

**Town of Little Elm, Texas
Contract for Services**

This Agreement is made by and between the Town of Little Elm, Texas, a Texas home-rule municipality (hereinafter referred to as the "Town") and **Prime Controls, L.P.** (hereinafter referred to as the "Provider") for **SCADA System Upgrades**, (hereinafter referred to as the "Project"). In consideration of the premises, covenants and mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Provider hereby agree as follows:

1. **EMPLOYMENT OF THE PROVIDER.** The Town agrees to retain the Provider for, and the Provider agrees to provide services relative to, the following Project: **Bid 2024-14 SCADA System Upgrades** (hereinafter also referred to as "Services") in accordance with the terms and conditions as set forth in this Agreement and in Exhibit A, attached hereto and incorporated herein by reference.
2. **SCOPE OF SERVICES.** The Services to be performed are specified in **Exhibit A**. Deviations from the agreed-upon scope of work of such Services may be authorized from time to time by the Town in writing.
3. **SCHEDULE OF WORK.** The Provider agrees to begin work upon receipt of written authorization from the Town. Time is of the essence for this Agreement and work is to commence immediately.
4. **CONTRACT PERIOD.** The contract period for this Agreement shall commence upon execution, and remain in place until work is satisfactorily complete by the Town.
5. **COMPENSATION.** The Provider's total compensation for services to be performed and expenses to be incurred is specified in **Exhibit A**, attached hereto and incorporated herein by reference.
6. **PAYMENTS.** Payments will be processed on a monthly basis with payment available within thirty (30) days after the Town's receipt of the invoice for the previous month's Services.
7. **INVOICING.** Invoices should be prepared and submitted to the Town for payment. Invoices should be mailed to Accounts Payable, Town of Little Elm, 100 W. Eldorado, Little Elm, TX 75068, or emailed to accounts.payable@littleelm.org.
8. **RIGHTS OF WITHHOLDING.** The Town may withhold any payment or partial payment otherwise due the Provider on account of unsatisfactory performance by the Provider. The amount to be withheld will be calculated based on the work not performed and the impact to the Town. Any payment or partial payment that may be withheld for unsatisfactory performance can be used to remedy the lack of performance and, if so used, will not be paid to the Provider.
9. **INFORMATION PROVIDED BY THE TOWN.** Although every effort has been or will be made to furnish accurate information, the Town does not guarantee the accuracy of information it furnishes to the Provider.
10. **INSURANCE.** The Provider shall provide proof that it has obtained and will continue to maintain throughout the duration of this Agreement the insurance requirements set forth in Exhibit A. Failure to maintain the required insurance may result in immediate termination of this Agreement.
11. **INDEMNIFICATION.** THE PROVIDER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "INDEMNITEES") FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, ANY DAMAGE, LIABILITY, AND FROM AND AGAINST ANY COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY'S FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS CLAIMS, LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF

USE RESULTING THEREFROM, ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF THE PROVIDER, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER THE PROVIDER'S DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES UNDER THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, THE PROVIDER SHALL BE OBLIGATED TO INDEMNIFY INDEMNITEES AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY. THIS INDEMNIFICATION IS SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE, § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), AS SAME MAY BE APPLICABLE TO PROVIDER AS A MATTER OF LAW.

12. **TRANSFER OF INTEREST.** Neither the Town nor the Provider may assign or transfer their interests in this Agreement without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. This Agreement is binding on the Town, the Provider, and their successors and assigns. Nothing herein is to be construed as creating a personal liability on the part of any Town officer, employee or agent.
13. **AUDITS AND RECORDS.** At any time during normal business hours and as often as the Town may deem necessary, the Provider shall make available to the Town for examination all of its records with respect to all matters covered by this Agreement, and will permit the Town to audit, examine and make copies, excerpts, or transcripts from such records. The Town may also audit all contracts, invoices, payroll records of personnel, conditions of employment and other data relating to this Agreement.
14. **EQUAL EMPLOYMENT OPPORTUNITY.** The Provider shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, national origin, disability or any other protected characteristic. The Provider shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin, disability or any other protected characteristic. Such actions shall include, but not be limited to the following: employment, promotions, demotion, transfers, recruitment or recruitment advertising, layoffs, terminations, selection for training (including apprenticeships), and participation in recreational activities.

The Provider agrees to post in conspicuous places, accessible to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause. The Provider will, in all solicitations or advertisements for employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Provider will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each sub-Provider, except that the foregoing provisions shall not apply to contracts or subcontracts for customary office supplies.

The Provider shall keep records and submit reports concerning the racial and ethnic origin(s) of applicant employment and employees as the law may require.

15. **SECURITY BREACH NOTIFICATION.** Provider shall have policies and procedures in place for the effective management of Security Breaches, as defined below. In the event of any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance Provider experiences or learns of that either compromises or could reasonably be expected to comprise Town data through unauthorized use, disclosure, or acquisition of Town data ("Security Breach"), Provider shall immediately notify Town of its discovery. After such notification, Provider shall, at its own expense, immediately: Investigate to determine the

nature and extent of the Security Breach. Contain the incident by taking necessary action, including, but not limited to, attempting to recover records, revoking access, and/or correcting weaknesses in security. Report to Town the nature of the Security Breach, the Town data used or disclosed, the person who made the unauthorized use or received the unauthorized disclosure, what Provider has done or will do to mitigate any harmful effect of the unauthorized use or disclosure, and the corrective action Provider has taken or will take to prevent future similar unauthorized use or disclosure.

16. **SECURITY BREACH DEFINED.** The unauthorized acquisition of or access to Customer Data by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, including instances in which internal personnel access systems in excess of their rights or use systems inappropriately. "Security Breach" shall also be deemed to include any breach or security, confidentiality, or privacy as defined by any applicable law, rule regulation, or order.

15. **TERMINATION OF CONTRACT.** The Town may terminate this Agreement upon thirty (30) days written notice to the Provider, except in the event (i) the Provider is in breach of this Agreement, or (ii) the Provider fails to comply with the terms of Exhibit A. If either of the foregoing conditions exists, the Town shall notify the Provider and the Provider shall be given seven (7) days to cure such breach or failure to comply. Should the Provider fail to cure to the satisfaction of the Town, the Town may terminate this Agreement upon written notice as provided herein.

Furthermore, the Town retains the right to terminate this Agreement at the expiration of each Town budget period (September 30) during the term of this Agreement, even without prior notice as described in the preceding sentence.

In the event of any termination hereunder, the Provider consents to the Town's selection of another Provider to assist the Town in any way in completing the Services. The Provider further agrees to cooperate and provide any information requested by the Town in connection with the completion of the Services.

The Provider shall be compensated for Services performed and expenses incurred for satisfactory work up to the termination date in that the Provider shall receive a portion of fees and expenses permitted under this Agreement in direct proportion to percentage of work actually completed up to the termination date. This provision shall not deprive the Town of any remedies against the Provider that may be available under applicable law.

16. **PROVIDER'S REPRESENTATIONS.** The Provider hereby represents to the Town that the Provider is financially solvent and possesses sufficient experience, licenses, authority, personnel, and working capital to complete the Services required under this Agreement.
17. **TOWN APPROVAL FOR ADDITIONAL WORK.** No payment, of any nature whatsoever, will be made to the Provider for additional work without the Town's written approval before such work begins.
18. **PERFORMANCE BY PROVIDER.** All Services provided by the Provider hereunder shall be performed in accordance with the highest professional standards and in accordance with Exhibit A, and the Provider shall be responsible for all Services provided hereunder whether such services are provided directly by the Provider or by any sub-Providers hired by the Provider. The Provider shall perform all duties and Services and make all decisions called for hereunder promptly and without unreasonable delay. The Provider shall not utilize sub-Providers to perform Services without the Town's prior written consent.
19. **DAMAGE.** In all instances where Town property and/or equipment is damaged by the Provider's employees, a full report of the facts, extent of the damage and estimated impact on the Provider's schedule shall be submitted to the Town by 8:00 a.m. of the following Town

business day after the incident. If damage may result in further damages to the Town or loss of Town property, the Provider must notify Police Dispatch immediately. The Provider shall be fully liable for all damage to Town property or equipment caused by the Provider's officers, employees, agents or sub-Providers.

20. **TOWN OBJECTION TO PERSONNEL.** If at any time after entering into this Agreement, the Town has any reasonable objection to any of the Provider's personnel, or any personnel retained by the Provider, then the Provider shall promptly propose substitutes to whom the Town has no reasonable objection, and the Provider's compensation shall be equitably adjusted to reflect any difference in the Provider's costs occasioned by such substitution.
21. **COMPLIANCE WITH LAWS.** The Provider warrants and covenants to the Town that all Services will be performed in compliance with all applicable federal, state, county and Town laws, rules, and regulations including, but not limited to, the Texas Industrial Safety and Health Act and the Workers Right-to-Know Law. All necessary precautions shall be taken to assure that safety regulations prescribed by OSHA and the Town are followed.
22. **NON-BINDING MEDIATION.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved informally by the Town and the Provider, the Town and the Provider agree to submit such disagreement to non-binding mediation before pursuing any other legal remedy.
23. **ENTIRE CONTRACT.** This Agreement together with Exhibit A, attached hereto and any other exhibit attached hereto contains the entire contract between the Town and the Provider concerning the Services for the Project. There will be no understandings or contracts other than those incorporated herein. This Agreement may not be modified except by an instrument in writing signed by the Parties hereto. In the event of a conflict between an attachment to this Agreement and this Agreement, this Agreement shall control.
24. **MAILING ADDRESSES.** All notices and communications concerning this Agreement are to be mailed or delivered to the addresses shown below unless and until the other Party is otherwise notified in writing of a different address:

Town of Little Elm
 Rebecca Hunter, CPPB
 Purchasing Manager
 100 W. Eldorado
 Little Elm, TX 75068

Prime Controls, L.P.
 Lain Cloy
 Account Manager
 1725 Lakepointe Dr.
 Lewisville, TX 75057

Any notices and communications required to be given in writing by one Party or the other shall be considered as having been given to the addressee on the date in the notice or communication is placed in the United States Mail or hand-delivered.


25. **LEGAL CONSTRUCTION.** If any one or more of the provisions contained in this Agreement for any reason is held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been included.
26. **GOVERNING LAW.** The validity of this Agreement and any of its terms or provisions as well as the rights and duties of the Parties hereunder, shall be governed by and construed in accordance with Texas law. Exclusive venue for any legal action concerning this Agreement shall be located in Denton County, Texas.
27. **COUNTERPARTS.** This Agreement may be signed in multiple counterparts, each of which shall be deemed to be an original.
28. **EFFECTIVE DATE.** This Agreement shall be effective once it is signed by the Town and the Provider, as indicated below.

EXECUTED in single or multiple originals, this _____ day of _____, 2024.

TOWN OF LITTLE ELM

Matt Mueller, Town Manager

Prime Controls, L.P.

DocuSigned by:


Signature

Jace McNeil (President and General Partner)

Name and Title

EXHIBIT A

Prime Controls Information

Contact: Lain Cloy
Address: 1725 Lakepointe Dr
Lewisville, TX 75057
Phone: (972) 221-4849
Email: l.cloy@prime-controls.com

Undersigned affirms that they have read and understand all requirements of this request. <P> The undersigned affirms that they are duly authorized to sign and submit this response on behalf of the firm named in the submittal. <P> Additionally, the undersigned confirms that the has not been prepared in collusion with any other proposer, and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this proposal.

Lain Cloy

Signature

Submitted at 3/21/2024 04:55:25 PM (CT)

l.cloy@prime-controls.com

Email

Response Attachments

- Bid Bond.pdf

Bid Bond
- Prime Controls Information Packet.pdf

Information Packet
- CIQ Form.pdf

Prime Controls CIQ Form

Bid Lines

1	0010 Garza LS: Radio / Network, Programming, PLC Replacement, Instrumentation Quantity: <u>1</u> UOM: <u>LS</u>	Price: <div>\$87,034.00</div>	Total: <div>\$87,034.00</div>
2	0020 Kings Crossing LS: Radio / Network, Programming, PLC Replacement, Instrumentation and Control, Electrical General Quantity: <u>1</u> UOM: <u>LS</u>	Price: <div>\$94,433.00</div>	Total: <div>\$94,433.00</div>
3	0030 Lift Station #3: Radio / Network, Programming, PLC Replacement, Electrical General Quantity: <u>1</u> UOM: <u>LS</u>	Price: <div>\$70,819.00</div>	Total: <div>\$70,819.00</div>
4	0040 Lift Station #5: Radio / Network, Programming, PLC Replacement, Electrical General Quantity: <u>1</u> UOM: <u>LS</u>	Price: <div>\$82,590.00</div>	Total: <div>\$82,590.00</div>

5	<div>0050</div> <div>Sunset Pointe LS: Radio / Network, Programming, PLC Replacement, Instrumentation and Control, Electrical General</div> <div>Quantity: <u> 1 </u> UOM: <u> LS </u> Price: <u> \$111,401.00 </u> Total: <u> \$111,401.00 </u></div>
6	<div>0060</div> <div>Valencia LS #1: Radio / Network, Programming, PLC Replacement, Electrical General</div> <div>Quantity: <u> 1 </u> UOM: <u> LS </u> Price: <u> \$10,097.00 </u> Total: <u> \$10,097.00 </u></div>
7	<div>0070</div> <div>WWTP LS: Radio / Network, Programming, PLC Replacement, Instrumentation and Control, Electrical General</div> <div>Quantity: <u> 1 </u> UOM: <u> LS </u> Price: <u> \$1,745.00 </u> Total: <u> \$1,745.00 </u></div>
8	<div>0110</div> <div>423 EST: Radio / Network, Programming, PLC Replacement, Instrumentation and Control, Electrical General</div> <div>Quantity: <u> 1 </u> UOM: <u> LS </u> Price: <u> \$106,735.00 </u> Total: <u> \$106,735.00 </u></div>
9	<div>0120</div> <div>Eldorado EST: Radio / Network, Programming, PLC Replacement, Instrumentation and Control, Security System, Electrical General</div> <div>Quantity: <u> 1 </u> UOM: <u> LS </u> Price: <u> \$108,057.00 </u> Total: <u> \$108,057.00 </u></div>
10	<div>0130</div> <div>Walker EST: Radio / Network, Programming, PLC Replacement, Instrumentation and Control, Security System, Electrical General</div> <div>Quantity: <u> 1 </u> UOM: <u> LS </u> Price: <u> \$94,895.00 </u> Total: <u> \$94,895.00 </u></div>
11	<div>0210</div> <div>WWTP Lab: UV and Filters Communication</div> <div>Quantity: <u> 1 </u> UOM: <u> LS </u> Price: <u> \$26,695.00 </u> Total: <u> \$26,695.00 </u></div>
12	<div>MOB</div> <div>Mobilization and Demobilization - Maximum of 3% of the total of Item Nos. 1 through 11).</div> <div>Quantity: <u> 1 </u> UOM: <u> LS </u> Price: <u> \$23,835.03 </u> Total: <u> \$23,835.03 </u></div>
13	<div>Travel Expense reimbursement. \$5,000</div> <div>Quantity: <u> 1 </u> UOM: <u> LS </u> Price: <u> \$5,000.00 </u> Total: <u> \$5,000.00 </u></div> <div>Item Notes: Bidder to enter \$5,000 as an allowance for travel expenses. Any other amount entered will be changed to \$5,000.</div>

Response Total: \$823,336.03

INSURANCE REQUIREMENTS

The Contractor will not commence work under this Contract until it has obtained all the insurance required herein and such insurance has been approved by the Town, nor shall Contractor allow any subcontractor to commence work on its subcontract until all required insurance of the subcontractor has been obtained and submitted to the Town.

The Contractor shall submit evidence of required insurance on an original ACORD certificate or state approved form at time of bid. The Contractor will have no longer than fifteen (15) calendar days following notification of award to submit the required ACORD form identifying the Town as an additional insured to all applicable coverage, including materials, equipment, or supplies provided by the Town. Failure to submit the required document(s) may result in rescinding the award. The bid may thereafter be awarded to the next lowest responsible bidder. A current ACORD form must be submitted upon policy changes, renewal, or upon request by the Town.

An insurance certificate is required to be on file prior to the start of any work.

IT IS HIGHLY RECOMMENDED THAT CONTRACTORS CONFER WITH THEIR RESPECTIVE INSURANCE CARRIERS OR BROKERS TO DETERMINE IN ADVANCE OF PROPOSAL/BID SUBMISSION THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS AS PRESCRIBED AND PROVIDED HEREIN.

GENERAL PROVISIONS

1. The Town, its officials, employees and volunteers shall be named as an additional insured with waiver of subrogation in the favor of the Town on the Commercial General Liability and Automobile Liability Insurance policies. These policies shall contain the appropriate additional insured endorsement signed by a person authorized by that insurer to bind coverage on its behalf.
2. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage, materially changed, or in limits except after thirty (30) days prior written notice has been provided to the Town.
3. If the policy is cancelled for non-payment of premium, only ten (10) days' notice is required.
4. Insurance company must be A-rated or above.
5. The company must be duly authorized to conduct business in the State of Texas.
6. Workers' Compensation and Employers' Liability Coverage: The insurer shall agree to waive all rights of subrogation against the Town, its officials, employees, and volunteers for losses arising from the activities under this Contract.
7. Certificates of Insurance and Endorsements effecting coverage required by this clause shall be forwarded to:

Town of Little Elm
Purchasing
100 W. Eldorado Pkwy.
Little Elm, TX 75068

8. *THE PROJECT NAME AND BID/CONTRACT NUMBER SHALL BE LISTED ON THE CERTIFICATE.*
9. Companies issuing the insurance policies shall have no recourse against the Town for payment of any premiums, assessments, or for any deductibles, which are at the sole responsibility and risk of the Contractor.

10. Liability policies shall be endorsed to provide the following:
 - a. Name of Additional insured: Town of Little Elm, its Officials, Agents, Employees and Volunteers
 - b. That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against who claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
11. Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this Contract and, without lapse, for a period of three years beyond Contract expiration, such that occurrences arising during the Contract term which give rise to claims made after expiration of this Contract shall be covered.
12. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
13. Should any required insurance lapse during the Contract term, requests for payments originating after such lapse shall not be processed until the Town receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, the Town may, at its sole option, terminate this Contract effective on the date of the lapse.

SPECIFIC INSURANCE REQUIREMENTS

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

[X] A. General Liability Insurance:

General Liability insurance with combined single limits of not less than \$1,000,000.00 shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form, (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury (\$500,000) and Property Damage Liability (\$500,000) for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse, or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this Contract, personal injury liability and broad form property damage liability.

[X] Automobile Liability Insurance:

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than \$1,000,000 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury (\$500,000) and property damage liability (\$500,000) arising out of the operation, maintenance, and use of all automobiles and mobile equipment used in conjunction with this contract. Coverage shall include all owned/leased vehicles, non-owned vehicles, and hired vehicles.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- Code 1 - any auto, or
- All owned hired and non-owned autos.

[X] Workers' Compensation Insurance

Contractor shall purchase and maintain Workers' Compensation insurance, which in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$500,000 for each accident, \$500,000 per each employee, and a \$500,000 policy limit for occupational disease. The Town need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the Town, its officials, agents, employees, and volunteers for any work performed for the Town by the Named Insured. For building or construction projects, the Contractor shall comply with the provisions of Attachment 1 in accordance with §406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Workers' Compensation Commission (TWCC).

[] **Owner's and Contractor's Protective Liability Insurance**

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this Contract, an Owner's and Contractor's Protective Liability insurance policy naming the Town as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations under this Contract. Coverage shall be on an "occurrence" basis and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least \$500,000.00 combined bodily injury and property damage per occurrence with a \$1,000,000.00 aggregate.

[] **Fire Damage Legal Liability Insurance**

Coverage is required if Broad Form General Liability is not provided or is unavailable to the Contractor or if the Contractor leases or rents a portion of a Town building. Limits of not less than _____ each occurrence are required.

[] **Professional Liability Insurance**

Professional liability insurance with limits not less than \$1,000,000.00 per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Contract.

[] **Builders' Risk Insurance**

Builders' Risk Insurance, on an All-Risk form for 100% of the completed value shall be provided. Such policy shall include as "Named Insured" the Town of Little Elm and all subcontractors as their interests may appear.

Policy shall protect the Contractor and the Town against risks of damage to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall not be less than the insurable value of the work at completion less the value of the materials and equipment insured under installation floater insurance.

Equipment installed under this Contract shall be insured under installation floater insurance when the aggregate value of the equipment exceeds \$10,000.00.

If the work does not include the construction of building structures, builder's risk insurance may be omitted providing the installation floater insurance fully covers all work.

Builder's Risk insurance shall provide for losses to be payable to the Contractor and the Town as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

[] **Installation Floater**

This insurance shall protect the Contractor and the Town from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under Builder's Risk insurance, while in warehouse or storage areas, during installation, during testing, and after the work is completed. Installation floater insurance shall be of the "all risks" type, with coverage is designed for the circumstances, which may occur in the particular work included in this Contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under Builder's Risk insurance. The value shall include the aggregate value of the Town-furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under Builder's Risk insurance.

[] **Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to Town funds. Limits of not less than \$_____ each occurrence are required.

[] **Additional Insurance**

Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements.

- Physician's, Surgeons, or Dentists Professional Liability Policy - The Contractor shall provide and maintain such coverage with minimum limits of \$500,000.
- Errors and omissions - The Contractor shall provide and maintain such coverage within the Professional Liability Policy for the protection from claims arising out of performance of professional services in the minimum amount of \$1,000,000 for each occurrence.

ATTACHMENT 1**[X] Workers Compensation Coverage for Building or Construction Projects****1. Definitions:**

- A. Certificate of Coverage** ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, 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.
- B. 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 Town.
- C. Persons providing services on the project** ("subcontractor" in Section 406.096) - 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, owner-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.
- D. Building or Construction** (Labor Code § 406.096) includes:
 - 1. Erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
 - 2. Remodeling, extending, repairing, or demolishing a structure; or
 - 3. Otherwise improving real property or an appurtenance to real property through similar activities.
 - i. Real Property means land, an improvement, or an estate or interest in real property, other than a mortgage or deed of trust creating a lien on property or an interest in securing payment or performance of an obligation in real property.
 - ii. Improvement means a permanent building, structure, fixture, or fence that is erected on or affixed to land but does not include a transportable building or structure whether or not it is affixed to land.
- 2. The Contractor shall 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 Code, § 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- 3. The Contractor must provide a certificate of coverage to the Town prior to beginning work on the Contract.
- 4. 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 showing that coverage has been extended.
- 5. The Contractor shall obtain from each person providing services on a project, and provide to the Town:
 - 1. a certificate of coverage, prior to that person beginning work on the project, so the Town will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - 2. no later than seven (7) 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.

3. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
4. The Contractor shall notify the Town in writing by certified mail or personal delivery, within ten (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.
5. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
6. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - i. 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 Code, § 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - ii. 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;
 - iii. 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;
 - iv. obtain from each other person with whom it contracts, and provide to the Contractor a certificate of coverage, prior to the other person beginning work on the project; and a new certificate of coverage showing extension of coverage, 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;
 - v. retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - vi. notify the Town in writing by certified mail or personal delivery, within ten (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
 - vii. contractually require each person with whom it contracts, to perform as required by paragraphs (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.
6. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Town 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 commission'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.
7. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Town to declare the Contract void if the Contractor does not remedy the breach within seven (7) days after receipt of notice of breach from the Town.