

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A CONSTRUCTION SERVICES AGREEMENT BETWEEN THE TOWN OF ADDISON AND MCKINSTRY ESSENTION, LLC FOR EMERGENCY GENERATOR REPLACEMENT SERVICES FOR THE ADDISON POLICE DEPARTMENT AND FIRE STATION #1; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to authorize an agreement with McKinstry Essention, LLC to provide turn-key emergency generator replacement services for the Addison Police Department and Fire Station #1, in conformance with the terms of the contract documents.

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

SECTION 1. The City Council hereby approves the agreement between the Town and McKinstry Essention, LLC to provide emergency generator replacement services for the Addison Police Department and Fire Station #1, in an amount not to exceed \$641,765.00 , 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 **11th** day of **APRIL 2023**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma Parker, City Secretary

**CONSTRUCTION SERVICES AGREEMENT
EMERGENCY GENERATOR REPLACEMENT**

This CONSTRUCTION SERVICES AGREEMENT (“Agreement”) is made as of the Effective Date by and between **McKinstry Essention, LLC**, 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, below; 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 for emergency generator replacement for the Addison Police Department and Addison Fire Station #1 (the "Project"), such services being more fully described herein and pursuant to the Contract Documents (defined below).

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

This Agreement is a part of the "Contract Documents", which include:

- (1) This Agreement;
- (2) Contractor’s Scope of Work & Fee Schedule attached as **Exhibit A**;
- (3) City’s written notice(s) to proceed to the Contractor;
- (4) Properly authorized change orders; and
- (5) Any other materials distributed by the City that relate to the services.

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 Project.

(b) Quality Materials. 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. Unless otherwise specified in writing by City, 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 the Contract Documents that, so applied, have well known, technical or trade meaning shall be held to refer to such recognized standards. 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. All minor details of the work not specifically mentioned in the 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. 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. 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 acts or omissions. 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 unless City has provided advance written notice of an alternate time. 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 materials or 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 endeavor to provide such rights of access on any project site as may be reasonably necessary for Contractor to perform any required preliminary site studies, surveys, tests, or other necessary investigations prior to mobilization for the Project. 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, policies, orders, directives, and other regulations governing Contractor's performance of this Agreement.

Section 5. Payment

(a) Compensation. City agrees to pay Contractor for all services authorized in writing and properly performed by Contractor in a total amount not to exceed SIX HUNDRED AND FORTY-ONE THOUSAND SEVEN HUNDRED AND SIXTY-FIVE DOLLARS (\$641,765.00) ("Contract Price"), subject to additions or deletions for change orders and/or extra work agreed upon in writing.

(b) Method of Payment. Unless otherwise agreed by the parties in writing, payment to Contractor shall be monthly based on a monthly progress report and detailed monthly itemized statement for services submitted by Contractor that shows the names of the Contractor's employees, agents, or subcontractors performing the services, the time worked, the actual services performed, and the rates charged for such services, in a form acceptable to City. City shall pay such monthly statements within thirty (30) days after receipt of a completed submission and City's verification of the services performed.

(c) 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 any third-party of a 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 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 letter of credit, or similar guaranty 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. Contractor understands and agrees that time is of the essence of this Agreement. 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

(b) Extensions; 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.

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 DIRECTLY AS A RESULT OF 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 UPON FINAL ADJUDICATION 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 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.

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, policies, orders, and directives 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 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 Professional:

TOWN OF ADDISON, TEXAS

MCKINSTRY ESSENTION, LLC

By: _____
David Gaines
City Manager

By: _____
Brian Ratcliff
Vice President

Date: _____

Date: _____

Notice Address:

Notice Address:

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

McKinstry Essention, LLC
Attn: Brian Ratcliff, Vice President
4201 Spring Valley Rd, Ste 250
Dallas, Texas 75244
E: brianra@mckinstry.com

[EXHIBIT A FOLLOWS]

Exhibit A: Scope of Work & Fee Schedule

OVERVIEW

Based on MCKINSTRY's current knowledge and understanding of the Project, MCKINSTRY's scope of work will consist of engineering, design, procurement, implementation, construction management, and onsite supervision of all work regarding the Town of Addison Emergency Generator Replacement Turnkey project.

SCOPE OF SERVICES

The Town of Addison Emergency Generator Replacement project scope of work includes:

Turnkey services for an upgrade of the existing generators for the Police Department and Fire Station 1

Figure 1

#	Site	Address (Addison, TX)	Generator Size (kW)	Generator Voltage	ATS Size (A)	Fuel System
1	Police Department	4799 Airport Pkwy	230	208/120	800	Diesel
2	Fire Station #1	4798 Airport Pkwy	150	208/120	600	Diesel

TURNKEY SERVICES

MCKINSTRY shall, consistent with applicable state licensing laws, provide oversight and implementation of work with engineering designs. The planned scope of work to be managed under this Turnkey services agreement will include the items listed below:

- A. Engineering design of the new integration of a generator, or in the case of existing, upgrade of generator capability for the sites listed above:**
 - a. Work in conjunction with the town of Addison to determine location of upgraded generators at the Fire Station and Police Department.
 - b. Develop as-built conditions based on existing site evaluation and owner's existing drawings and specifications.
 - c. Design upgrade of existing generation and associated automatic transfer switches.
 - d. Cover integration of controls from new or upgraded generation to ATSs.
 - e. Provide one-line diagram of generation and ATS design.
 - f. Provide design specifications.
- B. Procurement of the New Generators:**
 - a. Specify and procure equipment of new generator and automatic transfer switch for the two buildings listed above according to generator specifications for scope of work:
 - b. Packaged engine generator set with the following standards and items:
 - i. In the case of diesel fuel, a belly-tank with capacity of fuel for 24 hours run-time at 100% load.
 - ii. Remote control and annunciator system for the engine gen set.



Exhibit A: Scope of Work & Fee Schedule

- iii. Mechanical and electrical start-up on each gen-set.
- iv. Engine Generator Set Ratings per Site
 - 1. Police Department: 230 kW Diesel, 208/120VAC
 - 2. Fire Station #1: 150 kW Diesel, 208/120VAC
 - 3. Auto-Transfer Switch Ratings per Site
 - a. Police Department: 800 Amp, UL Listed, 3 pole, 120/240 three phase, with 2 wire start circuit.
 - b. Fire Station #1: 600 Amp, UL Listed, 3 pole, 120/240 three phase, with 2 wire start circuit.
 - 4. Manufacturer's McKinstry may use for the procurement of gen-set:
 - a. MTU / Rolls
 - b. Generac
 - c. Caterpillar
 - d. Kohler
 - e. Cummins
 - f. Client approved equivalent
 - 5. Manufacturer's McKinstry may use for the procurement of ATS:
 - a. ASCO
 - b. Russelectric
 - c. Eaton
 - d. Generac
 - e. Caterpillar
 - f. Kohler
 - g. Cummins
 - h. Client approved equivalent
 - 6. Fuel Storage: no external fuel storage will be supplied unless the client requests longer than 24 hours' run time.

C. Construction:

Construction and installation of the new generators and ATS's will be per design docs that will be created and stamped by a licensed PE to include the below, but not limited to the following:

- a. Shipping and delivery of engine-generator and ATS to site.
- b. Offloading of gen set and ATS on to site.
- c. Construction of cement pad to mount engine-generator.
- d. Install all power and control cable and conduit required for generator and ATS.



Exhibit A: Scope of Work & Fee Schedule

- e. Construction of all underground for conduit or cable.
- f. Saw-cut for existing cement for routing of conduit and cable.
- g. Demo existing ATS.
- h. Install new ATS.
- i. Tie electrical controls to/from generator to/from ATS.
- j. Tie in feeder cables and install conduit from ATS to MDP.
- k. Return site to existing conditions

D. Commissioning:

- a. Commissioning process scope shall be completed for the generator and ATS systems listed above. Commissioning oversight scope includes producing test plans and testing scripts, witnessing of OEM install and start-up services along with documentation, testing and function testing by OEM provided load banks, and followed up with owner training on new equipment. All Cx will be conducted according to the NFPA 110 and NEC, and NETA- ATS standards.
- b. Testing Methods
 - i. Step Load
 - ii. Block Load
 - iii. 100% Burn in for a 2-hour duration.
 - iv. Test Generator Emergency Shutdowns
 - v. Power Quality and Transient Analysis of All Load Tests Above
 - vi. Automatic Transfer Switch (ATS): confirm controls and emergency transfer.

CLIENT RESPONSIBILITIES

For MCKINSTRY to effectively execute its obligations under this agreement within the timeframes specified in this agreement, CLIENT shall perform its responsibilities, obligations, and services, including its reviews and approvals of MCKINSTRY's submissions, in a timely manner so as not to delay or interfere with MCKINSTRY's performance of its obligations under this Agreement.

CLIENT shall provide, at its own cost and expense, for MCKINSTRY's information and use, the following, all of which MCKINSTRY is entitled to rely upon in performing its obligations hereunder:

1. As-builts of all mechanical, electrical, architectural, plumbing, and structural drawings.
2. Good Faith Survey for hazardous material.
3. Client shall be responsible for providing natural gas lines up to the point of interconnect to the natural gas generators and meeting the natural gas reequipments of flow and pressure as required by the engine manufacturer.
4. Any other information reasonably requested by MCKINSTRY.



Exhibit A: Scope of Work & Fee Schedule

5. Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
6. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
7. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use or necessary to permit the proper design and construction of the Project.
8. To the extent available, as-built and record drawings of any existing structures at the Site.
9. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

EXCLUSIONS

The following exclusions and clarifications apply to this scope of work:

General Exclusions & Assumptions

- Correction of deficiencies not explicitly listed in the scope of work is excluded; if existing equipment or components are reused, repairs to existing equipment or components is excluded unless specifically noted in the scopes of work.
- Prices are valid for 30 days after proposal presentation. After 30 days, MCKINSTRY reserves the right to update pricing based on changes in labor rates, equipment and material.
- Demolition work not specified in the scopes of work is excluded.
- Any equipment or work not specifically identified in the scopes of work is excluded.
- Lightning protection is excluded.
- Arc Flash Study is excluded.
- Network or IT work not specifically called out in scope of work is excluded.
- Generator fencing, screens, bollards, or sound barriers are excluded.
- Demand limiting, load shedding controls are excluded.
- Asbestos abatement of any kind is excluded.
- It is assumed that, except as stated in the scopes of work, the existing structure is adequate to accommodate new and existing equipment.
- Correction of any existing code violations not identified in the scope of work is excluded.
- Furnishing or installing any access panels or doors not specifically identified is excluded.
- Repair of any pre-existing damage not specifically identified in the scopes of work is excluded from this scope.

Exhibit A: Scope of Work & Fee Schedule

- It is assumed that the existing electric utility services are operational and adequately sized to accommodate new equipment.
- Electric Utility – everything on the line side of the client’s utility meter is the responsibility of the client and any upgrades required by the utility “ONCOR” for any reason will be the responsibility of the client and or ONCOR to correct or upgrade.
- Client’s Existing Electrical System – if it is discovered that any of the client’s electrical system requires upgrades in order to allow integration of the generator and ATS due to National Electrical Code violations or for insufficient: ampacity, short circuit ratings or any other nominal ratings found in the design stage by the engineer of record for the project, operational or functional problems, or due to requirements from the inspectors and authority having jurisdiction; it will not be included in the current scope of this project for McKinstry. *Upon discovery of any aforementioned problems, by McKinstry, the engineer of record, or AHJ / inspector that would prevent integration, McKinstry will recommend to the client the corrective action or design and equipment changes or upgrades and can supply an additional project for that equipment and work.
- Commissioning systems not specifically called out in the scope of work are excluded.
- Readiness for assessment: 1 single commissioning trip is provided per station, and upon arrival, all electrical gear mentioned above shall be accessible by McKinstry personnel.
- It is assumed work will be executed during normal business hours (7am – 4pm, M-F).
- McKinstry will initiate this scope of work immediately upon proposal acceptance.

Equipment & Material Selections

- The Contract Sum Price is based on the scopes of work, exclusions, and clarifications. Where scopes of work reference particular equipment selections, material sizing, and dimensions, the selections are a basis of design and may change during the design period. Final equipment and material selections will be provided in 100% Construction Drawings.

Design

- The Lump Sum Price documents are assumed to be the 'Design Development' documents and as such the final design deliverables shall follow standards associated with the 'Construction Documents'. The construction documents will not include selections or specifications as neither is necessary for the scope of work to be performed.

Construction and Schedule

- MCKINSTRY will provide a construction schedule within 45 days from the execution of this agreement and will be added as an exhibit to this contract as a no cost change order.
- MCKINSTRY reserves the right to extend construction timelines and/or issue a change order as required to account for any delays in construction outside of MCKINSTRY’s control.
- Should above average inclement weather occur during the above construction period MCKINSTRY reserves the right to request a modification to the project delivery schedule and contractual end date. No extension of time will be allowed for weather unless the number of days of adverse weather is substantially greater than the average for the calendar period as recorded by a recognized weather



Exhibit A: Scope of Work & Fee Schedule

observation agency.

- Costs are based on prompt and safe access to all areas necessary to complete these scopes of work.
- Moving of facility equipment, finished and/or furniture is excluded.

Equipment Maintenance

- MCKINSTRY will provide no equipment maintenance or repairs after the warranty period. Warranty begins following Substantial Completion. Maintenance during the warranty period is the responsibility of the owner unless otherwise stated.

Asbestos / Hazardous Material

- No asbestos / hazardous abatement, testing and/or removal shall be performed by MCKINSTRY. All work-stoppage or delays due to asbestos materials will be at Client's expense.
- The Client will schedule removal or abatement in a manner that does not affect the project delivery schedule.
- Should asbestos removal cause work stoppage during the above construction period MCKINSTRY reserves the right to modify project delivery schedule.

Scheduled Shut-Downs

- MCKINSTRY will give notice for heating, cooling, controls or electrical related shutdowns required to complete the implementation of the scope measures listed in this document.

Building Structure Specific Exclusions

- Pre-existing damage to building foundation
- Pre-existing utilities damage

PRICE PROPOSAL

McKinstry's price for the scope of work in this agreement is as follows:

Generator Turnkey Replacement Projects	
Site Name	Contract Amount
Fire Station 1	\$332,429
Police Department	\$323,336
Total Contract Amount:	\$655,765

