

TOWN OF LITTLE ELM, TEXAS
CONSTRUCTION MANAGER AT RISK AGREEMENT

For the consideration hereinafter set forth, **Crossland Construction Company, Inc.** (“Contractor” or “Construction Manager”), a Texas limited liability company with an office in Fort Worth, Texas, agrees to provide construction services to the TOWN OF LITTLE ELM, TEXAS (“Town” or “Owner”), for the project and work identified in this Construction Manager at Risk Agreement (“Agreement”). This Agreement is effective as of **March 21, 2024**, and unless earlier terminated pursuant to the provisions hereof, shall continue through the completion of performance of the Work specified hereunder.

WHEREAS, Owner desires to obtain professional construction and construction manager services from Contractor for the **Little Elm Public Safety Annex** project (“Project”); and

WHEREAS, Contractor is a construction firm selected to provide such services, based upon Contractor’s municipal experience, references, and qualifications, and is willing to undertake the performance of such services for Owner in exchange for payment and fees as hereinafter specified.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and in the Contract Documents, and subject to the terms and conditions hereinafter stated, Owner and Contractor do mutually agree as follows:

ARTICLE 1. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The term “Contract Documents” shall include and consist of the following documents:

1. Later executed amendments and/or modifications to the following documents as are mutually agreed upon by Contractor and Owner;
2. This Agreement;
3. Standard Form of Agreement Between Owner and Construction Manager as Constructor, AIA Document A133-2019;
4. Guaranteed Maximum Price Amendment, AIA Document A133-2019, Exhibit A;
5. Supplementary Conditions to AIA Documents A133-2019 and A201-2017;
6. The General Conditions of the Contract for Construction, AIA Document A201-2017, as amended by the Supplementary Conditions;

Whenever the term “AIA Document A201-2017, General Conditions of the Contract for Construction” or similar reference is used in the Contract Documents, including but not limited to the Standard Form of Agreement Between Owner and Construction Manager as Constructor, AIA Document A133-2019, and the Guaranteed Maximum Price Amendment attached to A133-2019, then such reference shall mean the AIA Document A201-2017 referenced in this section, as amended in this Agreement by the Supplementary Conditions.

7. Any Addenda adopted and agreed to by Owner and Contractor applicable to the Project;
8. The Specifications contained in the Project Manual adopted and agreed to by Owner and Contractor applicable to the Project;
9. The Drawings adopted and agreed to by Owner and Contractor applicable to the Project; and
10. Other documents that form part of the Contract Documents:
 - a. Contractor’s Qualification Statement;
 - b. Advertisement for Bids;

- c. Instruction to Bidders;
- d. Bid form;
- e. Certified Sealed Proposal submitted by Contractor; and

11. Exhibit B – Construction Manager’s Wage and Salary Rates.

These Contract Documents are incorporated by reference into this Agreement as if set out herein in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above. In the case of inconsistency between the documents that is not resolved by the order in which they are listed above, the better quality or greater quantity of Work shall be provided in accordance with the Owner’s interpretation. Should Drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by the Architect in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small scale drawings.

ARTICLE 2. EMPLOYMENT OF CONTRACTOR

A. Contractor will perform as an independent contractor all services under this Agreement to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the contractor/construction manager profession, both public and private, currently practicing in the North Texas area under similar conditions including, but not limited to, the exercise of reasonable, informed judgments and prompt, timely action. If Contractor is representing that it has special expertise in one or more areas to be utilized in this Agreement, then Contractor agrees to perform those special expertise services to the appropriate local, regional, and national professional standards.

B. The Contractor’s and Owner’s representatives on the Project(s) are listed as follows:

1. Contractor’s Representative:

Crossland Construction Company, Inc.
731 Industry Way, Suite 100
Prosper, TX 75078
ATTN: Eric Bunner

2. Owner’s Representative:

Wesley Brandon, P.E.
Town Engineer
100 West Eldorado Parkway
Little Elm, Texas 75068

Neither the Owner’s nor the Contractor’s representative shall be changed without ten (10) days’ prior written notice to the other party. Additionally, the roles and responsibilities of the following individuals shall not be materially changed during the Project duration, provided that their employment with the Contractor continues, and any such proposed change in the following personnel must have prior written approval by the Owner:

- [insert name] Project Executive providing a minimum of 50% time commitment to the Project(s).
- [insert name] Project Manager providing a minimum of 50% time commitment to the Project(s).
- [insert name] Project Superintendent providing a minimum of 100% time commitment to the Project(s).

ARTICLE 3. SCOPE OF SERVICES

Contractor shall perform such services as are necessary to complete the Work defined in the Contract Documents.

ARTICLE 4. CONTRACTOR'S LIABILITY

A. Acceptance of the Work by Owner shall not constitute nor be deemed a release of the responsibility and liability of Contractor to perform the Work according to the Contract Documents, including with respect to its employees, associates, agents or subcontractors for the accuracy and competency of their performance of the Work; nor shall such acceptance be deemed an assumption of responsibility by Owner for any defect in the performance of the Work by said Contractor, its employees, associates, agents or subcontractors.

B. If at any time during the term of this Agreement, Contractor shall fail to perform the Work in accordance with the provisions of this Agreement or fail to diligently provide construction manager at risk construction services in an efficient, timely and careful manner and in strict accordance with the provisions of this Agreement or fail to use an adequate number of competent personnel to complete the Work or fail to perform any of its obligations under this Agreement, then Owner shall have the right, if Contractor shall not cure any such default after thirty (30) days' written notice thereof, to terminate this Agreement. Any such act by Owner shall not be deemed a waiver of any other right or remedy of Owner. If, after exercising any such remedy due to Contractor's non-performance under this Agreement, the cost to Owner to complete the Work to be performed under this Agreement is in excess of that part of the Agreement sum which has not theretofore been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse Owner for such excess.

C. Owner may deduct from any amounts due or to become due to Contractor any sum or sums owing by Contractor to Owner under the Agreement. In the event of any breach by Contractor of any provision of this Agreement or in the event of any claim against Owner arising out of Contractor's performance under this Agreement, Owner shall have the right to retain out of any payment due or to become due to Contractor an amount determined by Owner to be sufficient to protect Owner from any and all loss, damage or expense therefrom, until the breach or claim has been satisfactorily remedied or adjusted by Contractor. Owner may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work. Owner may withhold payment under Section 9.5.1 of the General Conditions (document A201) and as provided elsewhere in the Contract Documents. Amounts withheld under this Article shall be in addition to any retainage.

D. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services, if any, made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 5. CONFIDENTIAL INFORMATION

Contractor hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Agreement, which is of a confidential, non-public or proprietary nature. Contractor shall treat any such information received in full confidence and will not disclose or appropriate such confidential information for its own use or the use

of any third party at any time during or subsequent to this Agreement. As used herein, “confidential information” means all oral and written information concerning Owner, its affiliates and subsidiaries, and all oral and written information concerning Owner, or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies, or other documents, whether prepared by Contractor or others, which contain or otherwise reflect such information. The term “confidential information” shall not include such materials that are or become generally available to the public other than as a result of disclosure by Contractor, or are required to be disclosed by a governmental authority under applicable law.

ARTICLE 6. INDEMNITY

NOTWITHSTANDING ANY OTHER PROVISION IN THE CONTRACT DOCUMENTS TO THE CONTRARY:

A. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE “INDEMNIFIED ITEMS”). BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY. INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEY’S FEES AND COSTS OF COURT, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEY’S FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

B. IN ITS SOLE DISCRETION, THE TOWN SHALL HAVE THE RIGHT TO APPROVE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION TO DEFEND AND INDEMNIFY THE TOWN. CONTRACTOR SHALL RETAIN APPROVED COUNSEL FOR THE TOWN WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE TOWN THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR DOES NOT RETAIN COUNSEL FOR THE TOWN WITHIN THE REQUIRED TIME, THEN THE TOWN SHALL HAVE THE RIGHT TO RETAIN COUNSEL AND THE CONTRACTOR SHALL PAY THESE ATTORNEY’S FEES AND EXPENSES. THE TOWN RETAINS THE RIGHT TO PROVIDE AND PAY FOR ANY AND ALL COSTS OF DEFENDING INDEMNIFIED ITEMS, BUT IT SHALL NOT BE REQUIRED TO DO SO.

C. THE OBLIGATIONS SET FORTH IN THIS ARTICLE SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

D. Contractor shall cause all contracts for subcontracted services to include a like indemnity that shall cover both the Owner and Contractor. Nothing herein shall limit the insurance requirements or applicability of same set forth in this Agreement and the Contract Documents.

E. The above indemnity is a business understanding between the parties and applies to all different theories of recovery, including breach of contract or warranty, tort including negligence, statutory liability or any other cause of action.

ARTICLE 7. TERMINATION OR SUSPENSION

A. If the Owner fails to make payments to the Contractor in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination by the Contractor or, at the Contractor's option, cause for suspension of performance of Work under this Agreement. If the Contractor elects to suspend performance of the Work, the Contractor shall give ten (10) days' written notice to the Owner before suspending performance of the Work. In the event of a suspension of performance of the Work, the Contractor shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of performance of the Work. Before resuming Work, the Contractor shall be paid all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of the Contractor's Work.

B. If the Owner suspends the Project, the Contractor shall be compensated for Work performed satisfactorily prior to notice of such suspension. When the Project is resumed, the Contractor may be compensated for expenses incurred in the interruption and resumption of the Contractor's performance of the Work. The Contractor's fee for the remaining Work and the time schedules may be equitably adjusted. If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of the Contractor, the Contractor may terminate this Agreement by giving not less than thirty (30) days' written notice.

C. Either party may terminate this Agreement upon not less than thirty (30) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

D. The Owner may terminate this Agreement upon not less than thirty (30) days' written notice to the Contractor for the Owner's convenience and without cause. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for services performed prior to termination.

E. Notwithstanding any other provision in the Contract Documents to the contrary, it is agreed by the parties that: (1) if an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of Contractor's creditors, or (5) if a receiver is appointed on account of Contractor's insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any of the above-listed events, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate this Agreement. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back-charged against the Guaranteed Maximum Price.

ARTICLE 8. CLAIMS AND DISPUTES

A. The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other party arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution set forth in this Agreement within the period specified by applicable law. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Article. To the extent damages are covered by property insurance, the Owner and Contractor waive all rights against each other and against the contractors, employees, agents, and subcontractors of the other party for damages, except such rights as they may have to the proceeds of such insurance as set forth in the Contract Documents. The Owner or the Contractor, as appropriate, shall require of the contractors, employees, agents, and subcontractors of any of them similar waivers in favor of the other parties enumerated herein.

B. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. The Owner and Contractor shall endeavor to resolve claims, disputes, and other matters in question between them first, informally and, second, by mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall have fifteen (15) days after receipt of a request for mediation to agree on a mediator. If the parties are unable to agree on a mediator within fifteen (15) days, each party shall have an additional five (5) days to designate a mediator. The two mediators so designated shall then designate a third unbiased mediator who shall be the mediator to conduct the mediation. The decision of the mediator shall be nonbinding. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

C. If the parties do not resolve a claim, dispute or other matter in question through mediation pursuant to this Article, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

ARTICLE 9. INSURANCE AND BONDS

A. The Contractor shall, at its own expense, procure, pay for, and maintain during the term of this Agreement the following insurance written by companies approved by the State of Texas and acceptable to Owner. The Contractor shall furnish to the Owner certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, and expiration dates in compliance with all applicable required provisions:

1. General Liability: Commercial General Liability insurance, including, but not limited to Premises/Operations (including X, C and U coverage as applicable), Personal & Advertising Injury (with Employment Exclusion deleted), Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000.00 per occurrence, \$2,000,000.00 Products/Completed Operations Aggregate, and \$2,000,000.00 General Aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.

2. Automobile Liability: Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence.

3. Workers' Compensation: Workers' Compensation insurance with statutory limits; and Employer's Liability coverage with minimum limits for bodily injury: (a) by accident, \$1,000,000.00 each accident, and (b) by disease, \$1,000,000.00 per employee, with a per policy aggregate of \$1,000,000.00.

4. Professional Liability: Professional Liability insurance to provide coverage against any claim which the Contractor and all subcontractors engaged by the Contractor become legally obligated to pay as damages arising out of the performance of professional services caused by error, omission or negligent act with minimum limits of \$2,000,000.00 per claim, \$2,000,000.00 annual aggregate.

5. Property Insurance: Property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Work on a replacement cost basis. The Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as

provided in section 9.A.4., unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees. Unless the parties agree otherwise, upon Substantial Completion, the Owner shall replace the insurance policy required under this section with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions. A loss insured under the property insurance required by the Agreement shall be adjusted by the Contractor and made payable to the insureds, as their interests may appear, who shall then pay their consultants and Subcontractors in similar manner.

Contractor shall not commence work at the project site(s) under this Agreement until all required insurance has been obtained and appropriate certificates have been submitted to Owner. If Owner is damaged by the failure of Contractor to maintain such insurance as required by the Contract Documents, then Contractor shall bear all reasonable costs properly attributed to such failure.

B. If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty-six (36) months following completion of this Agreement and acceptance by Owner.

C. With reference to the foregoing required insurance, the Contractor shall endorse applicable insurance policies as follows: (1) a waiver of subrogation in favor of Owner, its officials, employees and officers shall be contained in the Workers' Compensation insurance policy; (2) the Owner, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader; and (3) all insurance policies shall be endorsed to the effect that Owner will receive at least thirty (30) days' notice prior to cancellation, non-renewal, termination, or a material change of the policies. All insurance shall be purchased from an insurance company that meets a financial rating of B+IV or better as assigned by A. M. Best Company or equivalent.

D. Pursuant to Texas Administrative Code, Title 28, Section 110.110(c), the following language is hereby included in this Agreement:

REQUIRED WORKERS' COMPENSATION COVERAGE

The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee.

Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' 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 division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The Contractor agrees to comply with all applicable provisions of Texas Administrative Code, Title 28, Section 110.110, entitled “Reporting Requirements for Building or Construction Projects for Governmental Entities.” Under Section 110.110: (1) certain language must be included in this Agreement and in the Contractor’s contracts with subcontractors and others relating to the Work, (2) the Contractor is required to submit to the City certificates of coverage for its employees and for all others providing services relating to the Work until all project Work is completed, and (3) the Contractor is required to post certain notices at job sites.

E. The Contractor shall procure and pay for performance and payment bonds applicable to the Work, in accordance with Texas Government Code, Chapter 2253. The performance and payment bonds shall be issued in forms acceptable to Owner. Among other things, these bonds shall apply to any Work performed during Contractor’s performance under this Agreement, and to any Work performed during the warranty period after acceptance. The performance and payment bonds shall be issued by a corporate surety that is authorized to issue performance and payment bonds in Texas. Further, the Contractor shall supply to the Owner all capital and surplus information concerning the surety and all reinsurance information concerning the performance and payment bonds upon Owner request.

ARTICLE 10. MISCELLANEOUS

§10.1 Choice of Law

This Agreement shall be governed by the law of the State of Texas, and exclusive venue for any dispute shall be in any court of competent jurisdiction in Denton County, Texas.

§10.2 Severability

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceable provisions shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; and it is the intention of the parties that in lieu of each provision that is found to be illegal, invalid, or unenforceable, the parties seek to reasonably negotiate a new provision to this Agreement which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

§10.3 Notice

Except as otherwise provided in this Agreement or the Contract Documents, all notices and other communications required or permitted to be given under this Agreement, shall be in writing, addressed to the parties at their respective addresses as provided below, and may be delivered in person, sent by overnight express mail or courier service, or by certified mail, postage prepaid, return receipt requested. The addresses of each party are as follows:

If to the Owner: Town of Little Elm
 Town Manager
 100 West Eldorado Parkway
 Little Elm, Texas 75068

If to Contractor: Crossland Construction Company, Inc.
 731 Industry Way, Suite 100
 Prosper, TX 75078
 ATTN: Eric Bunner

Each party may from time to time change its address for receipt of notices by sending notice thereof in the manner provided herein to the other party. Each notice given by certified mail shall be deemed delivered on the date of delivery as shown on the return receipt, or if delivery is attempted, at the last address specified and the notice is returned, notice shall be deemed delivered on the date the notice was originally sent. Each notice delivered in any other manner shall be deemed delivered as of the time of actual receipt thereof. The parties acknowledge and agree to provide to the other party within seventy-two (72) hours of transmission such notice documents bearing the original signatures.

§10.4 Unsatisfactory Work

Nothing contained in this Agreement shall require Owner to pay for any work that is unsatisfactory as determined by Owner or which is not performed or completed in compliance with the terms of this Agreement, nor shall such failure to withhold payment pursuant to the provisions of this Section constitute a waiver of any right, at law or in equity, which Owner may have if Contractor is in default, including the right to bring legal action for damages or for a specific performance of this Agreement.

§10.5 Retainage

As is set forth in the Contract Documents, subject to Chapter 2252, Subchapter B, of the Texas Government Code concerning the withholding and use of retainage on public works contract payments, retainage shall be withheld and may be paid, provided Contractor is in default of its obligations under the Contract Documents (which default Contractor has not cured or commenced curing), to: (a) ensure proper completion of the Work, and the Owner may use retained funds to pay replacement or substitute contractors to complete unfinished or defective Work; (b) ensure timely completion of the Work, and the Owner may use retained funds to pay liquidated damages; and (c) provide an additional source of funds to pay claims for which the Owner is entitled to indemnification from Contractor under the Contract Documents. Retained funds shall be held by the Owner in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

§10.6 No Respondeat Superior

Contractor will have exclusive control of and the exclusive right to control the details of the Work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, and the doctrine of *respondeat superior* shall not apply as between Owner and Contractor, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between Owner and Contractor.

§10.7 Conflict of Interest

Contractor covenants and agrees that Contractor and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by Contractor pursuant to this Agreement will be conducted by employees, associates or subcontractors of Contractor.

§10.8 Non-Waiver

The failure of either party to insist upon or enforce strict performance by the other party of any provision of this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver or relinquishment to any extent of any such party's right to assert or rely upon any such provision or right in that or any other instance, rather, the same shall be and remain in full force and effect.

§10.9 Assignment

The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Contractor shall assign this Agreement without the prior written consent of the other party.

§10.10 No Third-Party Beneficiary Created

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Contractor.

§10.11 Signatures

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

IN WITNESS WHEREOF, the parties execute below:

TOWN OF LITTLE ELM, TEXAS

CONTRACTOR.

Matt Mueller, Town Manager

Signature

Date: _____

Printed Name & Title

Date: _____