil layer of the soil profile and typified by the lack of organic matter and soil organisms.

1.3 SUBMITTALS

A. Product Data: For each type of product indicated, including:

1. Digital photos - indicating plant size, condition, color and container size.
2. Nursery name, location and contact.
3. 1-gallon ziplock bag samples of mulch and compost.
4. Product certificates.

1.4 QUALITY ASSURANCE

- A. Installer's Field Supervision: Require Installer to maintain an experienced full-time supervisor on Project site when planting is in progress.

- B. Provide quality, size, genus, species, and variety of exterior plants indicated, complying with applicable requirements in ANSI Z60.1, "American Standard for Nursery Stock."

1.5 DELIVERY, STORAGE, AND HANDLING

- A. Do not prune trees before delivery. Protect bark, branches, and root systems from sun scald, drying, sweating, whipping, and other handling and tying damage. Do not bend or bind-tie trees or shrubs in such a manner as to destroy their natural shape. Provide protective covering of exterior plants during delivery. Do not drop exterior plants during delivery and handling.
- B. Handle planting stock by root ball/container.
- C. Deliver exterior plants after preparations for planting have been completed and install immediately. If planting is delayed more than six hours after delivery, set exterior plants and trees in shade, protect from weather and mechanical damage, and keep roots moist.

1.6 WARRANTY

- A. Special Warranty: Installer's standard form in which Installer agrees to repair or replace plantings that fail in materials, workmanship, or growth within specified warranty period.
 - 1. Failures include, but are not limited to, the following:
 - a. Death and unsatisfactory growth, except for defects resulting from lack of adequate maintenance, neglect, abuse by Owner, or incidents that are beyond Contractor's control.
 - b. Structural failures including plantings falling or blowing over.
 - 2. Warranty Periods from Date of Substantial Completion:
 - 3. Trees and Plants: One year.

1.7 MAINTENANCE SERVICE

- A. Initial Maintenance Service: Provide full maintenance by skilled employees of landscape Installer. Maintain as required in Part 3. Begin maintenance immediately after each area is planted and continue until plantings are acceptably healthy and well established, but for not less than maintenance period below.
 - 1. Maintenance Period for Trees and Plants: Three months from date of substantial planting completion.

PART 2 - PRODUCTS

2.1 TREE AND PLANT MATERIAL

- A. General: Furnish nursery-grown trees and shrubs complying with ANSI Z60.1, with healthy root systems developed by transplanting or root pruning. Provide well-shaped, fully branched, healthy, vigorous stock free of disease, insects, eggs, larvae, and defects such as knots, sun scald, injuries, abrasions, and disfigurement.

- B. Root-Ball Depth: Furnish trees and shrubs with root balls measured from top of root ball, which shall begin at root flare according to ANSI Z60.1. Root flare shall be visible before planting.
- C. Provide container-grown trees.
- D. Plant sizes indicated on Drawings are sizes after pruning.

2.2 TOPSOIL

A. Topsoil:

1. Topsoil Source: Reuse surface soil stockpiled on-site. Verify suitability of stockpiled surface soil to produce topsoil. Clean surface soil of roots, plants, sod, stones, clay lumps, and other extraneous materials harmful to plant growth. Contractor shall provide soil test of stockpiled topsoil. If the reuse of soil stockpiled on site does not apply, the contract shall import manufactured topsoil at no additional cost to the town.

2.3 ORGANIC SOIL AMENDMENTS

- A. Compost: Well-composted, stable, and weed-free organic matter, pH range of 5.5 to 8; moisture content 35 to 55 percent by weight; 100 percent passing through 1-inch sieve; soluble salt content of 5 to 10 decisiemens/m, Living Earth, or approved equal, Living Earth or approved equal.

2.4 FERTILIZER

- A. Slow-Release Fertilizer: Granular or pelleted fertilizer consisting of 50 percent water-insoluble nitrogen, phosphorus, and potassium in the following composition:
 1. Composition: 20 percent nitrogen, 10 percent phosphorous, and 10 percent potassium, by weight.

2.5 MULCHES

- A. Organic Mulch: Ground or shredded bark.

2.6 PLANTING SOIL MIX

- A. Planting Soil Mix: Mix topsoil with the following soil amendments in the following quantities:
 1. Install 3" of loose compost, then till into 6" of topsoil for a total prepared soil depth of 9".

PART 3 - EXECUTION

3.1 PLANTING BED ESTABLISHMENT

- A. Per 2.6A. Remove stones larger than 1 inch in any dimension and sticks, roots, rubbish, and other extraneous matter and legally dispose of them off Owner's property.

- B. Finish Grading: Grade planting beds to a smooth, uniform surface plane with loose, uniformly fine texture. Roll and rake, remove ridges, and fill depressions to meet finish grades.

3.2 TREES AND PLANTS

- A. Excavation of Pits and Trenches: Excavate circular pits with sides sloped inward. Trim base leaving center area raised slightly to support root ball and assist in drainage. Do not further disturb base. Scarify sides of plant pit smeared or smoothed during excavation.
 - 1. Excavate as indicated on plans.
- B. Before planting, verify that root flare is visible at top of root ball according to ANSI Z60.1.
- C. Container Grown: Carefully remove root ball from container without damaging root ball or plant. Set trees and plants plumb and in center of pit or trench with top of root ball 2 inches above adjacent finish grades.
- D. Organic Mulching: Apply 2-inch average thickness of organic mulch. Do not place mulch within 3 inches of trunks or stems.

3.3 TREE PRUNING

- A. Remove only dead, dying, or broken branches. Do not prune for shape.

3.4 PLANTING BED MULCHING

- A. Mulch surfaces of planting beds and other areas indicated.

3.5 PLANT MAINTENANCE

- A. Tree and Plant Maintenance: Maintain plantings by pruning, cultivating, watering, weeding, fertilizing and resetting to proper grades or vertical position, as required to establish healthy, viable plantings. Spray or treat as required to keep and plants free of insects and disease.
- B. Ground Cover and Plant Maintenance: Maintain and establish plantings by watering, weeding, fertilizing, mulching, and other operations as required to establish healthy, viable plantings.
- C. Protect exterior plants from damage due to landscape operations, operations by other contractors and trades, and others. Maintain protection during installation and maintenance periods. Treat, repair, or replace damaged plantings.

END OF SECTION 329300

Town of Addison Irrigation Specifications

Revised 6/14/19

These revised specifications supersede any and all others. However, any discrepancies between the approved construction plans and those of the Town **MUST** be brought to the attention of the Town's designated representative for a final determination. The contractor will present the Town's representative an as-built plan at the final walk-through, along with three Bucker VO75 brass quick coupling keys with brass hose-end swivels. A laminated zone map must also be supplied by the contractor. This map is to have each zone section on the plan separately colored so as to allow each zone to be easily discernible. A laminated numerical listing of each zone along with a description of each shall be supplied in each controller cabinet.

1. All work is to be accomplished by or directly supervised at all times by an on-site Irrigator currently licensed by the State of Texas.
2. The contractor shall verify the water pressure before the installation begins. If the static pressure is different than that of the design pressure, contact the designer and Town's representative immediately so changes can be made. Design pressure shall not be greater than 60 psi. Send a fax to the Parks dept. at 972-450-2834 or email the Town's Irrigation Supervisor with the current dated and timed static pressure reading. Design head-to-head with no single head coverage. Use appropriate size nozzles for a given landscape area so as not to spray onto or over paved surfaces or structures. Do not exceed manufacturer's recommendations.
3. The irrigation installer is responsible for resetting head and/or box height due to settling and after turf, groundcover, shrubs, trees, and mulch is added to the landscape areas. The irrigation contractor must supply a workmanship warranty for (1) year from date of final acceptance.
4. Plans are diagrammatic and field adjustments are often necessary. For this reason, prior to trenching, valve locations and head layout with flags needs to be done and approved by the Town's irrigation inspector. Not doing so may result in the relocation of heads and/or valves at the irrigation contractor's expense.
5. **Water Taps:** Unless otherwise noted, water taps will be 2" in size. **Note:** This does not imply that a 2" meter will be used; see Water Meters below. All parts must conform to the Town of Addison Water Department specifications and are the responsibility of the irrigation contractor to provide. Inspection of taps by the Water Department Representative must occur. Excavation and tap permits are required. Contact the Town of Addison Water Department at (972) 450-2871.
6. **Water Meters:** Only meter types approved by the Town of Addison Water Department with an electronic encoder register and touch pad reader and two (2) brass flanges are acceptable. Meter lay lengths must be in accordance with the Town of Addison Water Department's specifications, housed in an approved and appropriately sized (to be determined by the Town's Irrigation Inspector) galvanized metal meter can and cast metal lid. New stainless-steel bolts and nuts must be used in the installation along with new neoprene gaskets. The box should slightly above final grade using concrete pavers to support and prevent sinking. Backfill inside the box, 3" below meter base, with at least 6" of washed 1" rock. Connection to the main must be approved and inspected by the Town's Water Department

Inspector and all tap materials are to be purchased at the expense of the contractor and must comply with the Town of Addison's specifications.

Note: Meter size shall not exceed 1 ½" in size unless written approval is given by the Town of Addison Parks Department. All portions of this installation must adhere to the Town of Addison Water Department specifications as well.

7. Backflow Devices: Only Wilkins 350XL series inline check valve assemblies with the stainless-steel ball valve handles and nuts are to be used. The irrigation contractor shall provide and install plugs for the test cocks in accordance to the Town of Addison Water Department specifications. Connect the device to the water meter via a separate brass flange, neoprene gasket and stainless-steel nuts and bolts. Install to the flange a Teflon taped copper nipple and soldered copper pipe of sufficient length to center the DCA within its housing. The device will be housed in an appropriate size, (to be determined by the Town's Irrigation Inspector) rectangular Oldcastle composite box with a cast metal lid using concrete pavers for proper stability and height adjustment. Backfill inside the box, 3" below device bottom, with at least 6" of washed 1" rock. The irrigation contractor shall be responsible for the DCA testing in accordance with State of Texas law, using a Licensed Backflow Assembly Tester registered with the Town of Addison Water Department. Copies of the results must be given to both the Town of Addison Parks and Water Departments.

Note: All portions of this installation must adhere to the Town of Addison Water Department specifications as well.

8. Sleeves: All paving must have Town approved sleeve sizes and quantities present. It is the responsibility of the irrigation contractor to notify the Town's Irrigation Inspector of any area where sleeves should be present but are not and provide such materials at his cost. Any paving installed without sleeves will necessitate a bore and subsequent materials at the irrigation contractor's expense. All sleeves 2" and smaller will be Schedule 40 PVC with size and location noted on the plan. Larger sizes will be Class 200. All piping underneath paving, including sidewalks, must be sleeved. All sleeves are to be belled end PVC pipe. A minimum length of 12 inches of sleeve material must extend beyond the pavement. Sleeving sizing must be adequate to allow all pipes to move freely within them.

9. Glue and Primer: Use Turftite brand glue and a good quality purple primer on all PVC pipe and fittings. Avoid excessive use and wipe excess glue off of all joints and fittings with a clean rag.

10. Pipe: All main line pipe 2" and smaller is to be Schedule 40 belled PVC; larger sizes are to be Class 200 belled PVC with a minimum depth of 14" and a maximum depth of 16". Put not more than two (2) pipes in any one trench and separate the main line from the lateral line with at least 2" of cover. Class 200 belled PVC lateral piping is to be used with a minimum depth of 12" and a maximum depth of 14". No ½" piping will be allowed on drip zones; ¾" is the least size permissible. **Note:** In certain circumstances the Town of Addison may approve the use of 'funny pipe' in the installation of pop-up heads. The Town Inspector reserves the right to determine if and when 'funny pipe' will be allowed. When authorized, use only Toro pipe with Toro barb fittings, and provide a minimum of 24" of 'funny pipe' between the threaded fitting and the head.

11. Fittings: No crosses/4-ways are permitted. Separate tees, 45's, elbows and other fittings by at least 12". Reduction tees are preferred overuse of single reducer bushings. Multiple reducer bushings will not be accepted. Only Spears and/or Lasco fittings are permitted. Allow 18" outside of sleeve before the first fitting. No 45-degree elbows on 1" and larger pipe are allowed.

12. Valves:

A. Master Valves: Every point of connection to the water supply system shall have an Weathermatic 11000 series valve as the Master Valve, housed in a standard (large) Armor rectangular plastic valve box with 4-6" of 1" washed gravel placed underneath the valve in such a manner as to prevent soil infiltration into the box. The gravel must be 2" from the bottom of the valve body. A minimum of 3" of the valve box must extend below the bottom of the valve. If necessary, use valve box extensions. Use a good quality filter fabric to close off any openings between the valve box and PVC pipe. Use concrete pavers or bricks placed under the edges of valve box for stability. Note: The valve box must not rest on pipe. A Blue wire shall be used as the station wire for the Master Valve.

B. Station Valves: Only Weathermatic 11000 series valves are permitted. A Ball Valve will be installed before every station or zone valve. They are to be located within standard (large) Armor rectangular plastic valve boxes with 4-6" of 1" washed gravel placed underneath the valve in such a manner as to prevent soil infiltration into the box. The gravel must be 2" from the bottom of the valve body. A minimum of 3" of valve box must extend below bottom of valve. If necessary, use valve box extensions. Use a good quality filter fabric to close off any openings between the valve box and PVC pipe. Use concrete pavers or bricks placed under the edges of the valve box for stability. Note: The valve box must not rest on pipe.

C. Ball Valves: Female threaded plastic Spears or Lasco ball valves with a positive T-handle cut off must be installed on every 200' of mainline for isolation purposes. A ball valve is also required to be installed before every station valves. Use 10" Armor valve box with a minimum of 3" extending below the bottom of valve and fill to the bottom of valve with a minimum of 4-6" of 1" washed gravel placed underneath the valve in such a manner as to prevent soil infiltration into the box. A minimum of 3" of the valve box must extend below the bottom of valve. If necessary, use valve box extensions. Use concrete pavers or bricks placed under the edges of the valve box for stability. Note: The valve box must not rest on pipe.

D. Quick Coupler Valves: Use only Rain Bird single lug $\frac{3}{4}$ " quick coupling valves with a metal top. They are to be connected to a threaded fitting. Teflon tape and appropriate length of gray schedule 80 nipples and schedule 40 fittings are to be used for the swing joint. Secure to 18" long by $\frac{1}{2}$ " thick steel rebar with a stainless-steel worm screw clamp. House QCV in a 10" round plastic Armor valve box with a purple lid. Install a Spears ball valve prior to each QCV. Bricks or pavers need to be installed under the edges of valve boxes for stability. Backfill the bottom of the box with 1" washed gravel halfway up body of valve. Note: The valve box must not rest on pipe.

E. Flowmeters: Purchase from a certified Rainbird supplier and install appropriately sized Creative Sensor Technology (CST) flow meter. Follow all installation instructions as approved by the manufacturer and Rainbird. House in a standard (large) Armor rectangular plastic valve box with 4-6" of 1" washed gravel placed underneath the valve in such a manner as to prevent soil infiltration into the box. Use concrete pavers or bricks placed under the edges of valve box for stability. Note: The valve box must not rest on pipe. The irrigation contractor must also purchase from Rain Bird and install PE-39 shielded flow meter cable and install within continuous $\frac{3}{4}$ " or larger gray PVC conduit with 6" or larger J-boxes placed every 200' or where 360 degrees of fittings are installed; only gray sweep fittings are permitted. Only a continuous run of cable is allowed; no splices will be allowed except at the point of connection to the flow

meter. Connections at the flow meter must first be soldered and then waterproofed within a 3-M DBY connector. Note: Certain requirements must also be met regarding installation order and distances of separation between DCA, flow meter, master valve and the first fitting. It is the responsibility of the irrigation contractor to adhere to these requirements. At final walk through, proper operation of the flow meter at the controller must be demonstrated by the irrigation contractor.

13. Heads: All heads shall be installed using polyethylene green nipples (¾"x6" for rotors and ½"x6" for pop-ups) screwed into threaded fittings unless noted otherwise. No swing joints on 4" pop-ups or rotors will be allowed. Note: In certain circumstances the Town of Addison may approve the use of 'funny pipe' in the installation of pop-up heads. The Town Inspector reserves the right to determine if and when 'funny pipe' will be allowed. When authorized, use only Toro pipe with Toro barb fittings, and provide a minimum of 24" of 'funny pipe' between the threaded fitting and the head.

A. Pop-ups – Only Toro 570ZXF series are permitted. Install ¾" above the finished grade.

a. 4-inch pop-ups: Bermuda and Zoysia turf, for tree bubblers within turf areas use Hunter PCN 10 bubbler nozzles on spray heads.

b. 6-inch pop-ups with no side inlet: St. Augustine and Fescue turf and very low ground cover (less than 6" at mature height).

c. 12-inch pop-ups with side inlet: Ground cover and low growing shrubs. The ground cover and shrubs should not be more than 12" at maturity. The Town Inspector reserves the right to determine if and when side inlets installed using 'funny pipe' verses the bottom inlet will be allowed.

B. Nozzles: Only fixed arc Toro MPR Plus nozzles shall be acceptable unless otherwise noted in these specifications.

C. Bubblers - Use ½" Schedule 80 risers with shrub adapter and Hunter PCN 10, 1 gpm, bubbler nozzles for all tree wells with tree grates. Risers shall be a minimum of 2" below bottom of tree grates with nozzle 2" above mulch. Use (2) bubblers 180-degree opposed.

D. Rotors - Only Hunter PGP series are permitted, unless otherwise specified by the Town of Addison. Install ¾" above finished grade.

14. Drip: Use Netafim products only. Use 0.6 gph pressure compensated self-flushing dripper tubing with 12" emitter spacing. Install appropriate pressure reducer and filter in one standard rectangular plastic valve box and a ball valve (see Section 12 C) and station valve (see Section 12 B) in another standard rectangular plastic valve box. Use 17 mm Netafim barbed fittings. Secure tubing to the ground every 3' or less with heavy duty jute netting pins from Dallas Bag and Burlap or approved equal. Use air relief valves housed in 10" round valve boxes. Use a 12" Toro pop-up with the nozzle totally closed as an 'indicator flag' on each drip zone. Adhere to all Netafim design and installation specifications.

Note: Drip will not be authorized for installation on turf applications.

Note: On bed applications, do not bury the drip lines. Install them on the soil surface and secure them with the pins specified above. Space the pins at a distance adequate enough to keep the tubing flat and in place; do not exceed 3'. Cover the tubing with a minimum of 3" of shredded hardwood mulch.

15. Risers: Use Schedule 80 PVC risers with Weathermatic LXS Series shrub head adapters, a Schedule 40 threaded coupling, and a ½"x6" green poly cut-off nipple screwed into the threaded fitting in the ground. The irrigation inspector reserves the right to determine placement of risers versus pop-ups.

16. Wiring: All wires will be 14-gauge UF. Station wires will be red. Common wires will be white. Master valve wires will be blue. Anytime the wiring changes direction, such as at an elbow or a tee, allow a loop of at least 12 inches alongside the fitting at that location. Only continuous wire runs are permissible. Wire should follow the main line where possible and lay along a single side not crossing over lateral lines. Wire is to be placed under the mainline with 2" of dirt between wire and pipe.

17. Wire Connectors: Use only DBY connectors for all field wire splices other than at the station valves themselves. Allow at least 36" of pigtailed wire at each splice. Use King One Step tan-colored connectors for all station valve splices. All station valve splices are to be housed in standard (large) Armor rectangular plastic valve boxes. All field splices are to be in 10" round Armor plastic valve boxes or standard rectangular Amor plastic valve boxes at the discretion of the Town's representative.

18. Backfilling: Prior to any backfilling of trenches, an inspection by the Town's irrigation representative must take place and any necessary changes implemented; otherwise, manual excavation to enable proper inspection will be necessary. Use clean and approved topsoil to backfill all pipe to a depth. All heads and boxes are to be backfilled to grade with clean topsoil. No rocks greater than 1" in size are allowed. Compact trenches to alleviate settling. Minimal depth of coverage is 12".

19. Valve sequencing must be performed by the contractor and in an order approved by the Town Irrigation Inspector. At least 12" of extra station wiring within the bottom of the pedestal is necessary for each zone and must be of neat and orderly appearance.

20. Any deficiencies in coverage noted by the Town's irrigation inspector will be rectified at the cost of the contractor.

21. Controller: A Town irrigation representative will determine the type of controller to be used. All controllers shall have a concrete pad of 36"x36"x6". Pad will be set at 3" above final grade. Install the controller after the concrete pad is completely cured (two days). Use only appropriately sized stainless-steel bolts, washers and nuts to secure the controller to the concrete pad. All wiring is to enter the pedestal via appropriately sized PVC sweep elbows extending at least 1" through and 6" out from under the pad. Control/Master Valve wiring, flow meter wiring and 120-V service wiring are to be separated with each having its own access elbow. An additional spare ¾" sweep elbow for phone service is to be installed as well. All national and local codes must be followed during the installation.

- A. A/C controller** – Only an appropriately sized Rain Bird ESP12LXMEF controller w/ Flow Smart Module with the number of required ESPLXMSM 8 or 12 modules for the specific application housed in an ESPLXMMSS Stainless Steel Cabinet (for EXP-LX modular controller) with a LXMMSSPED Stainless Steel Pedestal is permitted. Components may only be purchased from a certified Rain Bird supplier. The entire installation must conform to manufacturer's and Rain Bird's specifications. Requirements include the installation of Rain Bird approved grounding configurations. Each controller must have a functional wireless Mini-click freeze and rain sensor with a Hunter bypass switch installed in an approved

location and by an approved method. The location of the sensors shall be determined by the Town's irrigation inspector.

B. Battery and/or Solar Operated Controllers - Only LEIT

controllers will be acceptable. Install rain and freeze sensors on these controllers with SKIT8821-4 installation kit. Install on galvanized thick wall galvanized poles and set controller panel to height above finished grade to be determined by Town's representative.

C. Rain Bird Central Control: Only an appropriately sized Rain Bird ESP12LXMEF controller w/ Flow Smart Module with the number of required ESPLXMSM 8 or 12 modules for the specific application housed in an ESPLXMMSS Stainless Steel Cabinet (for EXP-LX modular controller) with a LXMMSSPED Stainless Steel Pedestal is permitted. The controller must include all necessary hardware, to include but not limited to a proper sized Omni antenna, cables, etc., and/or software to ensure reliable radio communication and operation with the Town's central control system. Refer to the below-listed controller configurations. Radio is the mode of communication to be utilized. Components may only be purchased from a certified Rain Bird supplier.

Single (Client) Controller:

Single stand-alone (Client) controller with (Server) base controller within operational distance:

Note: The radio signal strength at the (Client) controller location shall be tested prior to purchase. Poor signal strength may necessitate another configuration.

Install RS-232 Comm cartridge

Install 902-928 MHZ SS Radio Modem (RB-SS-TN9B)

Install appropriately sized 900 MHz Omni antenna and brackets

Use all necessary and proper cables/connectors for installation

Multiple Controllers:

- 1) To link two (2) side by side controllers with base controller within operational distance:

Controller#1:

Install RS-232 Comm cartridge and include an IQFSCMLXME Flow Smart Connection Module

Install 902-928 MHZ SS Radio Modem 9RB-SS-TN9B)

Install appropriately sized 900 MHz Omni antenna

Use all necessary and proper cables/connectors for the installation

Controller#2:

Install RS-232 cartridge and include an IQFSCMLXME Flow Smart Connection Module

Connect two controllers using PE-39 cable

Use all necessary and proper cables/connectors for the installation

- 2) For Server/Client Configuration for multiple controllers at multiple locations w/ radio communication:

Note: A radio survey **MUST** be completed by Rain Bird personnel prior to purchase/use of radio product.

Server Controller:

Install a 3G GPRS VPN communication cartridge and properly sized external GP antenna (IQEXTANTGP)

Install 902-928 MHZ SS Radio Modem (RB-SS-TN9B)

Install appropriately sized 900 MHz Omni antenna
Use all necessary and proper cables/connectors for the installation

Client Controller:

Install RS-232 Comm cartridge
Install 902-928 SS Radio Modem (RB-SS-TN9B)
Install appropriately sized 900 MHz Omni antenna
Use all necessary and proper cables/connectors for the installation

Controllers shall be connected to a Creative Sensor Technology (CST) flow meter (same size as the mainline), utilizing PE-39 shielded cable (see section '12. Valves:', subsection 'E. Flowmeters' above for specifics to this installation), and where needed/required an ISF-304-00 CST Isoflow two output flow sensor isolator w/ leads or a CBF-100 CST Combiflow. The entire installation must conform to manufacturer's and Rain Bird's specifications and be approved by the Town's irrigation inspector prior to and be inspected during installation. Requirements include the installation of Rain Bird approved grounding configurations and distances of separation from water meter to DCA to master valve to flow meter and the first fitting. Each controller must have a functional Mini-click freeze and rain sensor with a Hunter bypass switch installed in an approved location and by an approved method.

22. Communication is the key. If you are unsure of anything, CALL Raul Rivera, Town of Addison Parks Department Irrigation Supervisor: Cell (214) 208-8776.

SECTION IS

ADDITIONAL INSURANCE REQUIREMENTS

TOWN OF ADDISON, TEXAS

IS 1

**PROJECT NAME: ADDISON RAWHIDE CREEK BASIN DRAINAGE AND ADA IMPROVEMENTS FROM
BROOKWOOD LN TO WATERSIDE CT**

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, and Criado & Associates, Inc. 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, and Criado & Associates, Inc. <u>to be listed as 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 per occurrence for bodily injury and property damage	TOWN OF ADDISON, and Criado & Associates, Inc. <u>to be listed as ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII-rated or above.
4. Umbrella or Excess Liability Policy over Commercial General Liability and Automobile Liability limits of \$1 million per occurrence	Minimum \$4 million per occurrence excess \$1 million underlying per occurrence	TOWN OF ADDISON, and Criado & Associates, Inc. <u>to be listed as 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) 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 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 and **Criado & Associates, Inc.** 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# Addison Rawhide Creek Basin Drainage and ADA Improvements
Project# 2022-010
Company: TEXAS STANDARD CONST., LTD.
Printed Name: Ronald H. Dalton
Signature: Ronald H. Dalton Date: 8/30/2022

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Council Meeting 2023

16.

Meeting Date: 10/25/2022

Department: Infrastructure- Development Services

Pillars: Excellence in Asset Management

Milestones: Implement the Asset Management Plan in accordance with the Asset Management Policy, utilizing information systems

AGENDA CAPTION:

Consider Action on the **Purchase of Water Quality Analyzers from Hach Company and Authorize the City Manager to Execute the Purchase Order** in an Amount Not to Exceed \$69,481.60.

BACKGROUND:

The purpose of this item is to purchase two replacement water quality analyzers from Hach Company (Hach).

These analyzers continuously monitor disinfectant levels in the water that Dallas Water Utilities provides at the two entry points. This is vital to ensuring the Town maintains superior water quality throughout the water distribution system.

Two of the Town's water quality analyzers have reached the end of their useful life. At 12 years old, parts for the analyzers are difficult to source due to their age. Additionally, the analyzers are identified as failed in the Town's asset management software.

The purchase of Hach's water quality analyzers ensures ease of maintenance and compatibility with existing water quality instruments and software already in place. Hach is the sole source manufacturer and direct distributor for all Hach instrumentation. The attached sole source letter explains this in greater detail.

The \$75,000 budget for this \$69,481.60 purchase was approved as a decision package as a part of the Fiscal Year 2023 budget process and will come out of the 2023 Utility Fund budget.

RECOMMENDATION:

Administration recommends approval.

Attachments

Hach Price Quote

Hach Sole Source Letter



Quotation

Quote Number: 100462060v8
Use quote number at time of order to ensure that you receive prices quoted

Hach
PO Box 608
Loveland, CO 80539-0608
Phone: (800) 227-4224
Email: quotes@hach.com
Website: www.hach.com

Quote Date: 10-Oct-2022

Quote Expiration: 09-Nov-2022

Town of Addison
PO Box 144
Addison, TX 75001

Name: Phil Kagarice
Phone: 9724502860
Email: pkagarice@addisontx.gov

Sales Contact: Gail Feikes Email: gfeikes@hach.com Phone: 800-227-4224

PRICING QUOTATION

Line	Part Number	Description	Qty	Net Unit Price	Extended Price
1	5500.AMC.2.KTO	KTO: 5500sc Ammonia Monochloramine, 2 Channel	2	29,520.96	59,041.92
2	25233000	5500sc Ammonia Monochloramine Analyzer Reagent Set	2	284.48	568.96
3	25277000	PROGNOSYS 5500sc AMC LICENSE KIT	2	1,515.36	3,030.72
4	WRTUPG5500SC AMC	WarrantyPlus Service Agreement includes: Instrument start-up, all parts, labor, and travel for on-site repairs, 1 on-site calibration per year, factory recommended maintenance (including required parts), unlimited technical support calls, and free firmware updates.	2	3,420.00	6,840.00
				Grand Total	\$ 69,481.60

TERMS OF SALE

Freight: Ground Prepay and Add

FCA: Hach's facility

12% Supply Chain Surcharge has been added to this quote for all shipments, if applicable, and is included in the "Net Unit Price" and Grand Total

ALL LEAD TIMES ARE ESTIMATED AND NOT GUARANTEED.

All purchases of Hach Company products and/or services are expressly and without limitation subject to Hach Company's Terms & Conditions of Sale ("Hach TCS"), incorporated herein by reference and published on Hach Company's website at www.hach.com/terms. Hach TCS are contained directly and/or by reference in Hach's offer, order acknowledgment,

and invoice documents. The first of the following acts constitutes an acceptance of Hach's offer and not a counteroffer and creates a contract of sale "Contract" in accordance with the Hach TCS: (i) Buyer's issuance of a purchase order document against Hach's offer; (ii) acknowledgement of Buyer's order by Hach; or (iii) commencement of any performance by Hach pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract

from the provisions of the Hach TCS are not part of the Contract.

Due to International regulations, a U.S. Department of Commerce Export License may be required. Hach reserves the right to approve specific shipping agents. Wooden boxes suitable for ocean shipment are extra. Specify final destination to ensure proper documentation and packing suitable for International transport. In addition, Hach may require : 1). A statement of intended end-use; 2). Certification that the intended end-use does not relate to proliferation of weapons of mass destruction (prohibited nuclear end use, chemical / biological weapons, missile technology); and 3). Certification that the goods will not be diverted contrary to U.S. and/or applicable laws in force in Buyer's jurisdiction.

ORDER TERMS:

Terms are Subject to Credit Review

In order for Hach to process the order as quickly as possible, please provide the following information.

- Complete Billing address.
- Complete Shipping address.
- Part numbers and quantities of items being ordered.
- Please reference the quotation number on your purchase order

If the order is over \$25,000 Hach will also require the following additional information.

- Pricing
- Purchase Order Number
- Freight terms and INCO term FOB Origin or FCA Shipping Point
- Required delivery date
- Vendor name should specify "Hach Company" with the Loveland address:
 - o Hach, PO Box 389, Loveland, CO 80539
- Credit terms of payment. Default payment terms are Net 30.
- Indicate if order needs to ship complete or if it can ship partial.
- Tax status
- Special invoicing instructions

Sales tax is not included on quote. Applicable sales tax will be added to the invoice based on the U.S. destination, if applicable provide a resale/exemption certificate.

Shipments will be prepaid and added to invoices unless otherwise specified.

Equipment quoted operates with standard U.S. supply voltage.

Hach standard terms and conditions apply to all sales.

Additional terms and conditions apply to orders for service partnerships.

Prices do not include delivery of product. Reference attached Freight Charge Schedule and Collect Handling Fees.

Standard lead time is 30 days.

This Quote is good for a one time purchase

Virtual and/or on-site training must be scheduled/completed within 30 days of order, or the price will be subject to change.

Sales Contact:

Name: Gail Feikes
Title: Regional Sales Manager
Phone: 800-227-4224
Email: gfeikes@hach.com



HACH COMPANY

Headquarters

P.O. Box 389
5600 Lindbergh Drive
Loveland, CO 80539-0389

Purchase Orders

PO Box 608
Loveland, CO 80539-0608

WebSite: www.hach.com

U.S.A.

Phone: 800-227-4224
Fax: 970-669-2932
E-Mail: orders@hach.com
quotes@hach.com
techhelp@hach.com

Export

Phone: 970-669-3050
Fax: 970-461-3939
Email: intl@hach.com

Remittance

2207 Collections Center Drive
Chicago, IL 60693

Wire Transfers

Bank of America
231 S. LaSalle St.
Chicago, IL 60604
Account: 8765602385
Routing (ABA): 071000039

Quotation Addendum

ADVANTAGES OF WORKING WITH HACH

 Hach Service	Pick&Ship™	Technical Support
<p><i>Protect your investment & peace of mind</i></p> <ul style="list-style-type: none"> ✓ A global partner who understands your needs ✓ Delivers timely, high-quality service you can trust ✓ Provides team of unique experts to help you maximize instrument uptime ✓ Ensure data integrity ✓ Maintain operational stability ✓ Reduce compliance risk <p>www.hach.com/service-contracts</p>	<p><i>Pick&Ship™ Program offers a better way to keep your supplies in stock</i></p> <ul style="list-style-type: none"> ✓ Convenience of one purchase order for the entire year ✓ Flexibility to change, cancel or create new orders ✓ Savings from locking in prices & thus avoiding price surges and rush charges ✓ Peace of mind with automatic, reliable shipments just as you need them <p>www.Hach.com/pickandship</p>	<p><i>Provides post-sale instrumentation and application support</i></p> <ul style="list-style-type: none"> ✓ Hach's highly skilled Technical Support staff is dedicated to helping you resolve technical issues before, during and after the sale. ✓ Available via phone, e-mail, or live online chat at Hach.com! ✓ Fast access to answers at https://support.hach.com ✓ Toll-free phone: 800-227-4224 ✓ E-mail: techhelp@hach.com <p>www.Hach.com</p>

ADVANTAGES OF SIMPLIFIED SHIPPING AND HANDLING

Safe & Fast Delivery	Save Time – Less Hassle	Save Money
<ul style="list-style-type: none"> ✓ Receive tracking numbers on your order acknowledgement ✓ Hach will assist with claims if an order is lost or damaged in shipment 	<ul style="list-style-type: none"> ✓ No need to set up deliveries for orders or to schedule pickup ✓ Hach ships order as product is available, at no additional charge, when simplified shipping and handling is used. 	<ul style="list-style-type: none"> ✓ No additional invoice to process – save on time and administrative costs ✓ Only pay shipping once, even if multiple shipments are required

STANDARD SIMPLIFIED SHIPPING AND HANDLING CHARGES ^{1, 2, 3, 4} Pricing Effective 4/11/2020						Collect ⁴
Total Price of Merchandise Ordered	Standard Surface (Mainland USA)	Second Day Delivery (Mainland USA)	Next Day Delivery (Mainland USA)	Second Day Delivery (Alaska & Hawaii)	Next Day Delivery (Alaska & Hawaii)	Handling Fee Effective 4/11/2020
\$0.00 - \$49.99	\$17.99	\$44.99	\$83.90	\$72.21	\$137.27	\$13.47
\$50.00 - \$149.99	\$28.59	\$84.27	\$159.00	\$120.84	\$229.73	\$13.85
\$150.00 - \$349.99	\$50.22	\$133.98	\$272.91	\$169.07	\$329.04	\$14.72
\$350.00 - \$649.99	\$69.95	\$182.91	\$363.75	\$228.65	\$442.76	\$15.48
\$650.00 - \$949.99	\$88.16	\$191.13	\$399.98	\$236.66	\$446.10	\$16.04
\$950.00 - \$1,999.99	\$110.91	\$235.85	\$498.69	\$280.67	\$543.06	\$17.52
\$2,000.00 - \$3,999.99	\$128.04	\$250.64	\$513.44	\$291.54	\$554.54	\$20.22
\$4,000.00 - \$5,999.99	\$148.44	\$260.33	\$538.23	\$292.89	\$570.53	\$24.90
\$6,000.00 - \$7,999.99	\$175.40	\$296.40	\$612.84	\$323.07	\$622.86	\$29.04
\$8,000.00 - \$9,999.99	\$200.15	\$336.83	\$658.19	\$360.41	\$683.52	\$33.51
Over \$10,000	2.5% of Net Order Value	4.5% of Net Order Value	7% of Net Order Value	4.5% of Net Order Value	7% of Net Order Value	\$51.84

- Shipping & Handling charges shown are only applicable to orders billing and shipping to U.S. destinations. Shipping & Handling charges will be prepaid and added to invoice. Shipping & Handling for the Pick&Ship Program is charged on each shipment release and is based on the total price of each shipment release. Shipping & Handling charges are subject to change without notice.
 - Additional Shipping & Handling charges will be applied to orders containing bulky and/or especially heavy orders. Refrigerated and all weather Samplers do not qualify for simplified Shipping & Handling charges, and are considered heavy products. Dissolved Oxygen Sensors can be damaged if exposed to temps below freezing, causing sensor failure. Must be shipped over night or 2nd day air during the cold weather months.
 - Orders shipping to Alaska or Hawaii: Additional Shipping & Handling charges may be applied at time of order processing. Second Day and Next Day delivery is not available to all destinations.
 - Hach Company will assess a collect handling fee on orders with collect shipping terms. This handling fee covers the additional costs that Hach Company incurs from processing and managing collect shipments.
- Due to variations in component characteristics, regulatory transportation requirements and/or associated shipping and handling costs, individual kit components may or may not be packaged together in a single carton at time of final packaging and shipping.

SALES TAX

Sales Tax is not included in the attached quotation. Applicable sales and usage taxes will be added to your invoice, at the time of order, based on U.S. destination of goods, unless a valid resale/exemption certificate for destination state is provided to the above address or fax number, attention of the Tax Dept.

TERMS & CONDITIONS OF SALE FOR HACH COMPANY PRODUCTS AND SERVICES

This document sets forth the Terms & Conditions of Sale for goods manufactured and/or supplied, and services provided, by Hach Company of Loveland, Colorado ("Hach") and sold to the original purchaser thereof ("Buyer"). Unless otherwise specifically stated herein, the term "Hach" includes only Hach Company and none of its affiliates. Unless otherwise specifically stated in a previously-executed written purchase agreement signed by authorized representatives of Hach and Buyer, these Terms & Conditions of Sale establish the rights, obligations and remedies of Hach and Buyer which apply to this offer and any resulting order or contract for the sale of Hach's goods and/or services ("Products").

1. **APPLICABLE TERMS & CONDITIONS:** These Terms & Conditions of Sale are contained directly and/or by reference in Hach's offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of Hach's offer and not a counteroffer and creates a contract of sale ("Contract") in accordance with these Terms & Conditions: (i) Buyer's issuance of a purchase order document against Hach's offer; (ii) acknowledgment of Buyer's order by Hach; or (iii) commencement of any performance by Hach pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not a part of the Contract.

2. **CANCELLATION:** Buyer may cancel goods orders subject to fair charges for Hach's expenses including handling, inspection, restocking, freight and invoicing charges as applicable, provided that Buyer returns such goods to Hach at Buyer's expense within 30 days of delivery and in the same condition as received. Buyer may cancel service orders on ninety (90) day's prior written notice and refunds will be prorated based on the duration of the service plan. Inspections and re-instatement fees may apply upon cancellation or expiration of service programs. Seller may cancel all or part of any order prior to delivery without liability if the order includes any Products that Seller determines may not comply with export, safety, local certification, or other applicable compliance requirements.

3. **DELIVERY:** Delivery will be accomplished FCA Hach's facility located in Ames, Iowa or Loveland, Colorado, United States (Incoterms 2010). Legal title and risk of loss or damage pass to Buyer upon transfer to the first carrier. Hach will use commercially reasonable efforts to deliver the Products ordered herein within the time specified on the face of this Contract or, if no time is specified, within Hach's normal lead-time necessary for Hach to deliver the Products sold hereunder. Upon prior agreement with Buyer and for an additional charge, Hach will deliver the Products on an expedited basis. Standard service delivery hours are 8 am – 5 pm Monday through Friday, excluding holidays.

4. **INSPECTION:** Buyer will promptly inspect and accept any Products delivered pursuant to this Contract after receipt of such Products. In the event the Products do not conform to any applicable specifications, Buyer will promptly notify Hach of such nonconformance in writing. Hach will have a reasonable opportunity to repair or replace the nonconforming product at its option. Buyer will be deemed to have accepted any Products delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by Hach within thirty (30) days of delivery.

5. **PRICES & ORDER SIZES:** All prices are in U.S. dollars and are based on delivery as stated above. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of Products. Buyer will either pay any and all such charges or provide Hach with acceptable exemption certificates, which obligation survives performance under this Contract. Hach reserves the right to establish minimum order sizes and will advise Buyer accordingly.

6. **PAYMENTS:** All payments must be made in U.S. dollars. For Internet orders, the purchase price is due at the time and manner set forth at www.hach.com. Invoices for all other orders are due and payable NET 30 DAYS from date of the invoice without regard to delays for inspection or transportation, with payments to be made by check to Hach at the above address or by wire transfer to the account stated on the front of Hach's invoice, or for customers with no established credit, Hach may require cash or credit

card payment in advance of delivery. In the event payments are not made or not made in a timely manner, Hach may, in addition to all other remedies provided at law, either: (a) declare Buyer's performance in breach and terminate this Contract for default; (b) withhold future shipments until delinquent payments are made; (c) deliver future shipments on a cash-with-order or cash-in-advance basis even after the delinquency is cured; (d) charge interest on the delinquency at a rate of 1-1/2% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges and/or inventory carrying charges; (e) repossess the Products for which payment has not been made; (f) recover all costs of collection including reasonable attorney's fees; or (g) combine any of the above rights and remedies as is practicable and permitted by law. Buyer is prohibited from setting off any and all monies owed under this from any other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with Hach or any of its affiliates. Should Buyer's financial responsibility become unsatisfactory to Hach in its reasonable discretion, Hach may require cash payment or other security. If Buyer fails to meet these requirements, Hach may treat such failure as reasonable grounds for repudiation of this Contract, in which case reasonable cancellation charges shall be due Hach. Buyer grants Hach a security interest in the Products to secure payment in full, which payment releases the security interest but only if such payments could not be considered an avoidable transfer under the U.S. Bankruptcy Code or other applicable laws. Buyer's insolvency, bankruptcy, assignment for the benefit of creditors, or dissolution or termination of the existence of Buyer, constitutes a default under this Contract and affords Hach all the remedies of a secured party under the U.C.C., as well as the remedies stated above for late payment or non-payment. See [120](#) for further wire transfer requirements.

7. **LIMITED WARRANTY:** Hach warrants that Products sold hereunder will be free from defects in material and workmanship and will, when used in accordance with the manufacturer's operating and maintenance instructions, conform to any express written warranty pertaining to the specific goods purchased, which for most Hach instruments is for a period of twelve (12) months from delivery. Hach warrants that services furnished hereunder will be free from defects in workmanship for a period of ninety (90) days from the completion of the services. Parts provided by Hach in the performance of services may be new or refurbished parts functioning equivalent to new parts. Any non-functioning parts that are repaired by Hach shall become the property of Hach. No warranties are extended to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. **All other guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial usage or otherwise, including implied warranties of merchantability and fitness for a particular purpose, are hereby excluded.** The sole remedy for Products not meeting this Limited Warranty is replacement, credit or refund of the purchase price. This remedy will not be deemed to have failed of its essential purpose so long as Hach is willing to provide such replacement, credit or refund.

8. **INDEMNIFICATION:** Indemnification applies to a party and to such party's successors-in-interest, assignees, affiliates, directors, officers, and employees ("Indemnified Parties"). Hach is responsible for and will defend, indemnify and hold harmless the Buyer Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to Hach's breach of the Limited Warranty. Buyer is responsible for and will defend, indemnify and hold harmless the Hach Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to negligence, misuse or misapplication of any goods or services, violations of law, or the breach of any provision of this Contract by the Buyer, its affiliates, or those employed by, controlled by or in privity with them. Buyer's workers' compensation immunity, if any, does not preclude or limit its indemnification obligations.

9. **PATENT PROTECTION:** Subject to all limitations of liability provided herein, Hach will, with respect to any Products of Hach's design or manufacture, indemnify Buyer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any U.S. patent (or European patent for Products that Hach sells to Buyer for end use in a member state of the E.U.) that has issued as of the delivery date, solely by reason of the sale or normal use of any Products sold to Buyer hereunder and from reasonable expenses incurred by Buyer in defense of such suit if Hach does not undertake the defense thereof, provided that Buyer promptly notifies



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Hach of such suit and offers Hach either (i) full and exclusive control of the defense of such suit when Products of Hach only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Hach are also involved. Hach's warranty as to use patents only applies to infringement arising solely out of the inherent operation of the Products according to their applications as envisioned by Hach's specifications. In case the Products are in such suit held to constitute infringement and the use of the Products is enjoined, Hach will, at its own expense and at its option, either procure for Buyer the right to continue using such Products or replace them with non-infringing products, or modify them so they become non-infringing, or remove the Products and refund the purchase price (prorated for depreciation) and the transportation costs thereof. The foregoing states the entire liability of Hach for patent infringement by the Products. Further, to the same extent as set forth in Hach's above obligation to Buyer, Buyer agrees to defend, indemnify and hold harmless Hach for patent infringement related to (x) any goods manufactured to the Buyer's design, (y) services provided in accordance with the Buyer's instructions, or (z) Hach's Products when used in combination with any other devices, parts or software not provided by Hach hereunder.

10. **TRADEMARKS AND OTHER LABELS:** Buyer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers or trademarks on nameplates or cast, molded or machined components.

11. **SOFTWARE AND DATA.** All licenses to Hach's separately-provided software products are subject to the separate software license agreement(s) accompanying the software media and/or included as an Appendix to these Terms & Conditions of Sale. Except to the extent such express licenses conflict with the remainder of this paragraph, the following also applies relative to Hach's software: Hach grants Buyer only a personal, non-exclusive license to access and use the software provided by Hach with Products purchased hereunder solely as necessary for Buyer to enjoy the benefit of the Products. A portion of the software may contain or consist of open source software, which Buyer may use under the terms and conditions of the specific license under which the open source software is distributed. Buyer agrees that it will be bound by all such license agreements. Title to software remains with the applicable licensor(s). In connection with Buyer's use of Products, Hach may obtain, receive, or collect data or information, including data produced by the Products. In such cases, Buyer grants Hach a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of such data, or to aggregate such data for use in an anonymous manner, solely to facilitate marketing, sales and R&D activities of Hach and its affiliates.

12. **PROPRIETARY INFORMATION; PRIVACY:** "Proprietary Information" means any information, technical data or know-how in whatever form, whether documented, contained in machine readable or physical components, mask works or artwork, or otherwise, which Hach considers proprietary, including but not limited to service and maintenance manuals. Buyer and its customers, employees and agents will keep confidential all such Proprietary Information obtained directly or indirectly from Hach and will not transfer or disclose it without Hach's prior written consent, or use it for the manufacture, procurement, servicing or calibration of Products or any similar products, or cause such products to be manufactured, serviced or calibrated by or procured from any other source, or reproduce or otherwise appropriate it. All such Proprietary Information remains Hach's property. No right or license is granted to Buyer or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent right or other proprietary right of Hach, except for the limited use licenses implied by law. Hach will manage Customer's information and personal data in accordance with its Privacy Policy, located at <http://www.hach.com/privacypolicy>.

13. **CHANGES AND ADDITIONAL CHARGES:** Hach reserves the right to make design changes or improvements to any products of the same general class as Products being delivered hereunder without liability or obligation to incorporate such changes or improvements to Products ordered by Buyer unless agreed upon in writing before the Products' delivery date. Services which must be performed as a result of any of the following conditions are subject to additional charges for labor, travel and parts: (a) equipment alterations not authorized in writing by Hach; (b) damage resulting from improper use or handling, accident, neglect, power surge, or operation in an environment or manner in which the instrument is not designed to operate or is not in accordance with Hach's operating manuals; (c) the use of parts or accessories not provided by Hach; (d) damage resulting from acts of war, terrorism or nature; (e) services outside standard business hours; (f) site

prework not complete per proposal; or (g) any repairs required to ensure equipment meets manufacturer's specifications upon activation of a service agreement.

14. **SITE ACCESS / PREPARATION / WORKER SAFETY / ENVIRONMENTAL COMPLIANCE:** In connection with services provided by Hach, Buyer agrees to permit prompt access to equipment. Buyer assumes full responsibility to back-up or otherwise protect its data against loss, damage or destruction before services are performed. Buyer is the operator and in full control of its premises, including those areas where Hach employees or contractors are performing service, repair and maintenance activities. Buyer will ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services. Buyer is the generator of any resulting wastes, including without limitation hazardous wastes. Buyer is solely responsible to arrange for the disposal of any wastes at its own expense. Buyer will, at its own expense, provide Hach employees and contractors working on Buyer's premises with all information and training required under applicable safety compliance regulations and Buyer's policies. If the instrument to be serviced is in a Confined Space, as that term is defined under OSHA regulations, Buyer is solely responsible to make it available to be serviced in an unconfined space. Hach service technicians will not work in Confined Spaces. In the event that a Buyer requires Hach employees or contractors to attend safety or compliance training programs provided by Buyer, Buyer will pay Hach the standard hourly rate and expense reimbursement for such training attended. The attendance at or completion of such training does not create or expand any warranty or obligation of Hach and does not serve to alter, amend, limit or supersede any part of this Contract.

15. **LIMITATIONS ON USE:** Buyer will not use any Products for any purpose other than those identified in Hach's catalogs and literature as intended uses. Unless Hach has advised the Buyer in writing, in no event will Buyer use any Products in drugs, food additives, food or cosmetics, or medical applications for humans or animals. In no event will Buyer use in any application any Product that requires FDA 510(k) clearance unless and only to the extent the Product has such clearance. Buyer will not sell, transfer, export or re-export any Hach Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Hach Products or technology in any facility which engages in activities relating to such weapons. Unless the "ship-to" address is in California, U.S.A., the Products are not intended for sale in California and may lack markings required by California Proposition 65; accordingly, unless Buyer has ordered Products specifying a California ship-to address, Buyer will not sell or deliver any Hach Products for use in California. Any warranty granted by Hach is void if any goods covered by such warranty are used for any purpose not permitted hereunder.

16. **EXPORT AND IMPORT LICENSES AND COMPLIANCE WITH LAWS:** Unless otherwise specified in this Contract, Buyer is responsible for obtaining any required export or import licenses. Buyer will comply with all laws and regulations applicable to the installation or use of all Products, including applicable import and export control laws and regulations of the U.S., E.U. and any other country having proper jurisdiction, and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Buyer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with this Contract, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Buyer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for Hach, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Buyer's activities related to this Contract. Hach asks Buyer to "Speak Up!" if aware of any violation of law, regulation or our Standards of Conduct ("SOC") in relation to this Contract. See <http://danaher.com/integrity-and-compliance> and www.danaherintegrity.com for a copy of the SOC and for access to our Helpline portal.

17. **RELATIONSHIP OF PARTIES:** Buyer is not an agent or representative of Hach and will not present itself as such under any circumstances unless and to

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the extent it has been formally screened by Hach's compliance department and received a separate duly-authorized letter from Hach setting forth the scope and limitations of such authorization.

18. **FORCE MAJEURE:** Hach is excused from performance of its obligations under this Contract to the extent caused by acts or omissions that are beyond its control of, including but not limited to Government embargoes, blockages, seizures or freeze of assets, delays or refusals to grant an export or import license or the suspension or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience or acts of criminals or terrorists; war; material shortages or delays in deliveries to Hach by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit will be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six months, Hach may, at its option, terminate this Contract without penalty and without being deemed in default or in breach thereof.

19. **NON ASSIGNMENT AND WAIVER:** Buyer will not transfer or assign this Contract or any rights or interests hereunder without Hach's prior written consent. Failure of either party to insist upon strict performance of any provision of this Contract, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Contract will not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same will continue and remain in force and effect as if no waiver had occurred.

20. **FUNDS TRANSFERS (PAYMENTS):** Buyer and Hach both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Buyer must verbally confirm any new or changed bank transfer or mailing instructions by calling Hach at +1-970-663-1377 and speaking with Hach's Credit Manager before mailing or transferring any monies using the new instructions. Both parties agree that they will not institute mailing or bank transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.

21. **LIMITATION OF LIABILITY:** None of the Hach Indemnified Parties will be liable to Buyer under any circumstances for any special, treble, incidental or consequential damages, including without limitation, damage to or loss of property other than for the Products purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of use; losses resulting from or related to downtime of the products or inaccurate measurements or reporting; the cost of substitute products; or claims of Buyer's customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort (including negligence, strict liability or otherwise). The total liability of the Hach Indemnified Parties arising out of the performance or nonperformance hereunder or Hach's obligations in connection with the design, manufacture, sale, delivery, and/or use of Products will in no circumstance exceed in the aggregate a sum equal to twice the amount actually paid to Hach for Products delivered hereunder.

22. **APPLICABLE LAW AND DISPUTE RESOLUTION:** The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of Colorado, without regard to its principles or laws regarding conflicts of laws. If any provision of this Contract violates any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions. Unless otherwise specifically agreed upon in writing between Hach and Buyer, any dispute relating to this Contract which is not resolved by the parties shall be adjudicated in order of preference by a court of competent jurisdiction (i) in the State of Colorado, U.S.A. if Buyer has minimum contacts with Colorado and the U.S., (ii) elsewhere in the U.S. if Buyer has minimum contacts with the U.S. but not Colorado, or (iii) in a neutral location if Buyer does not have minimum contacts with the United States.

23. **ENTIRE AGREEMENT & MODIFICATION:** These Terms & Conditions of Sale constitute the entire agreement between the parties and supersede any prior agreements or representations, whether oral or written. No change to or modification of these Terms & Conditions shall be binding upon Hach unless in a written instrument specifically referencing that it is amending these Terms & Conditions of Sale and signed by an authorized representative of Hach. Hach

rejects any additional or inconsistent Terms & Conditions of Sale offered by Buyer at any time, whether or not such terms or conditions materially alter the Terms & Conditions herein and irrespective of Hach's acceptance of Buyer's order for the described goods and services.

24. **APPENDICES:** If checked, the following Appendices are attached hereto and incorporated by reference into these Terms & Conditions of Sale:

CLAROS SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

* * *

The Sole Authorized Manufacturer and Direct Distributor Letter

10/6/2022

Customer Name: Town of Addison – Phil Kagarice

Customer Address: 16801 Westgrove Dr.

Customer City, State, Zip: Addison, Texas 75001

Customer Account Number: 086548

Item(s): **Description(s):**

RE: SOLE SOURCE LETTER – Hach Brand Instruments

Hach Brand Products – Instruments and Chemistry: Brands to include, but not limited to:

Other Hach Brands

Evita, GLI, Hach, Homeland Security Technologies, OPS Systems, ORBISPHERE, POLYMETRON, Sigma ANATEL, Dr. Lange, Environmental Test Strips, Evita, GLI, HIAC, Homeland Security Technologies, Hydrolab, IQ Scientific Instruments, Lachat Instruments, Leica Microsystems, Marsh-McBirney, MET ONE, OPS Systems, ORBISPHERE, OTT, Hydrometry, POLYMETRON, Radiometer Analytical, Sea-Bird Electronics, Sigma, WET Labs, Hach WIMS™, CLAROS Collect

Thank you for your interest in Hach Company products. This letter is to advise that Hach Company is the sole source manufacturer and distributor for all Hach branded instrumentation and chemistry. **This excludes all resell items, such as glassware, measuring spoons, brushes, and other general lab accessories.** Any software or firmware additions or alterations must be purchased directly from Hach Company

This letter is to confirm that Hach Company is the sole authorized manufacturer and direct distributor of the item/items listed above.

Thank you for your interest in Hach Company Products. If we can be of further assistance, please contact us at 1-800-227-4224.

Thank you



Council Meeting 2023

17.

Meeting Date: 10/25/2022

Department: Finance

Pillars: Gold Standard in Financial Health

Milestones: Continue development and implementation of Long Term Financial Plan

AGENDA CAPTION:

Consider Action on a **Resolution Adopting an Investment Strategy and Approving Brokers, Dealers, and Financial Institutions for Fiscal Year 2022-2023.**

BACKGROUND:

The Public Funds Investment Act (PFIA) requires the Council to annually adopt the Town's Investment Policy. The document has been drafted to comply with all aspects of the PFIA. This policy applies to the investment and management of all funds of the Town. Direct management responsibility for the investment program is delegated by the City Council to the Chief Financial Officer. The investment policy has the following priorities:

- Preservation and safety of principal
- Understanding the suitability of the investment to the financial requirements of the Town
- Liquidity
- Marketability of the investment if the need arises to liquidate the investment prior to maturity
- Diversification of the investment portfolio
- Yield

Finance staff determined that no changes are needed to the Town's investment policy.

The attached Resolution includes the Town's Investment Policy in Exhibit A.

The list of recommended qualified brokers, dealers, and financial institutions were vetted by Town staff in accordance with the requirements of the adopted Investment Policy which requires the Town Council to review, revise, and adopt the list at least annually. The recommended list includes the removal of Prosperity Bank from the list and the addition of Texas Security Bank to the list that was approved on October 12, 2021.

The attached Resolution includes the list of brokers, dealers, and financial institutions in Exhibit B.

Also attached to this item is the Certification of Investment Policy from the Government Treasurer's Organization of Texas for the period from July 1, 2021 to June 30, 2023.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Fiscal Year 2022-2023 Investment Policy
Investment Policy Certification

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS
ADOPTING AN INVESTMENT STRATEGY AND APPROVING BROKERS,
DEALERS, AND FINANCIAL INSTITUTIONS FOR FISCAL YEAR 2022-2023;
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Texas Public Funds Investment Act (“PFIA”) requires the City Council of the Town of Addison, Texas (“City”) to annually review the City’s investment policy (the “Policy”); and

WHEREAS, the City’s Staff has developed the City’s Policy and investment strategy to comply with all aspects of the PFIA;

WHEREAS, City staff has received and reviewed all documentation required by the City’s Policy for each approved broker, dealer, and financial institution listed in conformance with Section XI of the Policy; and

WHEREAS, for Fiscal Year 2022-2023, City Staff is recommending no changes from the Fiscal Year 2021-2022 approved investment strategy.

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

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The City Council does hereby adopt and approve the investment Policy and strategy for Fiscal Year 2022-2023 attached hereto as **Exhibit A** and incorporated herein.

SECTION 3. In conformance with Section XI of the Policy, the City Council does hereby adopt and approve the list of qualified brokers, dealers, and financial institutions for Fiscal Year 2022-2023 attached hereto as **Exhibit B** and incorporated herein.

SECTION 4. This Resolution shall take effect upon its passage and approval.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **25th** day of **OCTOBER** 2022.

ATTEST:

TOWN OF ADDISON, TEXAS

Irma Parker, City Secretary

Joe Chow, Mayor

EXHIBIT A

TOWN OF ADDISON

INVESTMENT POLICY

For

FY 2022-2023

Section I.	SCOPE
Section II.	OBJECTIVES
Section III.	INVESTMENT STRATEGY
Section IV.	DELEGATION OF AUTHORITY
Section V.	INVESTMENT ADVISORS
Section VI.	STANDARD OF CARE
Section VII.	AUTHORIZED SECURITIES INVESTMENTS
Section VIII.	OTHER INVESTMENT GUIDELINES
Section IX.	PORTFOLIO MATURITIES
Section X.	INVESTMENT LIMITS
Section XI.	SELECTION OF BROKER/DEALERS
Section XII.	SELECTION OF DEPOSITORIES
Section XIII.	SAFEKEEPING AND CUSTODY
Section XIV.	RECORDKEEPING AND REPORTING
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Section I. SCOPE

The Public Funds Investment Act, Chapter 2256, Texas Government Code, prescribes that each Town is to adopt rules governing its investment practices and to define the authority of the investment officer. The following Investment Policy addresses the methods, procedures, and practices which must be exercised to ensure effective and judicious fiscal management of the Town's funds. This Policy shall not apply to the selection, retention or other issues concerning the depositories of the Town's funds in demand and time deposits as provided under Chapter 105 of the Local Government Code.

This Policy shall apply to the investment and management of all funds of the Town under its control, other than those expressly excluded herein or by applicable law or valid agreement. This Policy shall not supersede the restrictions on investment and use applicable to any specific fund and, in the event of any conflict between this Policy and the requirements of any fund subject hereto, the specific requirement applicable to such fund shall be followed as well as all other provisions of this Policy other than those in conflict. The Employees Deferred Compensation Agency Fund is excluded from coverage under this Policy.

This Policy also requires the formal adoption of an "Investment Strategy Statement" that specifically addresses each of the Town's fund groups. Each Investment Strategy Statement will describe its objectives concerning:

- a. Suitability of investment type
- b. Preservation and safety of principal
- c. Liquidity
- d. Marketability of each investment
- e. Diversification of the portfolio
- f. Yield

In order to make effective use of the Town's resources, all monies shall be pooled into one investment bank account, except for those monies required to be accounted for in other bank accounts as stipulated by applicable laws, bond covenants or contracts. The income derived from this pooled investment account shall be distributed in accordance with the Town's internal procedures.

Section II. OBJECTIVES

The Town's principal investment objectives in order of priority are:

1. Conformance with all Federal regulations, State of Texas statutes and other legal requirements including the Town Charter and Town Ordinances, including this Policy.
2. Preservation of capital and the protection of investment principal.
3. Maintenance of sufficient liquidity to meet anticipated disbursement and cash flows.
4. Diversification to avoid incurring unreasonable risks regarding securities owned; and
5. Attainment of a market rate of return equal to or higher than the performance measure established from time to time by the Chief Financial Officer of the Town which is commensurate with the acceptable risk and liquidity objectives of this Policy

Section III. INVESTMENT STRATEGY

The Town of Addison may maintain portfolios which utilize three specific investment strategy considerations designed to address the unique characteristics of the fund groups represented in the investment portfolios.

- A. Operating funds shall have their primary objective to assure that anticipated cash outflows are matched with the adequate investment liquidity. The secondary objective is to create a portfolio structure which will experience minimal volatility during economic cycles. This may be accomplished by purchasing high quality, short-to-medium term securities which will complement each other in a laddered or barbell maturity structure.
- B. Debt service funds shall have as the primary objective the assurance of investment liquidity adequate to cover the debt service obligation on the required payment date. If the annual debt service obligation is covered, then securities may be purchased that have a stated final maturity date which exceeds the debt service payment date.
- C. Capital project funds shall have as their primary objective to assure that anticipated cash outflows are matched with adequate investment liquidity. These portfolios should have liquid securities to allow for unanticipated project expenditures or accelerated project outlays due to a better than expected or changed construction schedule. Funds invested for capital projects may be from bond proceeds that are subject to arbitrage rebate regulations.

Section IV. DELEGATION OF AUTHORITY

The City Manager appoints the Chief Financial Officer (CFO) and the Chief Financial Officer's designee(s) as the "Investment Officers" of the Town. Direct management responsibility for the investment program is delegated by the City Council to the Chief Financial Officer (hereinafter referred to as the "CFO"). The Investment Officers' authority will at all times be limited by all applicable laws and regulations in effect from time to time and this Policy. The Investment Officers shall exercise the judgment and care, under prevailing circumstances, that a prudent person would exercise in the management of the person's own affairs. Unless authorized by law, a person may not deposit, withdraw, transfer, or manage in any other manner the funds of the investing entity.

With written approval from the City Manager, the CFO may delegate any phase of the investment management program to any of the Investment Officers. Such approval shall state specifically the functions such person is authorized to perform or that the person is authorized to perform all activities of the CFO under this Policy. The CFO and Controller shall obtain and maintain, at the Town's expense, fidelity bonds in amounts determined adequate by the CFO (which shall not be less than \$250,000) for each fiscal year as shown by the approved budget. No person may engage in an investment transaction except as provided under the terms of this Policy and the internal procedures established by the CFO. A current list of persons authorized to transact investment business and wire funds on behalf of the Town shall be maintained by the CFO.

The CFO shall develop and maintain written administrative procedures for the operation of the investment

program consistent with this Policy. The controls shall be designed to prevent, identify, and control losses of public funds arising from deviation from this Policy, fraud, employee error, and misrepresentation by third parties, or imprudent actions by employees and officers of the Town.

In the discretion of the City Council and in any event upon the termination or reassignment of any Investment Officer authorized to conduct transactions for the Town pursuant to this Policy, the authority of such person shall be revoked and such revocation of authority shall be immediately communicated by the CFO orally and in writing to each and every depository, broker/dealer, investment advisor, custodian and other agency or entity with whom the Town has any existing or continuing relationship in the management of its investments.

The CFO and all Investment Officers shall attend at least ten (10) hours of training relating to the treasurer's or officer's responsibilities within twelve (12) months after taking office or assuming duties; and attend a training session not less than once in a two-year period that begins on the first day of the Town's fiscal year and consists of the two consecutive fiscal years after that date, and receive not less than eight (8) hours of training. Such training from an independent source shall be approved or endorsed by the Government Finance Officers Association, Government Finance Officers Association of Texas, Government Treasurers Organization of Texas, Texas Municipal League, or the North Central Texas Council of Governments to include education in investment controls, security risks, strategy risks, market risks, and compliance with the Public Funds Investment Act.

Section V. INVESTMENT ADVISORS

The Town may, in the discretion of the CFO, and the approval of the City Council, appoint one or more Investment Advisors to assist the Town's financial staff in the management of the Town's funds. The Investment Advisor must be registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940 and also be registered with the Texas State Securities Board as an Investment Advisor. To be eligible for consideration, an Investment Advisor shall demonstrate to the CFO knowledge of, and experience in, the management of public funds. The CFO will satisfy himself as to the Advisor's qualifications by all appropriate means, including reference checks with the Advisor's other clients, the State Securities Board and the Securities and Exchange Commission. An appointed Investment Advisor shall act solely in an advisor and administrative capacity, within the guidelines of this Investment Policy and without any discretionary authority to transact business on behalf of the Town.

Each Investment Advisor, appointed by the Town, shall agree that its investment advice shall at all times be given with the judgment and care, under circumstances then prevailing, which persons paid for their special prudence, discretion and intelligence, in such matters exercise in the management of their client's affairs, not for speculation by the client or production of fee income by the advisor or broker but for investment by the client with emphasis on the probable safety of the capital while considering the probable income to be derived.

Appointment of an Investment Advisor shall otherwise be according to the Town's normal purchasing procedures for selecting professional services. Any approved investment advisor may be terminated with the approval of the City Manager, if in the opinion of the CFO, the advisor has not performed adequately. The term of any Investment Advisor contract may not exceed five years. Any renewal or extension of the Investment Advisor contract must be made by the City Council by resolution.

Section VI. STANDARD OF CARE

As provided for in the Public Funds Investment Act, the standard of care for the Town's investments shall be that such "investments shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived."

The overall investment program shall be designed and managed with a degree of professionalism that is

worthy of the public trust. The CFO and the Investment Officers shall recognize that the investment activities of the Town are a matter of public record.

The CFO and the Investment Officers, acting in accordance with written procedures and exercising the proper standard of care, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that this Policy and the CFO's procedures were followed. In determining whether the CFO or an Investment Officer has exercised the proper standard of care, all investments over which the individual had responsibility will be considered rather than a single investment.

Section VII. AUTHORIZED SECURITIES INVESTMENTS

Subject to any limitations otherwise imposed by applicable law, regulations, bond indentures or other agreements, (including but not limited to Chapter 2256 Texas Government Code, the Public Funds Investment Act), the following securities and deposits are the only ones permitted as investments for the Town's funds:

- a. Direct obligations of the United States government with a maturity not to exceed five (5) years from the date of purchase; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).
- b. Senior debt obligations with a maturity not to exceed five (5) years from the date of purchase issued by, guaranteed by, or for which the credit of any of the following Federal Agencies and Instrumentalities is pledged for payment: Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), and Federal Home Loan Mortgage Corporation (FHLMC). Mortgage-backed securities may be held as collateral although principal-only and interest-only mortgage-backed securities as well as all types of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs) are expressly prohibited.
- c. Bonds or other interest-bearing obligations of which the principal and interest are guaranteed by the full faith and credit of the United States government, or fully insured by the Federal Deposit Insurance Corporation (FDIC), with a stated maturity not to exceed five (5) years from the date of purchase.
- d. Time Certificates of Deposit with a maturity not to exceed five (5) years from the date of purchase, secured by a combination of insurance from the Federal Deposit Insurance Corporation (FDIC) or its successor, and collateral as described in Section XV of this investment policy in depository institutions that have a main office or a branch office in the state of Texas which have been approved by the Town in accordance with Section XI of this Investment Policy.

In addition, separate CDs issued by depositories wherever located, bundled together into a single investment with the full amount of principal and interest of each CD federally insured may be purchased through a broker that has its main office or a branch office in Texas and is selected from a list adopted by the City Council, or from a depository institution with its main office or branch office in Texas. The broker or depository shall act as the custodian for the various certificates on behalf of the Town.

- e. Prime commercial paper with an original maturity of two hundred seventy (270) days or less which at the time of purchase, is rated at least:

A-1 by Standard & Poor's,
P-1 by Moody's
F1 by Fitch

- (1) At the time of purchase, the commercial paper must be rated by at least two (2) of the above stated ratings agencies at the above stated minimum credit rating.

- (2) If more than two (2) of the above stated agencies rates an issuer, all the rating agencies must rate the issuer in accordance with the above stated minimum credit criteria.
- (3) If the commercial paper issuer has senior debt* outstanding, the senior debt must be rated by each service that publishes a rating of the issue at least:

A-1 by Moody's,
A+ by Standard and Poor's
A+ by Fitch

**Senior Debt is defined as the most senior secured or unsecured debt of an issuer with an original maturity exceeding one year.*

- f. Eligible Bankers Acceptances with original maturities not exceeding one hundred eighty (180) days, issued on domestic banks operating under the banking laws of the United States, whose senior long-term debt is rated, at the time of purchase, A-1 or higher by Moody's, A+ by Standard and Poor's, or A+ by Fitch.
- g. Repurchase agreements with a defined termination date of ninety (90) days or less on U.S. Treasury and Federal Agency securities listed in items "a" and "c" above, collateralized initially at a minimum market value of 102% of the dollar value of the transaction, with the accrued interest accumulated on the collateral included in the calculation. An exception to the maturity may be made for bond proceeds, provided the repurchase agreement allows for multiple draws at the Town's discretion and the maturity date does not exceed the expected final expenditure date.

If the market value of the collateral falls below 101 percent the dollar value of the transaction, the collateral will be required to be brought up to the 102 percent initial maintenance level. A Repurchase Agreement is defined as a simultaneous agreement to buy, hold for ninety (90) days or less, and then sell back an obligation described in item (g) above, the principal and interest of which are guaranteed by the United States.

Repurchase Agreements shall be entered into only with dealers who:

- 1) are recognized as primary reporting dealers with the Market Reports Division of the Federal Reserve Board of New York; and
- 2) have an executed, Town approved Master Repurchase Agreement. Collateral (purchased securities) shall be held by the Town's custodian bank or in a segregated account registered in the name of the Town of Addison with an approved third-party safekeeping agent and the market value of the collateral securities shall be marked-to-market no less than weekly.

For the purpose of item "g" of this section, the term "collateral" shall mean "purchased securities" under the terms of the Town approved Master Repurchase Agreement. Collateral bearing no coupon will have a maturity not to exceed five (5) years. All other eligible collateral shall have a maturity limit of ten (10) years.

The term repurchase agreements include reverse repurchase agreements. The term of a reverse repurchase agreement shall not exceed ninety (90) days and any investments acquired with the proceeds from the reverse repurchase agreement shall not exceed the term of that agreement.

- h. Money Market Funds meeting the following criteria:
 - (h-1) Registered with and regulated by the Securities and Exchange Commission.
 - (h-2) Providing the Town with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940.
 - (h-3) Charging no commission fee on the purchase or sale of shares.
 - (h-4) Stating a fund objective to maintain a constant daily net asset value of \$1.00 per share.
 - (h-5) Limiting fund assets to those securities listed in paragraphs "a", "b", "c" and "g" above; and

- (h-6) Having a maximum stated maturity of thirteen (13) months and dollar weighted average portfolio maturity of not more than sixty (60) days. A list of Town approved Money Market Funds shall be kept by the CFO.
- i. State investment pools organized under the Interlocal Cooperation Act that meet the requirements of Chapter 2256 Texas Government Code and have been specifically approved by the CFO and authorized by the City Council.
- j. Local investment pools organized under the Interlocal Cooperation Act that meet the requirements of Chapter 2256 Texas Government Code and have been specifically approved by the CFO and authorized by the City Council.
- k. Other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or the United States with a maturity not to exceed five (5) years from the date of purchase.
- l. Obligations of states, agencies, counties, cities, and other political subdivisions of any State having been rated as to investment quality by a nationally recognized investment rating firm and having received a rating of not less than "A" or its equivalent with a maturity not to exceed five (5) years from the date of purchase.
- m. Interest bearing bank deposits insured by the FDIC or National Credit Union Share Insurance Fund.

Section VIII. OTHER INVESTMENT GUIDELINES

The Town seeks active management of its portfolio assets. In the effort of meeting the objectives of this Policy, the Town may from time to time sell securities that it owns in order to better position its portfolio assets. Sales of securities prior to maturity shall be documented and approved by the CFO before such a transaction is consummated. Sales of securities, yielding net proceeds less than 98 percent of the book value of the securities, must be approved in advance and in writing by both the City Manager and the CFO.

Each investment transaction must be based upon competitive quotations received from at least three (3) broker/dealers who have been approved by the Town in accordance with Texas law except for government securities purchased through a primary dealer at par.

The purchase and sale of all securities shall be on a delivery-versus-payment or payment-versus-delivery basis for securities purchases, monies will not be released by the Town's safekeeping bank until securities are received at the Federal Reserve Bank for further credit to the Town's safekeeping bank. In the case of securities sales, monies will be received by the Town's safekeeping bank via the Federal Reserve Bank, as the securities are simultaneously released to the purchaser). In this manner, the Town will always have possession of either its securities or its monies.

An investment that requires a minimum credit rating does not qualify as an AUTHORIZED SECURITIES INVESTMENT during the period the investment does not have the minimum credit rating even if the investment had the appropriate rating at the time of purchase. As stated in Section 2256.017 of the PFIA, the Town is not required to liquidate investments that were authorized investments at the time of purchase. The Town shall consider the time remaining until maturity, the quality of the investment, and the quality and amounts of any collateral which may be securing the investment in determining whether to hold the investment until maturity or to redeem the investment.

Section IX. PORTFOLIO MATURITIES

Maturities shall be selected which provide for both stability of income and reasonable liquidity.

At all times, the Town shall maintain 10 percent of its total investment portfolio in instruments maturing in ninety (90) days or less. The weighted average maturity of all securities in the Town's total investment

portfolio at any given time shall not exceed twenty-four (24) months.

In the case of callable securities, the first "call" date may be used as the "maturity" date for investment purposes in this Article if in the opinion of the CFO there is little doubt that the security will be called prior to maturity. At all times, the stated final maturity shall be used in portfolio average life calculations and reported as outlined in this Policy.

Investment of bond proceeds shall be invested in the investment types listed in Section VI. "a", "b", "c", "h", "i", and "j" for a period of time not to exceed five (5) years. Additionally, bond proceeds may be invested in a repurchase agreement that exceeds ninety (90) days if reductions are allowed from the agreement without penalty for legitimate bond proceeds expenditures and the final maturity is within the "temporary period" as defined by the Internal Revenue Service (this arrangement is commonly referred to as a "flexible repurchase agreement").

Section X. INVESTMENT LIMITS

It is the policy of the Town to avoid concentration of assets by limiting the maximum investment in a specific issuer to 25% of the entire investment portfolio, except for securities listed in Section VII. "a", "b", "i", and "j". The asset allocation in the portfolio should, however, be flexible depending upon the outlook for the economy and the securities markets.

The Town will not exceed the following maximum limits as a percentage of the total portfolio for each of the categories listed below:

- 20 percent in Money Market Funds
- 50 percent in Certificates of Deposit
- 30 percent in Commercial Paper
- 30 percent in Bankers Acceptances
- 70 percent in Local Government Investment Pools
- 70 percent in State Government Investment Pools
- 70 percent in Instrumentality Securities
- 50 percent in Municipal Bonds

In addition to the limitations set forth above the Town's investment in any single money market fund shall never exceed 10 percent of the total assets of the money market fund.

The CFO and investment officers shall evaluate how each security purchased fits into the Town's overall investment strategy.

Bond proceeds shall be exempt from the maximum limitation stated above for State Government Pools, but only for the period of time required to develop a comprehensive draw-down schedule for the project for which the proceeds are intended, the maximum being sixty (60) days, at which time the funds representing bond proceeds must be prudently diversified.

Section XI. SELECTION OF BROKER/DEALERS

The Town shall maintain a list of approved security broker/dealers maintaining minimum capital of \$10,000,000 and being in business for at least five years. These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule). Securities may only be purchased from those authorized institutions and firms identified in the above list.

Broker/dealers and other financial institutions will be selected by the CFO on the basis of expected financial stability, experience in selling fixed income securities to other local governments as well as perceived ability to service the Town's account. Each broker/dealer authorized to conduct business with the Town, shall be

required to submit a Broker/Dealer questionnaire as well as updated financial statements. In addition, all firms shall provide a detailed resume of the firm's primary sales representative, appropriate references and wiring instructions. The CFO shall maintain a file on each firm containing the most recent information.

The CFO shall review the quality of service and financial stability of each broker/dealer and financial institution approved under this Section at least annually. Any approved broker/dealer or financial institution may be removed from the list of approved broker/dealers with the approval of the CFO, if in the opinion of the CFO, the firm has not performed adequately, or its financial condition is considered inadequate. The City Council shall, at least annually, review, revise, and adopt the list of qualified broker/dealers and financial institutions which are authorized to engage in investment transactions with the Town.

All business organizations (specifically, local government investment pools and discretionary investment managers) eligible to transact investment business with the Town shall be presented a written copy of this Policy. The qualified representative of the business organization seeking to transact investment business with the Town shall execute a written instrument substantially to the effect that the qualified representative has:

- 1) Received and thoroughly reviewed this Policy, and
- 2) Acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the Town.

The Town shall not enter into an investment transaction with a business organization prior to receiving the written instrument described above. In addition, each Investment Advisor appointed by the Town shall execute the written instrument described above.

If the City Council has contracted with a Registered Investment Advisor for the management of its funds, the advisor shall be responsible for performing due diligence on and maintaining a list of broker/dealers with which it shall transact business on behalf of the Town. The advisor shall determine selection criteria. The advisor shall annually present a list of its authorized broker/dealers to the Town for review and likewise shall execute the aforementioned written instrument stating that the advisor has reviewed the Town's investment policy and has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities with the Town. The advisor shall obtain and document competitive bids and offers on all transactions and present these to the Town as part of its standard trade documentation.

Section XII. SELECTION OF DEPOSITORIES

Certificates of Deposit (CD) may be placed with banking institutions doing business in the state of Texas which offer competitive and documented interest rates, both at or above interest rates available on government securities to similar maturity dates. All deposits exceeding the current FDIC deposit insurance amount shall be fully collateralized in order to be eligible as Town investments.

In addition to maintaining proper collateral, bank financial positions shall be considered to best assure prudent investment. Relevant criteria shall include capital ratios, liquidity, profitability, and asset growth. Information sources for financial data may include www.bankrate.com and the FDIC website at www.fdic.gov. Because the financial condition of banks may change rapidly, primary focus shall be on maintaining adequate levels of collateral to support deposit amounts. If the Town utilizes the services of an investment advisor, the advisor shall assist in the evaluation of both the financial institution and assigned collateral.

Section XIII. SAFEKEEPING AND CUSTODY

Investment securities purchased for the Town will be delivered by either book entry or physical delivery and shall be held in third-party safekeeping by a Federal Reserve Member financial institution designated as the Town's safekeeping and custodian bank. The Town may designate more than one (1) custodian bank. In no event shall the Town's custodial or safekeeping institution also be the counterparty (broker or dealer) to

the purchase or sale of those securities. The Town shall execute a written Safekeeping Agreement with each bank prior to utilizing the custodian's safekeeping services. Only a state or national bank located within the State of Texas may be utilized as a custodian of securities pledged to secure certificates of deposit. The safekeeping agreement must provide that the safekeeping bank will immediately record the receipt of purchased or pledged securities in its books and promptly issue and deliver a signed safekeeping receipt showing the receipt and the identification of the security, as well as the Town's perfected interest.

The CFO shall maintain a list of designated custodian banks and a copy of the Safekeeping Agreement executed with each custodian bank.

The CFO must approve release of securities, in writing, prior to their removal from the custodial account. A telephonic facsimile of a written authorization shall be sufficient if the custodian orally confirms receipt of the transmission and an exact copy of the document is retained in the Town's files.

All securities shall be confirmed in the name of the Town and delivered to an approved custodial bank or carried at a Federal Reserve Bank in the name of the Town. The Custodian shall not otherwise deposit purchased or pledged securities. All book entry securities, owned by the Town, shall be evidenced by a safekeeping receipt issued to the Town and signed by the appropriate officer at the custodian bank stating that the securities are held in the Federal Reserve system in a CUSTOMER ACCOUNT naming the Town as the "customer". In addition, the custodian bank will, when requested, furnish a copy of the delivery advice received by the custodian bank from the Federal Reserve Bank.

The original safekeeping receipt for each transaction including purchased securities under a repurchase agreement and collateral securing deposits will be forwarded to the CFO or his designee and held in a secured file by the Town.

Securities delivered as part of a repurchase agreement may be held with an independent third-party safekeeping agent, provided that they are fully registered in the Town's name, segregated in account designated in the name of the Town and governed by a fully executed custodial agreement.

Section XIV. RECORDKEEPING AND REPORTING

A record shall be maintained of all bids and offerings for securities transactions in order to ensure that the Town receives competitive pricing. All transactions shall be documented by the person authorizing the transaction in a form that shows that person's name, the party instructed to execute the transaction, the date, a description of the transaction and a brief statement of the reason(s) for the transaction.

Each depository institution of the Town's funds and purchased securities shall maintain separate, accurate and complete records relating to all deposits of the Town's funds, the securities pledged to secure such deposits and all transactions relating to the pledged securities. Each approved custodian shall maintain separate, accurate and complete records relating to all securities received on behalf of the Town, whether pledged, purchased, or subject to repurchase agreement, as well as all transactions related to such securities. In addition, each depository shall file all reports required by the Texas State Depository Board. Each depository and custodian shall agree to make all the records described in this paragraph available to the CFO's designee and the Town's auditors at any reasonable time.

At least once each quarter, the CFO or investment officers shall verify that all securities owned by the Town or pledged to the Town are held in safekeeping in the Town's custodial bank with proper documentation. At least annually the Town's investment program, including the records of custodians and depositories, shall be audited by independent certified public accountants selected by the City Council. This annual audit shall include a compliance audit of the management controls on investments and adherence to the Town's Investment Policy and strategies.

All broker/dealers, custodians, depositories, and investment advisors shall maintain complete records of all transactions that they conducted on behalf of the Town and shall make those records available for

inspection by the CFO or other representatives designated by the City Council or City Manager.

All sales of securities for less than the book value of the security shall be approved by the CFO and reported to the City Council at the next regular meeting. Sales of securities for less than 98 percent of the book value of the securities must be approved by both the City Manager and the CFO.

All contracted Investment Advisors shall report at least monthly on the straight-line book value, the market value of investment holdings, and total earnings yield and such other information required by the CFO. Unrealized profits or losses in the Town's investment portfolio will be disclosed but will not be used in the calculation of income earned for the month. Contracted Investment Advisors shall provide monthly reports to the CFO no later than 15 business days following receipt of all depository bank statements, investment pool statements and money market fund statements as necessary to provide a full accounting of the Town's investment and cash position.

An investment report shall be prepared by the CFO within 60 days of the quarter end that:

- a) Describes in detail the investment position of the Town.
- b) States the reporting period beginning book and market values, additions or changes to the book and market values during the period and ending book and market values for the period of each pooled fund group.
- c) States the reporting period beginning book and market value and ending book and market value for each investment security by asset type and fund type.
- d) States the maturity date of each investment security.
- e) States the fund for which each investment security was purchased.
- f) States fully accrued interest for the reporting period.
- g) States the compliance of the investment portfolio with the Town's Investment Policy, Investment Strategy Statement, and the Public Funds Investment Act.
- h) Summarizes quarterly transactions, including a detailed list of the gains and losses recognized; and
- i) Explains the total earnings yield during the previous quarter and compares the portfolio's performance to other benchmarks of performance.

This report will be presented to the City Council and signed by all of the Town's Investment Officers.

Market valuations of investments shall be provided by the Investment Advisor on a monthly basis. The Investment Advisor shall use independent market pricing sources including, but not limited to, Interactive Data Corporation (IDC) and Bloomberg, to monitor the market price of investments acquired with the Town's funds.

Within sixty (60) days after the end of the Town's fiscal year the CFO shall prepare, sign and deliver to the City Manager and the City Council an annual report on the Town's investment program and investment activity which has also been signed by each officer and employee of the Town authorized to conduct any of the Town's investment activity. The annual report shall include full year earnings yield. Such annual report shall include an analysis of the compliance with this Policy as well as changes in applicable laws and regulations during the previous year and may include any other items of significance related to the investment program.

If the Town places funds in any investment other than registered investment pools or accounts offered by its depository bank, the above reports shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the City Council.

Section XV. ETHICS AND CONFLICTS OF INTEREST

Officers and employees of the Town involved in the investment process shall refrain from personal business activity that involves any of the Town's approved custodians, depositories, broker/dealers, or investment advisors and shall refrain from investing in any security issue held by the Town. Employees and officers shall not utilize investment advice concerning specific securities or classes of securities obtained in the

transaction of the Town's business for personal investment decisions, shall in all respects subordinate their personal investment transactions to those of the Town particularly with regard to the timing of purchases and sales and shall keep confidential all investment advice obtained on behalf of the Town, and all transactions contemplated and completed by the Town, except when disclosure is required by law.

All Investment Officers of the Town shall file with the Texas Ethics Commission and the City Council a statement disclosing any personal business relationship with business organization seeking to sell investments to the Town or any relationship within the second degree by affinity or consanguinity to an individual seeking to sell investments to the Town.

Section XVI. COLLATERAL REQUIREMENTS

Any and all deposits, including both principal as well as any and all interest that is directly applied to the security, shall be collateralized at the minimum margin of 102%, less applicable FDIC insurance, over the life of the security. Deposits shall be collateralized by securities listed in items "a", "b" and "c" below, and the collateral shall be held by a third-party custodian bank approved by the Town.

- a. Direct obligations of the United States government; U.S. Treasury Bills, U.S. Treasury Notes, U.S. Treasury Bonds, and U.S. Treasury Strips (book entry U.S. Treasury securities whose coupon has been removed).
- b. Debt obligations issued by, including letter of credit, issued by, guaranteed by, or for which the credit of any of the following Federal Agencies and Instrumentalities is pledged for payment: Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), Federal Home Loan Bank (FHLB), Federal Farm Credit Bank (FFCB), and Federal Home Loan Mortgage Corporation (FHLMC). Mortgage-backed securities are eligible as collateral, but principal-only and interest-only mortgage-backed securities and collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs) are expressly prohibited.
- c. Direct obligations of the State of Texas or its agencies or instrumentalities.

Consistent with the requirements of State law, the Town requires all bank and savings bank deposits to be federally insured or collateralized with eligible securities. Financial institutions serving as Town depositories will be required to sign a Security Agreement with the Town and the Town's custodian. The agreement shall define the Town's rights to the collateral in case of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations including:

- a. The Agreement must be in writing.
- b. The Agreement has to be executed by the Depository and the Town contemporaneously with the acquisition of the asset.
- c. The Agreement must be approved by the Board of Directors or the loan committee of the Depository and a copy of the meeting minutes must be delivered to the Town; and
- d. The Agreement must be part of the Depository's "official record" continuously since its execution.

Section XVII. POLICY REVISIONS

The Investment Policy and Investment Strategy Statements will be reviewed at least annually by the CFO and the City Council and may be amended as conditions warrant by the City Council.

EXHIBIT B

Authorized Broker/Dealer/Financial Institutions/Banks/Investment Pools

Comerica Securities, Inc. 39400 Woodward Avenue Suite 255, MC: 7951 Bloomfield Hills, MI 48304	Chris Theut Senior Vice President Kyle Rademaker Vice President	(248) 645-4173 (248) 645-4171	ctheut@comerica.com krademake@comerica.com
FHN Financial Capital Markets 920 Memorial City Way 11 th Floor Houston, TX 77024	John Buddy Saragusa Vice President	(713) 435-4475 (817) 471-7646 C	buddy.saragusa@fhnfinancial.com
Hilltop Securities Inc. 1201 Elm Street Suite 3500 Dallas, TX 75270	Gilbert Ramon Vice President	(713) 654-8606 (713) 724-4178 C	gilbert.ramon@hilltopsecurities.com
Stifel Nicolaus & Co., Inc. 100 Motor Parkway 2 nd Floor Hauppauge, NY 11788	Luke Donenfeld Director of Sales Mark Davidoff Managing Director	(631) 656-4471 (917) 846-8398 C	ldonenfeld@stifel.com mdavidoff@stifel.com
The Baker Group 1601 NW Expressway 20 th Floor Oklahoma City, OK 73118	Rick Hansing Managing Director	(405) 415-7237 (800) 998-8392	rick@cobaker.com
Vining-Sparks IBG, L.P. 775 Ridge Lake Boulevard 2 nd Floor Memphis, TN 38120	Anthony Nelson Senior Vice President Demetri Patikas Director of Sales	(206) 443-7256 (800) 357-0256	anelson@vining-sparks.com dpatikas@vining-sparks.com
Wells Fargo Securities, LLC 1445 Ross Avenue Suite 210 Dallas, TX 75202	Susan Ward Sales Representative Pamela Steuben Sales Assistant	(214) 740-1586 (214) 777-4078	wardsv@wellsfargo.com pamela.K.Steuben@wellsfargo.com
East West Bank 9090 Katy Freeway 3 rd Floor Houston, TX 77024	Jia Li Client Service Lead Esau C. Liu Senior Vice President	(832) 973-8934 (281) 386-1889 C (832) 973-8938	jia.li@eastwestbank.com esau.liu@eastwestbank.com
Texas Security Bank 1212 Turtle Creek Boulevard Dallas, TX 75207	Christian Garcia Treasury Mgmt Specialist Jasmine Evans Vice President	(469) 398-4817 (469) 398-4816	christian.garcia@texassecuritybank.com jasmine.evans@texassecuritybank.com
Texas Class 2435 N. Central Expressway Suite 1200 Richardson, TX 75080	Karen Proctor Regional Director	(214) 473-4224	karen.proctor@texasclass.com
TexPool Participant Services 1001 Texas Avenue Suite 1400 Houston, TX 77002	Denise Hamala Unit Manager	(866) 839-7665	dhamala@federatedinv.com
TexSTAR/LOGIC 1201 Elm Street Suite 3500 Dallas, TX 75270	Mary Ann Dunda Managing Director	(214) 953-4086	maryann.dunda@hilltopsecurities.com

Government Treasurers' Organization of Texas
Certification of Investment Policy

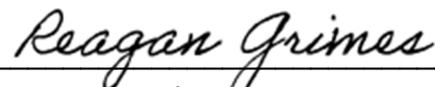
Presented to the

Town of Addison

for developing an investment policy that meets the requirements of the Public Funds Investment Act and the standards for prudent public investing established by the Government Treasurers' Organization of Texas.



Government Treasurers' Organization of Texas
President



Investment Policy Review Committee

For the two-year period ending June 30, 2023

Council Meeting 2023

18.

Meeting Date: 10/25/2022

Department: Finance

Pillars: Gold Standard in Financial Health

Milestones: Continue development and implementation of Long Term Financial Plan

AGENDA CAPTION:

Consider Action on an **Ordinance to Amend the Code of Ordinances by Amending Chapter 66 (Solid Waste) Article II (Collection And Disposal), Division 2 (Service Charge) Section 66-52 Increasing from \$12.56 to \$13.24 the Monthly Fee For Each Residential Unit.**

BACKGROUND:

The Town contracts with Community Waste Disposal (CWD) for the provision of residential garbage and recycling collections for all single-family homes in Addison. This contract began October 1, 2020 and automatically renews for an additional year for five years if neither party requests termination.

As stated in the contract, beginning with year three (3) and every year thereafter, prices will increase or decrease by one hundred percent (100%) in wholesale price as measured by the Consumer's Price Index for All Urban Consumers (CPI-U) U.S. City Average, Garbage and Trash not seasonally adjusted 12-month average in May of the adjustment year. According to the Bureau of Labor Statistics, the percent change in the CPI-U U.S. City Average, Garbage and Trash not seasonally adjusted 12-month average from May 2021 to May 2022 was an increase of 5.4%. This increase results in a monthly garbage and recycling rate increase from \$12.56 to \$13.24, per single-family home. The increase will take effect November 1, 2022 and be reflected on the December utility bill.

RECOMMENDATION:

Administration recommends approval.

Attachments

Ordinance - Solid Waste Fees

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY, CHAPTER 66 (SOLID WASTE), ARTICLE II (COLLECTION AND DISPOSAL), DIVISION 2 (SERVICE CHARGE), SECTION 66-52 TO INCREASE THE MANDATORY MONTHLY FEE FOR GARBAGE COLLECTION, HAULING AND DISPOSAL (CURBSIDE PICKUP) FROM EACH RESIDENTIAL UNIT WITHIN THE TOWN FROM \$12.56 TO \$13.24; PROVIDING THAT SUCH INCREASED RATE SHALL BE EFFECTIVE NOVEMBER 1, 2022 AND REFLECTED IN THE DECEMBER 2022 BILLING CYCLE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison (“City”) charges a monthly fee for residential solid waste collection services as authorized in Chapter 66 of the City’s Code of Ordinances and in conformance with the City’s current agreement for third-party residential collection services (the “Service Agreement”); and

WHEREAS, the City Council has determined that it is necessary to increase the monthly fee charged for residential solid waste collection in conformance with the Service Agreement, effective November 1, 2022; and

WHEREAS, the City Council has determined that the passage of this ordinance is in the best interest of the health, safety, and welfare of the public.

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

SECTION 1. The above and foregoing recitals are true and correct and are incorporated herein and made a part of this Ordinance.

SECTION 2. The Code of Ordinances of the Town of Addison, Texas, Chapter 66 (Solid Waste), Article II (Collection and Disposal), Division 2 (Service Charge), Section 66-52 (Single dwelling units) is hereby amended to read in its entirety as follows:

“Section 66-52. – Residential Units.

- (a) All owners, occupants, tenants or lessees of residential units receiving solid waste and recycling collection services shall be charged a mandatory monthly fee for garbage collection, hauling and disposal as follows:

Curbside pickup for each residential unit, exclusive of sales tax and applicable state fees . . . \$13.24.”

- (b) As used in subsection (a), above, the term *residential unit* shall mean a residential dwelling within the corporate limits of the town having an individual water meter,

generally intended for single-family occupancy.”

SECTION 3. The change in the mandatory monthly fee for garbage collection, hauling and disposal from residences as set forth in Section 1 above shall become effective on November 1, 2022 and shall be applied to monthly customer bills beginning with the December 2022 billing cycle.

SECTION 4. This Ordinance shall be cumulative of all other ordinances of the Town and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

SECTION 5. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed such remaining portion of this Ordinance despite such invalidity, which remaining portion shall remain in full force and effect.

SECTION 6. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas on this 25th day of OCTOBER 2022.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

Council Meeting 2023

19.

Meeting Date: 10/25/2022

Department: Development Services

AGENDA CAPTION:

Hold a Public Hearing, Present, Discuss, and Consider Action on an **Ordinance Amending Planned Development (PD) District Ordinance No. 099-025 for a 7.76 Acre Property Located at the Southeast Corner of Westgrove Drive and Excel Parkway in order to Modify Use Regulations by Allowing Light Assembly of Jewelry as a Permitted Use**. Case 1861-Z / 16650 Westgrove Drive (Precision Set).

BACKGROUND:

The Addison Planning and Zoning Commission, meeting in regular session on September 20, 2022, voted to recommend approval of an ordinance changing the zoning on property located at 16650 Westgrove Drive, which property is currently zoned Planned Development (PD), Ordinance No. 099-025, by approving a planned development amendment to modify use regulations by allowing light assembly of jewelry as a permitted use, subject to the following condition:

- Light assembly of jewelry shall not include smelting, soldering, or the use of hazardous chemicals.

Voting Aye: Branson, Catalani, Craig, Meleky, Souers, DeFrancisco

Voting Nay: none

Absent: Fansler

SPEAKERS AT THE PUBLIC HEARING:

For: none

On: none

Against: none

RECOMMENDATION:

Administration recommends approval.

Attachments

1861-Z Presentation

1861-Z Ordinance

1861-Z Staff Report

1861-Z Letter of Intent

1861-Z Plans

Precision Set PD Amendment (1861-Z)

The logo for Addison, featuring the word "ADDISON" in a bold, blue, sans-serif font centered within a white circle. This circle is set against a blue background that is part of a larger graphic design on the right side of the slide, which includes diagonal white lines and a grey triangle in the top right corner.

ADDISON

Case 1861-Z Precision Set PD Amendment

ADDISON

LOCATION:

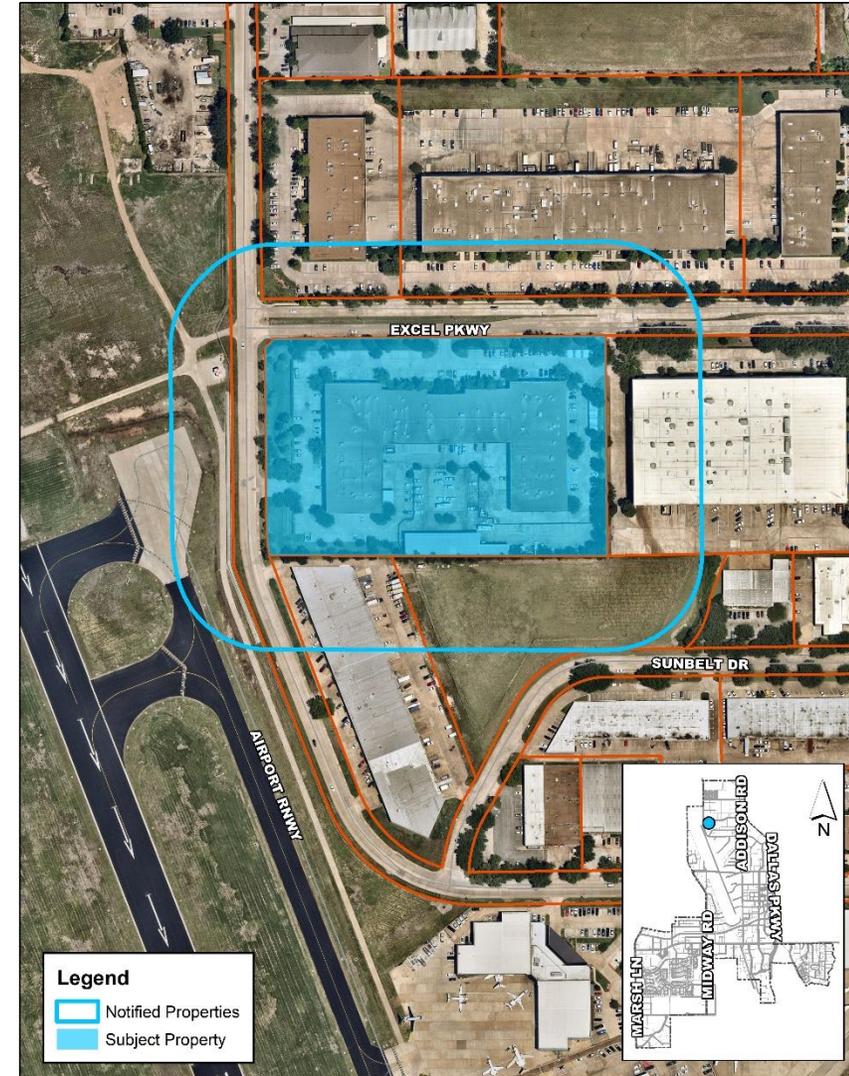
16650 Westgrove Drive

REQUEST:

Approval of a request to amend Planned Development, Ord. No. 099-025, to modify use regulations by allowing light assembly of jewelry as a permitted use.

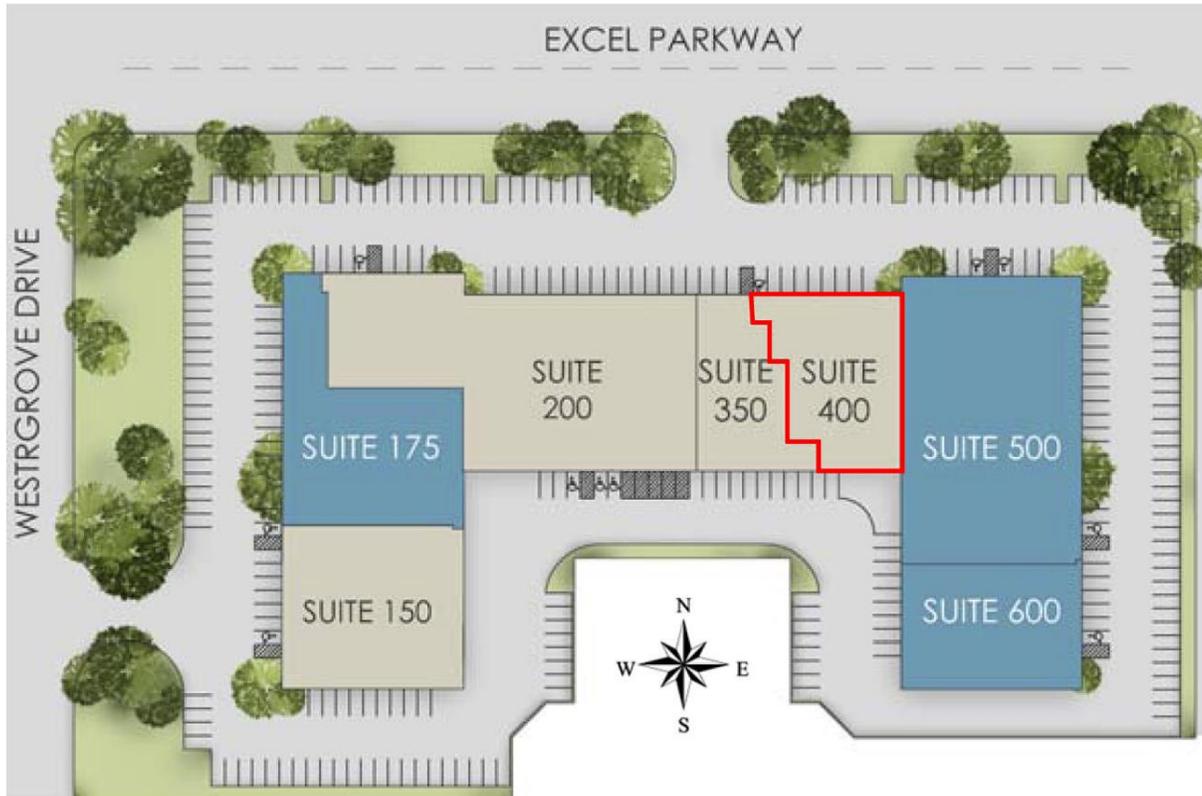
ACTION REQUIRED:

Discuss, consider, and take action on the appropriateness of the PD amendment and associated site conditions at the subject property.



Case 1861-Z Precision Set PD Amendment

ADDISON



PROJECT HISTORY:

1999 – Current PD, Ord. No. 099-025, approved.

2000 – Site developed with 96,748 SF office/warehouse structure.

Present – PD amendment request to expand allowed uses.

ORD. NO. 099-025 USE REGULATION:

Commercial-1 District land uses, and all distribution and warehouse uses related to light assembly of paper goods, computer products, or similar materials.

PROPOSED USE REGULATIONS:

Commercial-1 District land uses, and all distribution and warehouse uses related to light assembly of paper goods, computer products, jewelry, or similar materials.

There are no proposed site or exterior building modifications.

Case 1861-Z Precision Set PD Amendment

ADDISON

PUBLIC NOTICE:

Notice of public hearing was provided to property owners within 200 feet of the subject property in accordance with Town and State law.

NOTICE RECIPIENTS: 51

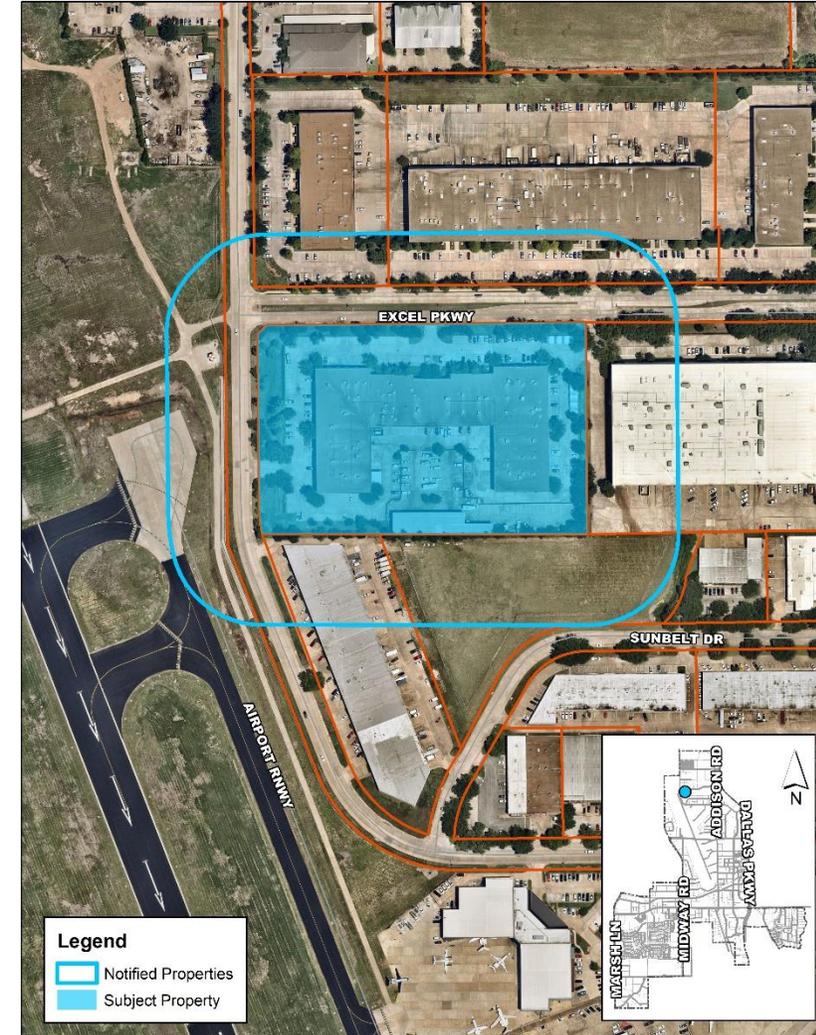
FOR: None

AGAINST: None

NEUTRAL: None

PLANNING & ZONING COMMISSION ACTION:

Approval: 6-0



RECOMMENDATION:

Staff recommends **approval of the request, with the following condition:**

- Light assembly of jewelry shall not include smelting, soldering, or the use of hazardous chemicals.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE BY AMENDING PLANNED DEVELOPMENT (PD) DISTRICT ORDINANCE 099-025 TO MODIFY THE EXISTING LAND USE REGULATIONS TO ALLOW LIGHT ASSEMBLY OF JEWELRY AS A PERMITTED USE ON A 7.76 ACRE PROPERTY LOCATED AT THE SOUTHEAST CORNER OF WESTGROVE DRIVE AND EXCEL PARKWAY; PROVIDING A PENALTY NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; PROVIDING A SAVINGS CLAUSE, SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, on August 10, 1999, the City Council for the Town of Addison, Texas adopted Planned Development (PD) District Ordinance 099-025 (“PD 099-025”) for a 7.76-acre property located at the southeast corner of Westgrove Drive and Excel Parkway (“Property”), being more particularly described in Exhibit A attached hereto and made a part hereof for all purposes; and

WHEREAS, at its regular meeting held on September 20, 2022, the Planning & Zoning Commission considered and made recommendations on a request to amend PD 099-025 to approve a modification to the use regulations to allow light assembly of jewelry as a permitted land use upon the Property (Case No. 1861-Z); and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning and Zoning Commission, the information received at a public hearing, and other relevant information and materials, the City Council of the Town of Addison, Texas finds that this amendment promotes the general welfare and public interests of the community; and

WHEREAS, the City Council further finds this change of zoning is in accordance with the adopted Comprehensive Plan of the Town of Addison, as amended.

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

SECTION 1. The recitals and findings set forth above are hereby found to be true and correct and incorporated as if fully set forth herein.

SECTION 2. The Zoning Ordinance and official zoning map shall be amended so as to amend PD 099-025, to provide for light assembly of jewelry as a permitted use upon the Property. Accordingly, PD 099-025, Section 2, subsection 1 entitled “USE REGULATIONS” is hereby amended and restated in its entirety to read as follows:

“1. USE REGULATIONS

All buildings and uses permitted in the C-1 (Commercial-1) district as set forth in Addison Zoning Ordinance No. 66 (being previously referenced as Article IX, C-1 (Commercial- 1) in Ordinance No. 099-025), and all distribution and warehouse uses related to light assembly of paper goods, computer products, jewelry products, or similar materials. For the purposes of this ordinance, light assembly shall be defined as the process and procedures for the assimilation, packaging, and distribution of finished goods and materials. The allowed uses specifically exclude the manufacturing of goods and materials, including, without limitation, smelting,

soldering, or the use of hazardous chemicals in connection with the assembly of jewelry or other goods.”

SECTION 4. Any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Zoning Ordinance for the Town of Addison, as heretofore amended, and upon conviction shall be punished by a fine set in accordance with Chapter 1, Section 1-7 of the Code of Ordinances for the Town of Addison.

SECTION 5. Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this ordinance or of the Zoning Ordinance for the Town of Addison, as amended hereby, be adjudged or held, in whole or in part, to be invalid, voided or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 6. All ordinances of the City in conflict with the provisions of this ordinance be, and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 7. This ordinance shall become effective from and after its passage and approval and after publication as may be required by law or by the City Charter.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas, on this the **25TH** day of **OCTOBER 2022.**

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt Wyatt, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

BEING a 7.776 acre tract of land situated in the William Lomax Survey, Abstract No. 792, Town of Addison, Dallas County, Texas and being a portion of that called 31.3625 acre tract of land labeled as Tract II described in deed to FM Properties Operating Company, recorded in Volume 92115, page 4018 of the deed records of Dallas County, Texas, (DRDCT) also being all of Lot 3 and a portion of Lot 4, Lot 21 and Lot 2, Block "A" of Carroll Estates, an addition to the County of Dallas recorded in Volume 10, Page 473 of the map records of Dallas County, Texas: said 7.776 acre tract of land being more particularly described as follows:

BEGINNING at a cut "X" in concrete found for the point of intersection of the East right-of-way line of Westgrove Drive (a 60-foot right-of-way) with South right-of-way line of Excel Parkway (FKA Bent Tree Plaza Parkway, an 80-foot right-of-way) and being the Northwest corner of said 31.3625 acre tract of land, from which a cut "X" in concrete found for the point of intersection of said East right-of-way line with the North right-of-way line of said Excel Parkway, bears North 00 degrees 02 minutes 26 seconds West, a distance of 79.95 feet.

THENCE South 89 degrees 59 minutes 00 seconds East along said South right-of-way line, same being the North line of said 31.3625 acre tract of land, a distance of 724.64 feet to a 1/2 inch iron rod set for the Southwest corner of said Lot 1, Block "A" and being in the South line of said 31.3635 acre tract of land and being in the North line of that called 1.3431 acre tract of land labeled as Tract 14 described in deed to Sunbelt Development Company, Limited recorded in Volume 83240, page 5601, DRDCT.

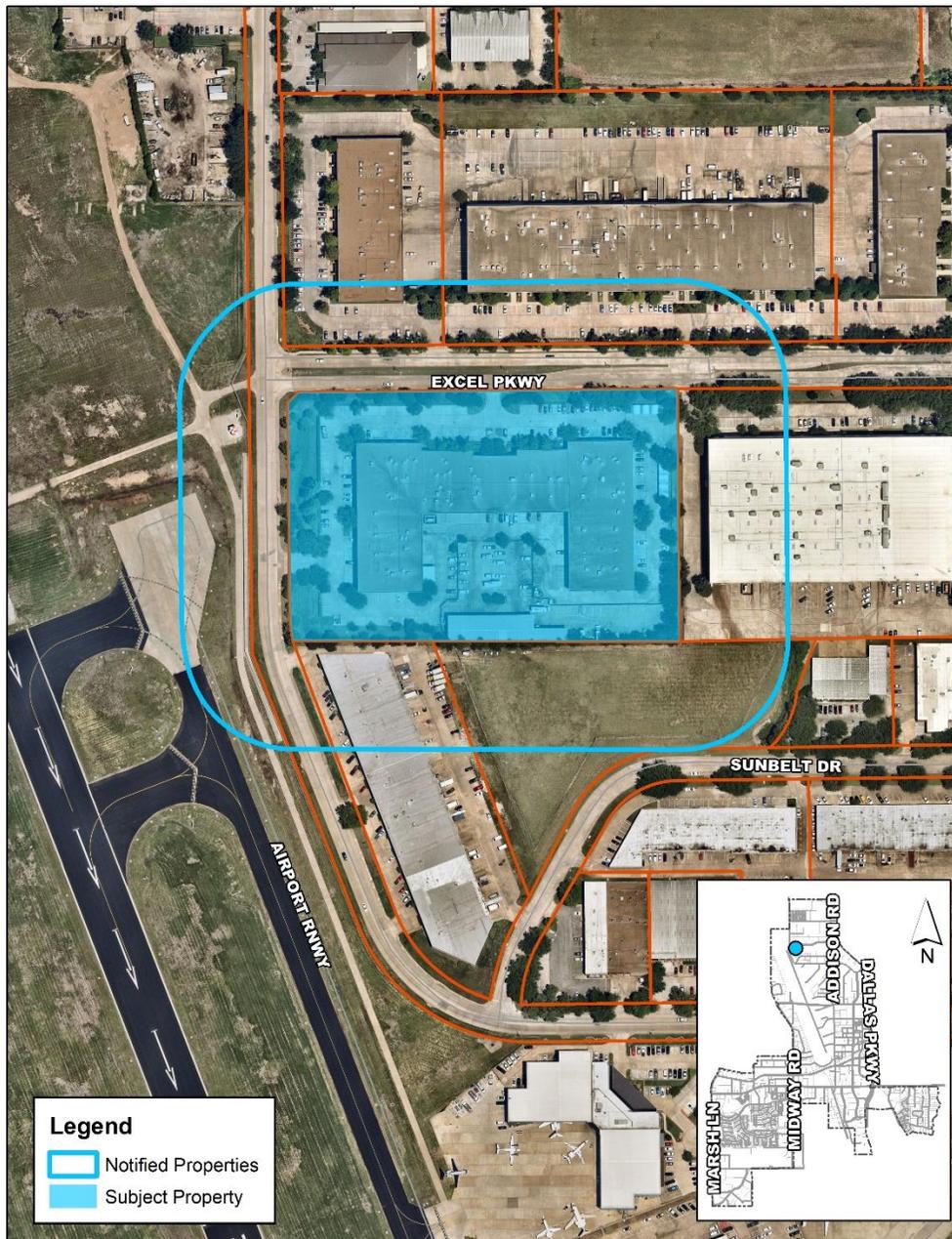
THENCE North 89 degrees 59 minutes 00 seconds West along the South line of said 31.3625 acre tract of land, passing at a distance of 466.56 feet the Northwest corner of that called 4.2339 acre tract of land labeled as Tract 15 described in deed to Sunbelt Development Company, Limited. Recorded in volume 83240, page 5601, DRDCT, same being the Northeast corner of tract IV, Block "B" of Sunbelt Business Park tract VI, an addition to the town of Addison described by plat recorded in Volume 80092, page 808, DRDCT, from which a 1/2 inch iron rod found bears North 00 degrees 01 minutes 00 seconds East, a distance of 0.3 feet, continuing along the common line of said 31.3625 acre tract of land and said tract VI in all for a total distance of 724.18 feet to a 1/2 inch iron rod found for the Southwest corner of said 31.3625 acre tract of land same being the Northwest corner of said tract I and being the aforementioned East right-of-way line of Westgrove Drive, from which a 3/4 inch iron rod found bears South 70 degrees 05 minutes 25 seconds East, a distance of 4.71 feet.

THENCE North 00 degrees 02 minutes 26 seconds West, along the West line of said 31.3625 acre tract of land and said East right-of-way line, a distance of 467.55 feet to the POINT OF BEGINNING AND CONTAINING a computed area of 338.699 square feet or 7.776 acres of land.

1861-Z

PUBLIC HEARING Case 1861-Z/16650 Westgrove Drive (Precision Set). Hold a Public Hearing, Present, Discuss, and Consider Action on a Recommendation regarding an Ordinance Amending Planned Development (PD) District Ordinance No. 099-025 for a 7.76 Acre property Located at the southeast corner of Westgrove Drive and Excel Parkway in order to Modify Use Regulations by allowing Light Assembly of Jewelry as a Permitted Use.

LOCATION MAP





September 20, 2022

STAFF REPORT

RE: 1861-Z/Precision Set

LOCATION: 16650 Westgrove Drive

REQUEST: Approval of a request to amend Planned Development (PD) District Ordinance 099-025 to modify use regulations by allowing light assembly of jewelry as a permitted use.

APPLICANT: Trenton Robertson, Masterplan

DISCUSSION:

Background: This request is specific to the existing office/warehouse building situated on a 7.76-acre lot located at the southeast corner of Westgrove Drive and Excel Parkway.

On August 10, 1999, the subject property was rezoned to Planned Development (PD) District, through Ordinance 099-025. This rezoning allowed for the construction of the existing office/warehouse structure and associated site improvements. The PD District is based on Commercial-1 (C-1) District standards with modifications to the permitted uses, building height requirements, and the prohibition outside sales and promotions.

The potential tenant, [Precision Set](#), has initiated this PD Amendment request to add light assembly of jewelry as a permitted use in order to occupy Suite 400. Precision Set specializes in the design and manufacturing of fine jewelry. Precision Set does not have a consumer retail component as they only provide design and production services to select fine jewelry retailers across the United States and Canada. The company has operated in DFW since it was founded in 1987. They would like to remain in the area to provide a central location for their employees. The company currently employs 32 individuals, with approximately half serving in professional service roles such as jewelry design, accounting, and sales. The remaining employees specialize in fine jewelry assembly and production. The business operates 8:30 am – 5:30 pm, Monday through Friday.

The proposed light assembly operation primarily includes the setting of diamonds and other precious gemstones. Precision Set does not use any assembly methods that require smelting, soldering, or the use of hazardous chemicals. They utilize various filtering methods to ensure any precious metal flakes and contaminants are captured.

Due to the small size of jewelry components, distribution generally includes one FedEx pickup per business day. The applicant does not anticipate any heavy load traffic to be generated by the business.

Proposed Amendment: This request is to amend the PD by including light assembly of jewelry as a permitted use. The Development Plan adopted with Ordinance 099-025 would not be modified by this request.

The intent of the C-1 District, the base zoning district for this PD, is to provide a mix of retail, office, and personal services for the Town. Additional uses, such as restaurants, are permitted through approval of a Special Use Permit (SUP). The PD also allows for distribution and warehouse uses related to the light assembly of paper goods, computer products, or similar materials. The development pattern, permitted uses and proximity to the Addison Airport, fosters businesses that have a warehouse component, that may be viewed as “light industrial”.

Light assembly of jewelry is compatible with other uses that are currently permitted in the PD and with other businesses in the area. The area has a variety of office, retail, and service uses, with many having a warehouse, assembly, or storage component.

The Town’s zoning ordinance prohibits smelting and uses that produce offensive odor, dust, smoke, gas, or noise. This PD amendment would not allow those operations or uses.

RECOMMENDATION: **APPROVAL WITH CONDITIONS**

The proposed amendment would allow opportunity for a business to occupy a currently vacant suite, that is similar to other permitted uses within the PD. Additionally, the amendment would allow uses that would be in line with the development pattern of the area.

Staff recommends approval of the request, with the following condition:

- Light assembly of jewelry shall not include smelting, soldering, or the use of hazardous chemicals.



Case 1861-Z/16650 Westgrove Drive (Precision Set)

September 20, 2022

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on September 20, 2022, voted to recommend approval of an ordinance changing the zoning on property located at 16650 Westgrove Drive, which property is currently zoned Planned Development (PD), Ordinance No. 099-025, by approving a planned development amendment to modify use regulations by allowing light assembly of jewelry as a permitted use, subject to the following condition:

- Light assembly of jewelry shall not include smelting, soldering, or the use of hazardous chemicals.

Voting Aye: Branson, Catalani, Craig, Meleky, Souers, DeFrancisco

Voting Nay: none

Absent: Fansler

SPEAKERS AT THE PUBLIC HEARING:

For: none

On: none

Against: none



Letter of Intent

PD-099-025 amendment for 16650 Westgrove Road

August 25, 2022

Dear City Officials and staff:

Our request is to amend Planned Development District No. 099-025 (PD-099-025) to allow for the distribution and warehouse uses related to “light assembly of jewelry products” in an existing structure. The request will not change the façade or the site and is specific to a certain suite within the building. Precision Set is a jewelry assembly, packaging and distribution company that provides products to guild quality jewelers throughout the United States. Precision Set does not smelt on premise and uses a variety of different mitigation techniques to provide a more safe, clean, and sustainable environment. The proposed use will have little to no impact on the surrounding area and the infrastructure. Precision Set’s processes and operations are like what you would find in the back of most jewelry stores, but on a larger scale.

Who is Precision Set

Precision Set was founded in 1987 in Dallas Texas. We have had 3 locations over 35 Years. The first 5 years we were on the 9th floor at Mockingbird and central (Now Mockingbird Station). The second location was 5473 Blair Rd on the 2nd floor (building owner occupied the 3rd floor). We have been in our present location at 13711 Omega for 20 Years. Over our 35 years we have been a leader in the Jewelry business selling to prominent Guild Independent jewelers. Our quality driven product is recognized throughout the United States and Canada. We are members of the American Gem Society and the Jewelers board of Trade. Precision Set has 32 employees. The average salary for each employee is approximately \$70,000/year (with benefits-Health and 401k). The common tenure for employment has been 12 years. The proposed location in Addison would be a central location for their employees.

Why support this project?

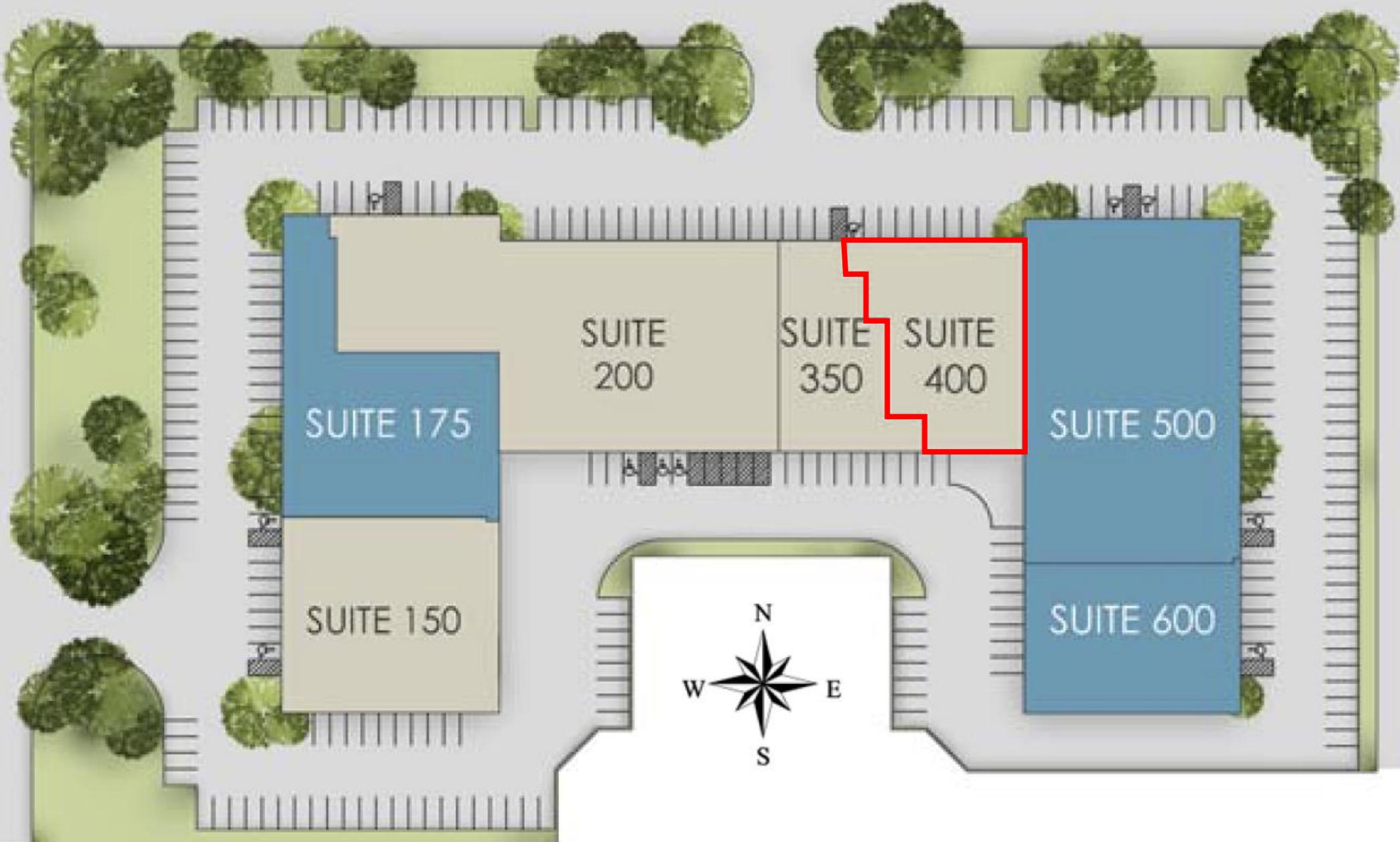
The site is surrounded by uses that are more intense and impactful. The proposed request is consistent with the design and intent of this area being geared toward light industrial. The use would produce less impact on public infrastructure than a small office. The type of distribution that is utilized is limited to a normal office FedEx pickup. The processes used to assemble jewelry are clean and do not produce any pollutants into the water or air. All exhaust and water that may be used are filtered repeatedly and then sent off to another facility to be refined for any precious metal flakes that may have been captured. Additionally, traps have been added to all drains and sinks to capture any additional metals or contaminants. All in all, this use would be inconspicuous and unobtrusive, and will bring a prestigious company that provides high salary jobs, with a history of longevity for employee retention. By changing the PD regulations to add this use would not change or alter the purpose or design of the ordinance, rather it would provide an additional less impactful use to support the Town of Addison and bring a leader in the industry to the community.

Sincerely,

Trenton Robertson, AICP

EXCEL PARKWAY

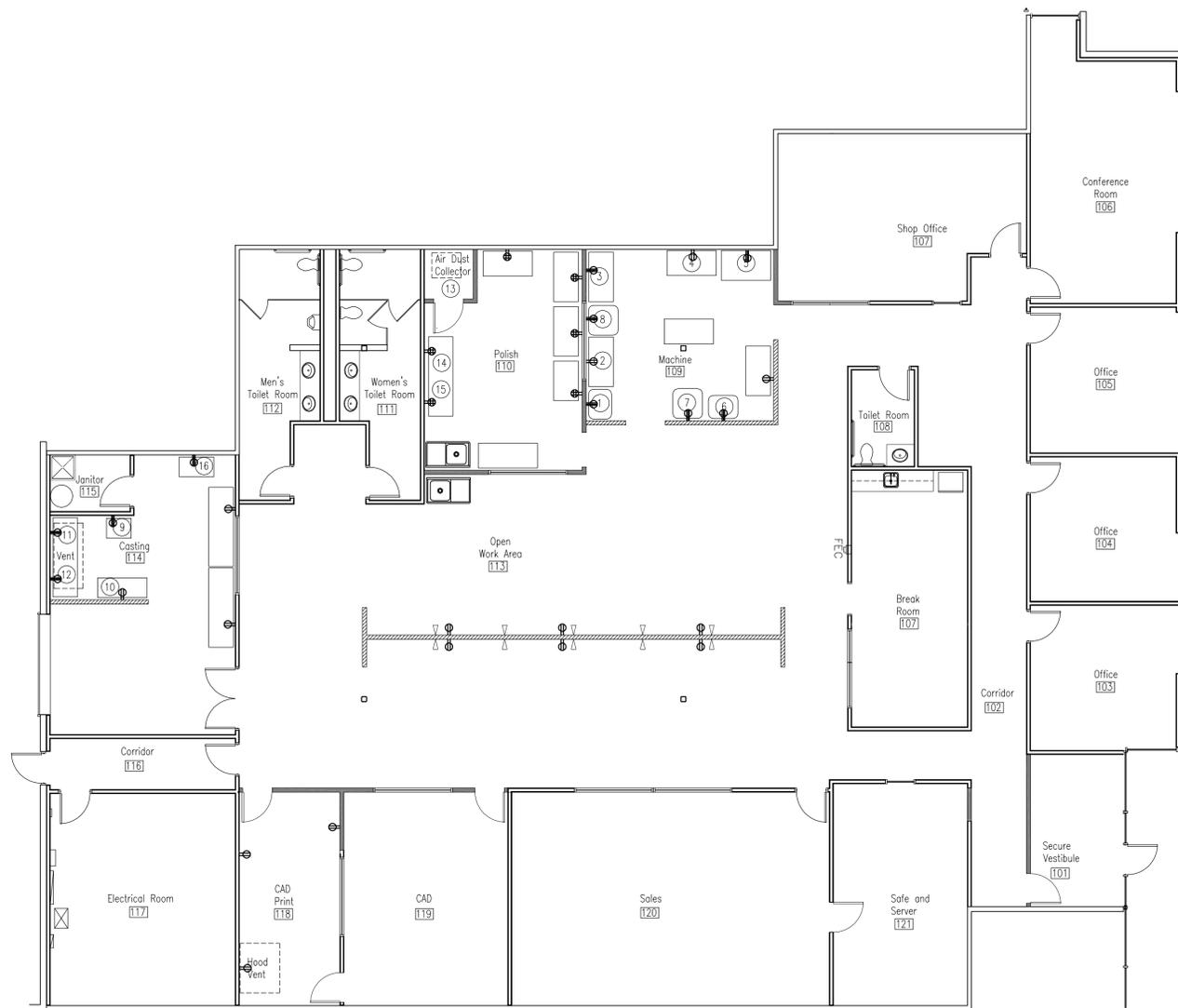
WESTGROVE DRIVE





Precision Set Fine Jewelry Works

16650 Westgrove Drive, Suite 400
 Addison, Texas 75001



LEGEND:

- DATA (DOUBLE JACK)
- DUPLEX OUTLET
- QUAD OUTLET
- TV MONITOR
- 220V OUTLET
- UC UNDERCOUNTER MTD. DUPLEX OUTLET
- FLOOR BOX

GENERAL NOTES

1. COORDINATE WITH TENANT'S POWER / DATA / IT REQUIREMENTS
2. COORDINATE MOUNTING HEIGHT OF DEVICES FOR TENANT PROVIDED EQUIPMENT.
3. PROVIDE TREATED WOOD BLOCKING AT ALL WALL MOUNTED EQUIPMENT
4. REFER TO MEP FOR EQUIPMENT ROUGH IN

Machine	V	Ph	A
1 Hardinge HSL	208-220	3	1.9/95
2 Emco lathe	115		11.9max
3 Fly cutter	230	1	.9
4 Lincoln mill	110		11
5 Emco Mill	230	3	1.52/.35
6 Moyas Lathe	220/380	?	
7 Feeler	220	3	1.9/1.1
8 Shop Hardinge	208/230	3	1.9/1.7
9 Tanabe plt caster	200V +/- 10% 30, 50/60HZ		8KVA
	Step UP/DN transformer		
10 Memco caster	120/208-240		23
	Plug: NEMA 10-30P		
11 Paragon kiln	240	1	13
12 Vulcan kiln	220	1	20
13 Donaldson	230	3	?
	Provide wall electrical box/cutoff for the two motors in this unit		
14 Sm Branson-ultra	120		350W
Tub	120		8.5
15 Lg Branson -ultra	120		500W
Tub	200-240	1	8.5
16 Vane compressor	230	1	40a

• Jewelers hall wall - 3 ea dedicated 20 amp lines for lasers

REVISION NO: DATE:

Equipment Plan



LH2 PROJECT NO: 22-067
 ISSUED: Permit
 ISSUED DATE: 06.24.2022

LETTIE H. HARRELL
 LICENSE NO. 16897

DRAWING NUMBER:

A1.22

Council Meeting 2023

20.

Meeting Date: 10/25/2022

Department: Municipal Court

AGENDA CAPTION:

Present, Discuss, and Consider Action on a **Resolution to Accept the Resignation of Addison Municipal Court No. 1 Alternate Judge Danielle Dulaney Effective October 25, 2022.**

BACKGROUND:

On August 15, 2022, Addison Municipal Court No. 1 Alternate Judge Danielle Dulaney notified Presiding Judge Larry Dwight of her intent to not seek reappointment as Alternate Judge and to resign her position effective October 25, 2022.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Judge Resignation (Dulaney)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS
ACCEPTING THE RESIGNATION OF ADDISON MUNICIPAL COURT NO. 1
ALTERNATE JUDGE DANIELLE DULANEY UPON EXPIRATION OF HER
CURRENT TERM; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, on August 15, 2022 Addison Municipal Court No. 1 Alternate Judge Danielle Dulaney notified Presiding Judge Larry Dwight of her intent to not seek reappointment as Alternate Judge and to resign her position effective October 25, 2022; and

WHEREAS, the City Council for the Town of Addison desires to accept Alternate Judge Danielle Dulaney's resignation effective October 25, 2022.

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

SECTION 1. The City Council hereby accepts judge Danielle Dulaney's resignation from the position of Alternate Municipal Judge for Addison Municipal Court No. 1, effective October 25, 2022.

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 25th day of OCTOBER, 2022.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

Council Meeting 2023

21.

Meeting Date: 10/25/2022

Department: Municipal Court

Pillars: Gold Standard in Customer Service

Milestones: Promote and protect the Addison Way

AGENDA CAPTION:

Present, Discuss, and Consider Action on the Ordinances to Reappoint Larry Dwight as Presiding Municipal Judge to the Addison Municipal Court of Record #1, Reappoint Cass Callaway and Appoint George "Buck" Johnson as Alternate Municipal Judges to the Addison Municipal Court of Record #1 and Authorize the Interim City Manager to Execute the Agreements .

BACKGROUND:

The Presiding Municipal Judge and the Alternate Municipal Judges are appointed to two-year terms with the current terms expiring on December 31, 2022.

Judge Larry Dwight has served as a Municipal Court Judge for the past thirty-six years, specifically serving as a Presiding Judge for the last 16 terms. Judge Cass Callaway has served as one of the Alternate Municipal Court Judges for the term ending December 31, 2022. Buck Johnson will be appointed as Alternate Municipal Court Judge with an initial term beginning immediately at the passage of this Ordinance and continuing through December 31, 2022. Buck will be completing the 2020-2022 term of Judge Danielle Dulaney taking 50% of the weekends through the end of the year due to Judge Dulaney being unavailable to preside during this time.

The judges will complete their evaluation by the City Council during an executive session at the October 25, 2022 Council Meeting. If approved, the judges will be appointed for a new term of January 1, 2023 through December 31, 2024.

RECOMMENDATION:

Administration recommends approval.

Attachments

Ordinance - Municipal Court Judge Appointment 2022 Dwight

Ordinance - Municipal Court Judge Appointment 2022 Calloway

Ordinance - Municipal Court Judge Appointment 2022 Johnson

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS RE-APPOINTING LARRY DWIGHT AS PRESIDING JUDGE OF ADDISON MUNICIPAL COURT OF RECORD NO. 1; APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH LARRY DWIGHT TO PERFORM SERVICES AS THE PRESIDING JUDGE; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison (“Town”) desires to re-appoint Larry Dwight as Presiding Judge of Addison Municipal Court of Record No. 1 (“Court”); and

WHEREAS, the City Council hereby authorizes the City Manager to execute a professional services agreement with Larry Dwight to continue to serve as Presiding Judge of the Court for a two (2) year term beginning on January 1, 2023.

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

SECTION 1. The City Council hereby appoints Larry Dwight as Presiding Judge of Addison Municipal Court of Record No. 1 to serve for a two (2) year term, which term shall begin on January 1, 2023, and shall expire on December 31, 2024.

SECTION 2. The professional services agreement by and between the Town and Larry Dwight for Presiding Judge services, a true and correct copy of which is attached hereto as **Exhibit A**, is hereby approved. The City Manager or the City Manager’s designee is authorized to execute the Agreement on behalf of the Town.

SECTION 3. This Ordinance shall take effect upon passage; provided, that the appointment effective on January 1, 2023.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this **25th** day of **OCTOBER 2022**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt L. Wyatt, City Attorney

Exhibit A

PROFESSIONAL SERVICES AGREEMENT PRESIDING MUNICIPAL COURT JUDGE

This Municipal Court Judge Agreement (“Agreement”) is made by and between the Town of Addison, Texas (“City”), and Larry Dwight (“Judge”), (each a “party” and collectively the “parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the Town of Addison Municipal Court of Record No. 1 (the “Court”) is a municipal court of record operated by the City pursuant to Chapter 30 of the Texas Government Code; and

WHEREAS, the City desires to engage and appoint Judge to serve as the presiding municipal judge for the Court pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and terms and conditions herein contained, and of the execution hereof, the parties agree and bind themselves to the obligations and performance of the tasks as follows:

Article I Purpose

The purpose of this Agreement is for the City to contract for municipal court judge services to be performed in accordance with the terms and conditions of this Agreement.

Article II Term

The term of this Agreement shall be effective on January 1, 2023 (“Effective Date”) and expire on December 31, 2024 (the “Term”). Notwithstanding the foregoing, the Term of this Agreement may be extended by mutual written agreement of the parties.

Article III Municipal Court Judge Services

3.1 Authority; Services. Judge shall have all authority vested under law and shall undertake Judge’s duties fairly, impartially and independently. Judge shall, in a timely and responsive manner, perform all services set forth herein and as required of municipal court judges in accordance with the City Charter, the adopted policies and procedures of the municipal court, and the laws applicable to municipal judges of courts in the State of Texas, as the foregoing may be amended (“Services”). The Services shall include, without limitation, the following:

- (a) Preside over municipal court proceedings;
- (b) Promptly handle adult and juvenile arraignments;
- (d) Execute arrest warrants;

- (e) Execute court warrants;
- (f) Coordinate court activities with the Presiding Judge, municipal court administrator, prosecutor(s), city attorney(s), and other departments of the City as necessary;
- (g) Perform such other duties as assigned by the City Council that may be commensurate with the position of municipal court judge; and
- (h) Perform all other administrative duties of a municipal court judge as may be provided by ordinance, resolution of the City Council, or applicable state law.

3.2 Duties; Coordination. Judge, shall be responsible for all duties customarily performed by magistrates of municipal courts of record in Texas. Judge agrees to coordinate with the alternate judges, as necessary to ensure one or more judges are available at all times during the term of this Agreement (on a 24/7 basis) to handle all warrants, bonds, emergency orders, prisoner transfers requests, and similar matters.

3.3 Scheduling of Dockets. The Judge shall be responsible for administering court dockets and proceedings in coordination with the other judges and municipal court administrator to facilitate optimal court efficiency in support of the City's customer service values.

3.4 Alternate Judge(s). The City may engage the services of one or more alternate municipal judges during the term hereof, subject to all terms and conditions established by the City, at its sole discretion.

3.5 Qualifications; Trainings. Judge must be an attorney licensed by the Texas Supreme Court and must remain in good standing with the State Bar of Texas at all times during the term of this Agreement. Judge shall further adhere to the Texas Code of Judicial Conduct and all other constitutional and statutory requirements of Judge's appointed office.

Article IV Compensation

4.1 Compensation. Judge shall be compensated for the Services in the amount of \$10,281.55 per month, paid at the same time as the City's regular full-time employees in the amount of \$4,745.33 per bi-weekly pay period) during the Term of this Agreement (subject to applicable deductions). Unless otherwise agreed by the parties in writing, Judge shall not be entitled to any other compensation under this Agreement.

4.2 Independent Contractor. It is understood and agreed by and between the parties that in performing the Services under this Agreement, Judge is acting independently, and that the City assume no responsibility or liabilities to any third party in connection with these actions. All Services to be performed by Judge pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an employee of Town of Addison. Judge shall supervise the performance of its Services and shall be entitled to control the manner and means by which its Services are to be performed, subject to the terms of this Agreement.

Article V
Termination

5.1 Termination for Convenience. Either party may terminate this Agreement, in whole or in part, at any time by providing thirty (30) days written notice. Judge shall be compensated for all Services up to the time of termination. If Judge has any property or documents in its possession belonging to the City, Judge will account for and dispose of the same in the manner requested.

5.2 Termination for Default [Breach or Cause]. If Judge fails to perform in the manner called for in this Agreement, or if Judge fails to comply with any other provisions of this Agreement, the City may terminate this Agreement for default. Termination shall be given by serving a notice of termination on Judge setting forth the default and stating the date of termination. Upon termination under this Section 5.2, Judge shall be compensated only for Services performed in accordance with this Agreement through the date of termination.

5.3 Removal from Office. Notwithstanding any other provisions of this Agreement, the parties acknowledge that Judge may be removed from office only as provided by law. The removal of Judge by either City, regardless of reason, shall be mutually effective to terminate this Agreement.

5.4 Waiver of Remedies for Any Breach. In the event that City elects to waive its remedies for any breach or default by Judge of any covenant, term or condition of this Agreement, such waiver by City shall not limit City's remedies for any succeeding breach or default of this Agreement.

Article VI
Miscellaneous

6.1 Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein.

6.2 Assignment of Agreement. Judge may not assign this Agreement, or assign or delegate any right or duty under this Agreement, without prior written approval from the City.

6.3 Notice. Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by UPS, FedEx or other nationally recognized carrier to be delivered on the next business day, or (iv) by email of a PDF copy of the same. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to UPS, FedEx or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day.

A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or documents are as set forth on the signature page to this Agreement.

6.4 Conflict of Interest. Judge covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. If any such conflict of interest shall arise during the Agreement Term, Judge shall immediately and fully disclose the nature and extent of the conflict to the respective party and resolve the conflict to party's satisfaction.

6.5 Signatories. Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have authority to enter into this Agreement.

6.6 Applicable Law and Venue. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.7 Amendments. This Agreement may be amended only upon written Agreement signed by the parties.

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

6.9 Compliance with Laws. Judge shall fully comply with all federal, state and local laws, rules, regulations, and ordinances applicable to the services covered hereunder as they may now read or may hereafter be amended.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

For City:
TOWN OF ADDISON, TEXAS

For Judge:
LARRY DWIGHT

By: _____
Hamid Khaleghipour
Interim City Manager

By: Larry Dwight
Larry Dwight
Presiding Judge

Date: _____

Date: 10/14/2022

Notice Address:

Town of Addison
Attn: City Manager
P.O. Box 9010
Town of Addison, Texas 75001
E: hkhaleghipour@addisontx.gov

Notice Address:

Honorable Larry Dwight
4799 Airport Parkway
Addison, Texas
E: ldwight@addisontx.gov

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS RE-APPOINTING CASS ROBERT CALLAWAY AS ALTERNATE MUNICIPAL JUDGE OF ADDISON MUNICIPAL COURT OF RECORD NO. 1; APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH CASS ROBERT CALLAWAY TO PERFORM SERVICES AS THE ALTERNATE MUNICIPAL JUDGE; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison (“Town”) desires to re-appoint Cass Robert Callaway as an Alternate Municipal Judge of Addison Municipal Court of Record No. 1 (“Court”); and

WHEREAS, the City Council hereby authorizes the City Manager to execute a professional services agreement with Cass Robert Callaway to continue to serve as an Alternate Municipal Judge of the Court for a two (2) year term beginning on January 1, 2023.

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

SECTION 1. The City Council hereby appoints Cass Robert Callaway as an Alternate Municipal Judge of Addison Municipal Court of Record No. 1 to serve for a two (2) year term, which term shall begin on January 1, 2023, and shall expire on December 31, 2024.

SECTION 2. The professional services agreement by and between the Town and Cass Robert Callaway for Alternate Municipal Judge services, a true and correct copy of which is attached hereto as **Exhibit A**, is hereby approved. The City Manager or the City Manager’s designee is authorized to execute the Agreement on behalf of the Town.

SECTION 3. This Ordinance shall become effective from and after its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this **25th** day of **OCTOBER** 2022.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt L. Wyatt, City Attorney

Exhibit A

PROFESSIONAL SERVICES AGREEMENT ALTERNATE MUNICIPAL COURT JUDGE

This Municipal Court Judge Agreement ("Agreement") is made by and between the Town of Addison, Texas ("City"), and Cass Robert Callaway ("Judge"), (each a "party" and collectively the "parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the Town of Addison Municipal Court of Record No. 1 (the "Court") is a municipal court of record operated by the City pursuant to Chapter 30 of the Texas Government Code; and

WHEREAS, the City desires to engage and appoint Judge to serve as an alternate municipal judge for the Court pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and terms and conditions herein contained, and of the execution hereof, the parties agree and bind themselves to the obligations and performance of the tasks as follows:

Article I Purpose

The purpose of this Agreement is for the City to contract for municipal court judge services to be performed in accordance with the terms and conditions of this Agreement.

Article II Term

The term of this Agreement shall be effective on January 1, 2023 ("Effective Date") and expire on December 31, 2024 (the "Term"). Notwithstanding the foregoing, the Term of this Agreement may be extended by mutual written agreement of the parties.

Article III Municipal Court Judge Services

3.1 Authority; Services. Judge shall have all authority vested under law and shall undertake Judge's duties fairly, impartially and independently. Judge shall, in a timely and responsive manner, perform all services set forth herein and as required of municipal court judges in accordance with the City Charter, the adopted policies and procedures of the municipal court, and the laws applicable to municipal judges of courts in the State of Texas, as the foregoing may be amended ("Services"). The Services shall include, without limitation, the following:

- (a) Preside over municipal court proceedings;
- (b) Promptly handle adult and juvenile arraignments;
- (d) Execute arrest warrants;

- (e) Execute court warrants;
- (f) Coordinate court activities with the Presiding Judge, municipal court administrator, prosecutor(s), city attorney(s), and other departments of the City as necessary;
- (g) Perform such other duties as assigned by the City Council that may be commensurate with the position of municipal court judge; and
- (h) Perform all other administrative duties of a municipal court judge as may be provided by ordinance, resolution of the City Council, or applicable state law.

3.2 Duties; Coordination. Judge, shall be responsible for all duties customarily performed by magistrates of municipal courts of record in Texas. Judge agrees to coordinate with the Presiding Judge and other alternate judges, as necessary to ensure one or more judges are available at all times during the term of this Agreement (on a 24/7 basis) to handle all warrants, bonds, emergency orders, prisoner transfers requests, and similar matters.

3.3 Scheduling of Dockets. The Judge shall be responsible for administering court dockets and proceedings in coordination with the Presiding Judge and municipal court administrator to facilitate optimal court efficiency in support of the City's customer service values.

3.4 Other Alternate Judge(s). The City may engage the services of one or more additional alternate municipal judges during the term hereof, subject to all terms and conditions established by the City, at its sole discretion.

3.6 Qualifications; Trainings. Judge must be an attorney licensed by the Texas Supreme Court and must remain in good standing with the State Bar of Texas at all times during the term of this Agreement. Judge shall further adhere to the Texas Code of Judicial Conduct and all other constitutional and statutory requirements of Judge's appointed office.

Article IV Compensation

4.1 Compensation. Judge shall be compensated for the Services on an hourly basis at a rate of One Hundred and Twenty-Five and No/100 (\$125.00) per hour, billed in quarter (.25) hour increments, with a minimum of one hour's compensation to be paid to Judge per sitting in his judicial capacity during the Term of this Agreement. Judge shall not be entitled to any other compensation under this Agreement unless otherwise agreed by the parties in writing.

4.2 Independent Contractor Status; Insurance; Taxes. Notwithstanding any other provision of this Agreement, the parties intend and agree that Judge shall be an independent contractor and not an employee of either City during the term of this Agreement for any purpose, including without limitation, application of FICA, the Social Security Act, the Federal Unemployment Act, and applicable provisions of the Internal Revenue Code. The City shall not pay (or reimburse) Worker's Compensation Insurance on Judge's behalf during the term of this Agreement and Judge shall at all times be responsible for the payment of Judge's self-employment taxes incurred in connection with this Agreement.

Article V

Termination

5.1 Termination for Convenience. Either party may terminate this Agreement, in whole or in part, at any time by providing thirty (30) days written notice. Judge shall be compensated for all Services up to the time of termination. If Judge has any property or documents in its possession belonging to the City, Judge will account for and dispose of the same in the manner requested.

5.2 Termination for Default [Breach or Cause]. If Judge fails to perform in the manner called for in this Agreement, or if Judge fails to comply with any other provisions of this Agreement, the City may terminate this Agreement for default. Termination shall be given by serving a notice of termination on Judge setting forth the default and stating the date of termination. Upon termination under this Section 5.2, Judge shall be compensated only for Services performed in accordance with this Agreement through the date of termination.

5.3 Removal from Office. Notwithstanding any other provisions of this Agreement, the parties acknowledge that Judge may be removed from office only as provided by law. The removal of Judge by either City, regardless of reason, shall be mutually effective to terminate this Agreement.

5.4 Waiver of Remedies for Any Breach. In the event that City elects to waive its remedies for any breach or default by Judge of any covenant, term or condition of this Agreement, such waiver by City shall not limit City's remedies for any succeeding breach or default of this Agreement.

Article VI Miscellaneous

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

6.3 Assignment of Agreement. Judge may not assign this Agreement, or assign or delegate any right or duty under this Agreement, without prior written approval from the City.

6.4 Notice. Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by UPS, FedEx or other nationally recognized carrier to be delivered on the next business day, or (iv) by email of a PDF copy of the same. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next

business day after the day the notice or document is provided to UPS, FedEx or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or documents are as set forth on the signature page to this Agreement.

6.5 Conflict of Interest. Judge covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. If any such conflict of interest shall arise during the Agreement Term, Judge shall immediately and fully disclose the nature and extent of the conflict to the respective party and resolve the conflict to party's satisfaction.

6.6 Signatories. Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have authority to enter into this Agreement.

6.7 Applicable Law and Venue. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendments. This Agreement may be amended only upon written Agreement signed by the parties.

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

6.10 Compliance with Laws. Judge shall fully comply with all federal, state and local laws, rules, regulations, and ordinances applicable to the services covered hereunder as they may now read or may hereafter be amended.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

For City:

For Judge:

TOWN OF ADDISON, TEXAS

CASS ROBERT CALLAWAY

By: _____
Hamid Khaleghipour
Interim City Manager

Digitally signed by Cass Robert Callaway
Date: 2022.10.15 07:26:26 -05'00'
By: _____
Cass Robert Callaway
Alternate Judge

Date: _____

Date: Saturday, October 15, 2022

Notice Address:

Notice Address:

Town of Addison
Attn: City Manager
P.O. Box 9010
Town of Addison, Texas 75001
E: hkhaleghipour@addisontx.gov

Honorable Cass Robert Callaway
4799 Airport Parkway
Addison, Texas
E: ccallaway@addisontx.gov

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPOINTING GEORGE C. “BUCK” JOHNSON, JR. AS ALTERNATE MUNICIPAL JUDGE OF ADDISON MUNICIPAL COURT OF RECORD NO. 1; APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH GEORGE C. “BUCK” JOHNSON, JR. TO PERFORM SERVICES AS THE ALTERNATE MUNICIPAL JUDGE; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison (“Town”) desires to appoint George C. “Buck” Johnson, Jr. as an Alternate Municipal Judge of Addison Municipal Court of Record No. 1 (“Court”); and

WHEREAS, the City Council hereby authorizes the City Manager to execute a professional services agreement with George C. “Buck” Johnson, Jr. to serve as an Alternate Municipal Judge of the Court with an initial term beginning upon the effective date of this Ordinance and continuing through December 31, 2022, with an additional two (2) year term beginning on January 1, 2023.

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

SECTION 1. The City Council hereby appoints George C. “Buck” Johnson, Jr. as an Alternate Municipal Judge of Addison Municipal Court of Record No. 1 to serve an initial term beginning upon the effective date of this Ordinance and continuing through December 31, 2022, with an additional two (2) year term beginning on January 1, 2023 and expiring on December 31, 2024.

SECTION 2. The professional services agreement by and between the Town and George C. “Buck” Johnson, Jr. for Alternate Municipal Judge services, a true and correct copy of which is attached hereto as **Exhibit A**, is hereby approved. The City Manager or the City Manager’s designee is authorized to execute the Agreement on behalf of the Town.

SECTION 3. This Ordinance shall become effective from and after its passage and approval.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this **25th** day of **OCTOBER** 2022.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Whitt L. Wyatt, City Attorney

Exhibit A

PROFESSIONAL SERVICES AGREEMENT ALTERNATE MUNICIPAL COURT JUDGE

This Agreement for Municipal Court Judge ("Agreement") is made by and between the Town of Addison, Texas ("City"), and George C. "Buck" Johnson, Jr. ("Judge"), (each a "party" and collectively the "parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the Town of Addison Municipal Court of Record No. 1 (the "Court") is a municipal court of record operated by the City pursuant to Chapter 30 of the Texas Government Code; and

WHEREAS, the City desires to engage and appoint Judge to serve as an alternate municipal judge for the Court pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and terms and conditions herein contained, and of the execution hereof, the parties agree and bind themselves to the obligations and performance of the tasks as follows:

Article I Purpose

The purpose of this Agreement is for the City to contract for municipal court judge services to be performed in accordance with the terms and conditions of this Agreement.

Article II Term

The term of this Agreement shall be effective as of October 25, 2022 (the "Effective Date") and shall expire on December 31, 2022. Thereafter, this Agreement shall automatically renew for an additional two (2) year term beginning on January 1, 2023 and expiring on December 31, 2024 (the "Term"). Notwithstanding the foregoing, the Term of this Agreement may be extended by mutual written agreement of the parties.

Article III Municipal Court Judge Services

3.1 Authority; Services. Judge shall have all authority vested under law and shall undertake Judge's duties fairly, impartially and independently. Judge shall, in a timely and responsive manner, perform all services set forth herein and as required of municipal court judges in accordance with the City Charter, the adopted policies and procedures of the municipal court, and the laws applicable to municipal judges of courts in the State of Texas, as the foregoing may be amended ("Services"). The Services shall include, without limitation, the following:

- (a) Preside over municipal court proceedings;

- (b) Promptly handle adult and juvenile arraignments;
- (d) Execute arrest warrants;
- (e) Execute court warrants;
- (f) Coordinate court activities with the Presiding Judge, municipal court administrator, prosecutor(s), city attorney(s), and other departments of the City as necessary;
- (g) Perform such other duties as assigned by the City Council that may be commensurate with the position of municipal court judge; and
- (h) Perform all other administrative duties of a municipal court judge as may be provided by ordinance, resolution of the City Council, or applicable state law.

3.2 Duties; Coordination. Judge, shall be responsible for all duties customarily performed by magistrates of municipal courts of record in Texas. Judge agrees to coordinate with the Presiding Judge and other Alternate judges, as necessary to ensure one or more judges are available at all times during the term of this Agreement (on a 24/7 basis) to handle all warrants, bonds, emergency orders, prisoner transfers requests, and similar matters.

3.3 Scheduling of Dockets. The Judge shall be responsible for administering court dockets and proceedings in coordination with the Presiding Judge and municipal court administrator to facilitate optimal court efficiency in support of the City's customer service values.

3.4 Other Alternate Judge(s). The City may engage the services of one or more additional alternate municipal judges during the term hereof, subject to all terms and conditions established by the City, at its sole discretion.

3.5 Qualifications; Trainings. Judge must be an attorney licensed by the Texas Supreme Court and must remain in good standing with the State Bar of Texas at all times during the term of this Agreement. Judge shall further adhere to the Texas Code of Judicial Conduct and all other constitutional and statutory requirements of Judge's appointed office.

Article IV Compensation

4.1 Compensation. Judge shall be compensated for the Services on an hourly basis at a rate of One Hundred and Twenty-Five and No/100 (\$125.00) per hour, billed in quarter (.25) hour increments, with a minimum of one hour's compensation to be paid to Judge per sitting in his judicial capacity during the Term of this Agreement. Judge shall not be entitled to any other compensation under this Agreement unless otherwise agreed by the parties in writing.

4.2 Independent Contractor Status; Insurance; Taxes. Notwithstanding any other provision of this Agreement, the parties intend and agree that Judge shall be an independent contractor and not an employee of either City during the term of this Agreement for any purpose, including without limitation, application of FICA, the Social Security Act, the Federal Unemployment Act, and applicable provisions of the Internal Revenue Code. The City shall not pay (or reimburse) Worker's Compensation Insurance on Judge's behalf during the term of this Agreement and Judge shall at all times be responsible for the payment of Judge's self-employment taxes incurred in connection with this Agreement.

Article V
Termination

5.1 Termination for Convenience. Either party may terminate this Agreement, in whole or in part, at any time by providing thirty (30) days written notice. Judge shall be compensated for all Services up to the time of termination. If Judge has any property or documents in its possession belonging to the City, Judge will account for and dispose of the same in the manner requested.

5.2 Termination for Default [Breach or Cause]. If Judge fails to perform in the manner called for in this Agreement, or if Judge fails to comply with any other provisions of this Agreement, the City may terminate this Agreement for default. Termination shall be given by serving a notice of termination on Judge setting forth the default and stating the date of termination. Upon termination under this Section 5.2, Judge shall be compensated only for Services performed in accordance with this Agreement through the date of termination.

5.3 Removal from Office. Notwithstanding any other provisions of this Agreement, the parties acknowledge that Judge may be removed from office only as provided by law. The removal of Judge by either City, regardless of reason, shall be mutually effective to terminate this Agreement.

5.4 Waiver of Remedies for Any Breach. In the event that City elects to waive its remedies for any breach or default by Judge of any covenant, term or condition of this Agreement, such waiver by City shall not limit City's remedies for any succeeding breach or default of this Agreement.

Article VI
Miscellaneous

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

6.3 Assignment of Agreement. Judge may not assign this Agreement, or assign or delegate any right or duty under this Agreement, without prior written approval from the City.

6.4 Notice. Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, (iii) by UPS, FedEx or other nationally recognized carrier to be delivered on the next business day, or (iv) by email of a PDF copy of the same. Such notice or document shall be deemed to be delivered or given, whether actually received

or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, (c) on the next business day after the day the notice or document is provided to UPS, FedEx or other nationally recognized carrier to be delivered as set forth above, or (d) if sent by email, the next business day. A confirmation of delivery report which reflects the time that the email was delivered to the recipient's last notified email address is prima facie evidence of its receipt by the recipient, unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient. Addresses for the delivery or giving of any such notice or documents are as set forth on the signature page to this Agreement.

6.5 Conflict of Interest. Judge covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. If any such conflict of interest shall arise during the Agreement Term, Judge shall immediately and fully disclose the nature and extent of the conflict to the respective party and resolve the conflict to party's satisfaction.

6.6 Signatories. Having agreed to the terms herein, the undersigned signatories hereby represent and warrant that they have authority to enter into this Agreement.

6.7 Applicable Law and Venue. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendments. This Agreement may be amended only upon written Agreement signed by the parties.

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

6.10 Compliance with Laws. Judge shall fully comply with all federal, state and local laws, rules, regulations, and ordinances applicable to the services covered hereunder as they may now read or may hereafter be amended.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

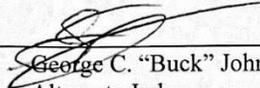
For City:

For Judge:

TOWN OF ADDISON, TEXAS

GEORGE C. "BUCK" JOHNSON, JR.

By: _____
Hamid Khalehipour
Interim City Manager

By:  _____
George C. "Buck" Johnson, Jr.
Alternate Judge

Date: _____

Date: 10-17-22

Notice Address:

Notice Address:

Town of Addison
Attn: City Manager
P.O. Box 9010
Town of Addison, Texas 75001
E: hkhalehipour@addisontx.gov

Honorable George C. "Buck: Johnson, Jr.
4799 Airport Parkway
Addison, Texas
E: buck@buckjohnsonlaw.com

Council Meeting 2023

22.

Meeting Date: 10/25/2022

Department: City Manager

Pillars: Excellence in Asset Management

AGENDA CAPTION:

Present, Discuss, and Consider Action on the **Addison Athletic Club Renovation Total Project Budget.**

BACKGROUND:

On October 12, 2021, the Addison City Council approved a total project budget for the Addison Athletic Club Renovation Project (Project) in the amount of \$5,077,631. This included \$4,035,083 for construction and \$1,042,548 for other project costs such as architectural, construction management, project contingencies, and (to the extent funding allowed) bid alternate items.

During the August 23, 2022 Council meeting, Staff provided an update on the Project. This included the status of the total project budget and the limited ability to approve bid alternates because of the cost of project contingencies that needed to be addressed. Following the discussion, Council asked Staff to:

- provide a cost estimate for the work necessary to complete the shade structure
- provide updated cost estimates for uncompleted alternate bid items
- provide a prioritization of the alternates bid items

Below is the requested information with the items listed in priority order (highest priority to lowest).

1. Ceiling Fan Replacement \$29,760.12 (see note below)
2. Shade Structure \$153,504
3. Additional Ceiling Tile Replacement \$56,116
4. Indoor Pool Skylight Panel Replacement \$44,497.60
5. Lobby Atrium Ceiling Painting \$25,922.40

Ceiling Fan Replacement. During design, staff informed the architect of the need to install flush mounted ceiling fans to provide adequate clearance in certain areas for safety. Upon installation, it was determined that the architect specified fans were not acceptable. Staff rejected these fans. Staff is asking for a budget increase in the amount of the cost of the replacement fans, installation work, and associated costs. Staff has notified the architect of the Town's position regarding being reimbursed for the fans and associated costs. The architect has agreed. Reimbursement will be credited back to the Town's bond account. For

accounting and contractual reasons, the Town prefers to process the transaction in this manner.

Shade Structure. A shade structure consisting of 5 metal columns supporting a suspended shade canopy is included in the project scope. As work to excavate the pier locations to support the structure began, construction crews identified previously unknown utilities that conflict with the pier locations. These utilities consist of piping for the outdoor pools, electrical circuits, a water supply line, and possibly other utilities that are not yet identified. Because the outdoor pool was set to open before a solution could be engineered and completed, the pier locations were filled in and work was delayed until after the September 10 pool closure. Installing the shade structure as designed will necessitate relocating the utilities from the planned pier locations at an additional cost of \$153,504.

Additional Ceiling Tile Replacement. The renovation contractor's scope of work called for the replacement of ceiling tiles in some areas and those ceiling tiles directly below work performed on certain air conditioning components. Now that the project is wrapping up, the contrast between the old and new ceiling tiles is evident in places. Staff is recommending the replacement of additional ceiling tiles to alleviate this condition. This is not a proposal to replace all ceiling tiles in the facility. The scope of the proposed replacements is intended to address only the more obvious contrasts in ceiling tiles in high use areas.

Indoor Pool Skylight Panel Replacement. The skylights above the indoor pool have deteriorated in appearance due to age and storm damage.

Lobby Atrium Ceiling Painting. The AAC Renovation Project is a partial renovation. Some areas of the facility received a total renovation while other received little or no work. As the project wraps up, it is evident that the appearance of the main lobby ceiling would benefit from a fresh coat of paint to match adjacent surfaces that were painted as part of the renovation work. This is not a proposal to paint all surfaces in the facility. It is intended to address a public area where the new and old paint adjacencies are most evident.

During the August 23, 2022 Council Meeting, Council approved Change Order #13 in the amount of \$44,469.51 and increased the overall project budget by that same amount to a new total of \$5,122,100.51.

Staff recommends approval of an additional increase in the total project budget in an amount sufficient to cover the Ceiling Fan replacement line item plus any of the additional line items that Council would like to see completed as part of this Project. Any items not approved will be added to the on-going list of facility maintenance projects and considered within the regular budget process.

The Town's Chief Financial Officer has identified investment earnings from bond

proceeds in an approximate amount of \$200,000. These funds may be applied to this, or any other, bond project. The amount approved to increase the Project's total project budget would come from these investment earnings.

RECOMMENDATION:

Administration recommends approval.

Attachments

Presentation - AAC Renovation Project Alternates

Addison Athletic Club Renovation

The logo for Addison Athletic Club, featuring the word "ADDISON" in a bold, blue, sans-serif font centered within a white circle. The circle is set against a blue background that is part of a larger graphic design on the right side of the slide, which includes diagonal grey and white sections.

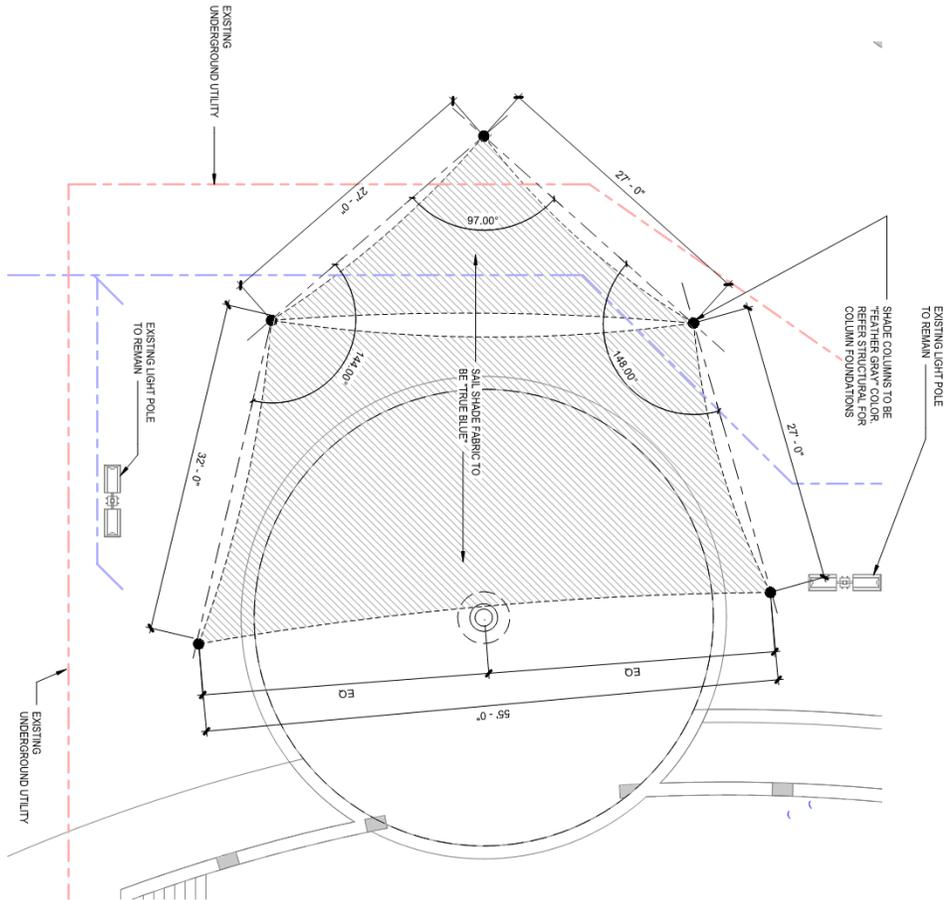
ADDISON

Background

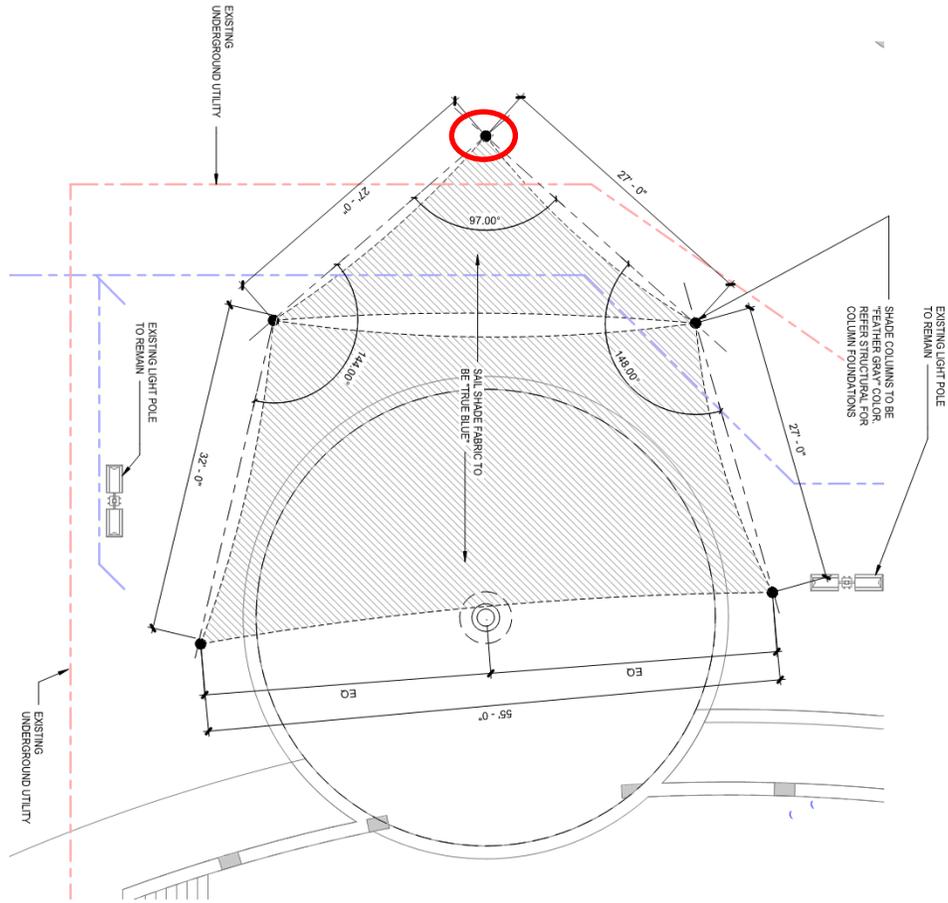
- October 12, 2021 - Construction Contract Awarded to Northridge Construction Group, LLC
- November 19, 2021 - Construction commenced
- August 23, 2022 – Council approved project budget amendment and requested staff provide:
 - A cost estimate for the shade structure work
 - Updated costs for the uncompleted alternate bid items
 - A prioritization of the alternate bid items
- October 2022 – facility reopened



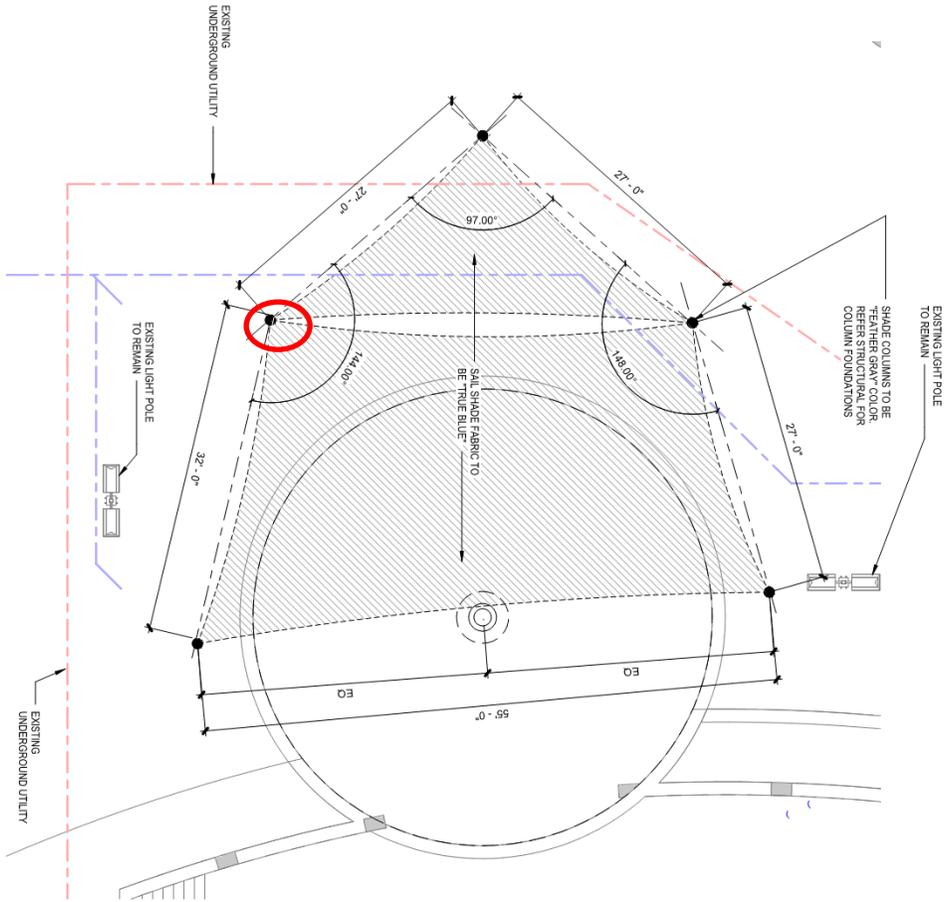
Shade Structure



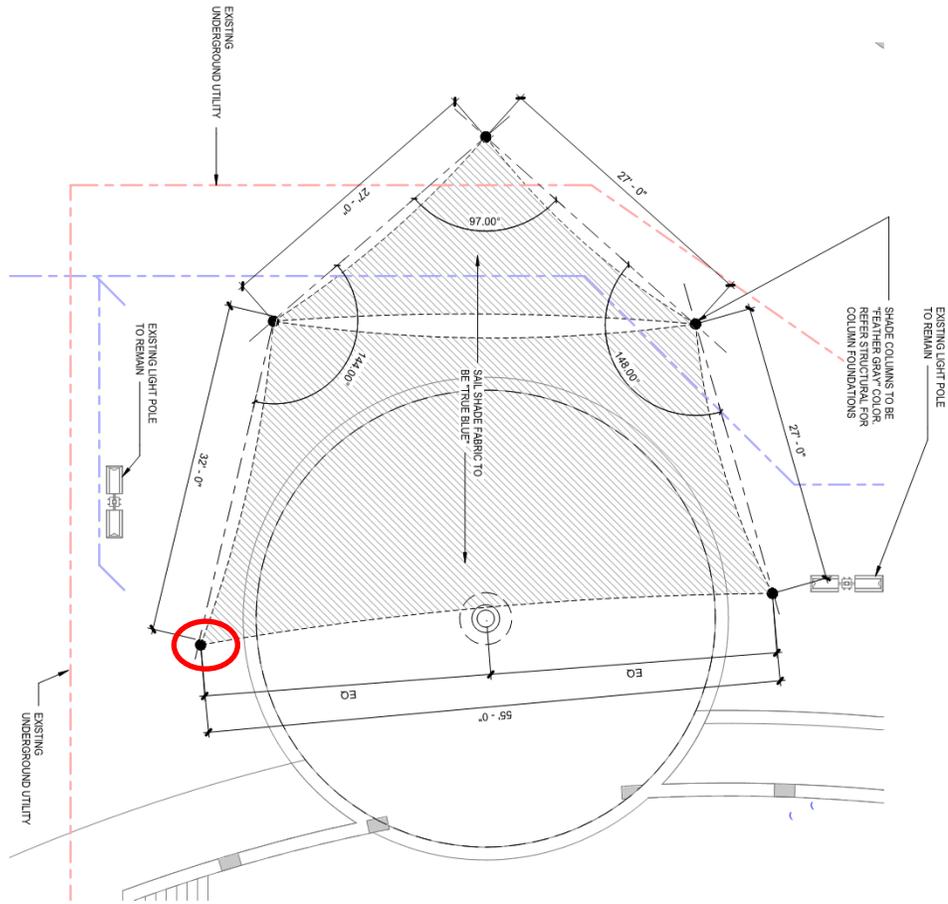
Shade Structure



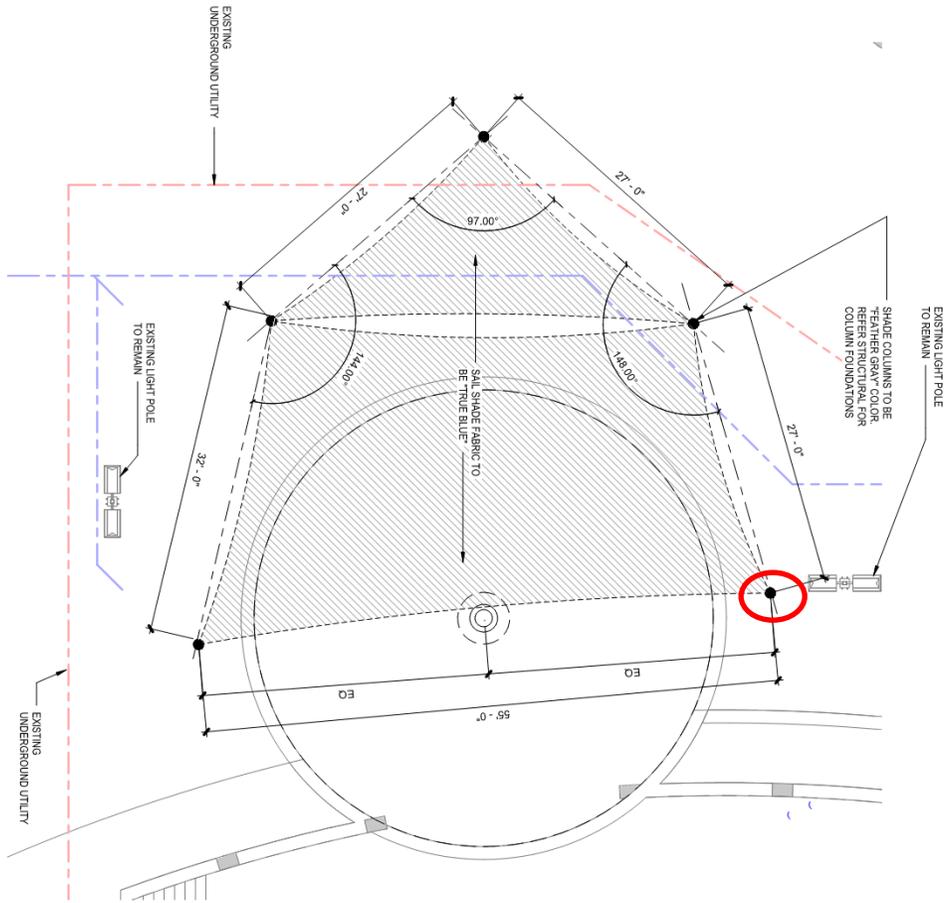
Shade Structure



Shade Structure



Shade Structure



Shade Structure Additional Costs



9/6/2022

Addison Athletic Club
3900 Beltway Dr
Addison, TX 75001

RE: NTE Cost Rework For Canopy

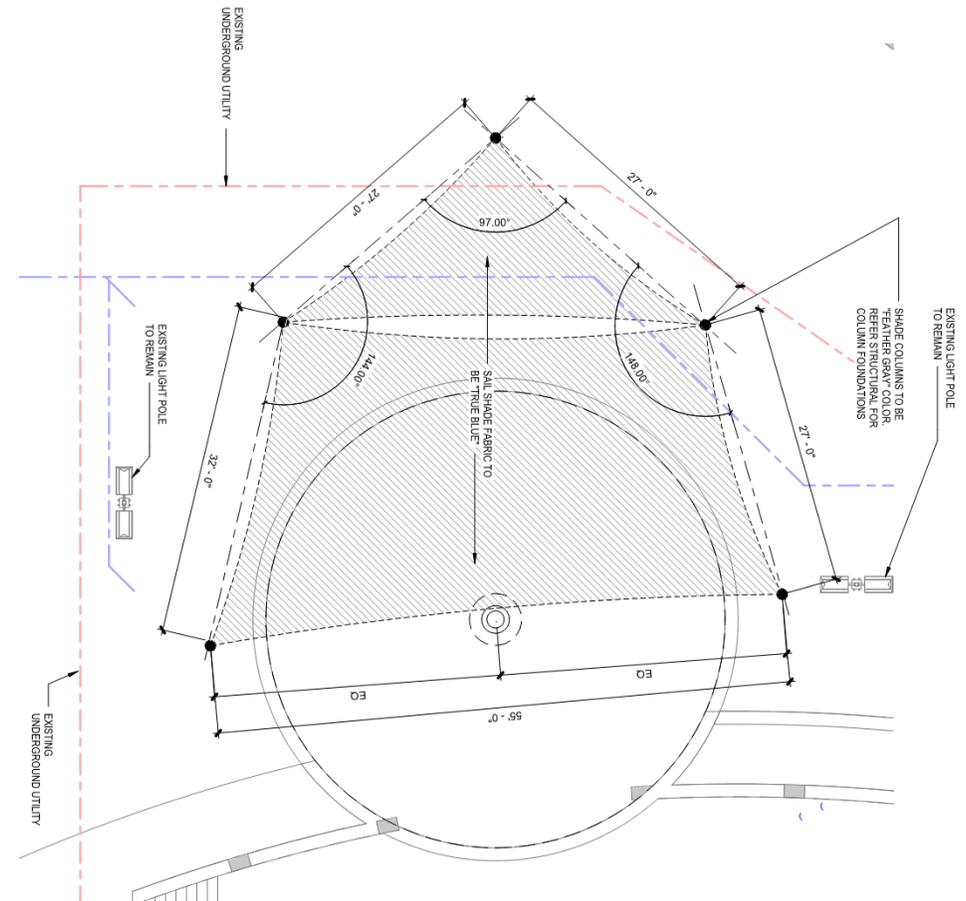
NTE cost for concrete, underground utilities and pool piping rework for canopy as previously designed.

Please see quote below for the additional scope of work .

Our bid is as follows:

NTE Cost	<u>\$ 131,200.00</u>
Sub Total	<u>\$ 131,200.00</u>
Bond	\$2,624.00
Overhead/Profit	\$19,680.00
Total	<u>\$ 153,504.00</u>

Sincerely,
Taylor Tucker



Below is the requested information with the items listed in priority order (highest priority to lowest).

1. Ceiling Fan Replacement \$29,760.12*
2. Shade Structure \$153,504
3. Additional Ceiling Tile Replacement \$56,116
4. Indoor Pool Skylight Panel Replacement \$44,497.60
5. Lobby Atrium Ceiling Painting \$25,922.40

* This was not an alternate. The architect is reimbursing the Town for the replacement of ceiling fans that were not consistent with our requirements. We need to amend the project budget accordingly.

Staff recommends approval of an increase in the total project budget in an amount sufficient to cover the Ceiling Fan replacement plus any of the other items that Council would like completed as part of this project.

Any alternate items not approved will be added to the on-going list of facility maintenance projects and considered within the regular budget process.

The Town's Chief Financial Officer has identified investment earnings from bond proceeds in an approximate amount of \$200,000. These funds may be applied to this, or other, bond projects.

Any amount approved, other than the ceiling fan replacement, would come from these investment earnings.

Questions?