

POSSESSION AND USE AGREEMENT

STATE OF TEXAS

§

Parcel No.: 21E

COUNTY OF DALLAS

§

Project No.:

§

This Possession and Use Agreement (this "Agreement") between the **Town of Addison, Texas** (the "Town") and **Ashton Dallas Residential L.L.C., a Texas limited liability company** (the "Grantor" whether one or more), grants to the Town, its contractors, agents and all others deemed necessary by the Town, an irrevocable right to possession and use of the Property (defined below) for the purpose of constructing a portion of Belt Line Road from Marsh Lane to Midway Road, and relocating utilities in connection with road construction (the "Construction Project"), *subject to the terms and provisions of this Agreement*. The property subject to this Agreement is described more fully in field notes and plat map (attached as **Exhibit "A"**) and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the Town which is set forth in Paragraph 2 below, the receipt and sufficiency of which is acknowledged, the Grantor grants, bargains, sells and conveys to the Town the right of entry and exclusive possession and use of the Property for the purpose of relocating utilities and constructing a highway and appurtenances thereto including the right to remove any improvements owned by Grantor and located on the Property. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the Construction Project. This Agreement will extend to the Town, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the Town in the future, and all others deemed necessary by the Town for the purpose of the Construction Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.

2. In consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the Town will to the Grantor, simultaneously with the execution and delivery of this Agreement by Grantor and the Town, the sum of Eleven Thousand Three Hundred Fifteen No/100 Dollars (\$11,315.00), which amount is the Town's determination of the just compensation owed to the Grantor for the real property interest to be acquired by the Town in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. parties agree that the sum tendered to and received by Grantor will be deducted from any final settlement amount, Special Commissioners' award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the Town has paid for the possession and use of the Property, then the Grantor agrees that the original

tendered represents an overpayment for the difference and, upon written notice from the Town, the Grantor will promptly refund the overpayment to the Town.

3. The effective date of this Agreement will be the date on which payment pursuant to Paragraph 2 above was tendered to and received by the Grantor by the Town, or disbursed to the Grantor by a title company acting as escrow agent for the transaction (the "Effective Date").
4. The Grantor warrants and represents that the title to the Property is free and clear of all liens or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the Town from all unreleased or undisclosed liens affecting the Property. This conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, right-of-way, conditions, restrictions, and outstanding mineral interests and royalty interests, if any, relating to the Property, to the extent, and only to the extent, that the same may still be in force and effect, and either shown of record in the Real Property Records of Dallas County, Texas, or that may be apparent on the Property (the "Exceptions").
5. The parties agree that the valuation date for determining the amount of just compensation for the real property interest to be acquired by the Town in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.
6. This Agreement is made with the understanding that the Town will, in a timely manner, continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the Town, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), if any; all as the Property exists on the Effective Date of this Agreement. The Town's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property due to the Town's removal or construction of improvements on the Property, but any such removal and construction shall be taken into account in determining the damages, if any, to the Remainder in the event the Town does not promptly restore or repair damages to the surface and any improvements located thereon to the same or better condition as existed immediately prior to the Effective Date of this Agreement. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
7. In the event the Town institutes or has instituted eminent domain proceedings, the Town will not be liable to the Grantor for interest upon any award or judgment as

result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the Town until entry of judgment.

8. The purpose of this Agreement is to allow the Town to proceed with its Construction Project without delay and to allow the Grantor to have the use at this time of the compensation, as estimated by the Town, for the Town's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed Construction Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the Construction Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.
9. The Grantor reserves all of the oil, gas sulphur and other minerals in and under the Property but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas sulphur and other minerals by Grantor may not affect the geological stability of the surface.
Nothing in this reservation will affect the title and rights of the Town to take and use all other minerals and materials thereon, and thereunder.
10. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the Town takes title to the Property.
11. Notwithstanding the acquisition of right of possession to the Property by the Town in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the Town acquires title to the Property either by negotiation, settlement, or final court judgment.
12. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
13. It is agreed the Town may record this Agreement.
14. The Town, its agents and contractors shall maintain workers' compensation insurance, business automobile liability insurance, and commercial general insurance providing coverage to Grantor (whether as named insured, additional insured or otherwise). The commercial general liability shall provide coverage to Grantor against any demands, claims or liability arising, in whole or in part, from any act or omission of the Town, its agents or contractors, in connection with any activity of the Town, its agents or contractors, on or about the Property. Such meet the coverage requirements and amounts set forth in the Town of Addison, Texas Addison, Texas Contractor Insurance Requirements contained in **Exhibit**

“B” attached hereto and made a part of this Agreement by reference. Each such policy shall be endorsed to so as to waive subrogation and to provide thirty (30) days written notice to Grantor prior to cancellation. The business automobile liability insurance and the general commercial liability insurance shall be further endorsed to add Grantor as an additional insured thereunder. Grantee shall Grantor with proof of such insurance prior to commencing any work or other activity on the Property.

15. The provisions of this Agreement may be modified or amended only with the consent of Grantor and the Town by amendment, executed, acknowledged, and recorded in the Real Property Records of Dallas County, Texas.
16. This Agreement and all of the provisions hereof shall be governed by and construed in accordance with the laws of the State of Texas.

Subject to the Exceptions and the limitations set forth in this Agreement, Grantor binds Grantor and Grantor’s successors and assigns to warrant and forever defend all and singular the property interests herein conveyed to the Town and the Town’s successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

[SIGNATURES AND ACKNOWLEDGMENTS ON FOLLOWING PAGES]

AGREED TO AND ACCEPTED by the Town of Addison, Texas this ___ day of _____, 2015.

TOWN OF ADDISON, TEXAS

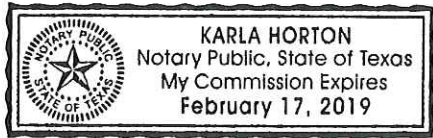
By: Lea Dunn
Lea Dunn, City Manager

Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned authority, on this day personally appeared Lea Dunn, the City Manager of the Town of Addison, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 29th day of May, 2015.



(seal)

Karla Horton
Notary Public, State of Texas
My Commission Expires: 2/17/19

EXHIBIT "A"

**PARCEL 21E
0.0344 ACRE (1,499 SQUARE FOOT)
EASEMENT OUT OF
LOT 16, BLOCK B OF
ASBURY CIRCLE
TOWN OF ADDISON, DALLAS COUNTY, TEXAS**

BEING a 1,499 square foot tract of land situated in the T. L. Chenoweth Survey, Abstract Number 273, Town of Addison, Dallas County, Texas, and being part of Lot 16, Block B of ASBURY CIRCLE, an addition to the Town of Addison, Texas, as recorded in Instrument Number 200900017267 of the Official Public Records of Dallas County, Texas (O.P.R.D.C.T.), said tract also being part of that tract of land described in deed to Ashton Dallas Residential L.L.C. as recorded in Instrument Number 200600258982, O.P.R.D.C.T., and being more particularly described as follows:

COMMENCING at a 1/2-inch found iron rod with "DAA" cap for the northwest corner of said Lot 16 on the south right-of-way line of Belt Line Road (a variable width right-of-way), said corner also being the beginning of a non-tangent circular curve to the left having a radius of 1,960.00 feet and a chord that bears North 79 degrees 18 minutes 43 seconds East a distance of 14.62 feet;

THENCE Easterly, with said south right-of-way line of Belt Line Road and with the north line of said Lot 16 and with said curve, through the central angle of 00 degrees 25 minutes 39 seconds, an arc distance of 14.62 feet to a 1/2-inch set iron rod with blue plastic cap stamped "HALFF ESMT" (hereinafter referred to as "with easement cap") for the POINT OF BEGINNING, said point also being on a circular curve to the left having a radius of 1,960.00 feet and a chord that bears North 78 degrees 48 minutes 16 seconds East a distance of 20.09 feet;

THENCE Easterly, with the south right-of-way line of said Belt Line Road and the north line of said Lot 16 and with said curve, through a central angle of 00 degrees 35 minutes 14 seconds, an arc distance of 20.09 feet to a 1/2-inch set iron rod with easement cap for corner;

THENCE South 16 degrees 36 minutes 41 seconds East, departing the south right-of-way line of said Belt Line Road and the north line of said Lot 16, a distance of 17.93 feet to a 1/2-inch set iron rod with easement cap for corner;

THENCE North 77 degrees 13 minutes 04 seconds East, a distance of 18.78 feet to a 1/2-inch set iron rod with easement cap corner;

THENCE South 12 degrees 46 minutes 56 seconds East, a distance of 30.06 feet to a 1/2-inch set iron rod with easement cap for corner;

THENCE South 77 degrees 22 minutes 09 seconds West, a distance of 36.82 feet to a 1/2-inch set iron rod with easement cap for corner;

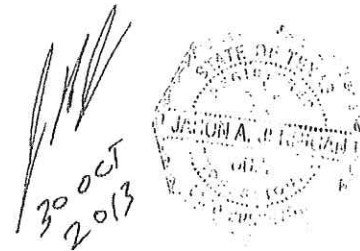
PARCEL 21E
0.0344 ACRE (1,499 SQUARE FOOT)
EASEMENT OUT OF
LOT 16, BLOCK B OF
ASBURY CIRCLE
TOWN OF ADDISON, DALLAS COUNTY, TEXAS

THENCE North 16 degrees 36 minutes 41 seconds West, a distance of 48.52 feet to the POINT OF BEGINNING and containing 0.0344 of an acre (1,499 square feet) of land, more or less.

Notes:

The basis of bearing is the Town of Addison Survey Control Network (December 2007 update) based on Monument Numbers COA-3, COA-4, COA-5, COA-10, & COA-11. All distance are surface distances using the TXDOT Dallas County Scale Factor 1.000136506.

This metes & bounds description is accompanied by a survey exhibit of even date.

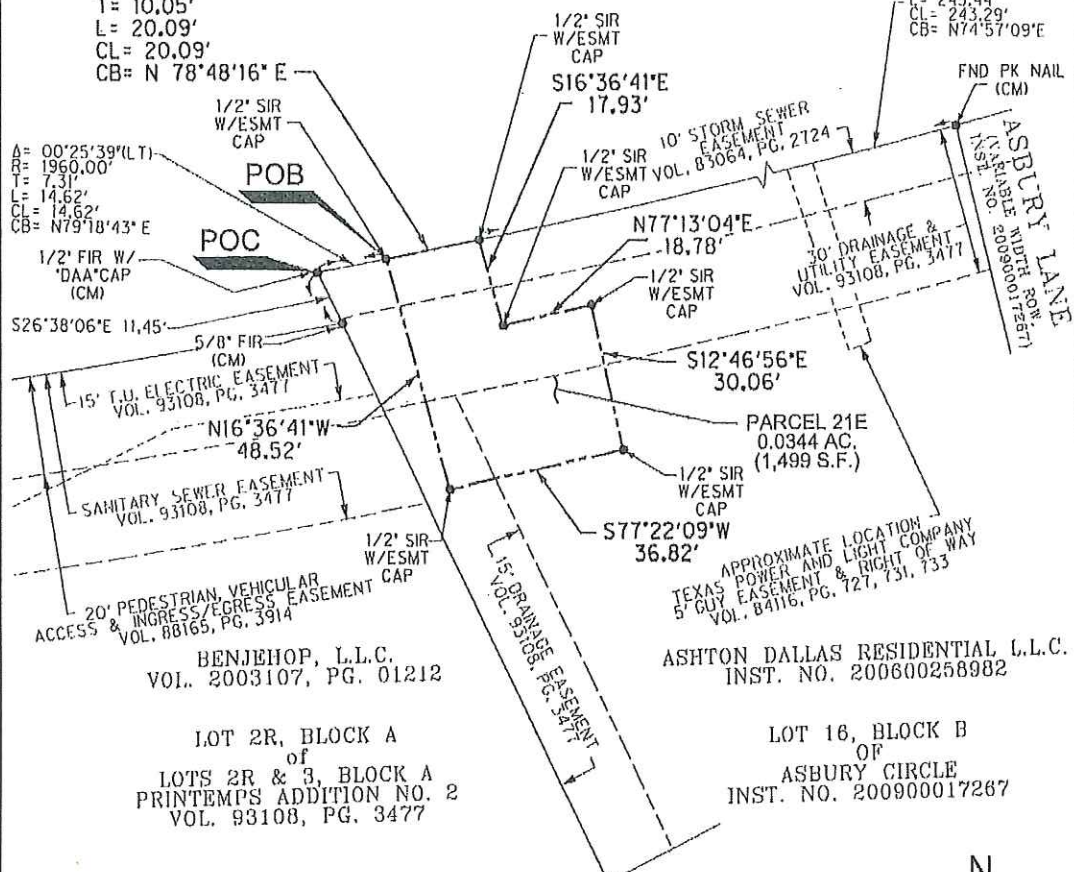


T.L. CHENOWETH SURVEY, ABSTRACT NUMBER 273

BELT LINE ROAD
(VARIABLE WIDTH RIGHT-OF-WAY)

A= 00°35'14"(LT)
R= 1960.00'
T= 10.05'
L= 20.09'
CL= 20.09'
CB= N 78°48'16" E

A= 07°06'59"(LT)
R= 1960.00'
T= 121.88'
L= 243.44'
CL= 243.29'
CB= N74°57'09"E



A= 00°25'39"(LT)
R= 1960.00'
T= 7.31'
L= 14.62'
CL= 14.62'
CB= N79°18'43" E

BENJEHOP, L.L.C.
VOL. 2003107, PG. 01212

LOT 2R, BLOCK A
of
LOTS 2R & 3, BLOCK A
PRINTEMPS ADDITION NO. 2
VOL. 93108, PG. 3477

ASHTON DALLAS RESIDENTIAL L.L.C.
INST. NO. 200600258982

LOT 16, BLOCK B
OF
ASBURY CIRCLE
INST. NO. 200900017267

APPROXIMATE LOCATION
TEXAS POWER AND LIGHT COMPANY
5' GUY EASEMENT & RIGHT OF WAY
VOL. 84116, PG. 727, 731, 733

LEGEND

(CM)	CONTROLLING MONUMENT
SIR	SET IRON ROD
W/CAP	WITH YELLOW PLASTIC CAP STAMP "HALFF"
W/ESMT CAP	WITH BLUE PLASTIC CAP STAMP "HALFF ESMT"
FIR	FOUND IRON ROD
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
AC.	ACRES
S.F.	SQUARE FEET

- NOTES
- The basis of bearing is the Town of Addison Survey Control Network (December 2007 update) based on Monument Numbers COA-3, COA-4, COA-5, COA-10, & COA-11. All distances are surface distances using the TXDOT Dallas County Scale Factor 1.000138506.
 - A metes & bounds description of even date accompanies this survey exhibit.
 - This survey was prepared without the benefit of a title commitment. Easements may exist where none are shown.

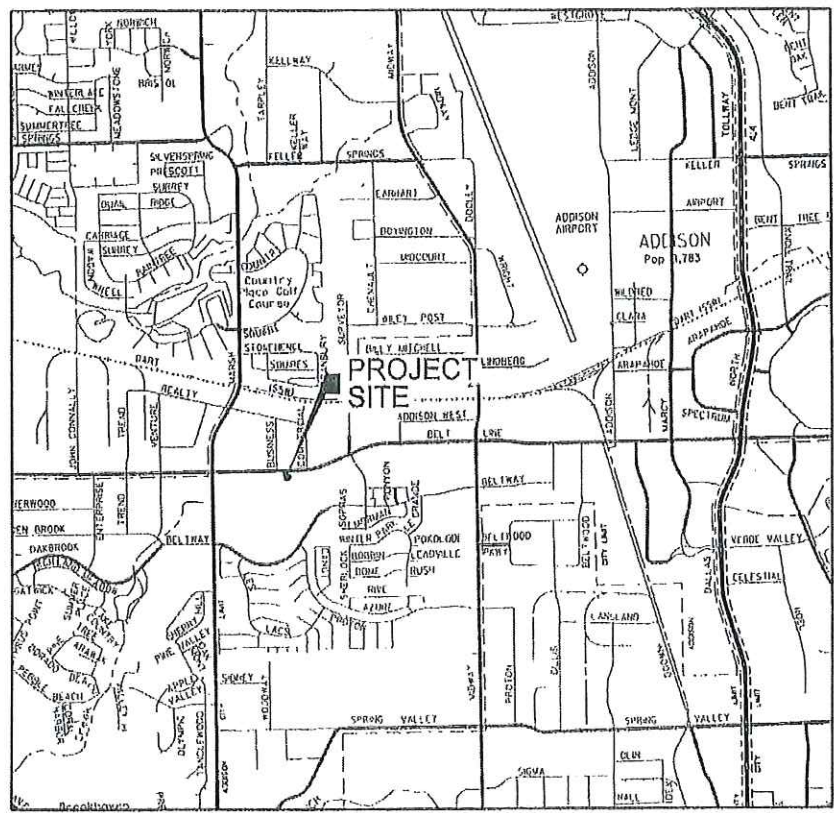
30 OCT 2013

30 005
2013

0 10 20 30
SCALE IN FEET
1" = 30'

PARCEL 21E
0.0344 AC. (1,499 S.F.)
EASEMENT OUT OF
LOT 16, BLOCK B OF
ASBURY CIRCLE
TOWN OF ADDISON, DALLAS COUNTY, TEXAS
DATE: 10-30-2013 AVO: 29350

1201 NORTH BOWSER ROAD RICHARDSON, TEXAS 75081
(214) 346-6200 TPBLS FIRM NO. 10029600



LOCATION MAP
NOT TO SCALE

PARCEL 21E
0.0344 AC. (1,499 S.F.)
EASEMENT OUT OF
LOT 16, BLOCK B OF
ASBURY CIRCLE
TOWN OF ADDISON, DALLAS COUNTY, TEXAS
DATE: 10-30-2013 AVO: 29350



PAGE 4 OF 4 1201 NORTH BOWSER ROAD RICHARDSON, TEXAS 75081
(214) 346-6200 TPBLS FIRM NO. 10029600

EXHIBIT "B"

TOWN OF ADDISON, TEXAS CONTRACTOR INSURANCE REQUIREMENTS & AGREEMENT

REQUIREMENTS

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

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

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

TYPE OF INSURANCE	AMOUNT OF INSURANCE	PROVISIONS
1. Workers' Compensation Employers' Liability to include: (a) each accident (b) Disease Policy Limits (c) Disease each employee	Statutory Limits per occurrence Each accident \$1,000,000 Disease Policy Limits \$1,000,000 Disease each employee \$1,000,000	TOWN OF ADDISON to be provided a <u>WAIVER OF SUBROGATION AND 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII rated or above.
2. Commercial General (Public) Liability to include coverage for: a) Bodily Injury b) Property damage c) Independent Contractors d) Personal Injury e) Contractual Liability	Bodily Injury/Property Damage per occurrence \$1,000,000, General Aggregate \$2,000,000 Products/Completed Aggregate \$2,000,000, Personal Advertising Injury per occurrence \$1,000,000, Medical Expense 5,000	<u>TOWN OF ADDISON to be listed as ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII rated or above.
3. Business Auto Liability to include coverage for: a) Owned/Leased vehicles b) Non-owned vehicles c) Hired vehicles	Combined Single Limit \$1,000,000	<u>TOWN OF ADDISON to be listed as ADDITIONAL INSURED and provided 30 DAY NOTICE OF CANCELLATION</u> or material change in coverage. Insurance company must be A-:VII-rated or above.

Certificate of Liability Insurance forms (together with the endorsements necessary to meet the requirements and instructions contained herein) may be faxed to the Purchasing Department; 972-450-7074 or emailed to: purchasing@addisontx.gov. Questions regarding required insurance should be directed to the Purchasing Manager.

With respect to the foregoing insurance,

- 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, Texas 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: _____