

**SPECIFICATIONS AND CONTRACT DOCUMENTS  
FOR THE CONSTRUCTION OF**

# **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

**TOWN OF ADDISON, TEXAS  
PUBLIC WORKS AND ENGINEERING SERVICES  
BID NUMBER 24-69, Project #2023-01C**

**MARCH 2024**

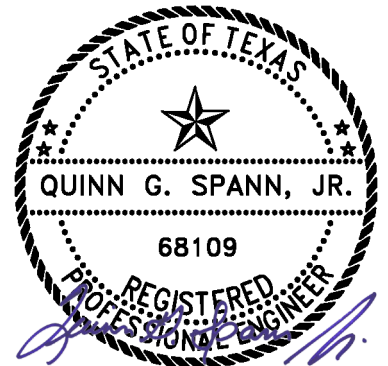
**PREPARED BY**



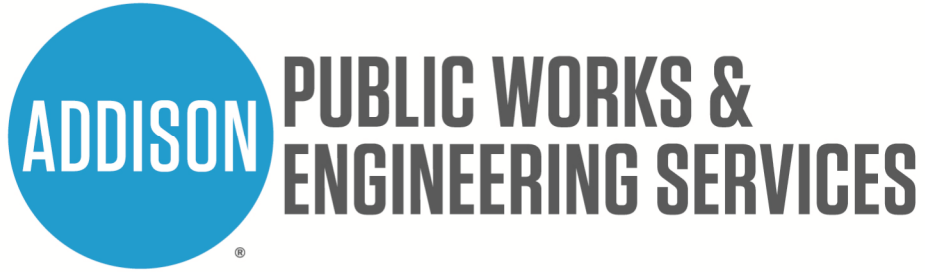
Texas Registration No. F-5713

**3000 Internet Blvd, Ste. 400**

**Frisco, Texas 75034  
(972) 377-7480**



Digitally sealed on  
March 27, 2024



**TOWN OF ADDISON, TEXAS**

**MAYOR**

**Bruce Arfsten**

**MAYOR PRO TEM:**

**Eileen Resnik**

**DEPUTY MAYOR PRO TEM:**

**Guillermo Quintanilla**

**COUNCIL MEMBERS**

**Nancy Craig**

**Darren Gardner**

**Dan Liscio**

**Marlin Willesen**

**CITY MANAGER**

**David Gaines**

**DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES**

**Shannon Hicks, P.E.**

## TABLE OF CONTENTS

<b>Section AB</b>	<b>Advertisement for Bids</b>
<b>Section IB</b>	<b>Instructions to Bidders</b>
<b>Section PF</b>	<b>Proposal Form</b>
<b>Section BB</b>	<b>Bid Bond</b>
<b>Section BQS</b>	<b>Bidder Qualification Statement</b>
<b>Section CA</b>	<b>Construction Services Agreement</b>
<b>Section PrB</b>	<b>Performance Bond</b>
<b>Section PyB</b>	<b>Payment Bond</b>
<b>Section MB</b>	<b>Maintenance Bond</b>
<b>Section BP</b>	<b>Contractor's Affidavit of Bills Paid</b>
<b>Section GP</b>	<b>General Provisions</b> <i>Standard Specifications for Public Works Construction – North Central Texas (5<sup>th</sup> Edition, 2017)</i>
<b>Section GTC</b>	<b>General Terms and Conditions</b>
<b>Section SP</b>	<b>Special Provisions</b>
<b>Section PS</b>	<b>Project Sign</b>
<b>Section TS</b>	<b>Technical Specifications</b>
<b>Section IS</b>	<b>Additional Insurance Requirements, Town of Addison</b>
<b>Section IP</b>	<b>Interested Parties HB1295</b>
<b>Section IIF</b>	<b>Information and Instruction Form</b>
<b>Appendix A</b>	<b>N/A</b>

**SECTION AB**

**ADVERTISEMENT FOR BIDS**

## **ADVERTISEMENT FOR BIDS**

1. The Town of Addison is requesting bids for the Bid of the Addison Hutton Outfall Channel and Town Hall Channel Improvements. **Bids will be accepted until 2:00 p.m., Thursday, May 23, 2024** at the Finance Building, 5350 Belt Line Rd., Dallas, Texas 75254 – Attention Purchasing Department, at which time responders names and bids will be publicly read aloud. Late bids will not be considered. The plans, specifications, quantities, pre-bid time and date, and other information are available on [www.civcastusa.com](http://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 bids, and to select the proposal deemed most advantageous to the Town of Addison.

2. The Contractor shall identify his bid on the outside of the envelope by writing the words **PUBLIC WORKS AND ENGINEERING SERVICES BID NUMBER 24-69, ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS (PROJECT #2023-01C)**.

PAPER BIDS SHALL BE REQUIRED. AN ELECTRONIC COPY OF THE BID SHALL BE INCLUDED IN THE ENVELOPE WHEN THE PAPER BID IS SUBMITTED. A USB DRIVE IS PREFERRED.

3. Bids shall be accompanied by a bid bond in an amount not less than five percent (5%) of the total maximum bid price payable without recourse to the Town of Addison, from a surety company licensed to do business in the State of Texas as a guarantee that the bidder will enter into a contract and execute a Performance Bond and Payment Bond within ten (10) calendar days after notice of award of contract to him.

4. Plans, specifications and bidding documents may be downloaded from [www.civcastusa.com](http://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](http://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 bids and to waive any formality in bids 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. **An optional pre-bid meeting will be held on Monday, May 13, 2024 at 2:00pm in the Town of Addison Service Center, 1<sup>st</sup> Floor Large Conference Room, 16801 Westgrove Drive, Addison, Texas 75001 A site visit will follow this meeting.**

10. For information on bidding or work to be performed, please submit all questions on [www.civcastusa.com](http://www.civcastusa.com). All questions must be received by 12:00pm on Thursday **May 16, 2024**. All questions received by this deadline will be answered by 5:00pm on Monday, **May 20, 2024**.
11. **The project consists of constructing the channel improvement to Addison Hutton Outfall Channel and Town Hall channel. The improvements include, channel excavation, channel slope pavement removal and replacement, MBGF, minor paving concrete removal and replacement.**

Advertising:

**May 1, 2024**

**May 8, 2024**

**May 15, 2024**

**SECTION IB**

**INSTRUCTIONS TO BIDDERS**

## **INSTRUCTIONS TO BIDDERS**

- A. PROJECT:** **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**, in the Town of Addison. The bids will be evaluated as stated in Section " I/P "of these Instructions to Bidders.
- B. PROJECT DESCRIPTION:** **The project consists of constructing the channel improvement to Hutton Outfall Channel and Town Hall channel. The improvements include, channel excavation, channel slope pavement removal and replacement, MBGF, minor paving concrete removal and replacement.**
- C. PROPOSALS:** Proposals must be in accordance with these instructions in order to receive consideration.
- D. DOCUMENTS:** Reference the Contract Agreement for a listing of Contract Documents to be included for this project.
- E. 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 Contract Documents 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.
- F. INTERPRETATION OF DOCUMENTS:** If any person contemplating submitting a bid 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 **12:00pm on Thursday, May 16, 2024**. All questions received by this deadline will be answered by **5:00pm on Monday, May 20, 2024**. Bidders should act promptly and allow sufficient time for a reply to reach them before preparing their bids. 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.
- G. 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 bid date.
- H. 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](http://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](http://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](http://www.civcastusa.com) not later than three (3) calendar days prior to the date fixed for the opening of bids. If any bidder fails to acknowledge the receipt of such addenda in the space provided in the bid form, his bid will nevertheless be construed as though the receipt of such addenda had been acknowledged.

I. The Town may consider more factors than just price in awarding a the 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 bids, proposals, or qualifications

J. **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 **Garver, LLC**. **Garver, LLC** 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 **90 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.

- K. PREPARATION OF BIDS:** 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. Bids shall be submitted in duplicate and shall be signed in ink. Any bid on other than the required form will be considered informal and may be rejected. Erasures or other changes in a bid must be explained or noted over the initials of the bidder. Bids 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 bid and that given in the figures, the price in writing will be considered as the bid. 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 bid irregular and subject to rejection. Bids 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, bids 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.
- L. SUBMITTAL OF BIDS:** 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 24-69**

**ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL  
IMPROVEMENTS-PROJECT #2023-01C**

An electronic copy of the bid shall be included in the envelope when the paper copy bid is submitted. A USB drive is preferred.

The Bid Bond must be completed and signed by each bidder and submitted with the bid. Submit Bids by mail or in person prior to the time for receiving bids set forth in the Advertisement for Bids issued by the Town.

Electronic bidding on [www.civcastusa.com](http://www.civcastusa.com) will not be considered for this project. The Town of Addison uses [www.civcastusa.com](http://www.civcastusa.com) to distribute bids and proposals. There will be NO COST to the contractor for the use of [www.civcastusa.com](http://www.civcastusa.com).

- M. MODIFICATION AND WITHDRAWAL OF BIDS:** Prior to the time set for bid opening, bids may be withdrawn or modified. Bids 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 bid or any part thereof for sixty (60) calendar days after the time agreed upon for the receipt of bids.
- N. 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.

**O. SUBMISSION OF POST-BID 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.

**P. AWARD:** The Owner reserves the right to accept any or to reject any bids 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, 5<sup>th</sup> Edition*, (hereinafter called SSPWC) Item 104.2 "Change or Modification of Contract".

**Q. 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 bid has been accepted. Failure to enter into a contract within the established time limit shall be considered grounds for forfeiture of the bid bond.

**R. 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.

**S. COST PLUS TIME BIDDING:** N/A

**T. 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.

- U. 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.)
- V. BID SECURITY:** Bids shall be accompanied by a bid bond in the same amount from a surety company licensed to do business in the State of Texas as a guarantee that the bidder will enter into a contract and execute a Performance Bond and Payment Bond within ten (10) calendar days after notice of award of contract to him. Such bid bonds will be returned to all except the three lowest bidders within three (3) days after the opening of bids, and the remaining bid bonds will be returned promptly after the Owner has made an award of contract, or, if no award has been made within thirty (30) calendar days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid.
- W. RESOLUTIONS:** If the bidder is a corporation, a copy of the resolution empowering the person submitting the bid to bind the bidder must be included with the bid.
- X. 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.
- Y. 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, if applicable.
  6. Public Infrastructure Contribution.
- Z. 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.
- AA. PRIORITY OF CONTRACT DOCUMENTS:** Reference the Contract Agreement for information regarding the priority of Contract Documents.

**SECTION PF-1**

**PROPOSAL FORM**

**PROPOSAL FORM**

\_\_\_\_\_, 2024

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: \_\_\_\_\_

ACKNOWLEDGMENT OF ADDENDA:

The Bidder acknowledges receipt of the following addenda:

Addendum No. 1 \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_

The following pages contain all bid items for:

**BID SCHEDULE – ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL  
IMPROVEMENTS BID NUMBER 24-69**

**ADDISON HUTTON OUTFALL CHANNEL AND  
TOWN HALL CHANNELL**

Item No.	Quantity	Unit	Description of Item and Unit Bid Price in Words	Unit Price in Figures	Extended Amount
1	1	LS	Mobilization and Demobilization/Clean Up (Max 10% of Bid Total) (For Both Outfalls) Complete in place for the sum of: _____ dollars and _____ cents per lump sum.	\$	\$
2	1	LS	Traffic Control (Incidental With Barricades, Signs, and Traffic Handling)(See Note 5) Complete in place for the sum of: _____ dollars and _____ cents per lump sum.	\$	\$
3	2	EA	Project Sign (For Both Outfalls) (1 Sign per Site) Complete in place for the sum of: _____ dollars and _____ cents per each.	\$	\$
4	1	LS	Insurance and Bonding (Quantity Includes 1 to Insure Both Outfalls) Complete in place for the sum of: _____ dollars and _____ cents per lump sum.	\$	\$
5	1	AL	Construction Contingency (As Approved By Owner) (See Note 4) Complete in place for the sum of: Twenty-Five Thousand _____ dollars and _____ Zero _____ cents per allowance.	\$25,000.00	\$25,000.00
6	150	CY	Unclassified Excavation (Plan Quantity) (See Note 1) Complete in place for the sum of: _____ dollars and _____ cents per cubic yard.	\$	\$
7	1	LS	Clearing and Grubbing (Including 1 Stump Removal) (For Both Outfalls) Complete in place for the sum of: _____ dollars and _____ cents per lump sum.	\$	\$
8	80	LF	Remove, Salvage, and Reinstall MBGF (Install New Wooden Posts) Complete in place for the sum of: _____ dollars and _____ cents per linear foot.	\$	\$
9	1	EA	Remove and Dispose of Existing MBGF Turndown Complete in place for the sum of: _____ dollars and _____ cents per each.	\$	\$
10	50	SY	Remove Existing Concrete Sloped Pavement (Regardless of Thickness) Complete in place for the sum of: _____ dollars and _____ cents per square yard.	\$	\$
11	20	SY	Remove Existing Concrete Driveway or Parking Lot Pavement (Including Curb) (Regardless of Thickness) Complete in place for the sum of: _____ dollars and _____ cents per square yard.	\$	\$

**ADDISON HUTTON OUTFALL CHANNEL AND  
TOWN HALL CHANNELL**

Item No.	Quantity	Unit	Description of Item and Unit	Bid Price in Words	Unit Price in Figures	Extended Amount
12	20	CY	Construct 6" 3,000 PSI Concrete Sloped Pavement (TxDOT RR8) (See Note 3) Complete in place for the sum of: _____ dollars and _____ cents per cubic yard.		\$	\$
13	1	LS	Repair Concrete Headwall Spall and Straighten Metal Pipe Rail (See Note 6) Complete in place for the sum of: _____ dollars and _____ cents per lump sum.		\$	\$
14	20	SY	Construct 8" 4,000 PSI Driveway or Parking Lot Pavement (Including 6" Mono Curb) Complete in place for the sum of: _____ dollars and _____ cents per square yard.		\$	\$
15	100	LF	Install Crack Sealing in Existing Concrete Sloped Pavement Complete in place for the sum of: _____ dollars and _____ cents per linear foot.		\$	\$
16	1	EA	Construct New Single Guardrail Terminal (SGT) (12S)31-18 Complete in place for the sum of: _____ dollars and _____ cents per each.		\$	\$
17	1	EA	Remove Exist Tree (Including Rootball) (12" to 18" Dia.) Complete in place for the sum of: _____ dollars and _____ cents per each.		\$	\$
18	350	SY	Block Sod (Match Existing) (Including Watering, Mowing, and Full Grass Establishment) Complete in place for the sum of: _____ dollars and _____ cents per square yard.		\$	\$
19	550	SY	Hydromulch w/ Biodegradable Erosion Control Blanket (Including Ground Staples) (Including Watering and Full Grass Establishment) Complete in place for the sum of: _____ dollars and _____ cents per square yard.		\$	\$
20	70	LF	Rock Filter Dam (Ty II) (Inst./Maint./Rem.) Complete in place for the sum of: _____ dollars and _____ cents per linear foot.		\$	\$
21	1	EA	Inlet Protection (Inst./Maint./Rem.) Complete in place for the sum of: _____ dollars and _____ cents per each.		\$	\$
22	30	LF	Biodegradable Erosion Control Log (Inst./Maint./Rem.) Complete in place for the sum of: _____ dollars and _____ cents per linear foot.		\$	\$

**TOTAL BID PRICE (Items 1-22)** \_\_\_\_\_



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TOTAL AMOUNT OF BASE BID (ITEMS 1 THROUGH 22)

\$ \_\_\_\_\_ -

(Total Amount Bid,  
Numerical Value)

\_\_\_\_\_ Dollars

and \_\_\_\_\_

\_\_\_\_\_ Cents

(Total Amount Bid in Words)

**\*The Owner reserves the right to delete any bid items or portions thereof. If the Owner elects to delete any portions of the PROJECT from the contract, then the contract can be awarded on that basis.**

- 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.

\_\_\_\_\_  
Name of Person Signing Bid

\_\_\_\_\_  
Signature of Person Signing Bid

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Fax No.

\_\_\_\_\_  
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**

By \_\_\_\_\_ (Firm Name) (Seal)

\_\_\_\_\_ (General Partner)

doing business as \_\_\_\_\_

Business address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_

**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.

**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 concrete pavement, channel improvements, and traffic control in close proximity to many physical features (such as: channels with active storm water, roadways, fences, drives, 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 24-69, ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

Contractor: \_\_\_\_\_

Indicate One: \_\_\_\_\_ Sole Proprietor      \_\_\_\_\_ Partnership      \_\_\_\_\_ Other  
                                 \_\_\_\_\_ Corporation      \_\_\_\_\_ Joint Venture

Name: \_\_\_\_\_ Partner: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ City: \_\_\_\_\_

State & Zip: \_\_\_\_\_ State & Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

State and Date of Incorporation, Partnership, Ownership, Etc. \_\_\_\_\_

Location of Principal Office: \_\_\_\_\_

Contact and Phone at Principal Office: \_\_\_\_\_

Liability Insurance Provider and Limits of Coverage: \_\_\_\_\_

Workers Compensation Insurance Provider: \_\_\_\_\_

Surety (Performance and Payment): \_\_\_\_\_

Address: \_\_\_\_\_

Contact and Phone: \_\_\_\_\_



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

Backup Superintendent Name

\_\_\_\_\_

Safety Record – List ALL Verified Violations for Superintendent and Backup Superintendent with explanation, date and action taken to correct future safety violations:

Superintendent

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Backup Superintendent

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total Number of Employees to be Associated with this Job: \_\_\_\_\_

Managerial \_\_\_\_\_ Administrative \_\_\_\_\_ Professional \_\_\_\_\_

Skilled \_\_\_\_\_ Semi-Skilled \_\_\_\_\_ Other \_\_\_\_\_

Percentage of work to be done by Bidder's Employees (Based on Dollars Bid): \_\_\_\_\_

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.)

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Access to Tools and Equipment: Percent Owned \_\_\_\_ Percent Rented \_\_\_\_

Number of Years in Business as a Contractor on Above Types of Works: \_\_\_\_\_

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

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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)

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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: \_\_\_\_\_

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: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
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: \_\_\_\_\_

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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: \_\_\_\_\_

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Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: \_\_\_\_\_

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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: \_\_\_\_\_

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Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: \_\_\_\_\_

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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: \_\_\_\_\_

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Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: \_\_\_\_\_

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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? \_\_\_\_\_
2. Are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or officers? \_\_\_\_\_
3. Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? \_\_\_\_\_
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? \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn deposes and says that the information

provided herein is true and sufficiently complete so as not to be misleading.

Date this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Name of

Organization: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF TEXAS**

**COUNTY OF DALLAS**

**BEFORE ME** the undersigned authority, on this day personally appeared \_\_\_\_\_, 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 \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_ County, Texas

**CONSTRUCTION SERVICES AGREEMENT**  
ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS  
(Bid # 24-69 )

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 #24-69** \_\_\_\_\_;
  - (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 \_\_\_\_\_ **(90) calendar days**. Accordingly, Contractor shall complete all work related to the Project on or before \_\_\_\_\_ **(90) calendar days** following the date of City's written notice to proceed to Contractor.

(b) Extentions; 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 **\$500 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:

For Contractor:

TOWN OF ADDISON, TEXAS

[CONTRACTOR ENTITY NAME]

By: \_\_\_\_\_  
David Gaines  
City Manager

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Notice Address:

Notice Address:

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

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 \_\_\_\_\_ 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
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 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
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 HUTTON CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

**INFRASTRUCTURE AND DEVELOPMENT SERVICES BID NUMBER 24-69**

---

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, 5<sup>th</sup> 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 Bid (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.bidsync.com](http://www.bidsync.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 BidSync 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 bid 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 bid 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 bid 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, disclaim, 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 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 Bid 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 bid 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: Bids 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 bid, and to accept the offer considered most advantageous to the Town by line item or total bid.

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 bid 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 bid, 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 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.

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 7<sup>th</sup> 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](http://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 this 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 bid, 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 bid, acceptance or rejection of any bid, 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.

60: NO INDUSTRY DISCRIMINATION. The entity contracting with the Town of Addison does not discriminate against firearm and ammunition industries during the term of the contract. Reference SB 19 as it relates to Chapter 2251 of the Texas Government Code. Discriminating means refusing to deal with, terminate 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.

**ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL  
IMPROVEMENTS**

**SECTION SP**  
**SPECIAL PROVISIONS**

# ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS

## 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 HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS.** (“Project”)
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 (**Garver, LLC**).
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 (November 2014); Standard Specifications for Public Works Construction, North Central Texas - North Central Texas Council of Governments (5th edition, 2017); 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.

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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.
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.

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",

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

“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 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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

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



## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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 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.”

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

11. **COMPLIANCE WITH IMMIGRATION LAWS:** Contractor shall take all steps necessary to ensure that 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.
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 Bid opening. The ability to ask questions will close at **12:00pm on Thursday May 16, 2024**. 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](http://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](http://www.civcastusa.com). Addenda will be bound with and made a part of the Contract Documents. No other explanation or

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

### **TECHICAL SPECIFICATIONS- Bid Items Descriptions**

#### **BID ITEM 1 -MOBILIZATION AND DEMOBILIZATION / CLEAN UP (MAX 10%)(FOR BOTH OUTFALLS):**

This item shall govern for the establishment of office and other facilities at the project site and the movement of personnel, construction equipment, project signs, and supplies to the project site or to the vicinity of the project site to enable the Contractor to begin work on the other contract items that will be performed by the Contractor. This item includes mobilization for both site locations. The maximum bid amount for this item shall not exceed ten percent (10%) of the total bid. Partial payments of the Lump Sum (LS) bid for mobilization will be as outlined in **Special Provisions No. 25 for details for payment for this line Item.**

#### **BID ITEM 2 -TRAFFIC CONTROL (INCIDENTAL WITH BARRICADES, SIGNS, AND TRAFFIC HANDLING)**

This item shall include the developing the final traffic control plans signed by a Professional Engineer licensed in the State of Texas that shall be reviewed and approved by the Town of Addison Engineering Department prior to the start of any construction activities. Refer to the Traffic Control Plan in this set of plans for a general schematic of how to develop the final traffic control plan. This item shall include the furnishing, installation, maintenance and removal of barricades, channeling devices, lights, warning signs, temporary traffic signal controls, temporary pavement markings, and all other necessary traffic control items in accordance with the traffic control plans. The Lump Sum (LS) price shall include all labor, equipment, materials, and incidentals necessary to complete the work. **See Special Provisions No. 50 and No. 51.**

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

### **BID ITEM 3 - PROJECT SIGN (FOR BOTH OUTFALLS)( 1 SIGN PER SITE)**

This item shall include all material, labor, equipment, tools and superintendence necessary to furnish, install, and maintain Project Signs as described in Section PS. The per Each (EA) price shall include all labor, equipment, materials, and incidentals necessary to complete the work.

### **BID ITEM 4 - INSURANCE AND BONDING (QUANTITY INCLUDES 1 TO INSURE BOTH OUTFALLS)**

This item shall be used by the contractor to pay for the required insurance and bonding of this project which will be paid for by the unit price lump sum (LS) and shall include all cost associated with obtaining the necessary insurance and bonds of this project.

### **BID ITEM 5 - CONSTRUCTION CONTINGENCY (AS APPROVED BY OWNER)**

This item shall be used by the Town of Addison at their discretion for addition miscellaneous work that they may require that is not covered in the other bid items. This unit price is an allowance (AL). Contractor shall provide a detailed itemized breakdown of labor, materials, and profit markup in order to be reimbursed under this item.

### **BID ITEM 6 – UNCLASSIFIED EXCAVATION (PLAN QUANTITY)**

This work consists of all the required excavation within the limits of the right-of-way and adjacent areas to grade roadway and channel as shown on the plans. All excavation is considered unclassified and shall be performed to the lines & grades shown on the construction plans or as directed by the ENGINEER, in accordance with the appropriate specifications, details and notes, including NCTCOG Item 203.2, 203.4 & 203.5.

This item also includes temporary stockpiling, placement, and compaction of excavated or borrow material required for this project, in accordance with the appropriate specifications. Fill shall be placed and compacted (minimum 95% of maximum dry density) in accordance with the specifications, details, notes, and geotechnical report.

This is a “Plans Quantity” item and will not be measured unless there are revisions to the scope of work. Payment for work performed and materials furnished related to the unclassified excavation and embankment, as provided herein, shall be made on the basis of the price bid per cubic yard (CY) for unclassified excavation 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 7: CLEARING AND GRUBBING (INCLUDING 1 STUMP REMOVAL)(BOTH OUTFALLS)**

This item shall consist of removal and proper disposal of shrubbery, plants, sod, rocks, boulders, rock channel, and any vegetation necessary for the contractor to properly construct this project, including trees smaller than 6 inches in diameter; in accordance with the appropriate

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

specifications, details and notes, including NCTCOG Item 203.1-General Site Preparation. The contractor shall be responsible for all damage to adjacent trees, etc., and any such damage shall be remedied to the satisfaction of the Town at the expense of the Contractor. Where shrubbery, plants, sod and any vegetation are removed in making the excavation, such areas shall be brought back to the original ground elevation and replanted per other separate bid items. The lump sum (LS) price bid shall include all labor, equipment, material, legal removal and disposal, and incidentals necessary to complete the work.

### **BID ITEM 8 – REMOVE, SALVAGE, AND REINSTALL MBGF (INSTALL NEW WOODEN POSTS)**

This item shall consist of removing, salvaging and reinstalling the existing metal beam guard fence with new timber post and new hardware. This item also includes removing and legally disposing off-site all wooden posts. Metal beam guard fence and posts shall be installed in accordance with project specification, details, and notes, including TxDOT Item 540.

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 9 – REMOVE AND DISPOSE OF EXISTING MBGF TURNDOWN**

This item shall consist of removing the existing metal beam guard fence turndown. This item shall consist of removing and legally disposing off-site all railing and wooden post as delineated by the plans, in accordance with the appropriate specifications, details and notes, including NCTCOG Item 203.1. The per each (EA) price bid shall include all labor, equipment, hauling, disposal cost, and incidentals necessary to complete the work.

### **BID ITEM 10 - REMOVE EXISTING CONCRETE SLOPED PAVEMENT (REGARDLESS OF THICKNESS)**

This item shall consist of sawcutting, removing and legally disposing off-site all concrete slope pavement as delineated by the plans. Sawcutting will not be measured for payment and will be considered subsidiary to the removal of the concrete; in accordance with the appropriate specifications, details and notes, including NCTCOG Item 203.1. The per square yard (SY) price bid, regardless of the thickness of the concrete, shall include all labor, equipment, hauling, disposal cost, and incidentals necessary to complete the work.

### **BID ITEM 11 - REMOVE EXISTING CONCRETE DRIVEWAY OR PARKING LOT PAVEMENT (INCLUDING CURB) (REGARDLESS OF THICKNESS)**

This item shall consist of sawcutting, removing and legally disposing off-site all concrete roadway, driveway and parking lot pavement or median (including integral curb) as delineated by the plans. Sawcutting will not be measured for payment and will be considered subsidiary to the removal of the concrete; in accordance with the appropriate specifications, details and notes, including NCTCOG Item 203.1. The per square yard (SY) price bid, regardless of the thickness

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

of the concrete, shall include all labor, equipment, hauling, disposal cost, and incidentals necessary to complete the work.

### **BID ITEM 12 - CONSTRUCT 6" 3000 PSI CONCRETE SLOPED PAVEMENT (TXDOT RR8)**

This item shall consist of installation of concrete riprap at the locations shown in the drawings. Concrete riprap shall be installed in accordance with project specification, details, and notes, including TxDOT Item 432.

Measurement and payment shall be made on the basis of price bid per cubic yard (CY) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

### **BID ITEM 13 – REPAIR CONCRETE HEADWALL SPALL AND STRAIGHTEN METAL PIPE RAIL**

This item shall consist of straightening and repainting the damaged metal pipe rail embedded in the concrete headwall regardless of method (bending, cutting, welding, etc) and repairing the concrete headwall spall at the base of the pipe rail and headwall. Contractor shall repair any damage to galvanized or painted surfaces after repair in accordance with TxDOT Items 445, "Galvanizing", and TxDOT Item 446, "Field Cleaning and painting Steel". Contractor shall repaint the entire existing pipe rail (no separate pay for cleaning and painting); contractor shall coordinate with Town on paint color. Concrete headwall shall be installed/repared in accordance with project specification, details, and notes, including TxDOT Item 466.

Measurement and payment shall be made on the basis of price bid per lump sump (LS) and shall be total compensation for furnishing all materials, tools, equipment, labor, and any other incidentals necessary to complete the work.

### **BID ITEM 14 - 8" 4000 PSI DRIVEWAY OR PARKING LOT PAVEMENT (INCLD 6" MONO CURB)**

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, including NCTCOG Item 303.

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 15 – INSTALL CRACK SEALING IN EXISTING CONCRETE SLOPED PAVEMENT**

**ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

This item shall consist of installing hot poured polymer or ready-mixed cold-applied sealant per NCTCOG Item 401 in existing slope pavement cracks at the locations shown in the drawings. The per linear foot (LF) price bid shall include all labor, equipment, material, and incidentals necessary to complete the work.

**BID ITEM 16 – CONSTRUCT NEW SINGLE GUARDRAIL TERMINAL (SGT)(12S) 31-18**

This item shall consist of installation of new single guardrail terminal (SGT) shown at the locations shown in the drawings. SGT shall be installed in accordance with project specification, details, and notes, including TxDOT Item 540.

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 17 - REMOVE EXISTING TREE (INCLD. ROOT BALL)(12” TO 18” DIA)**

This item shall consist of removing trees, including the stumps and root ball, as shown in the drawings. The material removed must be hauled off by the contractor. Tree removal shall be in accordance with project specification, details, and notes, including NCTCOG Item 201. The per each (EA) price bid shall include all labor, equipment, material to fill for excavated hole area, hauling, legal disposal, and incidentals necessary to complete the work.

**BID ITEM 18 - BLOCK SOD (MATCH EXISTING)(INCLUDING WATERING, MOWING, AND FULL GRASS ESTABLISHMENT)**

This item shall consist of installing Block Sod (match existing or as directed by the Town of Addison staff). This block sod shall be place in areas as directed by the Town of Addison Staff, but shall not be used in areas outside the construction zone that have been damaged by the Contractor. Block Sodding shall be installed in accordance with project specification, details, and notes, including NCTCOG Item 204. The square yard (SY) price bid shall include all labor, equipment, material, watering, mowing and full grass establishment, and incidentals necessary to complete the work.

**BID ITEM 19 - HYDRAULIC MULCHING WITH BIODEGRADABLE EROSION CONTROL BLANKET (INCLD GROUND STAPLES) (INCLUDING WATERING, MOWING, AND FULL GRASS ESTABLISHMENT)**

This item includes all work, materials and incidentals necessary to restore channel banks or other areas that are disturbed to an equal or better condition than prior to construction, in accordance

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

with the appropriate details and specifications, including NCTCOG Item 204. Disturbed areas along the length of the project shall be fine graded and cut to receive hydraulic mulching.

Unless directed otherwise by the engineer, hydraulic mulching shall match the species (minimum of Bermuda sod) that existed prior to construction and/or the species adjacent to the disturbed area shall be placed in all disturbed areas where improved lawn or established turf existed prior to construction. The contractor will be required to water, fertilize, mow and otherwise maintain restored areas to establish healthy growth, even distribution of vegetation and full coverage over the entire restored area. The contractor shall also maintain and protect these areas from damage and repair any damage that occurs, until completion and final acceptance of the project by the OWNER.

Measurement and payment for channel and disturbed area restoration work performed and materials furnished complete and in place as provided herein shall be made on the basis of the price bid per square yard (SY) and shall be total compensation for furnishing and/or operating all labor, materials, tools, equipment and other incidentals necessary to complete the work, including watering, fertilizing, mowing and maintenance of the restored areas. Payment shall be made based on the quantity shown in the bid proposal, regardless if the amount installed in order to hydraulic mulching all disturbed areas exceeds the bid quantity. No more than 75% of this item will be paid until 100% turf coverage has been established in all areas disturbed, to the satisfaction of the OWNER.

### **BID ITEM 20 – ROCK FILTER DAM (TY ID)(INSTALL/MAINTAIN/REMOVE)**

This item shall consist of installation, maintenance, and removal of rock check dam at the locations shown in the drawings. Rock check dam shall be constructed in accordance with project specification, details, and notes, including NCTCOG Item 202.9.

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 21 - INLET PROTECTION (INSTALL/MAINTAIN/REMOVE)**

This item shall consist of installation, maintenance, and removal of inlet protection at the locations shown in the drawings. Inlet protection shall be constructed in accordance with project specification, details, and notes, including NCTCOG Item 202.14.

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 22 – BIODEGRADABLE EROSION CONTROL LOG (INSTALL/MAINTAIN/ REMOVE)**



## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

This item shall consist of installation, maintenance, and removal of straw erosion control sock at the locations shown in the drawings. Straw erosion control sock shall be constructed in accordance with project specification, details, and notes, including NCTCOG Item 202.18.

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.

20. **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.
  
21. **QUALIFICATION OF BIDS:** The Town of Addison reserves the right to reject any and all Bids, 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 Bids. The Town reserves the right to reject the Bid 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 Bid 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.

**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 bid 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:

- ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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 bid is determined to be in the best interest of the public and to reject all bids.

All payments will be based on actual quantities and bid unit prices.

22. **EXPLANATION OF CONTRACT TIME:** The term “Contract Time” as used in this Provision will mean the **90** calendar days (approx. 3 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 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.**

23. **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.
24. **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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.**

25. **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
26. **GENERAL SEQUENCE OF CONSTRUCTION:** Prior to the start of Work, the Contractor shall develop a detailed construction and sequence of construction schedule and submit to the Town of Addison and Engineer for approval. The schedule 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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

The Contractor must comply with all work area restrictions as indicated in the Plans unless specifically authorized in writing by the Town of Addison.

27. **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.
28. **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.
29. **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 bid 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.
    - 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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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](mailto: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.

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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

3.2 Licensed and admitted to do 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 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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

- 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 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;

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

- (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 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



**ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.”

**30. 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.

**31. 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"/> Bridge Superstructure  | <input type="checkbox"/> Valves & Boxes          |
| <input type="checkbox"/> Rock Riprap                 | <input type="checkbox"/> Manholes & Vaults      | <input type="checkbox"/> Backfill Materials      |
| <input type="checkbox"/> Sanitary Sewer Pipe/Fitting | <input type="checkbox"/> Metal Beam Guard Fence | <input type="checkbox"/> Handrail Shop Drawings  |

**32. 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).

**33. 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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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 (5<sup>th</sup> Addition) as amended or supplemented.

34. **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.

35. **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 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.
36. **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.
37. **PLANT, PROCEDURES, METHODS AND EQUIPMENT:** The Contractor shall determine the methods to be employed, the procedures to be followed, and equipment to

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.**

38. **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.
39. **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.
40. **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 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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

41. **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.
42. **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.
43. **SAFETY RESTRICTIONS - WORK NEAR HIGH VOLTAGE LINES:** The contractor is responsibly 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.
44. **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 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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

which are not made in the Plans, in which case, provisions in these Specifications for Extra Work shall apply.

45. **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.
46. **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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

47. **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.
48. **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 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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

49. **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 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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

- 50. 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.
- 51. 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 handling traffic does not provide for safe comfortable movement, the Contractor shall immediately change its operations to correct the unsatisfactory conditions.



## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

### **52. 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.

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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

**53. 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).

**54. 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.

**55. 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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

56. **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.
57. **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.
- 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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

i. Cut sheets shall be signed by a Texas Registered Professional Land Surveyor.

58. **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.
59. **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.

60. **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.
61. **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.**

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

- 62. 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.
- 63. 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.
- 64. 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.
- 65. 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.
- 66. 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 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:
- (1) Density and associated tests on embedment and backfill.
  - (2) Compressive strength tests on concrete.
  - (3) Gradation soil tests on backfill as may be required.
  - (4) Pressure test, bacteriological tests for disinfection of water lines,

**ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

- (5) Mandrel test for gravity sewer pipeline
- (6) Vacuum test for SSMH for water tightness.
- (7) Providing test results from manufacturer and as specified in Town of Addison Specifications (NTCOG).

67. **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.

68. **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.

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.”

69. **WAIVER OF CLAIMS:** The making and acceptance of final payment will constitute:

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

70. **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.
71. **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.
72. **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.

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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

- 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.

73. **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 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.



## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

The Contractor shall insert provisions in its subcontracts sufficient to ensure compliance with the content of this Section.

74. **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.

75. **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.

76. **USE OF EXPLOSIVES:** The use of explosives by the Contractor to complete the Work shall be prohibited.

77. **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.

78. **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 \$ 500 for each calendar day of delay until the Work is completed or accepted.

79. **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 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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

- 80. 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.

- 81. 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.

- 82. 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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.

**83. 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.

**84. 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.

**85. 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.

**86. 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 bid 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.

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

**CONSULTANT ENGINEER (DESIGN ENGINEER):** The consultant engineer of record is Quinn Spann, Jr., PE (Texas Registered PE #68109 with **Garver, LLC** located at 3000 Internet Blvd, Suite 400, Frisco, Texas 75034.

**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.

**87. 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 fourth 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 ninth 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.”

- 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 bid 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”

**ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

- E. Add the following word after the word “work” found on the fifth 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 107.2 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 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**

**ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL  
IMPROVEMENTS**

**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 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**

**ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

**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 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:

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

- (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 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



## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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, October 2004 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 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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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."

M. Add the following language after Section 107.5 of the General Provisions:

**"107.5.1. 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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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 107.11 of the General Provisions:

**“107.11.1. 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 107.4 of the General Provisions and replace it with the following:

**“107.4. 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 25<sup>th</sup> 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 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 15<sup>th</sup> 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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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.’

**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

## **ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

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. Delete Section 109.5.2 of the General Provisions and replace with the following:

"Ten-percent (10%) retainage shall be withheld until 40 days after Final Completion."

**88. 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 bid 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 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 bid is submitted

**ADDISON HUTTON OUTFALL CHANNEL AND TOWN HALL CHANNEL IMPROVEMENTS**

- G. The Contractor acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of bids, 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.
89. **PREVAILING WAGE RATES:** Wage rates paid on this Project shall not be less than specified in the latest published schedule of general prevailing rates of per diem wages as set forth below in the Davis Bacon Act General Decision No. TX130035:
90. **NO BOYCOTT ISREAL:** 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

**SECTION PS**

**PROJECT SIGN**

## **PROJECT SIGN**

### **1. Quantity**

Two (2) Project Designation signs will be constructed and installed on the project site (**One per site for this project**) 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. [The Contractor shall obtain a "QR Code" from the Town to install on the sign.](#)

### **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



QR Code

**PLEASE PARDON THE TEMPORARY  
INCONVENIENCE DURING THIS PROJECT**

**“PROJECT NAME”**

Obtain QR Code from  
the Town staff

CONTRACTOR: \_\_\_\_\_

ESTIMATED COMPLETION DATE:      XXX

AN ADDISON PROJECT

**FOR MORE INFORMATION, PLEASE CALL (972) 450-2871**

## SECTION TS

# TECHNICAL SPECIFICATIONS

### **STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (North Central Texas) - Fifth Edition 2017**

For this project, the Standard Specifications for Public Works Construction, North Central Texas, as prepared by the North Central Texas Council of Governments, and Town of Addison Standard Construction Details, shall govern all work to be done, together with any additional Technical Specifications included herein.

The following is a listing of technical specification sections that are anticipated for use on this project.

Site Protection & Preparation	Division 200
Roadway Construction	Division 300
Roadway Maintenance & Rehabilitation	Division 400
Underground Construction	Division 500
Conduit & Appurtenance Rehabilitation Structures	Division 600
Misc. Construction & Materials	Division 700
	Division 800

### **TXDOT STANDARD SPECIFICATION**

The Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges Adopted by the Texas Department of Transportation November 1, 2014 are included in the contract by reference and are available as a separate document from TxDOT at the following link: <https://www.txdot.gov/business/resources/txdot-specifications.html>

The following is a listing of technical specifications that are anticipated for use on this project.

Item 340	Dense-Graded Hot-Mix Asphalt (Small Quantity)
Item 401	Flowable Fill
Item 416	Drilled Shaft Foundations
Item 420	Concrete Substructures
Item 422	Concrete Superstructures
Item 425	Precast Prestressed Concrete Structural Members
Item 432	Riprap
Item 434	Bridge Bearings
Item 442	Metals for Structures
Item 450	Railing
Item 454	Bridge Expansion Joints
Item 462	Concrete Box Culverts and Drains
Item 464	Reinforced Concrete Pipe
Item 466	Headwall and Wingwall

- Item 467 Safety End Treatment
- Item 531 Sidewalks
- Item 540 Metal Beam Guard Fence
- Item 644 Small Roadside Sign Assemblies
- Item 666 Retroreflectorized Pavement Markings

The following is a listing of special specifications that are anticipated for use on this project.

- SS7076 Grouting of Water Mains

**SECTION IS**

**ADDITIONAL INSURANCE REQUIREMENTS**

**TOWN OF ADDISON, TEXAS**

IS 1

**TOWN OF ADDISON INSURANCE GUIDELINES**

**REQUIREMENTS**

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

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

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

TYPE OF INSURANCE	AMOUNT OF INSURANCE	PROVISIONS
1. <b>Workers' Compensation Employers' Liability</b> 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 GARVER, LLC to be provided a <b><u>WAIVER OF SUBROGATION AND 30 DAY NOTICE OF CANCELLATION</u></b> or material change in coverage. <b>Insurance company must be A-:VII rated or above.</b>
2. <b>Commercial General (Public) Liability</b> 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 GARVER, LLC to be listed as <b><u>ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u></b> or material change in coverage. <b>Insurance company must be A-:VII rated or above.</b>
3. <b>Business Auto Liability</b> 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 GARVER, LLC to be listed as <b><u>ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u></b> or material change in coverage. <b>Insurance company must be A-:VII-rated or above.</b>
4. <b>Umbrella or Excess Liability Policy over Commercial General Liability and Automobile Liability limits of \$1 million per occurrence</b>	Minimum \$4 million per occurrence excess \$1 million underlying per occurrence	TOWN OF ADDISON, and GARVER, LLC to be listed as <b><u>ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u></b> or material change in coverage. <b>Insurance company must be A-:VII-rated or above.</b>

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](mailto: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 Kimley-Horn and 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#** \_\_\_\_\_

**Company:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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Information and Instruction Form

RESPONSES THAT DO NOT CONTAIN THIS COMPLETED FORM MAY NOT BE COMPLIANT

Section I Company Profile

Name of Business:

Business Address:

Contact Name:

Phone#:

Fax#:

Email:

Name(s) Title of Authorized Company Officers:

Federal ID #: W-9 Form: A W-9 form will be required from the successful bidder.

DUN #:

Remit Address: If different than your physical address:

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.

**Contractor Responsibility:** It is the contractor's responsibility to check for any addenda or questions and answers that might have been issued before the bid closing date and time. Contractors/Suppliers will be notified of any addenda and Q&A if they are on the invited list, they view the bid or add themselves to the watch list.

Acknowledgement of Addenda: #1 #2 #3 #4 #5



## **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](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm), please follow Instructional Video for Business Entities.



Delivery of Bids: For delivery of paper bids, our physical address is:

Town of Addison

5350 Beltline Road

Dallas, TX 75254

Attn: Purchasing Department

Contractor: No Contractor 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.

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.

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 bid.

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:

Title:

Signature certifies no changes have been made to the content of this solicitation as provided by the Town of Addison.

Today's date:

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