



Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000

FAX (972) 450-7043

## AGENDA

### WORK SESSION OF THE CITY COUNCIL

NOVEMBER 22, 2005

3:00 P.M.

RTKL ASSOCIATES, INC.  
1717 PACIFIC DALLAS, TX 75201

---

### WORK SESSION

---

Item #WS1 - Preview of Belt Line Road Streetscape Design.

---

Adjourn Meeting

---

Posted 5:00 p.m.  
November 17, 2005  
Carmen Moran  
City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS  
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST  
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**



Post Office Box 9010      Addison, Texas 75001-9010      5300 Belt Line Road      (972) 450-7000  
FAX (972) 450-7043

## **AGENDA**

### **WORK SESSION OF THE CITY COUNCIL**

**NOVEMBER 22, 2005**

**6:00 P.M.**

**COUNCIL CHAMBERS  
5300 BELT LINE ROAD**

---

### **WORK SESSION**

---

Item #WS1 - Discussion regarding employee health insurance renewal.

---

Item #WS2 - Preview of the City Manager's recommended incentive compensation reward to Washington Staubach Addison Airport Venture for 2005.

---

Adjourn Meeting

---

Posted 5:00 p.m.  
November 17, 2005  
Carmen Moran  
City Secretary

**Item #WS1 – Attachments are in Item #R7 of the regular session packet.**

**Item #WS2 – Attachments are in item #R6 of the regular session packet.**



Post Office Box 9010      Addison, Texas 75001-9010      5300 Belt Line Road      (972) 450-7000  
FAX (972) 450-7043

**AGENDA**

**REGULAR MEETING OF THE CITY COUNCIL**

**NOVEMBER 22, 2005**

**7:30 P.M.**

**COUNCIL CHAMBERS**

**5300 BELT LINE ROAD**

---

**REGULAR SESSION**

---

Item #R1 -      Consideration of Old Business.

---

Item #R2 -      Consent Agenda.

---

---

## CONSENT AGENDA

---

- #2a - Approval of the Minutes for the November 8, 2005, Council Meeting.
- 
- #2b - Consideration and approval of a resolution authorizing the City Manager to enter into an agreement with, Meggitt Defense Systems Caswell, in the amount of \$49,500 to replace the electronic control systems on the police pistol range.
- 
- #2c - Consideration and approval of a resolution to award bid to StageLight, Inc., in the amount of \$132,275 for a lighting system upgrade to the Addison Theatre Centre.
- 
- #2d - Approval of final payment to Craig Olden, Inc., in the amount of \$37,800 for repairs to the concrete apron and drainage channel on the east side of the Lake Forest Drive Bridge.
- 
- #2e - Consideration and approval of a resolution authorizing the City Manager to enter into an agreement with The Margulies Communications Group to assist the Town with crisis communications.
- 
- #2f - Consideration and approval of a resolution authorizing the City Manager to enter into an agreement with Shiroma Southwest to provide public relations and media publicity programs to promote certain special events within the Town of Addison.
- 
- #2g - Consideration and approval of a resolution to fund the Cavanaugh Flight Museum sponsorship request in the amount of \$50,000.
-

---

Item #R3 - Consideration and approval of a resolution regarding certain matters pertaining to a Ground Lease at 4505 Claire Chennault (a.k.a. Addison Jetport) on Addison Airport between the Town of Addison, as Landlord, and Addison Airport of Texas, Inc. (AATI), as Tenant, as follows: i) consent to an assignment, assumption and extension of an existing sublease agreement between FirstAIR Group, Inc., and Mercury Air Center – Addison, Inc., collectively the subtenants.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Bill Dyer
3. Exhibit A – Ground Lease (0680-0501)
4. Exhibit B – Consent To Sublease Agreement
5. Exhibit C – Aerial of Mercury & Addison Jetport Facilities

Administrative Recommendation:

Administration recommends approval.

---

Item #R4 - Presentation and discussion of the Belt Line Corridor Comprehensive Streetscape Master Plan prepared by RTKL.

Attachments:

1. Council Agenda Item Overview
2. Memorandum

Administrative Recommendation:

Administration recommends approval.

---

Item #R5 - Consideration and approval for the City Manager to enter into contracts for services between the Town of Addison and Communities in Schools-Dallas, Senior Adult Services, Metrocrest Social Service Center, Metrocrest Family Medical Clinic, Metrocrest Chamber of Commerce, The Family Place, Special Care and Career Services funded from the General Fund and WaterTower Theatre, WaterTower Theatre-Matching, and Dance Council funded from the Hotel Fund budgets.

Attachments:

1. Council Agenda Item Overview
2. Contracts
  - a. Communities in Schools-Dallas
  - b. Senior Adult Services
  - c. Metrocrest Social Service Center
  - d. Metrocrest Family Medical Clinic
  - e. Metrocrest Chamber of Commerce
  - f. The Family Place
  - g. Special care and Career Services
  - h. WaterTower Theatre
  - i. WaterTower Theatre
  - j. Dance Council

Administrative Recommendation:

Administration recommends approval.

---

Item #R6 - Consideration and approval of the City Manager's recommended incentive compensation reward to Washington Staubach Addison Airport Venture for 2005.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Mark Acevedo
3. Memorandum from Lisa Pyles
4. Exhibit 3 – Incentive Compensation Agreement
5. Third Amendment to Agreement

Administrative Recommendation:

Administration recommends approval.

---

Item #R7 - Consideration and approval of a Resolution authorizing the City Manager to enter into contracts with Blue Cross/Blue Shield of Texas for employee health insurance, with Delta Dental for employee dental insurance, with Hartford Life Insurance for life, accidental death and dismemberment insurance and with UnumProvident for long term disability insurance and an Employee Assistance Program, for the year 2006.

Attachments:

1. Council Agenda Item Overview
2. Memorandum from Judy Stafford
3. 2005 Focus Group
4. 2006 Recommended Insurance Coverage

Administrative Recommendation:

Administration recommends approval.

---

Adjourn Meeting

---

Posted 5:00 p.m.  
November 17, 2005  
Carmen Moran  
City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS  
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST  
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL**

November 8, 2005  
7:30 p.m. - Council Chambers  
5300 Belt Line Road

Present: Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Mallory, Mellow,  
Niemann

Absent: None

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Shane Steinbach (Fire), Erik Gaume (Public Works), Michael Vincent (Police).

Item #R2 - Consent Agenda.

#2a – Approval of the Minutes for the October 24, 2005 and October 25, 2005 Council Meeting. (Approved as written)

#2b – Consideration and approval of a resolution of the City Council casting its vote to support R. Scott Wheeler as the suburban cities representative to the Dallas Central Appraisal District Board of Directors. (Approved Resolution No. R05-084)

#2c – Consideration and approval of a 9-1-1 billing agreement with IQC, LLC dba CNB Communications, which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

#2d – Consideration and approval of a 9-1-1 billing agreement with VCI Company, which have a Service Provider Certificate of Operating Authority (SPCOA) from the Texas Public Utilities Commission. (Approved)

#2e – Consideration and approval for final payment in the amount of \$74,221 to Jim Bowman Construction Co., L.P., and acceptance of improvements for construction of the Sampling Manhole Construction Project. (Approved)

Item #R3 – Presentation regarding the Addison Arbor Foundation's 2005-2006 Urban Forestry Partnership Grant received for the funding of a forestry intern to conduct a tree inventory and management plan.

No action taken.

Item #R4 – Consideration and approval of an ordinance authorizing the issuance and sale of Town of Addison, Texas, General Obligation Refunding and

Improvement Bonds, Series 2005 and levying tax for the payment thereof; approving a bond purchase agreement; approving an official statement; and enacting other provisions relating to the subject.

Councilmember Mallory moved to duly pass Ordinance No. 005-058 authorizing the issuance and sale of Town of Addison, Texas, General Obligation Refunding and Improvement Bonds, Series 2005 and levying tax for the payment thereof; approving a bond purchase agreement; approving an official statement; and enacting other provisions relating to the subject. Councilmember Niemann seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

Councilmember Niemann recused himself and left the Council Chambers.

Item #R5 – Consideration and approval of an ordinance of the Town of Addison, Texas, denying the request of Atmos Energy Corp., Mid-Tex Division, for an annual Gas Reliability Infrastructure Program (GRIP) rate increase in this municipality, as a part of the Company’s statewide gas utility distribution system; approving cooperation with other cities within the Atmos Energy Corp., Mid-Tex Division distribution system as part of the Atmos Cities Steering Committee (ACSC); authorizing the ACSC to hire legal and consulting services and to negotiate with the Company and direct any necessary litigation; authorizing intervention as part of ACSC in any appeal of the Town’s action to the railroad commission; providing a requirement for a prompt reimbursement of costs incurred by the Town; finding that the meeting at which this ordinance is passed is open to the public as required by law; and providing for notice of this ordinance to Atmos Energy Corp., Mid-Tex Division.

Councilmember Mallory moved to duly approve Ordinance No. 005-059 denying the request of Atmos Energy Corp., Mid-Tex Division, for an annual Gas Reliability Infrastructure Program (GRIP) rate increase in this municipality, as a part of the Company’s statewide gas utility distribution system; approving cooperation with other cities within the Atmos Energy Corp., Mid-Tex Division distribution system as part of the Atmos Cities Steering Committee (ACSC); authorizing the ACSC to hire legal and consulting services and to negotiate with the Company and direct any necessary litigation; authorizing intervention as part of ACSC in any appeal of the Town’s action to the railroad commission; providing a requirement for a prompt reimbursement of costs incurred by the Town; finding that the meeting at which this ordinance is passed is open to the public as required by law; and providing for notice of this ordinance to Atmos Energy Corp., Mid-Tex Division. Councilmember Kraft seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow  
Voting Nay: None  
Absent: None  
Abstain: Niemann

Item #R6 - Consideration and approval of a resolution by the Town of Addison, Texas, ordering Atmos Energy Corp., Mid-Tex Division to show cause regarding the reasonableness of its existing natural gas distribution rates within the Town; requiring Atmos Energy Corp., Mid-Tex Division to submit a rate package based on a rate year ending June 30, 2005; directing that such filing shall be made by December 31, 2005; requiring reimbursement of reasonable legal and consultant expenses; and requiring delivery of this resolution to the company and legal counsel.

Councilmember Braun moved to duly pass Resolution No. R05-085 ordering Atmos Energy Corp., Mid-Tex Division, by the Town of Addison, to show cause regarding the reasonableness of its existing natural gas distribution rates within the Town; requiring Atmos Energy Corp., Mid-Tex Division to submit a rate package based on a rate year ending June 30, 2005; directing that such filing shall be made by December 31, 2005; requiring reimbursement of reasonable legal and consultant expenses; and requiring delivery of this resolution to the company and legal counsel. Councilmember Hirsch seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow  
Voting Nay: None  
Absent: None  
Abstain: Niemann

Councilmember Niemann returned to the Council Chambers.

Item #R7 – Consideration and approval of an ordinance approving amendments to the Town’s financial policies.

Councilmember Braun moved to duly pass Ordinance No. 005-060 approving amendments to the Town’s financial policies. Councilmember Kraft seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

Item #R8 – Consideration of an ordinance providing conditional approval of consent of the transfer of a cable franchise agreement from Comcast to C-Native Exchange.

Councilmember Niemann moves to duly pass Ordinance No. 005-061 providing conditional approval of consent of the transfer of a cable franchise agreement from Comcast to C-Native Exchange subject to final approval by the city attorney. Councilmember Mellow seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

**EXECUTIVE SESSION.** At 8:15 p.m., Mayor Chow announced that the Council would convene into Executive Session to discuss the following item:

Item #ES1 – Closed (executive) session of the City Council pursuant to Section 551.087 of the Texas Government Code to discuss and deliberate regarding commercial or financial information that the Town has received from business prospects that the Town seeks to have locate or expand in the Town and with which the Town is conducting economic development negotiations; and to deliberate the offer of a financial or other incentive to such business prospects.

The Council came out of Executive Session at 8:37 p.m.

Item #R9 – Discussion and consideration of any action regarding an offer by the Town of a financial or other incentive to business prospects that the Town seeks to have locate or expand in the Town and with which the Town is conducting economic development negotiations.

Councilmember Niemann moved to authorize the City Manager to execute a Memorandum of Understanding (“MOU”), regarding a business prospect that seeks to locate in the Town. Councilmember Mallory seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

Item #R10 – Discussion and consideration of amendment to Agreement between the Town and Don Franklin for education cost reimbursement.

Councilmember Niemann moved to approve an amendment to the Agreement between the Town and Don Franklin for education cost reimbursement to 36 months post graduation. Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann  
Voting Nay: None  
Absent: None

There being no further business before the Council, the meeting was adjourned.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Secretary

**Council Agenda Item: #2b****SUMMARY:**

Council consideration is requested authorizing the City Manager to enter into an agreement with, Meggitt Defense Systems Caswell, in the amount of \$49,500 to replace the existing electronic control systems on the police pistol range. The original equipment was manufactured, and installed by Meggitt Defense Systems Caswell, and has been maintained by them since the range opened in 1984. The range is a "target system" hence this is a sole source replacement request to ensure compatibility with the multiple components that make up the overall target system.

**FINANCIAL IMPACT:**

This item was included in the Police Department's Fiscal Year 05-06 Budget.

Each year the department renews a preventive maintenance agreement with Meggitt Defense Systems Caswell, at a cost of \$3,600 per year. The agreement covers preventive maintenance and all minor parts and labor for the existing electronic control systems and other range components. The replacement electronic control systems will continue to be part of this annual maintenance package and will not increase our maintenance costs.

**BACKGROUND:**

The existing electronic control systems were installed when the building was opened in 1984. As with the electronic control systems in our jail, the electronics were the industry standard 20 years ago but are no longer manufactured. The average life of this equipment is ten to fifteen years but due to regular preventive maintenance and our ability to obtain used parts we have managed to extend the life of this equipment. However, during one of our 04-05 preventive maintenance inspections the Caswell service representative reported that the availability of used parts had declined to the point that future repairs may not be possible. In order to continue to use the range without danger of interruption we feel it is preferable to schedule the replacement as an anticipated budget item rather than as a future emergency budget request.

**Recommendation:**

Staff recommends approval.

**DEFENSE SYSTEMS  
CASWELL**

720 Industrial Drive, Unit 112  
Cary, IL  
60013-1987  
tel 512 358 9590  
fax 847 639 7694

[www.mds-caswell.com](http://www.mds-caswell.com)

November 16, 2005

Addison Police Department (TX)  
4799 Airport Parkway  
Addison, TX 75001  
Attn: Lt Steve Smith

**RE: Range Retrofit Project**

Dear Sgt. Smith,

Thank you for your interest in Meggitt Defense Systems Caswell Inc. and our retrofit program. The target system you have in your range has been developed and modified over the years by Caswell. All the modifications and upgrades have been made with the existing systems in mind. Therefore Meggitt Defense Systems Caswell Inc is the sole supplier of the RTS360, a completely compatible upgrade to the existing range. The target carriers are designed for the existing rail. The drive units are designed to fit with the existing firing line cross-member. Caswell was the original supplier of the equipment in the range we are the only source for replacement system to minimize expenditure while bringing the system in the range up to current standards. Any other system considered would add unwarranted costs to the City of Addison as the range would have to be modified completely to accommodate it properly.

Meggitt Defense Systems Caswell has been the sole source supplier to hundreds of agencies including the United States Government, large municipalities and the smallest villages. Meggitt Defense Systems Caswell is the world leader in firearms training equipment and has complete sales, service, installation, and engineering staffs to make certain that each project is properly handled. Meggitt Defense Systems Caswell has over 78 years of experience in designing and manufacturing all types of firearms training equipment and has successfully fabricated and installed literally thousands of shooting ranges world-wide, consisting of military, law-enforcement, commercial, and private ranges. Our emphasis on safety is always, and will remain, foremost. After reviewing this information, should you have any questions or be in need of any additional assistance, please do not hesitate to contact me. We at Meggitt Defense Systems Caswell appreciate your interest in our products and look forward to working with you on this project.

Sincerely,

A handwritten signature in cursive script that reads 'David O'Meara'.

David O' Meara  
Customer Account Representative



**DEFENSE SYSTEMS  
CASWELL**

#2b-3

720 Industrial Drive, Unit 112  
Cary, IL  
60013-1987  
tel 512 358 9590  
fax 847 639 7694

www.mds-caswell.com

November 16, 2005

Addison Police Department (TX)  
4799 Airport Parkway  
Addison, TX 75001  
Attn: Lt Steve Smith  
Fax: 972-450-7182

QUOTATION

Dear Lt Steve Smith:

We herewith offer our quotation price of \$49,500.00 for the furnishing and delivery, F.O.B. jobsite, the equipment listed herein. In addition to the quotation price, you will be responsible for all Federal, State, or Local Taxes, Licenses, Permits, and Fees applicable to the sale. The above quoted price does not include any charges for Bid, Payment, or Performance Bonds. This quotation is null and void if not accepted, in writing, and received by Meggitt Defense Systems Caswell by 12/31/05.

Terms are 100% due no later than 30 days after receipt of invoice. Any deviation must be mutually agreed upon in writing.

Delivery is normally 90 days after return receipt of approved order. This quotation and attached pages will be attached to and made part of any forthcoming purchase order. Indication of acceptance shall be by signature in the space provided on each page of the quotation herein.

Sincerely,

David O'Meara  
Customer Account Representative

Meggitt Defense Systems Caswell

APPROVED: \_\_\_\_\_

DATE: \_\_\_\_\_

**QUOTATION - EQUIPMENT LISTING**

<u>QUANTITY</u>	<u>MODEL</u>	<u>DESCRIPTION</u>
6	ATO360	360 Degree Targets Rifle Rated Random Facing
6	EF5	Local Controls
1	RM9000	PC Master Controller
1	NSFP-17	17" Flat Panel Monitor
6	NSSB7P	Local control panels
1	Lot	Freight
1	Lot	Installation
1	Lot	Training

**Other Comments:** Removal of the old equipment by Meggitt Defense Systems Caswell Inc. disposal by the customer.

Due to the current instability in the metals market, particularly armor plate, all prices are quoted based on today's cost of metal and metal availability. Due to the fact that our metal supplier's will only quote on the basis of price in effect on date of shipment, we reserve the right to amend our quote for any difference in the cost of metal at the time of contract award. The adjustment, if any, will be either additive or deductive based on the then current metal prices.

APPROVED: \_\_\_\_\_

DATE: \_\_\_\_\_

-3-

**TERMS AND CONDITIONS****DATED:** \_\_\_\_\_

The following Terms and Conditions are a part of Caswell International Corporation's ("Caswell") quote to the Town of Addison, Texas for the **Target System Retrofit** project (the "project"). These Terms and Conditions will be part of any contract, purchase order or signed quote that Caswell enters into with you, your department or company.

1. Caswell's Terms and Conditions contained herein, along with the enclosed quote take precedent over all other project documents. Any earlier quote along with those terms and conditions are immediately null and void.
2. Caswell excludes the following items unless specifically included as a line item at the end of this paragraph.
  - A. Line voltage electrical, connections, line or control conduits (empty or full), electrical boxes, receptacles, target or general lights and any other devices generally considered for high voltage.  
All temp utilities for construction (including adequate lighting and 115v power for hand-tools) are the responsibility of the General Contractor.
  - B. Bridging, structural supports or any other material that is required as support for Caswell's baffle or safety ceiling.  
All coordination for baffle, safety ceiling, and bullet trap (and the associated hanging provisions) is the responsibility of the General Contractor. Caswell will provide accurate submittal drawings for this purpose.
  - C. Unloading and/or moving/placement of Caswell equipment into the range area.
  - D. Removal / disposal of existing equipment
  - E. Removal / disposal of lead or other hazardous waste
  - F. Relocation of existing piping, ventilation ducts, electrical conduit, etc

Items that are specifically included with this quote:

None

---



---

3. Caswell will not be responsible for payment of the following statutory items unless specifically included as a line item at the end of this paragraph:
- A. Taxes
  - B. Permits
  - C. Fees
  - D. Bonds
  - E. Licenses
  - F. Other Charges

Statutory items that are specifically included with this quote:

None

4. Caswell represents and warrants:

- (i) That Caswell's services and work will be provided in a professional, good and workman-like manner, consistent with the commercially accepted best practices and standards that are in use in Caswell's line of business as of the time such services and work are provided. Caswell warrants and represents that it has the skills, qualifications, expertise and experience necessary to perform the services described in the project specifications applicable thereto.
- (ii) Caswell will perform its work in accordance with, and for the period of time set forth in, the specifications applicable thereto.
- (iii) That any support and other services that Caswell provides to the Town under this Agreement, directly or through its subcontractors, shall be provided by personnel who are trained and skilled in the provision of such services consistent with commercially accepted practices.

5. Caswell is a non-union manufacturer. Caswell will provide prevailing wages (Davis-Bacon) or pay for union workers only if specifically included as a line item below.

None

6. The payment amount included in the attached quote shall be payable to Caswell as follows: An invoice for payment will be provided to the Town upon completion of all work and services to be provided by Caswell hereunder and acceptance thereof by the Town. Terms are 100% due no later than 30 days after the Town's receipt of the invoice. Any deviation must be mutually agreed upon in writing.

If Caswell is not authorized to commence work on the Project within 90 days from the date of the attached quote, Caswell shall be entitled to adjust its quoted prices to account for increased costs if any to Caswell as a result of said delay: provided, however, that before any such increased costs may be charged to the Town, Caswell shall provide to the Town evidence of such increased costs in form and content satisfactory to the Town.

7. All drawings, specifications and other design documents stamped "Proprietary Information" as prepared by Caswell are the property of Caswell. Caswell shall retain all common law, statutory and other rights, including all copyrights, related to said design documents. The Town shall not use the design documents on other projects without the specific written consent of Caswell.
8. Caswell shall operate as an independent contractor and not as an agent of the Town during performance of this Agreement, and nothing herein shall be construed to create a partnership, joint venture, joint enterprise, or agency relationship between the parties hereto. No personnel of Caswell or of any subcontractor shall be deemed under any circumstances to be an agent or employee of the Town, nor do such personnel have authority to bind the Town by any representation, promise, contract or agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.
9. **CASWELL AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS OFFICERS, AGENTS AND EMPLOYEES (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH (A) CASWELL'S PERFORMANCE OF THIS AGREEMENT, (B) THE USE OF ANY TOWN PROPERTY BY CASWELL OR BY ANY OWNER, OFFICER, PARTNER, SHAREHOLDER, EMPLOYEE, AGENT, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, SUBCONTRACTOR, LICENSEE, GUEST, INVITEE, OR CONCESSIONAIRE OF CASWELL, OR ANY OTHER PERSON OR ENTITY FOR WHOM CASWELL MAY BE LIABLE (TOGETHER, "CASWELL PARTIES"), OR ANY OF THEM, (C) THE CONDUCT OF CASWELL'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY CASWELL (OR ANY OF CASWELL PARTIES) TO BE DONE IN OR ABOUT THE PREMISES OF THE TOWN, (D) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF CASWELL'S OBLIGATIONS UNDER THIS AGREEMENT, (E) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY CASWELL UNDER THIS AGREEMENT, AND (E) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF CASWELL**

OR OF ANY OF CASWELL PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT, INCLUDING DAMAGES CAUSED BY AN INDEMNITEE'S OWN NEGLIGENCE.

(b) With respect to Caswell's indemnity obligation set forth in subsection (a), Caswell shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee.

(c) With respect to Caswell's duty to defend set forth herein in subsection (a), Caswell shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the Town shall have the right to approve the selection of counsel by Caswell and to reject Caswell's selection of counsel and to select counsel of the Town's own choosing, in which instance, Caswell shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The Town agrees that it will not unreasonably withhold approval of counsel selected by Caswell, and further, the Town agrees to act reasonably in the selection of counsel of its own choosing.

(d) In the event that Caswell fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Caswell, and Caswell shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(e) The indemnity, hold harmless, and defense obligations shall survive the termination, revocation, or expiration of this Agreement.

11. Caswell has no authority or power to and shall not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of the Town, and any such assignment, transfer, delegation, subcontract or other conveyance without the Town's prior written consent shall be considered null and void and shall be cause for the Town to immediately terminate this Agreement.

12. The Town may terminate this Agreement for Caswell's failure to meet any material obligation hereunder if Caswell has failed to take corrective action within three (3) days (or such longer period as specified in the notice of termination) of its receipt of written notification of the failure, which corrective action has a substantial likelihood of effecting a cure within a reasonable period thereafter. If the Town terminates the Agreement for such failure, the Town will pay Caswell for products and materials Client accepted prior to such termination.

13. All notices, requests, directions or other communications hereunder shall be in writing and deemed to have been duly given when delivered in person (including by a reputable delivery service) or within three (3) business days after being deposited

with the United States Postal Service for delivery by certified or registered mail, postage pre-paid and return receipt requested, to the address of the respective party below:

To Caswell:

To the Town:

Attn: David O'Meara

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

14. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. All obligations arising prior to the termination of this Agreement allocating responsibility or liability of or between Contractor and Client shall survive completion of the services hereunder and the cancellation, expiration, or termination of this Agreement.

15. Time is of the essence of this Agreement and in each provision contained in it.

16. This Agreement and each of its provisions is solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

17. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise.

18. In the event of any suit or action under this Agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. Caswell and the Town agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

19. Caswell at its own expense, shall purchase, maintain and keep in force such insurance as described and in the minimum amounts set forth below:

A. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include, without limitation, products/completed operations (\$1,000,000 products/ completed operations aggregate). Coverage for products/completed operations must be maintained for at least one (1) year after the work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.

B. Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

C. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

With reference to the foregoing insurance requirements, Caswell shall specifically endorse applicable insurance policies as follows:

A. The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.

B. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.

C. A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the Workers Compensation and all liability policies.

D. 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.

E. All insurance policies, which name The Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

F. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

G. Caswell may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.

prepared and executed by the insurance company or its authorized agent, delivered to the Town simultaneously with the execution of this Agreement (and updated copies of any such insurance shall be delivered to the Town as appropriate), and shall contain provisions representing and warranting the following:

- A. Sets forth all endorsements and insurance coverage's according to requirements and instructions contained herein.
- B. Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.
- C. Upon request, Caswell shall furnish the Town of Addison with certified copies of all insurance policies.

**Council Agenda Item: #2c****SUMMARY:**

This item is to consider an award of a bid to StageLight, Inc. in the amount of \$132,275.00. for a lighting system upgrade to the Addison Theatre Centre.

**FINANCIAL IMPACT:**

Budgeted Amount: \$150,000.00

Cost: \$132,275.00

**BACKGROUND:**

This current lighting system at the Addison Theatre Centre was installed when the building opened and for the past four years has been showing signs of failure. When the system fails it causes part or all of the lighting in the theatre, including house lights for patron areas, to go dark. Other failures include the inability to change lighting levels and/or slow response time to requested lighting changes. The manufacturer of the current lighting system, Colortran Lighting, is no longer in business and therefore no longer supports the system. In addition, there are no suitable replacement parts to repair the lighting system.

This project would allow for new theatrical dimming and control equipment to be purchased and installed at the Addison Theatre Centre.. Installation has tentatively been scheduled for February 13-24, 2006 to not interfere with any scheduled performances.

81 vendors were notified of this bid and 13 vendors received plans. Two bids were received, which are listed on the attached bid tabulation form. Due to the specialized nature of this work, there are only a few companies in the Metroplex that are able to bid on this type of project.

Staff has worked with StageLight, Inc. on other theatre-related projects and has performed well. In addition, StageLight, Inc. has performed similar projects for Alley Theatre, Casa Manana Theatre, Tulsa Performing Arts Center and the University of Texas-Austin Bass Hall. References for StageLight, Inc. have been very positive about the quality of their work.

**RECOMMENDATION:**

Staff recommends approval of this bid.

**Lighting System Upgrade  
 Bid No. 06-01  
 DUE: November 8, 2005  
 2:00 PM**

BIDDER	Signed	Bid Bond	Total Bid
Stagelight	Y	Y	\$132,275.00
Barbizon Light of the Rockies	Y	Y	\$149,940.00

*Shanna N. Sims*

Shanna N. Sims, Strategic Services Manager

*Natie Roller*

Witness

**Council Agenda Item: #2d**

**SUMMARY:**

This item is Council acceptance and payment to Craig Olden, Inc. for repairs to the concrete apron and drainage channel on the east side of the Lake Forest Drive Bridge.

**FINANCIAL IMPACT:**

Bid Amount: \$37,800

Final Cost: \$37,800

This project is funded for 2005 in the Street Department Operations Budget.

**BACKGROUND:**

On August 13, Council awarded a contract to Craig Olden, Inc. for the Lake Forest Drive Bridge repair. This project removed the cracked concrete bridge apron, filled all subgrade erosion with crushed stone, and topped it with 9" of concrete. The existing Gabion walls were also fortified and new Gabion mats constructed to prevent future bank erosion.

Craig Olden, Inc. did an excellent job and there were no cost overruns or change orders.

**RECOMMENDATION:**

Staff recommends payment in the amount of \$37,800 to Craig Olden, Inc. for the Lake Forest Drive Culvert Repair project.

**Council Agenda Item: #2e****SUMMARY:**

Staff is requesting approval to enter into an agreement with The Margulies Communication Group to assist the Town with media communications.

**FINANCIAL IMPACT:**

Budgeted Amount: \$36,000

Cost: \$36,000 plus expenses that may be incurred

**BACKGROUND:**

For the last several years, the Town has utilized the services of The Margulies Communications Group to respond to media inquiries, particularly as it relates to crisis situations. The agreement is structured so that the Margulies Group will respond at anytime to media inquiries or situations that may result in media inquiries. In addition the agreement is structured so that the Town may utilize the services of the Margulies Group on specific projects so as to minimize the potential for negative publicity for the Town. The arrangement has served the Town well and enabled the Town to address the media in an efficient, effective manner.

**RECOMMENDATION:**

Staff recommends approval.

This letter, when signed by you, will confirm that the Town of Addison (Client) has retained The Margulies Communications Group (MCG), a Texas Corporation as public relations counsel to provide the services described below. Such services shall be provided beginning on October 1, 2005.

**Services**

MCG will, at Client's request from time to time and to the Client's satisfaction, assist Client in responding to media inquiries concerning crisis communications issues as well as other assignments given to MCG by Client. CG shall submit such responses and other work prepared by MCG for Client's review and consideration of approval prior to release to the media or any other third party, except when MCG is called upon by Client to be its representative and spokesperson in connection with an incident or matter and the then existing circumstances do not permit MCG adequate time to submit such responses or other work to Client for its review and consideration prior to its release. MCG will work with Client to develop strategies to minimize any negative publicity during crisis situations and will assist the Client in providing accurate and timely information to the news media. In providing such services, MCG shall comply with all applicable federal, state and local laws, rules and regulations.

For the services described above, Client will pay MCG a monthly retainer of \$3,000 for each calendar month during the term hereof (the "Monthly Fee"). Up to one-half of this amount (\$1,500.00) can be utilized by Client for other hourly media relations services provided by MCG should the amount as determined by the following formula be less than \$3,000: number of hours for crisis response services during the applicable month ("Applicable Month") X (times) the applicable hourly rate (as set forth below); such amount may be used by Client during the month immediately following the Applicable Month. For any single crisis situation, should the amount as determined by the following formula: [Number of hours provided by MCG hereunder during a calendar month ("MCG Total Monthly Hours") X (times) the applicable hourly rate (as set forth below)] exceed \$6,000.00 in any calendar month, Client will pay MCG's normal hourly rates as set forth below for all hours that exceed the MCG Total Monthly Hours.

Professional Services	Hourly Fees
David Margulies – Senior Counsel	\$300
Account Executives	\$135
Support Staff	\$50

If incurred, MCG will bill Client for reimbursement of out-of-pocket expenses incurred on Client's behalf when these expenses have been approved by Client in advance.

MCG shall submit to Client, on or before the fifth day of each month, an invoice for the Monthly Fee. Each such invoice shall include (i) a description of the work performed for the month preceding the date of the invoice, (ii) time reports for that month for all MCG personnel who

work under this contract, (iii) an itemized statement of any reimbursable expenses incurred; (iv) true and correct copies of any and all receipts, invoices, and other documents and materials in support of the invoice, and (v) any such additional documents or materials as Client may request in connection with the invoice and/or the compensation paid to MCG. Client shall pay the Monthly Fee set forth in the invoice for service properly performed and all expenses properly incurred by MCG and set forth in the invoice within thirty (30) days following Client's receipt of the invoice.

This contract shall last for one year from the date of signing, subject however to the earlier termination of this contract as provided for herein and subject to the annual appropriation and budgeting of funds by Client to make payments under this contract. If funds to make any payment or payments under this contract during the said term are not appropriated and budgeted by the Town, this contract shall terminate on the last day of the Client's fiscal period in which funds were appropriated and budgeted without penalty or expense to client of any kind whatsoever.

Either party may terminate this contract at any time and for any reason by giving to the other party at least 30 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination, all finished or unfinished reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by MCG shall be and become the property of Client, and MCG shall promptly deliver such items to Client. MCG shall be paid for all work satisfactorily completed prior to the effective date of said termination.

If MCG, MCG's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the Client, then Client shall have the right to terminate this contract effective immediately upon the Client giving written notice thereof to MCG. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. In the event of termination, all finished or unfinished reports and other materials and items (whether kept electronically, in writing, or otherwise) prepared by MCG shall be and become the property of the Client and MCG shall promptly deliver such items to the Client. MCG shall be paid for all work satisfactorily completed prior to the effective date of such termination.

In connection with this Agreement, MCG shall provide and maintain in full force and effect during the term of this Agreement:

- (i) Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate;
- (ii) Commercial general liability insurance at minimum combined single limits of \$1,000,000.00 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate) and contractual liability

(covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement).

(iii) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000\_per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

(iv) Professional Liability coverage at minimum limits of \$1,000,000. This coverage must be maintained for at least two (2) years after the termination of this letter agreement. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term of this agreement or any extensions or renewals thereof.

With reference to the foregoing insurance requirement, MCG shall specifically endorse applicable insurance policies as follows:

- (a) The Town of Addison shall be named as an additional insured with respect to General Liability and Automobile Liability.
- (b) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- (c) A waiver of subrogation in favor of the Town of Addison shall be contained in the Workers Compensation and all liability policies.
- (d) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- (e) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- (f) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (g) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (h) MCG may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
- (i) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance, satisfactory to Client, shall be prepared and

executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

- (a) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- (b) Shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, MCG shall furnish the Town of Addison with certified copies of all insurance policies.

MCG AGREES TO AND SHALL DEFEND (TO THE EXTENT INSURANCE COVERAGE IS AVAILABLE), INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH (A) MCG'S PERFORMANCE OF THIS AGREEMENT, (B) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF MCG'S OBLIGATIONS UNDER THIS AGREEMENT, AND (C) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF MCG, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, AND SUBCONTRACTORS UNDER, RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT (AND INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR DAMAGES RELATING TO COPYRIGHT OR ANY OTHER INTELLECTUAL PROPERTY RIGHT), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

With respect to MCG's indemnity obligation set forth above, MCG shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee. If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence of both MCG and the Indemnitee, MCG's indemnity obligation will be limited to a fraction of the total Damages equivalent to MCG's own percentage of responsibility. With respect to MCG's duty to defend set forth herein in subsection, MCG shall have the duty, at its sole cost and expense, through counsel of its choice (subject to the Client's reasonable consent), to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement. In the event that MCG fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Agreement, the Client shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of MCG, and MCG shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the Client in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action. The terms and provisions of this defense and indemnity set forth above shall survive the expiration or termination of this Agreement.

Client agrees to indemnify and hold harmless MCG from and against all losses which MCG may incur, based on information, representations, reports or data (together, "information") negligently furnished by Client in writing to MCG under this letter agreement, to the extent that (i) such information is accurately provided by MCG to the media and accurately disclosed by the media to the public, and (ii) the Client is legally liable for making such information available to the public; provided, however, that this indemnity and hold harmless is given by Client subject to and without waiving (i) any immunity available to Client, (ii) any tort limitation and any of its rights under, and the indemnity and hold harmless provided for herein is subject to and shall not exceed the monetary limitations of damages as set forth in, the Texas Tort Claims Act (Chapter 101, Tex. Civ. Prac. & Rem. Code, as amended) or any successor statute thereto, and (iii) any defenses afforded by law or otherwise; and further, in no event shall this indemnity and hold harmless apply to punitive or exemplary damages of whatever kind or nature.

MCG shall keep complete and accurate records for the services performed pursuant to this Contract and any records required by law or government regulation and shall make such records available to Town upon request. MCG shall assure the confidentiality of any records that are required by law to be so maintained. MCG shall prepare and forward such additional or supplementary records as Town may reasonably request.

Inasmuch as this contract is intended to secure the specialized services of MCG, MCG has no authority or power to and may not assign, transfer, delegate, subcontract or otherwise convey any interest herein without the prior written consent of Client, and any such assignment, transfer, delegation, subcontract or other conveyance without the Client's prior written consent shall be considered null and void.

Where the terms of this contract require that notice in writing be provided, such notice shall be deemed received by the party to whom it is directed upon being hand-delivered or upon three (3) days following the deposit of the notice in the United States mail, postage pre-paid, and sent by certified mail, return receipt requested and properly addressed as follows:

To Client:

5300 Belt Line Road  
Dallas, Texas 75254  
Attn: Lea Dunn

To MCG:

7007 Twin Hills Avenue  
LB-5 S-401  
Dallas, Texas 75231

No reports, information, documents, or other materials given to or prepared by MCG under this contract which Client requests to be kept confidential shall be made available to any individual or organization by MCG without the prior written approval of Client.

This letter agreement is entered into for the sole benefit of MCG and Client. Nothing in this letter agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof.

The reports, documents and materials prepared by MCG under this contract shall be the sole property of Client upon payment by Client to MCG for the fees earned under this contract in connection with the preparation and delivery of such reports, documents and materials.

If any clause, paragraph, section or portion of this contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the contract initially.

Any rights and remedies either party may have with respect to the other arising out of the performance of services during the term of this contract shall survive the cancellation, expiration or termination of this contract. Obligations of either party hereunder arising prior to the termination or cancellation of this contract allocating responsibility or liability of or between Client and MCG shall survive the completion of this services hereunder and termination or cancellation of this contract.

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

In the event of any action under this contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this contract.

MCG shall, during the entire term of the contract, be construed to be an independent contractor and nothing in this contract is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow the Town to exercise discretion or control over the professional manner in which MCG performs the services which are the subject matter of the contract; provided, however, that the services to be provided by MCG shall be provided in a manner consistent with the highest ethical standards and applicable laws and regulations governing such services.

This contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. MCG shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

**7007 Twin Hills Avenue LB-5 S-401 Dallas, Texas 75231  
(214) 368-0909 fax (214) 692-5959 david@prexperts.net**

**Council Agenda Item: #2f****SUMMARY:**

Staff is requesting approval to enter into an agreement with Shiroma Southwest to provide public relations and media publicity programs to promote certain special events in the Town of Addison.

**FINANCIAL IMPACT:**

Budgeted Amount: \$33,750

Cost: \$33,750 plus expenses that may be incurred

**BACKGROUND:**

For the last several years, the Town has utilized the services of Shiroma Southwest to promote the Town's four major events as well as the smaller events and third party events sponsored by the Town. With the success of the Arts and Events District, the number of events and the Town's exposure as a result of the events has continued to grow. Staff is very pleased with the results that Shiroma consistently provides and feels that the marketing of Addison is definitely enhanced as a result of their services. Funds have been budgeted to cover the marketing costs.

**RECOMMENDATION:**

Staff recommends approval.

# SHIROMA SOUTHWEST

17311 N. Dallas Parkway, Suite 232, Dallas, Texas 75248

Phone (972) 732-6100 Fax (972) 732-0386

November 16, 2005

## LETTER OF AGREEMENT BETWEEN THE TOWN OF ADDISON AND SOUTHWEST SPEAKERS BUREAU, INC., D.B.A. SHIROMA/SOUTHWEST, FOR EVENT PUBLIC RELATIONS AND PUBLICITY

This Letter confirms the agreement between the Town of Addison (the client) and Southwest Speakers Bureau, Inc., d.b.a., Shiroma/Southwest (the agency):

### SERVICES:

Shiroma Southwest will develop and execute public relations and media publicity programs to promote the Town of Addison's events:

### EVENTS ARE AS FOLLOWS:

- Bookworm Bash
- Resolution Run
- Addison Beverage Center
- Out of the Loop Festival
- Taste Showcase
- Jazz Festival
- Play in May
- Taste Addison
- Artfest
- Summer Series
- Kaboom Town
- Oktoberfest
- Miscellaneous consultation

**FEES:** The annual fee is \$33,750, with fees allotted proportionately to each event, based on the amount of hours required. The fee will be billed in 12 monthly increments of \$2,812.50.

### EXPENSE REIMBURSEMENT:

Expenses will be billed monthly. Agency will provide the client with a budget of anticipated charges. Client agrees to provide any necessary collateral pieces, if possible, to reduce the need for additional expenses. Agency will be reimbursed for all expenses pertaining to the programs, which may include copies, long distance phone, faxes, postage, printing, messenger services, overnight deliveries, press kit materials and assembly, photo reproduction, print and electronic clipping services, etc. All outside purchases are made only under the authorization of the client and insomuch, the client agrees to accept full responsibility for all obligations and holds the agency harmless from all liability and payment of such charges as ordered under the client's authorization.

All amounts are due in Dallas, Dallas County, Texas. Balances that are more than sixty (60) days past due are subject to a finance charge of 1.33% per month (16% annually) or the current amount allowable by law.

This agreement is effective immediately upon signing and shall remain in effect through September 30, 2006.

**FOR TOWN OF ADDISON**

**FOR SOUTHWEST SPEAKERS BUREAU, INC.  
D.B.A. SHIROMA/SOUTHWEST**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**ITS:** \_\_\_\_\_

**ITS:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**Council Agenda Item: #2g**

**SUMMARY:** Approval to fund the Cavanaugh Flight Museum sponsorship request in the amount of \$50,000 to assist the Museum in their marketing efforts.

**FINANCIAL IMPACT:**

Budgeted Amount: \$50,000

Cost: \$50,000

**BACKGROUND:** For the past several years, the Town has provided funding to the Cavanaugh Flight Museum to assist the Museum in their marketing efforts. These funds are used for promotional purposes and advertising special events hosted by the Museum, and are matched on a dollar for dollar basis. In return for the sponsorship, the Town will be listed as a sponsor on all print advertising. Staff believes this is a good partnership because it not only increases attendance at the museum but it also increases the Town's exposure to the visitor market and our event activity.

**RECOMMENDATION:**

Staff recommends approval.

Attachment: Letter from Kevin Rawlie



November 16, 2005

Ron Whitehead, City Manager  
Town of Addison  
5300 Beltline Road  
Addison, Texas 75001

RE: Request for Sponsorship

Dear Ron:

On behalf of the Cavanaugh Flight Museum, I want to thank you for your continued support of the museum through sponsorship of our advertising. With the Addison Walk project completed and the Arapaho Road project in its final phase, Addison continues to develop and project its tourist friendly attitude. I look forward to another year working with the Town's staff and of shared success for both the Cavanaugh Flight Museum and the Town of Addison!

I respectfully request your genuine consideration for funding for the fiscal year 2005-2006 in the amount of \$50,000. These funds will be used for promotional purposes and advertising for upcoming special events hosted by the museum and will be matched dollar for dollar. Please see the attached schedule detailing the breakdown of the museum's expenses for fiscal year 2005-2006.

I strongly believe that through our continued cooperative efforts, the Town of Addison and the Cavanaugh Flight Museum will enjoy continued growth through tourism for many years to come.

Thanks in advance.

A handwritten signature in black ink, appearing to read "Kevin Raulie".

Kevin Raulie  
Assistant Museum Director & Pilot

**Cavanaugh Flight Museum  
Advertising Costs  
Fiscal Year 2006**

<u>Advertisement</u>	<u>Total Annual Costs \$</u>
AutoPilot Magazine	7,200
CFM Brochure printing	12,500
Warbirds Over Addison	15,000
Dallas Morning News Weekend Guide	57,000
Travel Host	6,600
DFW Tourism Council	5,825
East TX Tourism Assoc.	3,240
Addison N. Dallas Guide	5,628
	<u>Totals \$ 112,993</u>

Total Annual Costs \$ 112,993  
Addison's Proposed Contribution \$ 50,000

Balance Paid by CFM \$ 62,993

**Council Agenda Item: #R3****SUMMARY:**

Consideration of a resolution regarding certain matters pertaining to a Ground Lease at 4505 Claire Chennault (a.k.a. Addison Jetport) on Addison Airport between the Town of Addison, as Landlord, and Addison Airport of Texas, Inc. (AATI), as Tenant, as follows: i) consent to an assignment, assumption and extension of an existing sublease agreement between FirstAIR Group, Inc., and Mercury Air Center – Addison, Inc., collectively the subtenants.

**BACKGROUND:**

AATI and Addison Express entered in to a sublease agreement in June 1999, covering the ground-leased premises located at 4505 Claire Chennault and commonly known as the Addison Jet Port Terminal. Addison Express continued to sublease this facility until April 12, 2005 at which time; Addison Express effectively assigned their sub-leasehold interest in the Jetport to FirstAIR. This assignment was considered and consented to by the Town of Addison on May 10, 2005. FirstAIR has been actively using the Jetport as their terminal facility in support of their fixed based operations at the R. Stern FBO facilities located at 4553 Jimmy Doolittle. FirstAIR now desires to assign their sub-leasehold interest in the Jetport to Mercury in together with other assets of the company. Simultaneously, AATI and Mercury have agreed, subject to the Town's consent, to amend the sublease agreement giving Mercury a right of first offer, under certain terms and conditions, to extend the sub-lease term until August 31, 2013. Provided Mercury exercises this option, the sublease will then be co-terminus with the expiration of the underlying ground lease between AATI and the Town of Addison.

Mercury has been a full service fixed base operator at Addison Airport since August of 1996. They are the second largest ground tenant at the airport with 10.37 acres under lease and improved with 109,796 square feet of hangar space and 14,250 square feet of office space. In 2002, the Town of Addison consented to the assignment of the Mercury ground leases to Mercury Air Center – Addison Inc, a wholly owned subsidiary of Mercury Air Centers, Inc. In April 2004, Allied Capital, a private equity investor (NYSE – ALD), acquired Mercury Air Center, Inc. and its subsidiaries from Mercury Air Group. Shortly thereafter, Allied Capital acquired Corporate Wings; another fixed operator based in Cleveland, Ohio, and has begun to restructure these two companies by leveraging the attributes of each. Airport Management has looked favorably upon these recent changes and the renewed commitment expressed by Allied Capital and its management team towards the Addison facility.

The Jetport will allow Mercury to expand and better serve its retail/transient clientele with the additional 80,000 square feet of aircraft ramp, 80+/- public parking spaces and the use of the Jetport terminal building for improved customer service.

**RECOMMENDATION:**

AATI, FirstAIR and Mercury are each in good standing with the Airport and Town of Addison. In Airport Management's assessment, the Jetport facilities should greatly enhance Mercury's continued operations at Addison Airport therefore, Airport Management recommends the Town of Addison to consent to the assignment and assumption of the sublease agreement between AATI, FirstAIR Group, Inc. and Mercury Air Center – Addison, Inc. The City attorney has reviewed the attached Consent To Sublease Agreement and has found it to be acceptable for the Town's use. Staff recommends approval.

Attachments: Bill Dyer - Memorandum  
Exhibit A – Ground Lease (0680-0501)  
Exhibit B – Consent To Sublease Agreement  
Exhibit C – Aerial of Mercury & Addison Jetport Facilities



William M. Dyer  
 Real Estate Manager  
 16051 Addison Road,  
 Suite 220  
 Addison, Texas 75001

Main: 972-392-4850  
 Direct: 972-392-4856  
 Fax: 972-788-9334  
[bill.dyer@staubach.com](mailto:bill.dyer@staubach.com)

## Memorandum

To: Mark Acevedo  
 From: Bill Dyer  
 Cc: Lisa Pyles  
 Date: 10/28/2005  
 Re: Ground Lease: 0680-0501 (GL #05)  
 Tenant: Addison Airport of Texas, Inc.  
 Property Address: 4505 Claire Chennault (a.k.a. Addison Jetport)

Addison Airport of Texas, Inc. (AATI), tenant to the above referenced ground lease, is requesting for the Town of Addison to consider and consent to the assignment, assumption and extension of an existing sublease agreement between FirstAIR Group, Inc ("FirstAIR") and Mercury Air Center – Addison, Inc. ("Mercury"), collectively the subtenants. AATI has consented to FirstAIR's assignment of the sublease, as amended and modified, to Mercury, which is scheduled to expire April 1, 2010. AATI has also agreed to give Mercury the option to extend the sublease term until August 31, 2013, making the sublease co-terminus with the underlying ground lease. Mercury intends to use the subleased premises in support of their existing fixed-base operations based out of their 4400 Glenn Curtiss facility.

Airport Management recommends the Town of Addison consent to the assignment and assumption of the sublease agreement between FirstAIR and Mercury provided that AATI and each of the subtenants execute and deliver to the Town the "Consent to Sublease Agreement" attached hereto as Exhibit "B"

The Town's attorney has reviewed the attached "Consent To Sublease Agreement" and has found it to be acceptable for the Town's use.

### **Background Information:**

AATI and Addison Express entered in to a sublease agreement in June 1999, covering the ground-leased premises located at 4505 Claire Chennault and commonly known as the Addison Jet Port Terminal ("the Jetport"). Addison Express continued to sublease this facility until April 12, 2005 at which time, Addison Express effectively assigned their sub-leasehold interest in the Jetport to FirstAIR. This assignment was considered and consented to by the

Town of Addison on May 10, 2005 (consent agenda item #R8). FirstAIR has been actively using the Jetport as their terminal facility in support of their fixed based operations at the R. Stern FBO facilities located at 4553 Jimmy Doolittle. FirstAIR now desires to assign their sub-leasehold interest in the Jetport to Mercury in together with other assets of the company. Simultaneously, AATI and Mercury have agreed, subject to the Town's consent, to amend the sublease agreement giving Mercury a right of first offer, under certain terms and conditions, to extend the sub-lease term until August 31, 2013. Provided Mercury exercises this option, the sublease will then be co-terminus with the expiration of the underlying ground lease between AATI and the Town of Addison.

Mercury has been a full service fixed base operator at Addison Airport since August of 1996. They are the second largest ground tenant at the airport with 10.37 acres under lease and improved with 109,796 square feet of hangar space and 14,250 square feet of office space. In 2002, the Town of Addison consented to the assignment of the Mercury ground leases to Mercury Air Center – Addison Inc, a wholly owned subsidiary of Mercury Air Centers, Inc. In April 2004, Allied Capital, a private equity investor (NYSE – ALD), acquired Mercury Air Center, Inc. and its subsidiaries from Mercury Air Group. Shortly thereafter, Allied Capital acquired Corporate Wings; another fixed operator based in Cleveland, Ohio, and has begun to restructure these two companies by leveraging the attributes of each. Airport Management has looked favorably upon these recent changes and the renewed commitment expressed by Allied Capital and its management team towards the Addison facility.

According to Mercury's management, the existing facility provides ample hangar, office and shop space for their "private business" services. The Jetport will allow Mercury to expand and better serve its retail/transient clientele with the additional 80,000 square feet of aircraft ramp, 80+/- public parking spaces and the use of the Jetport terminal building for improved customer service.

To Airport Management's knowledge, AATI, FirstAIR and Mercury are each in good standing with the Airport and Town of Addison.

#### **Landlord's Standards for Consent to Assignment or Sub-letting**

In Section 11 of the Ground Lease between AATI and the Town of Addison, there are provisions allowing AATI to sublet the leased premises provided AATI obtains and delivers to the Town of Addison a written agreement (i.e. the attached Consent to Sublease Agreement) whereby the Tenant and each subtenant agree that:

- each are to be bound by the terms and provisions of the Ground Lease;
- such a sublease does not constitute a novation;
- each tenant remains fully liable for its and any subtenant's performance under the Ground Lease;
- no further subletting is permitted without Landlord's prior written consent;

- the sublease shall automatically terminate upon the termination of the Ground Lease; and,
- in the event of an occurrence of default under the Ground Lease while the sublease is in effect, Landlord may collect directly from the subtenant all rents becoming due under the sublease and apply to sums due the Landlord under the Ground Lease.

#### **Airport Management's Conclusion and Recommendation**

AATI is requesting the Town of Addison to consider and consent to the assignment, assumption and modification of the sublease agreement affecting its ground-leased premises located at 4505 Claire Chennault to Mercury Air – Addison, Inc. who intends to conduct fixed-base operations on the premises. In Airport Management's assessment, the Jetport facilities should greatly enhance Mercury's continued operations at Addison Airport therefore, Airport Management recommends the Town of Addison to consent to the assignment and assumption of the sublease agreement between AATI, FirstAIR Group, Inc. and Mercury Air Center – Addison, Inc. provided that AATI and each of the subtenants execute and delivered to the Town the "Consent to Sublease Agreement" attached hereto as Exhibit "B".

The Town's attorney has reviewed the attached "Consent To Sublease Agreement" and has found it acceptable for the Town's use.

**Exhibit "A"**

Copy of Ground Lease 0680-0501



## ADDISON AIRPORT

May 27, 1998

Via Certified Mail # Z 129 781 435  
And by Hand Delivery.

City of Addison  
P.O. Box 144  
Addison, TX 75001

RE: Exercise of the Tenant's "First Renewal Term" and the "Second Renewal Term" Option by Addison Airport of Texas, Inc. of a Certain Ground Lease Dated March 31, 1982 by and Between the City and AATI

Dear Sir:

As you know, the City of Addison, as Lessor entered into a certain Ground Lease made and entered into on March 31, 1982, with Addison Airport of Texas, Inc. ("AATI"), as Tenant. This property is commonly referred to as the JetPort Terminal. The City of Addison issued a certificate of occupancy for the initial improvements on that building on August 9, 1983. A true and correct copy of the certificate is attached hereto.

Pursuant to the Ground Lease, please consider this letter to be Tenant's exercise of its option for the First and Second Renewal Term.

Very Truly Yours,



Sam Stuart

THE STATE OF TEXAS  
COUNTY OF DALLAS

§  
§  
§

No. 2-10-100-10-11  
14  
GROUND LEASE **EXHIBIT A**

This Ground Lease (hereinafter referred to as the "Lease") is made and entered into this 21 day of March, 1982, by and between the City of Addison, Texas, a municipal corporation (hereinafter referred to as "Landlord"), and Addison Airport of Texas, Inc., a Texas corporation (hereinafter referred to as "Tenant").

W I T N E S S E T H :

WHEREAS, Tenant already leases that certain real property (hereinafter referred to as the "demised premises") described in attached Exhibit A from the City pursuant to that certain instrument captioned Agreement for Operation of the Addison Airport (hereinafter referred to as the "Base Lease") between Landlord and Addison Airport, Inc. (predecessor of AATI); and

WHEREAS, the demised premises are situated at Addison Airport (hereinafter referred to as the "Airport") in Dallas County, Texas, the Airport being delineated in a plat attached hereto as Exhibit B; and

WHEREAS, Landlord has agreed to construct certain terminal facility improvements on the demised premises for use by Tenant; and

WHEREAS, Landlord to finance the construction of such terminal facility improvements has sold bonds (the "Bonds"); and

WHEREAS, Tenant has agreed to amortize the Bonds through the payment of additional rent to Landlord with respect to the demised premises; and

WHEREAS, Landlord and Tenant wish to enter into this Lease to reduce to writing the foregoing and other agreements;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

1. Demise. Landlord hereby leases and demises the demised premises to Tenant, and Tenant hereby leases and takes the demised premises from Landlord, upon the terms and conditions set forth herein.

2. Base Lease. All of the terms and conditions of the Base Lease are incorporated into this Lease by reference as if written verbatim herein. So long as the Base Lease remains in effect, Tenant agrees to fully comply at all times and in all respects with the terms and conditions of the Base Lease insofar as the same relate to the demised premises and/or the use and operation thereof. Neither the expiration or termination of the Base Lease nor default by Tenant under the Base Lease shall have any effect on this Lease so long as Tenant pays and performs Tenant's duties, covenants and obligations under this Lease.

3. Initial Improvements. Landlord and Tenant previously have agreed to the plans and specifications (the "Plans") for the construction of the terminal facility improvements to be constructed on the demised premises by Landlord (the "Initial Improvements"). Tenant shall have the right to request changes in the Plans from time to time, and Landlord agrees that

15

Landlord will not unreasonably withhold or delay Landlord's consent to such requested changes. Landlord promptly shall implement the construction of the Initial Improvements and diligently pursue the same to completion in accordance with the Plans and all applicable governmental laws, ordinances and regulations. Landlord shall be responsible for up to \$1,200,000.00 of the costs for the construction of the Initial Improvements ("Landlord's Cost"), and Tenant shall be responsible for all costs in excess of \$1,200,000.00 ("Excess Costs"). Unless otherwise agreed to by Tenant in writing, all contracts for the construction of the Initial Improvements shall be guaranteed maximum cost contracts with reputable contractors approved in writing by Tenant. Under no circumstances shall Landlord enter into a construction contract and/or a series of construction contracts which will result in Excess Costs unless Tenant has approved the same in writing. Upon completion of the Initial Improvements, Tenant agrees to accept the same in their then existing condition. If the Initial Improvements prove to be defective in any way, Tenant shall have no claim against Landlord, but Tenant shall be entitled to pursue all available remedies against the applicable contractor or contractors. Landlord agrees to fully cooperate with Tenant in pursuing remedies against the applicable contractor or contractors, including assigning Landlord's warranties or contractual rights against such contractor or contractors to Tenant and/or joining Tenant in litigation against such contractor or contractors so long as Tenant agrees to pay the costs of such litigation. Landlord agrees that in contracts entered into by Landlord in connection with the construction of the Initial Improvements, Landlord will not exculpate the contractor from or limit remedies against the contractor for defective construction without first securing the prior written consent of Tenant thereto.

4. Additional Improvements and Alterations. Either during the construction of the Initial Improvements or after the completion of the Initial Improvements, Tenant shall have the right to make additions to or alterations in the Initial Improvements. If such additions or alterations are of a nature that they will either materially diminish the value of the Initial Improvements or adversely affect the structural integrity of the Initial Improvements, they shall not be made without the prior written consent of Landlord. All such additions or alterations shall be made (i) at the sole cost and expense of Tenant, (ii) in a first class, workmanlike manner, and (iii) in compliance with all applicable governmental laws, ordinances and regulations. Tenant promptly shall pay and discharge all costs, expenses, claims for damages, liens and any and all other liabilities and obligations which arise in connection with any such additions or alterations.

5. Primary Term and Renewal Terms.

A. The primary term hereof shall commence on the date hereof and shall end on the fifteenth anniversary of the Completion Date. As used herein, the term "Completion Date" means the last day of the calendar month in which a certificate of occupancy covering the Initial Improvements has been issued by the City of Addison, Texas.

B. If Tenant is not then in default under this Lease, Tenant shall have the option to renew the term hereof for the five (5) year period beginning on the fifteenth anniversary of the Completion Date and ending on the twentieth anniversary of the Completion Date (the "First Renewal Term"). Tenant must exercise Tenant's option for the First Renewal Term by delivering written notice to Landlord of Tenant's election to exercise the same ninety (90) days prior to the end of the primary term hereof. The First Renewal Term shall be upon the same

16

terms and conditions applicable during the primary term hereof except that rental shall be adjusted as provided in paragraph 7.

C. If Tenant exercises Tenant's option for the First Renewal Term and if Tenant is not then in default under this Lease and if Tenant at such time is the operator of the Airport under the Base Lease or an extension or replacement of the Base Lease or if Tenant at such time is not the operator of the Airport because Tenant declined to operate the Airport under an operating agreement tendered by Landlord which was materially different in terms and conditions than the terms and conditions presently contained in the Base Lease, Tenant shall have the option to renew the term hereof for the ten (10) year period beginning on the twentieth anniversary of the Completion Date and ending on the thirtieth anniversary of the Completion Date (the "Second Renewal Term"). Tenant must exercise Tenant's option for the Second Renewal Term by delivering written notice to Landlord of Tenant's election to exercise the same ninety (90) days prior to the end of the First Renewal Term. The Second Renewal Term shall be upon the same terms and conditions applicable during the primary term hereof except that rental shall be adjusted as provided in paragraph 7. If during the Second Renewal Term Tenant declines an offer of Landlord to extend the Base Lease upon terms and conditions not materially different than the terms and conditions presently contained in the Base Lease or if Tenant declines an offer of Landlord to reinstate Tenant as the operator of the Airport under an operating agreement containing terms and conditions not materially different than the terms and conditions presently contained in the Base Lease, Landlord shall have the right to terminate this Lease after giving Tenant at least one (1) year's prior written notice of Landlord's election to terminate.

6. Fuel Sales. Tenant presently possesses the right under the Base Lease to sell aircraft fuels at the Airport. In the event that for whatever reason Tenant's rights under the Base Lease to sell aircraft fuels at the Airport are terminated or in the event that for whatever reason Tenant is no longer the operator of the Airport under the Base Lease, Landlord hereby grants Tenant the right to sell aircraft fuels at the demised premises during the term of this Lease conditioned upon (i) Tenant's compliance with all then existing fueling standards and requirements applicable to such sales operations insofar as the same apply to the demised premises, and (ii) Tenant paying to Landlord the then applicable fuel flowage fees imposed by Landlord on fuel sales at the Airport by parties other than the operator of the Airport.

7. Rental.

A. During the primary term hereof, Tenant shall pay to Landlord rent for the demised premises at the times and in the amounts set forth in attached Exhibit C.

B. During the First Renewal Term, Tenant shall pay to Landlord rent for the demised premises of \$100.00 per year, which shall be due and payable on or before the first day of each lease year.

C. During the Second Renewal Term, Tenant shall pay to Landlord rental for the demised premises at the applicable of the following rates: (i) so long as Tenant is the operator of the Airport under the Base Lease or an extension or replacement of the Base Lease, \$100.00 per year, which shall be due and payable on or before the first day of each lease year; or (ii) at any time that Tenant is

17)

not the operator of the Airport under the Base Lease or an extension or replacement of the Base Lease, monthly rental at the lesser of (a) the monthly ground rental rate then being charged by Landlord for premises at the Airport, or (b) one-twelfth of the product of (x) 26¢ increased or decreased, as the case may be, by the percentage of increase or decrease in the Consumer Price Index (All Urban Consumers) for the Dallas, Texas, Metropolitan Area published by the United States Department of Labor, Bureau of Labor Statistics, or an equivalent successor or substitute index, between January 1, 1902, and the commencement date of the Second Renewal Term, multiplied by, (y) the square feet contained within the boundaries of the demised premises.

8. Rent Credit. Landlord has invested the funds obtained from the sale of the Bonds, and Landlord agrees that income from such investment (hereinafter referred to as the "Investment Income") shall be used by Landlord to pay the required payments when due on the Bonds and the rental installments due by Tenant to Landlord hereunder shall be reduced by an amount equal to the amount of such payments made from the Investment Income, commencing with the first maturing rental installment and continuing with each successive installment maturing thereafter until the Investment Income has been fully expended by Landlord. Further, if the cost of the Initial Improvements is less than Landlord's Cost, the difference between Landlord's Cost and the actual costs of the Initial Improvements (hereinafter referred to as the "Cost Saving") shall be used by Landlord to pay the required payments when due on the Bonds and the rental installments due by Tenant to Landlord hereunder shall be reduced by an amount equal to the amount of such payments made from the Cost Saving, commencing with the first maturing rental installment and continuing with each successive installment maturing thereafter until the Cost Saving has been fully expended by Landlord.

9. Use of Demised Premises. The demised premises shall be used and occupied by Tenant for the operation of airport terminal facilities, fuel sales and related uses, and other uses authorized under the Base Lease, and not otherwise without the prior written consent of Landlord.

10. Compliance with Law. Tenant shall comply at all times with all governmental laws, ordinances and regulations applicable to the use of the demised premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with the demised premises, all at Tenant's sole cost and expense.

11. Assignment and Subletting. Without the prior written consent of Landlord, Tenant may not assign this Lease or any rights of Tenant hereunder or sublet the whole or any part of the demised premises. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of paragraph 9 pertaining to the use of the demised premises. In the event of any assignment or subletting, Tenant shall not assign Tenant's rights hereunder or sublet the demised premises without first obtaining and delivering to Landlord a written agreement from each such assignee or subtenant whereby each such assignee or subtenant agrees to be bound by the terms and provisions of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the demised premises are assigned or sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums

due to Landlord hereunder. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder.

12. Property Taxes and Assessments. Tenant shall pay any and all property taxes or assessments levied or assessed on the improvements on the demised premises, the personal property and fixtures on the demised premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such taxes have been paid by Tenant.

13. Maintenance and Repair of Demised Premises.

A. After the completion of the Initial Improvements, Tenant shall, throughout the term hereof, maintain in good repair and condition all the demised premises and all improvements, fixtures, equipment and personal property on the demised premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the demised premises clean and free of trash and in good repair and condition, with all improvements, fixtures and equipment situated in or on the demised premises in working order, reasonable wear and tear excepted.

B. In the event Tenant shall fail to so maintain the demised premises and the improvements, fixtures, equipment and personal property situated thereon, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made and the reasonable costs therefor expended by Landlord plus interest thereon as provided in paragraph 37 shall be paid by Tenant on demand.

14. Insurance. Tenant shall during the term hereof maintain at Tenant's sole cost and expense insurance relating to the demised premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and other risks from time to time included under standard extended coverage policies, and sprinkler; vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than eighty percent (80%) of the full insurable value of such improvements. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be effected.

(ii) General public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the demised premises, such insurance to afford protection to Landlord of not less than \$5,000,000.00 with respect to any one person, \$5,000,000.00 with respect to any one accident and not less than \$5,000,000.00 with respect to property damage.

(iii) Workmen's compensation insurance covering all persons employed by Tenant in connection with any work done on or about the demised premises with respect to which claims for death or bodily injury could be asserted against Landlord or the demised premises, or in lieu of such workmen's compensation insurance, a program of self-insurance complying with the rules, regulations and requirements of the appropriate state agency of the State of Texas.

19

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$100,000.00 for damage to property resulting from such perils.

(v) Such other insurance on improvements in such amounts and against such other insurable hazard which at the time are commonly obtained in the case of property similar to such improvements.

All such policies of insurance (i) shall be issued by insurance companies acceptable to Landlord, (ii) shall name Landlord as an additional insured or loss payee, as the case may be, and (iii) shall provide for at least thirty (30) days written notice to Landlord prior to cancellation or modification. Tenant shall provide Landlord with duplicate originals of all insurance policies required by this paragraph.

15. Casualty Damage or Destruction.

A. In case of any damage to or destruction of the improvements and/or equipment on the demised premises, or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.

B. In case of any damage to or destruction of the improvements and/or equipment on the demised premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly commence and complete the restoration, repair and replacement of such improvements and/or equipment as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration").

C. All insurance proceeds, if any, payable on account of such damage to or destruction of the improvements and/or equipment on the demised premises shall be held by Landlord. Landlord shall be protected in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warrant, authority and protection to Landlord in acting thereon, and Landlord shall be under no duty to take any action other than as set forth in this paragraph 15.

D. Insurance proceeds received by Landlord on account of any damage to or destruction of the improvements and/or equipment on the demised premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster's and attorney's fees and expenses) shall be applied as follows:

(1) Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) a certificate of a supervising architect or engineer approved by Landlord describing in reasonable

268

detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a completed part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel satisfactory to Landlord that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.

(ii) Upon receipt by Landlord of evidence of the character required by the foregoing clauses (i)(a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialmen's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.

E. In the event that Tenant does not promptly commence Restoration, or after commencement Tenant does not diligently proceed to the completion of same, Landlord shall have the right to commence or complete Restoration after Landlord has given Tenant thirty (30) days prior written notice requesting the commencement of Restoration or that Tenant diligently proceed to the completion of same if Tenant during such thirty (30) day period does not so commence or proceed to diligently complete Restoration. In such event, Landlord shall retain the insurance proceeds, and Tenant shall pay any deficiency if such proceeds are not sufficient for Restoration.

16. Utilities. Except to the extent that such items are included in the Initial Improvements, Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the demised premises, and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees and services furnished to the demised premises during the term hereof. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services.

17. Common Facilities. Tenant and Tenant's employees, agents, servants, customers and other invitees shall have the non-exclusive right to use all common facilities, improvements, equipment and services which may now exist or which may hereafter be provided by Landlord for the accommodation and convenience of Landlord's customers and tenants, including landing and takeoff facilities, means of ingress and egress to the demised premises, other airport installations, and all other reasonable services which may be provided without charge from time to time by Landlord in operating the Airport. All such common facilities shall at all times be under the exclusive control and management of Landlord and may be rearranged, modified, changed or terminated from time to time at Landlord's sole discretion.

18. Rules and Regulations. Landlord has adopted Rules and Regulations (hereinafter referred to as the "Rules and Regulations") which shall govern Tenant in the use of the demised premises and all common facilities, a copy of which has been furnished to Tenant. The Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with the Rules and Regulations. Landlord shall have the right to amend, modify and alter the Rules and Regulations from time to time in a reasonable manner for the purpose of assuring the safety, welfare and convenience of Landlord, Tenant and all other tenants and customers of the Airport.

21

19. No Signs. Except to the extent that signs are included in the Initial Improvements, Tenant shall not construct, erect, install, paint or otherwise permit, suffer or allow to exist any sign located on or about the demised premises without the prior written consent of Landlord which will not be unreasonably withheld.

20. Landlord's Right of Entry. Landlord and Landlord's authorized representatives shall have the right, during normal business hours, to enter the demised premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the demised premises to any prospective tenant or purchaser or (iv) for any other reasonable and lawful purpose. During the final ninety (90) days of the term hereof, Landlord and Landlord's authorized representatives shall have the right to erect and maintain on or about the demised premises customary signs advertising the demised premises for lease or for sale.

21. Indemnity and Exculpation.

A. Landlord shall not be liable to Tenant or to Tenant's employees, agents, servants, customers, invitees, or to any other party whomsoever, for any injury to persons or damage to property on or about the demised premises or any adjacent area owned by Landlord caused by the negligence or misconduct of Tenant, Tenant's employees, servants, customers, invitees, subtenants, licensees or concessionaires or any other party entering the demised premises under the express or implied invitation of Tenant, or arising out of the use of the demised premises by Tenant or the conduct of Tenant's business thereon, or arising out of any breach or default by Tenant in the performance of Tenant's obligations hereunder; and Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from any loss, expense or claim arising out of such damage or injury.

B. Landlord and Landlord's agents and employees shall not be liable to Tenant for any injury to persons or damage to property resulting from the demised premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the demised premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever. Landlord shall not be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public or quasi-public work, or of any other parties whomsoever, excepting only duly authorized agents and employees of Landlord.

22. Default by Tenant. The following events shall be deemed to be events of default by Tenant under this Lease:

A. Failure of Tenant to pay any installment of rent or any other sum payable to Landlord hereunder on the date that the same is due and such failure shall continue for a period of ten (10) days after written notice from Landlord to Tenant.

B. Failure of Tenant to comply with any term, condition or covenant of this Lease, other than the payment of rent or other sum of money, and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant.

C. Insolvency, the making of a transfer in fraud of creditors, or the making of a general assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.

D. Filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor.

E. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations.

F. Abandonment by Tenant of any substantial portion of the demised premises or cessation of use of the demised premises for the purpose leased.

23. Remedies of Landlord. Upon the occurrence of any of the events of default listed in paragraph 22, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

A. Terminate this Lease, in which event Tenant shall immediately surrender the demised premises to Landlord. If Tenant fails to so surrender the demised premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the demised premises or arrearages in rent, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the demised premises on satisfactory terms or otherwise.

B. Terminate this Lease, in which event Tenant shall immediately surrender the demised premises to Landlord. If Tenant fails to so surrender the demised premises, Landlord may, without prejudice to any other remedy which Landlord may have for possession of the demised premises or arrearages in rent, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Tenant shall pay to Landlord on the date of such termination damages in an amount equal to the excess, if any, of the total amount of all rental and other amounts to be paid by Tenant to Landlord hereunder for the period which would otherwise have constituted the unexpired portion of the term of this Lease over the then fair market rental value of the demised premises for such unexpired portion of the term of this Lease.

C. Enter upon and take possession of the demised premises without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and expel or remove Tenant and any other person who may be occupying the demised premises or any part thereof. Landlord may relet the demised premises and receive the rent therefor. Tenant agrees to pay to Landlord on demand from time to time any deficiency that may arise by reason of any such reletting. In determining the amount of such deficiency, brokerage commissions, attorneys' fees, remodeling expenses and other costs of reletting shall be subtracted from the amount of rent

Recess Under Sect 4 Reletting

D. Enter upon the demised premises without terminating this Lease and without being liable for prosecution or for any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease. Tenant agrees to pay Landlord on demand for expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, together with interest thereon at the rate of eighteen percent (18%) per annum from the date expended until paid. Landlord shall not be liable for any damages resulting to Tenant from such action, whether caused by negligence of Landlord or otherwise.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained.

24. Landlord's lien. In addition to the constitutional and statutory Landlord's liens, Tenant hereby grants to Landlord a security interest to secure payment of all rent and other sums of money becoming due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated in or upon the demised premises, together with the proceeds from the sale or lease thereof. Such property shall not be removed without the consent of Landlord until all arrearages in rent and other sums of money then due to Landlord hereunder shall first have been paid and discharged. Upon the occurrence of an event of default, Landlord may, in addition to any other remedies provided herein or by law, enter upon the demised premises and take possession of any and all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated on the demised premises without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any such sale. Unless otherwise required by law, notice to Tenant of such sale shall be deemed sufficient if given in the manner prescribed in this Lease at least ten (10) days before the time of the sale. Any public sale made under this paragraph shall be deemed to have been conducted in a commercially reasonable manner if held in the demised premises or where the property is located, after the time, place and method of sale and a general description of the types of property to be sold have been advertised in a daily newspaper published in the county wherein the demised premises are located, or if no such newspaper is published in said county in the county nearest to the demised premises where such a newspaper is published, for five (5) consecutive days before the date of the sale. Landlord or Landlord's assigns may purchase at a public sale and, unless prohibited by law, at a private sale. The proceeds from any disposition dealt with in this paragraph, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and legal expenses), shall be applied as a credit against the indebtedness secured by the security interest granted herein. Any surplus shall be paid to Tenant or as otherwise required by law, and Tenant shall pay any deficiency forthwith. Upon request by Landlord, Tenant agrees to execute and deliver to Landlord financing statements in form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the provisions of the Uniform Commercial Code in force in the State of Texas. The constitutional and statutory liens for rent are expressly reserved; the security interest herein granted is in addition and supplementary thereto.

25. Default by Landlord. No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the demised premises or render Landlord liable for damages or entitle Tenant to be relieved from any of Tenant's obligations hereunder (including the obligation to pay rent) or grant Tenant any right of deduction, abatement, set-off or recoupment or entitle Tenant to take any action whatsoever with regard to the demised premises or Landlord until thirty (30) days after Tenant has given Landlord written notice specifically setting forth such default by Landlord, and Landlord has failed to cure such default within said thirty (30) day period, or in the event such default cannot be cured within said thirty (30) day period then within an additional reasonable period of time so long as Landlord has commenced curative action within said thirty (30) day period and thereafter is diligently attempting to cure such default. If any mortgagee of Landlord has given Tenant its address for notices and specifically requests such notice, Tenant agrees to give the notice required hereinabove to such mortgagee at the same time Tenant gives same to Landlord, and to accept curative action, if any, undertaken by such mortgagee as if such curative action had been taken by Landlord.

26. Waiver of Subrogation. Each party hereto waives any and every claim which arises or may arise in such party's favor against the other party hereto during the term of this Lease for any and all loss of, or damage to, any of such party's property located within or upon, or constituting a part of, the demised premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other party), each party hereby agrees immediately to give to each insurance company which has issued to such party policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

27. Title to Improvements. Any and all improvements on the demised premises shall become the property of Landlord upon the expiration or termination of this Lease, provided, however, if Tenant is not then in default hereunder, Tenant shall have the right to remove all personal property and trade fixtures owned by Tenant from the demised premises, but Tenant shall be required to repair any damage to the demised premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense.

28. Mechanics' and Materialmen's Liens. Tenant agrees to indemnify and hold Landlord harmless of and from all liability arising out of the filing of any mechanics' or materialmen's liens against the demised premises by reason of any act or omission of Tenant or anyone claiming under Tenant, and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in paragraph 37 as additional rent; provided, however, that Landlord shall not so satisfy such liens until fifteen (15) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such fifteen (15) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the demised premises.

29. Title. Tenant accepts the demised premises subject to: (i) the Base Lease; (ii) easements and rights-of-way; and (iii) zoning ordinances and other ordinances, laws, statutes or regulations now in effect or hereafter promulgated by any governmental authority having jurisdiction over the demised premises.

30. Quiet Enjoyment and Subordination. Landlord covenants, represents and warrants that Landlord has full right and power to execute and perform this Lease and to grant the estate demised herein, and that Tenant, upon payment of the rents herein reserved, and performance of the terms, conditions, covenants and agreements herein contained, shall peaceably and quietly have, hold and enjoy the demised premises during the full term of this Lease; provided, however, that Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust or other lien presently existing upon the demised premises. Tenant agrees upon demand to execute instruments subordinating this Lease as Landlord may request, provided such subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of the rights of Tenant shall remain in full force and effect during the full term of this Lease on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as Tenant shall fully perform all Tenant's obligations hereunder and attorn to the purchaser. Tenant also agrees upon demand to execute instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive the foreclosure of such mortgage, deed of trust or other lien.

31. Rent on Net Return Basis. Except as otherwise provided herein, it is intended that the rent provided for in this Lease shall be an absolutely net return to Landlord for the term of this Lease, free of any loss, expense or charge with respect to the demised premises, including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intent.

32. Holding Over. Should Tenant, or any of Tenant's successors in interest fail to surrender the demised premises, or any part thereof, on the expiration of the term of this Lease (whether by lapse of time or otherwise), such holding over shall constitute a tenancy from month to month only terminable at any time by either Landlord or Tenant after thirty (30) days prior written notice to the other, at a monthly rental equal to two hundred percent (200%) of the rent payable for the last month of the term of this Lease.

33. Waiver of Default. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

34. Release of Landlord Upon Transfer. All of Landlord's personal or corporate liability for the performance of the terms and provisions of this Lease (except for any liability accruing prior to such transfer) shall terminate upon a transfer of the demised premises by Landlord, provided that the obligations of Landlord under this Lease are covenants running with the land and shall be binding upon the transferee of Landlord's interest in this Lease and the demised premises.

35. Attorneys' Fees. If, on account of any breach or default by Landlord or Tenant of their respective obligations under this Lease, it shall become necessary for the other to employ an attorney to enforce or defend any of such party's rights or remedies hereunder, and should such party prevail, such party shall be entitled to collect reasonable attorneys' fees incurred in such connection from the other party.

36. Estoppel Certificates. Tenant agrees that from time to time, upon not less than ten (10) days' prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications).

B. The dates to which rent and other charges have been paid.

C. Landlord is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached to such statement.

D. If requested by Landlord, Tenant will not pay rent for more than one (1) month in advance and that this Lease will not be amended without notice to Landlord's mortgagee and that the same will not be terminated without the same notice required by this Lease to be furnished to Landlord also being furnished to Landlord's mortgagee and Landlord's mortgagee fails to cure such default within the curative period allowed Landlord under this Lease.

Landlord agrees that from time to time, upon not less than ten (10) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications).

B. The dates to which rent and other charges have been paid.

C. Tenant is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached to such statement.

37. Interest on Tenant's Obligations and Manner of Payment. All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) days after the due date of the same (if no due date has been established under other provisions hereof, the "due date" shall be the date upon which Landlord demands payment from Tenant in writing) shall bear interest at the rate of eighteen percent (18%) per annum from and after said tenth (10th) day until paid. If more than twice during the term of this Lease Tenant's personal or corporate check is not paid by the bank on which it is drawn for whatever reason, Landlord may require by giving written notice to Tenant that the payment of all future monetary obligations of Tenant under this Lease are to be made on or before the due date by cash, cashier's check, certified check or money order, and that the delivery of Tenant's personal or corporate check will no longer constitute payment of such monetary obligations. Any acceptance by Landlord of a personal or corporate check after such notice shall not be deemed or construed as a waiver or estoppel of Landlord to require other payments as required by said notice.

38. Independent Contractor. It is understood and agreed that in leasing and operating the demised premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord.

39. Force Majeure. In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by any Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or hindered.

40. Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

41. Use of Language. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

42. Captions. The captions or headings of paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

43. Successors. The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including, but not limited to, any notices required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

44. Severability. If any provision in this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

45. Notices. Any notice or document required or permitted to be delivered hereunder may be delivered in person or shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at the addresses indicated below, or at such other addresses as may have theretofore been specified by written notice delivered in accordance herewith.

LANDLORD:

City of Addison, Texas  
Addison, Texas 75001

TENANT:

Addison Airport of Texas, Inc.  
4651 Airport Parkway  
Dallas, Texas 75248

46. Fees or Commissions. Each party hereto hereby covenants and agrees with the other that such party shall be solely responsible for the payment of any brokers', agents' or finders' fees or commissions agreed to by such party arising from the execution of this Lease or the performance of the terms and provisions contained herein, and such party agrees to indemnify and hold the other party harmless from the payment of any such fees or commissions.

47. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

48. Governing Law and Venue. This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, and Landlord and Tenant both irrevocably agree that venue for any dispute concerning this Lease or any of the transactions contemplated herein shall be in any court of competent jurisdiction in Dallas County, Texas.

49. Entire Agreement and Amendments. This Lease, consisting of forty-nine (49) paragraphs and Exhibits A through C attached hereto, embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or on behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

EXECUTED as of the day, month and year first above written.

LANDLORD:

CITY OF ADDISON, TEXAS

By [Signature]  
Title MAYOR

TENANT:

ADDISON AIRPORT OF TEXAS, INC.

By [Signature]  
Title Pres

## EXHIBIT C

29

<u>YEAR</u>	<u>FIRST PAYMENT</u> May 15	<u>SECOND PAYMENT</u> November 15
1982	\$60,020.42	\$ 60,020.42
1983	\$60,020.42	\$101,216.36
1984	\$57,754.64	\$148,047.26
1985	\$52,788.54	\$143,081.16
1986	\$47,822.45	\$138,115.07
1987	\$43,307.82	\$133,600.44
1988	\$39,244.65	\$129,537.27
1989	\$35,181.48	\$125,474.10
1990	\$31,118.32	\$121,410.94
1991	\$26,942.28	\$117,234.90
1992	\$22,653.38	\$112,946.00
1993	\$18,364.48	\$108,657.10
1994	\$13,895.00	\$104,187.62
1995	\$ 9,380.37	\$ 99,672.99
1996	\$ 4,752.87	\$ 95,045.49

0259S

Ent B

Copy of Consent to Sublease Agreement

## CONSENT TO SUBLEASE

The Town of Addison, Texas ("**Landlord**") is the landlord under that certain Ground Lease dated March 31, 1982 entered into between the City of Addison (the same being the Town of Addison, Texas), as Landlord, and Addison Airport of Texas, Inc. ("**Tenant**"), as Tenant [a true and correct copy of which Ground Lease, together with any and all modifications and amendments, if any, is attached hereto as Exhibit A (the "**Ground Lease**")], by the terms of which Tenant leased certain real property (the "**Demised Premises**", so called in the Ground Lease) as described in the Ground Lease located at Addison Airport within the Town of Addison, Texas. As set forth below, Tenant has previously subleased the Demised Premises, and has requested, in accordance with the Ground Lease, Landlord's consent to the subtenant's assignment of its interest in the sublease, and in connection with such request Tenant represents to the Landlord as follows:

1. The Demised Premises were, as of June 9, 1999, subleased by Tenant to Addison Express IV, LP, a Texas limited partnership, f/k/a Keith Partners II, Ltd. d/b/a/ 15407 Addison Road LP ("Addison Express") pursuant to that "Jet Port Terminal Lease," as amended by that Lease Amendment (Jet Port Terminal Lease) dated April 9, 2002 (the "Jet Port Terminal Lease").
2. Addison Express's interest in the sublease has been assigned to FirstAIR Group, Inc., a New York corporation ("FirstAIR"), by that Assignment, Assumption and Second Lease Amendment entered into as of April 15, 2005 and consented to by Landlord effective May 10, 2005 (the "Second Amendment").
3. FirstAIR desires to convey its interest in the Jet Port Terminal Lease to Mercury Air Center-Addison, Inc., ("**Mercury Air Center**"), a corporation organized and existing under the laws of the State of Texas, as set forth in that "Assignment, Assumption and Third Lease Amendment" to become effective on or before January 8<sup>th</sup>, 2006 by and among Tenant, FirstAIR and Mercury Air Center ("Assignment").

For purposes hereof, the term "Sublease" means the Jet Port Terminal Lease, as amended by the Second Amendment and the Assignment, and the term "Subtenant" means FirstAIR and Mercury Air Center.

Based on Tenant's representations, Landlord hereby consents to the Sublease on the following terms and conditions:

1. Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under the Ground Lease, including, without limitation, the duty to make any and all payments of rent. This Consent to Sublease shall in no way release Tenant from any of its covenants, agreements, liabilities and duties under the Ground Lease. This Consent to Sublease does not constitute approval by Landlord of the terms of the Sublease. Nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights under the Ground Lease;

2. No further subletting or assignment, conveyance, or other transfer of all or any portion of the Demised Premises shall be made without the prior written consent of the Landlord;

3. Subtenant's use and occupancy of the Demised Premises shall be subject to all of the terms and conditions of the Ground Lease, Subtenant agrees to be bound by the terms and provisions of the Ground Lease, and in the event of any conflict between the terms of the Ground Lease and the terms of the Sublease, the terms of the Ground Lease shall control;

4. Subtenant shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Ground Lease;

5. The Sublease shall automatically terminate upon termination of the Ground Lease, notwithstanding any other provision of the Sublease to the contrary;

6. Tenant shall be fully liable for any violation by Subtenant of any of the terms and conditions of the Ground Lease;

7. Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under the Sublease. Neither this Consent, the exercise by Landlord of its rights hereunder, nor the Sublease or any other instrument shall give Subtenant any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of Subtenant;

8. In the event of the occurrence of an event of default under the Ground Lease while the Sublease is in effect, Landlord in addition to any other remedies provided in the Ground Lease or by law, may at Landlord's option, collect directly from the Subtenant all rents becoming due under the Sublease and apply such rent against any sums due to Landlord hereunder; no direct collection by Landlord from Subtenant shall release Tenant from the payment or performance of Tenant's obligations under the Ground Lease; provided that if Landlord collects any rents directly from Subtenant pursuant to this paragraph, Subtenant shall be released from its obligations to pay such rents to Tenant;

9. Tenant and Subtenant each hereby represent and warrant to Landlord that other than the Sublease, there are no agreements or understandings, whether written or oral between Tenant and Subtenant with respect to Subtenant's use and occupancy of the Demised Premises or any property of Tenant located therein; and

10. Tenant and Subtenant each hereby covenants and agrees with Landlord that Tenant and Subtenant shall defend, indemnify and hold Landlord, its officials, officers, employees and agents harmless from and against any and all claims, liabilities and obligations to any broker or agent in connection with the Sublease, including, without limitation, any reasonable attorneys' fees and costs incurred by Landlord in connection therewith.

This Consent to Sublease shall not be effective unless and until an original copy hereof executed by Tenant and Subtenant has been returned to Landlord, attention Ron Whitehead, City Manager, Town of Addison, Texas, 5300 Belt Line Road, Dallas, Texas 75254.

Town of Addison, Texas

By: \_\_\_\_\_  
Ron Whitehead  
City Manager

ACKNOWLEDGED AND AGREED:

Tenant:

Addison Airport of Texas, Inc., a Texas corporation

By: \_\_\_\_\_  
Sam Stuart, President

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

Subtenant:

FirstAIR GROUP, Inc., a New York corporation

By: \_\_\_\_\_  
Thomas J. Freeman, President

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

Mercury Air Center – Addison, Inc. a Texas corporation

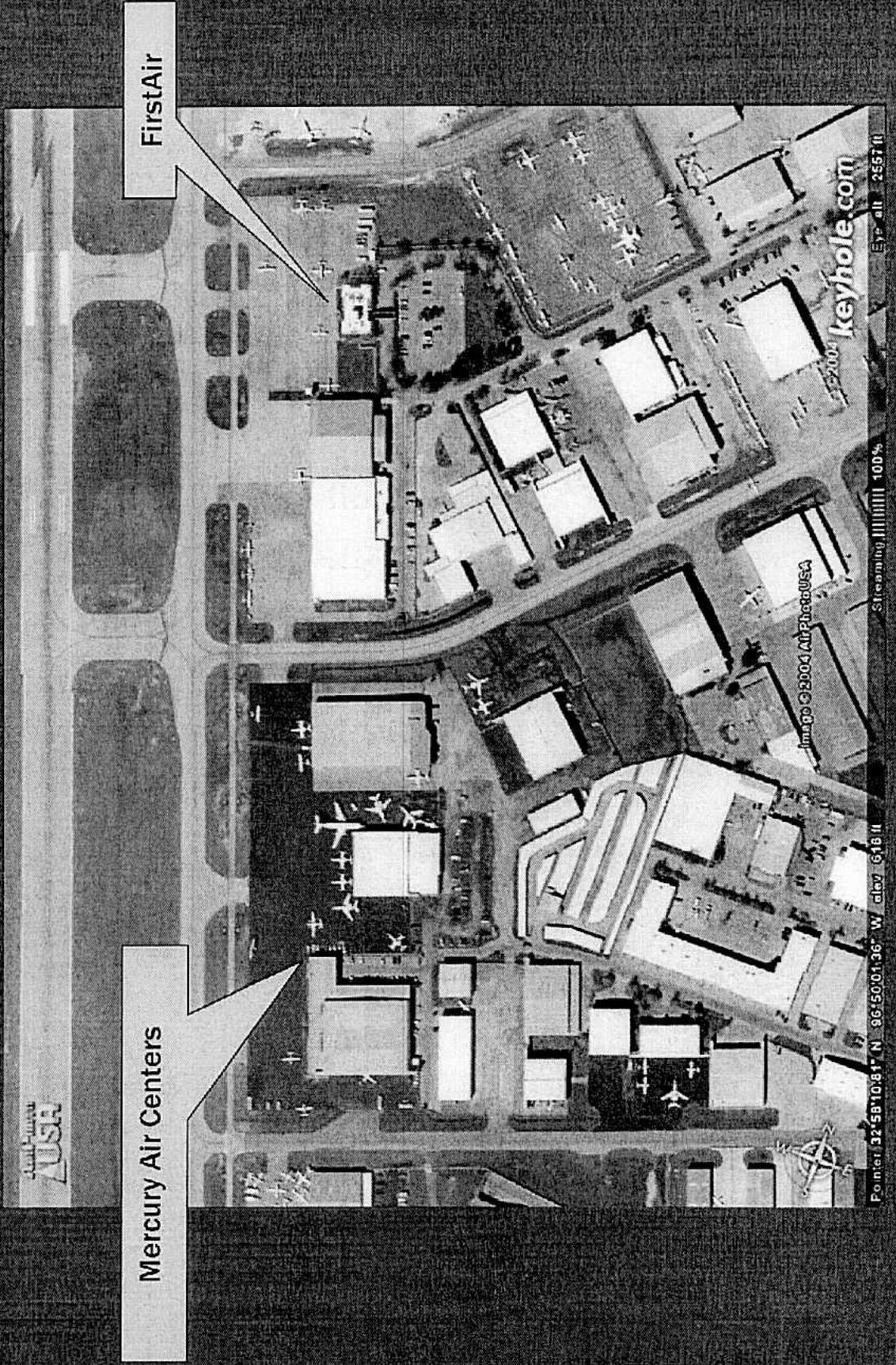
By: \_\_\_\_\_  
*(Insert Name and Title)*

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

**Exhibit "C"**

Aerial of Mercury and Addison Jetport Facilities

**A good fit: Mercury becomes a private flight department area. Mercury can also provide transient hanger, FirstAir's FBO and ramp cater strictly to transient aircraft.**



Mercury Air Centers

FirstAir

Point: 32°58'10.81" N, 86°50'01.36" W, elev: 616 ft  
Streaming: 100%  
Image © 2004 AirPhotoUSA  
keyhole.com

**Council Agenda Item: #R4**

Staff will present the Belt Line Corridor Streetscape Master Plan for the Council's review. The attached memorandum explains the scope of services for this project.

DATE SUBMITTED: April 15, 2005  
FOR COUNCIL MEETING: April 26, 2005

**Council Agenda Item:** \_\_\_\_\_

**SUMMARY:**

Staff recommends that the Council approve a design fee proposal from RTKL totaling \$78,000 for professional urban design and landscape architecture services aimed at preparing a conceptual plan for streetscape improvements for the Belt Line Road Corridor.

**FINANCIAL IMPACT:**

Budgeted Amount:     \$78,000

Cost:                     \$11 Million

Funds are available from bond proceeds associated with the \$11 million Belt Line Road Streetscape project. As of 12/31/04, funds from previous bond sales total \$2,255,121, with \$8,625,000 yet to be issued.

..

**BACKGROUND:**

Last year RTKL completed a study and provided a series of presentations to identify pertinent issues and challenges facing the re-invigoration of the Belt Line Road Corridor. They identified specific challenges such as:

- How to create points of activity along the corridor's experience to provide heightened interest and activity.
- How to bring visual order to the corridor's appearance to overcome it's unorchestrated collection of civil, landscape, architectural and programmatic improvements.
- How to create stronger physical closure along the corridor to mitigate the "missing teeth" effect created by restaurant pad sites.
- How to promote the redevelopment of key blocks.
- How to guide the potential for a transit-oriented anchor in the area currently defined by warehousing and storage uses.
- How to allow a stronger transition to the corridor along the north-south roads.
- Potential improvements to the Belt Line Road street section and its related streetscape.

This proposal specifically addresses services to prepare conceptual streetscape improvements and enhancements for the Belt Line Road Corridor to help bring order to the corridor's visual appearance. The scope of the design effort will focus on the entire length of Belt Line Road.

The purpose of the plan is to:



**Council Agenda Item: #R5**

**SUMMARY:**

To consider approval of the contracts for services between the Town of Addison and the non-profits agencies funded from the General Fund and Hotel Fund budgets. The agencies and the amounts were approved by the City Council and included in the adopted FY 2005/06 budget.

**FINANCIAL IMPACT:**

All contracts are fully funded within the General Fund and Hotel Fund budgets.

	<b>General Fund</b>	<b>Hotel Fund</b>
Budgeted Amount:	<u>\$107,000.00</u>	<u>\$386,600.00</u>
Cost:	<u>\$107,000.00</u>	<u>\$386,600.00</u>

**BACKGROUND:**

During the FY 2005/06 budget process, the City Council reviewed the following non-profit agencies and funding amounts for FY 2005/06. Attached are the contracts for the non-profits and minor changes have made to ensure consistency within the contracts and to reflect changes to performances and their dates as applicable. In addition, the Council approved a non-recurring grant of an additional \$15,000 for Metrocrest Social Services to bring their total grant to \$30,000 for FY 2006.

<b>General Fund:</b>	<b>Amount</b>	<b>Hotel Fund</b>	<b>Amount</b>
Communities in Schools –Dallas	\$40,000	WaterTower Theatre	\$230,000
Senior Adult Services	\$15,000	WaterTower Theatre – Matching	\$150,000
Metrocrest Social Service Center	\$30,000	Dance Council	\$6,600
Metrocrest Family Medical Clinic	\$2,000		
Metrocrest Chamber of Commerce	\$10,000		
The Family Place	\$5,000		
Special Care and Career Services	\$5,000		
<b>TOTAL</b>	<b>\$107,000</b>	<b>TOTAL</b>	<b>\$386,600</b>

**RECOMMENDATION:**

It is recommended that the City Council approve a resolution authorizing the City Manager to enter into contracts with the non-profits for the amounts listed above. These contracts shall be subject to final review and approval by the City Attorney to allow the flexibility to negotiate any minor changes as needed.

STATE OF TEXAS

§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

§

§

This Contract for Services is made and entered into as of the 1st day of October 2005 by and between the Town of Addison, Texas (the "City"), and Communities In Schools Dallas Region, Inc. ("Communities In Schools").

WITNESSETH:

WHEREAS, Communities In Schools is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing academic support and social services for children at risk of dropping out of school in the Dallas region; and

WHEREAS, the success or failure of the purposes and objectives of Communities In Schools has a direct impact on the health and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, is authorized and empowered to exercise the power of eminent domain to acquire property for a school or other educational facility pursuant to Section 251.001, Tex. Loc. Gov. Code, and the services provided by Communities In Schools hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Communities In Schools Dallas, Inc. do hereby contract, covenant and agree as follows:

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October 2005 through the 30th day of September 2006, except as otherwise provided for herein.

II. SERVICES

Communities In Schools covenants and agrees that it shall:

(a) establish and continue an on-going campus program at Janie Stark Elementary School in the Carrollton-Farmers Branch I.S.D. aimed at providing students with supportive guidance, academic enhancement opportunities, individual and scholastic enrichment activities, health and human service agency referrals, and parental involvement programs;

(b) Assign two (2) professional staff to the Janie Stark Elementary School campus with bi-lingual language skills to guide in student development;

- (c) conduct off-campus "home visits" with interested parents to acquaint them with enhanced student and parenting skills;
- (d) coordinate with Addison apartment managers to hold neighborhood meetings to acquaint parents with Communities In Schools and its opportunities;
- (e) bring the mobile service component of Communities In Schools to the Janie Stark Elementary School students;
- (f) Provide effective follow-up reporting to the City through quarterly financial and service reports to indicate the numbers served;
- (g) Provide an annual audit of financial condition to the City; and
- (h) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

### **III. COMPENSATION**

For the operation and provision of the services, projects and programs of Communities In Schools as described herein, the City shall pay Communities In Schools the sum of Forty Thousand and No/100 Dollars (\$40,000.00). Such sum shall be paid on or before January 9, 2006, provided Communities In Schools is not then in default of this Contract.

### **IV. RESPONSIBILITY; INDEMNIFICATION**

(a) COMMUNITIES IN SCHOOLS AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY COMMUNITIES IN SCHOOLS, OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (TOGETHER, "COMMUNITIES IN SCHOOLS PARTIES").

(b) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, COMMUNITIES IN SCHOOLS AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE"), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH COMMUNITIES IN SCHOOLS PERFORMANCE OF THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF COMMUNITIES IN SCHOOLS OR OF ANY OF THE COMMUNITIES IN SCHOOLS PARTIES), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

(c) With respect to Communities In Schools indemnity obligation set forth in subsection (b) of this Section, Communities In Schools shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee.

(d) With respect to Communities In Schools' duty to defend set forth herein in subsection (b) of this Section, Communities In Schools shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Contract; provided however, that the City shall have the right to approve the selection of counsel by Communities In Schools and to reject the Communities In Schools' selection of counsel and to select counsel of the City's own choosing, in which instance, Communities In Schools shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by Communities In Schools, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Communities In Schools fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Communities In Schools, and Communities In Schools shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF COMMUNITIES IN SCHOOLS SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Communities In Schools has failed at the time of such cancellation and termination to provide all of the services set forth herein, Communities In Schools shall refund to the City that portion of funds paid to Communities In Schools under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Communities In Schools shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Communities In Schools and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of Communities In Schools shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, Communities in School shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Communities in School shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Communities in School from the funds provided by the City. The approval of Communities in School's annual budget creates a fiduciary duty in Communities in School with respect to the funds provided by the City under this Contract.

The funds paid to Communities in School pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Communities In Schools shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2005, with the last quarter ending September 30, 2006), Communities In Schools shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Communities In Schools of the funds paid to Communities In Schools under this Contract; and (b) a year-to-date report of the expenditures made by Communities In Schools of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Communities In Schools shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Communities In Schools shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Communities In Schools' fiscal year, Communities In Schools shall provide the City with a financial statement signed by the Chairman of Communities In Schools' Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Communities In Schools' income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

## **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and Communities In Schools is that of independent contractor, and the City and Communities In Schools by the execution of this Contract do not change the independent status of Communities In Schools. No term or provision of this Contract or action by Communities In Schools in the performance of this Contract is intended nor shall be construed as making Communities In Schools the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

#### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

Communities In Schools may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the City and Communities In Schools are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

#### **XI. NON-DISCRIMINATION**

During the term of this Contract, Communities In Schools agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

#### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

Communities In Schools shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

#### **XIII. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

#### **XIV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

#### **XV. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

#### **XVI. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Communities In Schools Dallas Region, Inc. agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Communities In Schools Dallas Region,  
Inc. address:

Sandra Chavarria  
President & CEO  
8700 Stemmons Frwy, Suite 125  
Dallas, TX 75247

#### **XVII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

#### **XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

#### **XIX. ENTIRE CONTRACT**

This Contract represents the entire and integrated contract and agreement between the City and Communities In Schools Dallas Region, Inc. and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Communities In Schools Dallas Region, Inc.

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**COMMUNITIES IN SCHOOLS  
DALLAS REGION, INC.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Sandra Chavarria, President

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

By: \_\_\_\_\_  
\_\_\_\_\_  
(printed name)  
Its: \_\_\_\_\_

STATE OF TEXAS

§  
§  
§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October 2005 by and between the Town of Addison, Texas (the "City") and Senior Adult Services of Addison, Carrollton, Coppell, and Farmers Branch ("Senior Adult Services").

**WITNESSETH:**

**WHEREAS**, Senior Adult Services is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing information, programs, and referral services to the senior citizens within Addison, Carrollton, Coppell and Farmers Branch; and

**WHEREAS**, the success or failure of Senior Adult Services purposes and objectives has a direct impact on the health, comfort, and welfare of the senior citizens of the Town; and

**WHEREAS**, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, is authorized pursuant to Section 150.002, Texas Human Resources Code, to provide housing, food, clothing, and day care services on its own or by contract, has authority to provide public health services as set forth in Chapter 121, Tex. Health and Safety Code and other law, and the services provided by Senior Adult Services hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Senior Adult Services of Addison, Carrollton, Coppell, and Farmers Branch do hereby covenant and agree as follows:

**I. TERM**

The term of this Contract shall be for a period of one year from October 1, 2005 through September 30, 2006, except as otherwise provided for herein.

**II. SERVICES**

Senior Adult Services covenants and agrees that it shall:

- (a) Design, develop, and implement referral services, projects, or programs beneficial to the senior citizens living in the City of which include
  - (1) Transportation Assistance
  - (2) Home Repair Assistance
  - (3) Informational and Referral Services
  - (4) Home Delivered Meals
  - (5) Provide Case Management Services

(6) Care Givers Support

(b) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

### III. COMPENSATION

For the operation and provision of the services, projects and programs of Senior Adult Services as described herein, the City shall pay Senior Adult Services the sum of Fifteen Thousand and No/100 Dollars (\$15,000.00). Such sum shall be paid on or before January 9, 2006, provided Senior Adult Services is not then in default of this Contract.

### IV. INDEMNIFICATION

(a) SENIOR ADULT SERVICES AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY SENIOR ADULT SERVICES OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (TOGETHER, "SENIOR ADULT SERVICES PARTIES").

(b) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, SENIOR ADULT SERVICES AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICIAL, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE"), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH SENIOR ADULT SERVICES PERFORMANCE OF THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF SENIOR ADULT SERVICES OR OF ANY OF THE SENIOR ADULT SERVICES PARTIES), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

(c) With respect to Senior Adult Services' indemnity obligation set forth in subsection (c) of this Section, Senior Adult Services shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee.

(d) With respect to Senior Adult Services' duty to defend set forth herein in subsection (b) of this Section, Senior Adult Services shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Contract; provided however, that the City shall have the right to approve the selection of counsel by Senior Adult Services and to reject the Senior Adult Services' selection of counsel and to select counsel of the City's own choosing, in which instance, Senior Adult Services shall be obligated to pay

reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by Senior Adult Services, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Senior Adult Services fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Senior Adult Services, and Senior Adult Services shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF SENIOR ADULT SERVICES SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Senior Adult Services has failed at the time of such cancellation and termination to provide all of the services set forth herein, Senior Adult Services shall refund to the City that portion of funds paid to Senior Adult Services under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Senior Adult Services shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Senior Adult Services and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of Senior Adult Services shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is

interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, Senior Adult Services shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Senior Adult Services shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Senior Adult Services from the funds provided by the City. The approval of Senior Adult Services' annual budget creates a fiduciary duty in Senior Adult Services with respect to the funds provided by the City under this Contract.

The funds paid to Senior Adult Services pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Senior Adult Services shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2005, with the last quarter ending September 30, 2006), Senior Adult Services shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Senior Adult Services of the funds paid to Senior Adult Services under this Contract; and (b) a year-to-date report of the expenditures made by Senior Adult Services of the funds paid to Senior Adult Services under this Contract (and if this Contract is terminated prior to its expiration, Senior Adult Services shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Senior Adult Services shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Senior Adult Services' fiscal year, Senior Adult Services shall provide the City with a financial statement signed by the Chairman of Senior Adult Services' Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Senior Adult Services' income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

## **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and Senior Adult Services is that of independent contractor, and the City and Senior Adult Services by the execution of this Contract do not change the independent status of Senior Adult Services. No term or provision of this Contract or action by Senior Adult Services in the performance of this Contract is intended nor shall be construed as making Senior Adult Services the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

## **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

Senior Adult Services may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

## **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the City and Senior Adult Services are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

## **XI. NON-DISCRIMINATION**

During the term of this Contract, Senior Adult Services agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

## **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

Senior Adult Services shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

## **XIII. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

## **XIV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

## **XV. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a

waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

## **XVI. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Senior Adult Services agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The Town's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Senior Adult Services' address:

Mary Joiner  
Executive Director  
Senior Adult Services  
1111 Belt Line Rd., # 110  
Carrollton, Texas 75006

## **XVII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

## **XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

## **XIX. ENTIRE CONTRACT**

This Contract represents the entire and integrated contract and agreement between the City and Senior Adult Services and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Senior Adult Services

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

**SENIOR ADULT SERVICES  
OF ADDISON, CARROLLTON COPPELL  
AND FARMERS BRANCH**

By: \_\_\_\_\_  
Mary Joiner, Executive Director

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_

STATE OF TEXAS

§  
§  
§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October 2005 by and between the Town of Addison, Texas (the "City") and Metrocrest Social Service Center ("Metrocrest").

**WITNESSETH:**

**WHEREAS**, Metrocrest is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing information, referral and short term emergency assistance to the citizens within the City; and

**WHEREAS**, the success or failure of Metrocrest's purposes and objectives has a direct impact on the health, comfort, and welfare of the citizens of the City; and

**WHEREAS**, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, is authorized pursuant to Section 150.002, Texas Human Resources Code, to provide housing, food, clothing, and day care services on its own or by contract, and the services provided by Metrocrest hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

**NOW, THEREFORE**, in consideration of all mutual covenants and agreements hereinafter set forth, the parties do hereby covenant and agree as follows:

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2005 through the 30th day of September, 2006, except as otherwise provided for herein.

**II. SERVICES**

Metrocrest covenants and agrees that it shall:

(a) Provide direct material assistance and short term emergency assistance to residents and citizens of the City of which includes:

- 1) Rent
- 2) Utilities
- 3) Food
- 4) Clothing
- 5) Prescription Drugs
- 6) Transportation Services
- 7) Other

- (b) Provide information and referral on health and social service issues to residents and citizens of the City of which includes:
  - 1) Employment Assistance
  - 2) Health and Social Services Referrals
  - 3) Support Group Information
  
- (c) Provide indirect assistance to residents and citizens for the City of which includes:
  - (1) Collaboration with others in the community for awareness of need and maximum utilization of resources
  - (2) Community education about issues, needs, and resources
  - (3) Inquiry into the causes of identified problems
  - (4) Participation in the development of plans and strategies to address the causes
  - (5) Provisions of volunteer opportunities for community-wide involvement in the programs of the Metrocrest Social Service Center.
  
- (d) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

### **III. COMPENSATION**

For the operation and provision of the services, projects and programs of Metrocrest as described herein, the City shall pay Metrocrest the sum of Thirty Thousand and No/100 Dollars (\$30,000.00), a portion of which (Fifteen Thousand and No/100 Dollars (\$15,000.00)) is intended to compensate Metrocrest for anticipated additional increase in the costs of its services, projects and programs solely for the time period described in Section I of this Contract. Such sum shall be paid on or before January 9, 2006, provided Metrocrest is not then in default of this Contract.

### **IV. INDEMNIFICATION**

(a) METROCREST AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY METROCREST OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (TOGETHER, "METROCREST PARTIES").

(b) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, METROCREST AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE"), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH

METROCREST'S PERFORMANCE OF THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF METROCREST OR OF ANY OF THE METROCREST PARTIES) , INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

(c) With respect to Metrocrest's indemnity obligation set forth in subsection (b) of this Section, Metrocrest shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee.

(d) With respect to Metrocrest's duty to defend set forth herein in subsection (b) of this Section, Metrocrest shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Contract; provided however, that the City shall have the right to approve the selection of counsel by Metrocrest and to reject the Metrocrest's selection of counsel and to select counsel of the City's own choosing, in which instance, Metrocrest shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by Metrocrest, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Metrocrest fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Metrocrest, and Metrocrest shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF METROCREST SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Metrocrest has failed at the time of such cancellation and termination to provide all of the services set forth herein, Metrocrest shall refund to the City that portion of funds paid to Metrocrest under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Metrocrest shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such

amount, all of the obligations of Metrocrest and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of Metrocrest shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, Metrocrest shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Metrocrest shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Metrocrest from the funds provided by the City. The approval of Metrocrest' annual budget creates a fiduciary duty in Metrocrest with respect to the funds provided by the City under this Contract.

The funds paid to Metrocrest pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Metrocrest shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2005, with the last quarter ending September 30, 2006), Metrocrest shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Metrocrest of the funds paid to Metrocrest under this Contract; and (b) a year-to-date report of the expenditures made by Metrocrest of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Metrocrest shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Metrocrest shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Metrocrest's fiscal year, Metrocrest shall provide the City with a financial statement signed by the Chairman of Metrocrest's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public

Accountant, setting forth Metrocrest's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

### **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and Metrocrest is that of independent contractor, and the City and Metrocrest by the execution of this Contract do not change the independent status of Metrocrest. No term or provision of this Contract or action by Metrocrest in the performance of this Contract is intended nor shall be construed as making Metrocrest the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

Metrocrest may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the City and Metrocrest are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

### **XI. NON-DISCRIMINATION**

During the term of this Contract, Metrocrest agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

Metrocrest shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

### **XIII. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions

shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

#### **XIV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

#### **XV. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

#### **XVI. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Metrocrest agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Metrocrest's address:

Bunny Summerlin  
Executive Director  
Metrocrest Social Services  
110 Belt Line Rd., #100  
Carrollton, Texas 75006

#### **XVII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

#### **XVIII. AUTHORITY TO EXECUTE CONTRACT**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Contract on behalf of the parties hereto,

and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

**XIX. ENTIRE AGREEMENT**

This Contract represents the entire and integrated contract and agreement between the City and Metrocrest and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Metrocrest

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**METROCREST SOCIAL SERVICE  
CENTER**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Bunny Summerlin, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

By: \_\_\_\_\_  
\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_

STATE OF TEXAS

§  
§  
§

**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October 2005 by and between the Town of Addison, Texas (the "City"), and Metrocrest Family Medical Clinic, ("Metrocrest Medical").

**WITNESSETH:**

**WHEREAS**, Metrocrest Family Medical Clinic is a private, non-profit organization established under the laws of the State of Texas for the purpose of improving the health of the local community by offering low cost treatment for minor medical problems for children and adults; and

**WHEREAS**, the success or failure of Metrocrest Family Medical Clinic purposes and objectives has a direct impact on the health and welfare of the citizens of the City; and

**WHEREAS**, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, has authority to provide public health services as set forth in Chapter 121, Tex. Health and Safety Code and other law, and the services provided by Metrocrest Family Medical Clinic hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Metrocrest Family Medical Clinic do hereby contract, covenant and agree as follows:

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2005 through the 30th day of September, 2006, except as otherwise provided for herein.

**II. SERVICES**

Metrocrest Family Medical Clinic covenants and agrees that it shall:

- (a) Provide low cost treatment for minor medical problems, during normal operating hours of the clinic, for children and adults living in Addison;
- (b) Present a mid-year written report to the City on the progress and status of services provided by Metrocrest Medical and provide quarterly status reporting to the City in a mutually agreed upon form;
- (c) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

### **III. COMPENSATION**

For the operation and provision of the services, projects and programs of Metrocrest Family Medical Clinic as described herein, the City shall pay Metrocrest Family Medical Clinic the sum of Two Thousand and No/100 Dollars (\$2,000.00). Such sum shall be paid on or before January 9, 2006, provided Metrocrest Family Medical Clinic is not then in default of this Contract.

### **IV. RESPONSIBILITY; INDEMNIFICATION**

(a) METROCREST FAMILY MEDICAL CLINIC AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY METROCREST FAMILY MEDICAL CLINIC, ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (TOGETHER, "METROCREST MEDICAL PARTIES").

(b) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, METROCREST FAMILY MEDICAL CLINIC AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE"), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH METROCREST FAMILY MEDICAL CLINIC'S PERFORMANCE OF THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF METROCREST FAMILY MEDICAL CLINIC OR OF ANY OF THE METROCREST MEDICAL PARTIES), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

(c) With respect to Metrocrest Family Medical Clinic's indemnity obligation set forth in subsection (b) of this Section, Metrocrest Family Medical Clinic shall have no duty to indemnify an Indemnatee for any Damages caused by the sole negligence of the Indemnatee.

(d) With respect to Metrocrest Family Medical Clinic's duty to defend set forth herein in subsection (b) of this Section, Metrocrest Family Medical Clinic shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Contract; provided however, that the City shall have the right to approve the selection of counsel by Metrocrest Family Medical Clinic and to reject Metrocrest Family Medical Clinic's selection of counsel and to select counsel of the City's own choosing, in which instance, Metrocrest Family Medical Clinic shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by Metrocrest Family Medical Clinic, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Metrocrest Family Medical Clinic fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Metrocrest Family Medical Clinic, and Metrocrest Family Medical Clinic shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF METROCREST FAMILY MEDICAL CLINIC SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Metrocrest Family Medical Clinic has failed at the time of such cancellation and termination to provide all of the services set forth herein, Metrocrest Family Medical Clinic shall refund to the City that portion of funds paid to Metrocrest Family Medical Clinic under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Metrocrest Family Medical Clinic shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Metrocrest Family Medical Clinic and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of Metrocrest Family Medical Clinic shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, Metrocrest Family Medical Clinic shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Metrocrest Family Medical Clinic shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Metrocrest Family Medical Clinic from the funds provided by the City. The approval of Metrocrest Family Medical Clinic's annual budget creates a fiduciary duty in Metrocrest Family Medical Clinic with respect to the funds provided by the City under this Contract.

The funds paid to Metrocrest Family Medical Clinic pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Metrocrest Family Medical Clinic shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2005, with the last quarter ending September 30, 2006), Metrocrest Family Medical Clinic shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Metrocrest Family Medical Clinic of the funds paid to Metrocrest Family Medical Clinic under this Contract; and (b) a year-to-date report of the expenditures made by Metrocrest Family Medical Clinic of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Metrocrest Family Medical Clinic shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Metrocrest Family Medical Clinic shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Metrocrest Family Medical Clinic's fiscal year, Metrocrest Family Medical Clinic shall provide the City with a financial statement signed by the Chairman of Metrocrest Family Medical Clinic's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Metrocrest Family Medical Clinic's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

## **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and Metrocrest Family Medical Clinic is that of independent contractor, and the City and Metrocrest Family Medical Clinic by the execution of this Contract do not change the independent status of Metrocrest Family Medical Clinic. No term or provision of this Contract or action by Metrocrest Family Medical Clinic in the performance of this Contract is intended nor shall be construed as making Metrocrest Family Medical Clinic the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

## **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

Metrocrest Family Medical Clinic may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any

attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the City and Metrocrest Family Medical Clinic are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

#### **XI. NON-DISCRIMINATION**

During the term of this Contract, Metrocrest Family Medical Clinic agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

#### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

Metrocrest Family Medical Clinic shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

#### **XIII. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

#### **XIV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

#### **XV. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

#### **XVI. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Metrocrest Family Medical Clinic agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Metrocrest Family Medical Clinic's  
address:

Page Flink  
Executive Director  
Metrocrest Family Medical Clinic  
P.O. Box 7999  
Dallas, Texas 75209

**XVII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

**XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

**XIX. ENTIRE CONTRACT**

This Contract represents the entire and integrated contract and agreement between the City and Metrocrest Family Medical Clinic and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Metrocrest Family Medical Clinic

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**METROCREST FAMILY MEDICAL  
CLINIC, INC.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

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

Helen Lazor, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

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

STATE OF TEXAS §  
COUNTY OF DALLAS §

**CONTRACT FOR SERVICES**

This Contract for Services ("Contract") is made and entered into as of the 1st day of October 2005 by and between the Town of Addison, Texas (the "City") and the Metrocrest Chamber of Commerce (the "Chamber").

**WITNESSETH:**

**WHEREAS**, the Chamber is an independent non-profit corporation established under the laws of the State of Texas for the purpose of promoting business in the City; and

**WHEREAS**, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, has authority to promote the economic development and to stimulate business and commercial activity within the City, and the services provided by the Chamber hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens and the economic development of the City.

**NOW, THEREFORE**, in consideration of all mutual covenants and agreements hereinafter set forth, the parties do hereby covenant and agree as follows:

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October 2005 through the 30th day of September 2006, except as otherwise provided for herein.

**II. SERVICES**

A. The Chamber shall provide to the City the following services:

The Chamber shall assist the City in its economic development activities and assist in developing programs that will enhance business opportunities throughout the Metrocrest region.

Five key program areas in which the Chamber shall assist the City include:

1. Familiarization tour of the Metrocrest.
2. Economic Development convention participation.
3. Familiarization tour of Metrocrest businesses.
4. Metroplex International Development Association (MIDAS) support.
5. Resource materials - publishing of new (updated) Economic Development resource materials.

B. The Mayor of the City shall serve as an Ex-Officio Director of the Chamber and as a member of the Chamber's Economic Development Committee. The City's staff member responsible for Economic Development shall also be a member of the Committee.

### **III. COMPENSATION**

A. For the design, development and implementation of the programs enumerated in Section II above, the City shall pay to the Chamber the sum of Ten Thousand and No/100 Dollars (\$10,000.00). Such sum shall be paid on or before January 9, 2006, provided Provider is not then in default of this Contract.

B. The Chamber shall provide its monthly financial statements to the City Manager. Such reports shall include statements of revenues and expenses. The City Manager shall also receive a copy of the Annual Business Plan and Annual Report of program activity. No payment shall be made during any period in which this provision is not complied with. Within 90 days following the termination of the Chamber's fiscal year, a financial statement for the Chamber prepared by a Certified Public Accountant of all activities funded by this Contract shall be provided to the City Manager. Such statement shall provide sufficient information as to support the accuracy of the monthly financial statements.

### **IV. RESPONSIBILITY; INDEMNIFICATION**

(a) THE CHAMBER AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY THE CHAMBER, ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (TOGETHER, "CHAMBER PARTIES").

(b) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, THE CHAMBER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE"), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH THE CHAMBER'S PERFORMANCE OF THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF THE CHAMBER OR OF ANY OF THE CHAMBER PARTIES), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

(c) With respect to the Chamber's indemnity obligation set forth in subsection (b) of this Section, the Chamber shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee.

(d) With respect to the Chamber's duty to defend set forth herein in subsection (b) of this Section, the Chamber shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Contract; provided however, that the City shall have the right to approve the selection of counsel by the Chamber and to reject the

Chamber's selection of counsel and to select counsel of the City's own choosing, in which instance, the Chamber shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by the Chamber, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that the Chamber fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of the Chamber, and the Chamber shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF THE CHAMBER SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Chamber has failed at the time of such cancellation and termination to provide all of the services set forth herein, Chamber shall refund to the City that portion of funds paid to Chamber under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Chamber shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Chamber and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of Chamber shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is

interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, Chamber shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Chamber shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Chamber from the funds provided by the City. The approval of Chamber's annual budget creates a fiduciary duty in Chamber with respect to the funds provided by the City under this Contract.

The funds paid to Chamber pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day-to-day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Chamber shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2005, with the last quarter ending September 30, 2006), Chamber shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Chamber of the funds paid to Chamber under this Contract; and (b) a year-to-date report of the expenditures made by Chamber of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Chamber shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Chamber shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Chamber's fiscal year, Chamber shall provide the City with a financial statement signed by the Chairman of Chamber's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Chamber's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

## **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and Chamber is that of independent contractor, and the City and Chamber by the execution of this Contract do not change the independent status of Chamber. No term or provision of this Contract or action by Chamber in the performance of this Contract is intended nor shall be construed as making Chamber the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

## **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

Chamber may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without

obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the City and Chamber are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

#### **XI. NON-DISCRIMINATION**

During the term of this Contract, Chamber agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

#### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

Chamber shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

#### **XIII. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

#### **XIV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

#### **XV. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

## **XVI. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Chamber agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Chamber's address:

Ed Brady  
Executive Director  
Metrocrest Chamber of Commerce  
1204 Metrocrest Drive  
Carrollton, Texas 75006

## **XVII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

## **XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

## **XIX. ENTIRE AGREEMENT**

This Contract represents the entire and integrated contract and agreement between the City and Chamber and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Chamber.

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**METROCREST CHAMBER OF**

**COMMERCE**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Ed Brady, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

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

STATE OF TEXAS

§

CONTRACT FOR SERVICES

§

COUNTY OF DALLAS

§

This Contract for Services ("Contract") is made and entered into as of the 1st day of October 2005 by and between the Town of Addison, Texas (the "City"), and The Family Place, Inc. ("The Family Place").

WITNESSETH:

WHEREAS, The Family Place is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing counseling, outreach, referrals, education and protection services to victims of domestic violence; and

WHEREAS, the success or failure of The Family Place purposes and objectives has a direct impact on the health and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, has authority to provide public health services as set forth in Chapter 121, Tex. Health and Safety Code and other law, and the services provided by The Family Place hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and The Family Place do hereby contract, covenant and agree as follows:

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2005 through the 30th day of September, 2006, except as otherwise provided for herein.

II. SERVICES

The Family Place covenants and agrees that it shall:

(a) Establish a satellite facility in the Metrocrest area for the purpose of conducting counseling, outreach, referrals, public education, and protection services to victims of domestic violence through a variety of program services in the Addison, Carrollton, and Farmers Branch area;

(b) Coordinate with other area social outreach agencies such as Metrocrest Social Services to provide the functions described in paragraph (a) above. Such coordination shall include volunteer training for those volunteers (who desire and agree to be so trained) conducting referral functions for the Metrocrest Social Services and any other groups employing volunteers for referral functions;

(c) Distribute to various media, brochures and public service announcements (“PSA”) to inform residents in the area of the services offered by The Family Place. Such an informational campaign shall include the following:

- radio public service announcements submitted to air in English and Spanish
- local and regional newspaper PSAs describing the Family Place services
- distribution of informational pamphlets to various community, civic, and social service organizations within the Metrocrest
- speaking engagements at various community, civic, and social service organizations to also include, when arranged by the City, an annual presentation to the Addison apartment managers forum as an avenue to disseminate public information within the apartment communities;

(d) Include an Addison representative on the Family Place Metrocrest Advisory Board to enhance communication and coordination of the agencies efforts in Addison and the Metrocrest;

(e) Seek the assistance of volunteers in conducting all annual fundraising events to raise awareness of the Family Place and its services. Such special events shall be rotated through Addison, Carrollton, and Farmers Branch to serve as host sites;

(f) Present a mid-year written report to the City on the progress and status of services provided at the new Metrocrest satellite facility, and continue quarterly status reporting to the City in a mutually agreed upon form;

(g) Provide a copy of The Family Place’s annual audit of financial condition to the City; and

(h) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

### **III. COMPENSATION**

For the operation and provision of the services, projects and programs of The Family Place as described herein, the City shall pay The Family Place the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 9, 2006, provided The Family Place is not then in default of this Contract.

### **IV. RESPONSIBILITY; INDEMNIFICATION**

(a) THE FAMILY PLACE AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY THE FAMILY PLACE OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY

EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (TOGETHER, "FAMILY PLACE PARTIES").

(b) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, THE FAMILY PLACE AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE"), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH THE FAMILY PLACE'S PERFORMANCE OF THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF THE FAMILY PLACE OR OF ANY OF THE FAMILY PLACE PARTIES), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

(c) With respect to the Family Place's indemnity obligation set forth in subsection (b) of this Section, the Family Place shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee.

(d) With respect to the Family Place's duty to defend set forth herein in subsection (b) of this Section, the Family Place shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the City shall have the right to approve the selection of counsel by the Family Place and to reject the Family Place's selection of counsel and to select counsel of the City's own choosing, in which instance, the Family Place shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by the Family Place, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that the Family Place fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of the Family Place, and the Family Place shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF THE FAMILY PLACE SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day

period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if The Family Place has failed at the time of such cancellation and termination to provide all of the services set forth herein, The Family Place shall refund to the City that portion of funds paid to The Family Place under the terms of this Contract in accordance with the following: Prorata funding returned to the City by The Family Place shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of The Family Place and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer or employee of The Family Place shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, The Family Place shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and The Family Place shall make such periodic reports to the City, as provided for herein, listing the expenditures made by The Family Place from the funds provided by the City. The approval of The Family Place's annual budget creates a fiduciary duty in The Family Place with respect to the funds provided by the City under this Contract.

The funds paid to The Family Place pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

The Family Place shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2005, with the last quarter ending September 30, 2006), The Family Place shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by The Family Place of the funds paid to The Family Place under this Contract; and (b) a year-to-date report of the expenditures made by The Family Place of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, The

Family Place shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, The Family Place shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of The Family Place's fiscal year, The Family Place shall provide the City with a financial statement signed by the Chairman of The Family Place's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth The Family Place's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

### **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and The Family Place is that of independent contractor, and the City and The Family Place by the execution of this Contract do not change the independent status of The Family Place. No term or provision of this Contract or action by The Family Place in the performance of this Contract is intended nor shall be construed as making The Family Place the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

The Family Place may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPIRS**

Nothing contained in this Contract shall be deemed to constitute that the City and The Family Place are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

### **XI. NON-DISCRIMINATION**

During the term of this Contract, The Family Place agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

The Family Place shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

### **XIII. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

### **XIV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

### **XV. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

### **XVI. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and The Family Place agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

The Family Place's address:

Page Flink  
Executive Director  
The Family Place  
P.O. Box 7999  
Dallas, Texas 75209

### **XVII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

### **XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

**XIX. ENTIRE CONTRACT**

This Contract represents the entire and integrated contract and agreement between the City and The Family Place and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and The Family Place

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**THE FAMILY PLACE, INC.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Page Flink, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

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

STATE OF TEXAS

§

CONTRACT FOR SERVICES

COUNTY OF DALLAS

§

§

This Contract for Services (“Contract”) made and entered into as of the 1st day of October 2005 by and between the Town of Addison, Texas (the “City”) and Special Care and Career Services (“Provider”).

WITNESSETH:

WHEREAS, Provider is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing services to children and adults with disabilities since 1963; and

WHEREAS, Provider provides and will continue to provide “early childhood intervention” to citizens of the City and of the region surrounding the City through speech, physical, developmental and other specialized behavioral therapies; and,

WHEREAS, Provider provides and will continue to provide “supported employment services” to citizens of the City and of the region surrounding the City through occupational training for adults with mental retardation, job matching assistance and job performance support for these individuals; and

WHEREAS, Provider will provide these services in a manner consistent with the Town of Addison's non-profit agency reporting requirements by submitting quarterly client service reports, regular organizational financial reports, and updates on City clients served by the agency as well as identifying a staff person with Provider to be designated as a liaison to the City through which all reporting and communication shall flow; and

WHEREAS, the success or failure of Provider’s purposes and objectives has a direct impact on the health, comfort, and welfare of the citizens of the City; and

WHEREAS, the City has full power of local self government, has authority to contract with other persons, has authority to adopt regulations that are for the good government, peace, and order of the City, has authority to enforce laws reasonably necessary to protect the public health, has authority to provide public health services as set forth in Chapter 121, Tex. Health and Safety Code and other law, and to create a municipal development corporation pursuant to Chapter 379A, Tex. Loc. Gov. Code, to provide job training and to foster economic opportunity and job generation, and the services provided by Provider hereunder are in the public interest and are for, constitute and serve a public purpose in promoting the health and welfare of the citizens of the City.

NOW, THEREFORE, for and in consideration of all mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the parties do hereby contract, covenant and agree as follows:

I. TERM

The term of this Contract shall be for a period of one year from the 1st day of October, 2005 through the 30th day of September, 2006, except as otherwise provided for herein.

## **II. SERVICES**

Provider covenants and agrees that it shall:

(a) Provide "early childhood intervention" to citizens of the City and of the region surrounding the City through speech, physical, developmental and other specialized behavioral therapies; and

(b) Provide "supported employment services" to citizens of the City and of the region surrounding the City through occupational training for adults with mental retardation, job matching assistance and job performance support for these individuals; and

(c) Provide such services in a manner consistent with the Town of Addison's non-profit agency reporting requirements by submitting quarterly client service reports, regular organizational financial reports, and updates on City clients served by the agency as well as identifying a staff person with Provider to be designated as a liaison to the City through which all reporting and communication shall flow; and

(d) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter explaining all expenditures.

## **III. COMPENSATION**

For the operation and provision of the services, projects and programs of Provider as described herein, the City shall pay Provider the sum of Five Thousand and No/100 Dollars (\$5,000.00). Such sum shall be paid on or before January 9, 2006, provided Provider is not then in default of this Contract.

## **IV. RESPONSIBILITY; INDEMNIFICATION**

(a) SPECIAL CARE AND CAREER SERVICES AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY SPECIAL CARE AND CAREER SERVICES OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (TOGETHER, "SPECIAL CARE PARTIES").

(b) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, SPECIAL CARE AND CAREER SERVICES AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE"), IN BOTH THEIR PUBLIC AND

PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH SPECIAL CARE AND CAREER SERVICES PERFORMANCE OF THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF SPECIAL CARE AND CAREER SERVICES OR OF ANY OF THE SPECIAL CARE PARTIES), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

(c) With respect to Special Care and Career Services' indemnity obligation set forth in subsection (b) of this Section, Special Care and Career Services shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee.

(d) With respect to Special Care and Career Services' duty to defend set forth herein in subsection (b) of this Section, Special Care and Career Services shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Contract; provided however, that the City shall have the right to approve the selection of counsel by Special Care and Career Services and to reject Special Care and Career Services' selection of counsel and to select counsel of the City's own choosing, in which instance, Special Care and Career Services shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by Special Care and Career Services, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Special Care and Career Services fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Special Care and Career Services, and Special Care and Career Services shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF SPECIAL CARE AND CAREER SERVICES SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Provider has failed at the time of such cancellation and termination to provide all of the services set

forth herein, Provider shall refund to the City that portion of funds paid to Provider under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Provider shall be determined by dividing the amount paid by the City under this Contract by 365 (the “daily rate”), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Provider and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City’s business. No officer or employee of Provider shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

(b) For purposes of this section, “benefit” means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, Provider shall submit for the City’s review a budget showing the use of the City’s funds provided pursuant to this Contract, and Provider shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Provider from the funds provided by the City. The approval of Provider’ annual budget creates a fiduciary duty in Provider with respect to the funds provided by the City under this Contract.

The funds paid to Provider pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Provider shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2005, with the last quarter ending September 30, 2006), Provider shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Provider of the funds paid to Provider under this Contract; and (b) a year-to-date report of the expenditures made by Provider of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Provider shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time,

Provider shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Provider's fiscal year, Provider shall provide the City with a financial statement signed by the Chairman of Provider's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Provider's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

### **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and Provider is that of independent contractor, and the City and Provider by the execution of this Contract do not change the independent status of Provider. No term or provision of this Contract or action by Provider in the performance of this Contract is intended nor shall be construed as making Provider the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

Provider may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the City and Provider are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

### **XI. NON-DISCRIMINATION**

During the term of this Contract, Provider agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

### **XII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

Provider shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

### **XIII. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

#### **XIV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

#### **XV. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

#### **XVI. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Provider agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Provider' address:

Chris Schaefer  
Interim Executive Director  
Special Care & Career Services  
4350 Sigma, Suite 100  
Farmers Branch, Texas 75244

#### **XVII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

**XVIII. AUTHORITY TO EXECUTE CONTRACT**

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

**XIX. ENTIRE AGREEMENT**

This Contract represents the entire and integrated contract and agreement between the City and Provider and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Provider

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**SPECIAL CARE AND CAREER SERVICES**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Chris Schaefer, Interim Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

By: \_\_\_\_\_  
\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_

**AGREEMENT FOR THE USE OF THE  
ADDISON THEATRE CENTRE**

**THIS AGREEMENT** is between the Town of Addison, a municipal corporation, of Dallas County, Texas (“TOWN”) and the WaterTower Theatre, Inc. (“WTT”), a Texas nonprofit corporation with its principal place of business at Addison Theatre Centre, Addison, Dallas County, Texas.

**WHEREAS**, the TOWN has as one of its purposes the establishment, maintenance, promotion, and operation of cultural facilities for the benefit of the public; and

**WHEREAS**, the TOWN has constructed a theatre (Theatre Centre) in the furtherance of such purposes; and

**WHEREAS**, the Theatre Centre is located upon real estate as shown in Exhibit A which is attached and made a part of this Agreement; and

**WHEREAS**, the TOWN and WTT intend that the Theatre Centre will provide office space together with access to rehearsal and performance space, as well as serve as an outstanding performance facility that will attract other prominent performing groups and individuals to Addison; and

**WHEREAS**, the TOWN and WTT desire to enter into an agreement whereby WTT would be a user of the Theatre Centre with scheduling rights as defined in this document;

**NOW, THEREFORE**, the TOWN and WTT agree as follows:

**SECTION 1**

**PURPOSE; THEATRE CENTRE DEFINED**

(a) The purpose of this Agreement is to state the terms and conditions under which WTT will use and occupy the described portions of the Theatre Centre and to describe the responsibilities of the TOWN in the operation and management of the Theatre Centre.

(b) As used in this Agreement “Theatre Centre” means the structure shown in Exhibit A. The areas indicated in Exhibit A shaded in blue denote the areas that are accessible to the lessee of the main theatre space. “Administrative Offices” shall mean those certain offices located in the Theatre Centre designated by the Manager of the TOWN (the "City Manager") for use by WTT, solely for their administrative activities, and set out on the plans, as attached Exhibit A denoted in red.

(c) WTT, its employees, agents, patrons, and invitees shall have a nonexclusive license to use the common areas designated on Exhibit A attached hereto but such license shall at all times be subject to the exclusive control and management by the TOWN. WTT hereby agrees to be bound by and to comply with such reasonable rules and regulations as the TOWN

may establish with respect to the use of such common areas. The TOWN agrees to inform WTT in writing of such rules and regulations, and of any changes to such that might occur. The term "common areas" shall include but not be limited to parking area, walkways, green areas and landscaped areas. The TOWN understands that WTT may, from time to time, wish to utilize the "common areas" as a part of or for performances. WTT agrees to inform the TOWN as prescribed in Section 4(c) of this agreement of the intent to use such common areas for theatrical performances or for other events. The TOWN and WTT agree to cooperate with the other in the event that the "common areas" are used for theatrical performances or events related to the conference center or any other event sponsored by the TOWN.

## **SECTION 2**

### **LEASE OF THEATRE CENTRE**

The TOWN, upon the terms and conditions contained herein, agrees to allow WTT use of, in accordance with the use and occupancy provisions of this Agreement, those facilities and areas within the Theatre Centre that are needed from time to time for its various activities including but not limited to performances, rehearsals, auditions, meetings, administration, ticket and merchandise sales, library, dressing, storage, and such other activities as approved by the Conference and Theatre Centre Manager (hereafter "Manager"), in writing, and as further set forth on the Theatre and Conference Center's Master Booking Calendar. WTT shall furnish, in writing no later than June 1 of each year, schedules setting out all dates, times and spaces needed. The TOWN agrees to provide written confirmation of WTT's use of spaces, on the dates and times requested, if such spaces are available when requested.

## **SECTION 3**

### **TERM AND TERMINATION**

(a) The term of this Agreement is for a period beginning on the 1<sup>st</sup> day of October 2005, and continuing until September 30, 2006, unless earlier cancelled, as provided herein.

(b) The TOWN may cancel this Agreement at any time if:

(i) WTT fails to make any payment required under this Agreement within 10 days after written notification of delinquency of payment by the TOWN; or

(ii) WTT violates any other provision of this Agreement and fails to begin correction of the violation within 25 days of written notification of the violation from the TOWN and fails to accomplish correction within a reasonable period thereafter; or

(iii) The TOWN shall give WTT sixty (60) days written notice; or

(iv) WTT fails to comply with any term of the 2005-2006 Contract for Services between the Town of Addison and Water Tower Theatre Company within thirty (30) days after written notice of such failure to comply from the TOWN.

(c) WTT may cancel this Agreement by giving the City Manager written notice sixty (60) days or more in advance of the cancellation date.

(d) This Agreement may be renewed and extended for a term of twelve (12) months beginning October 1, 2005, and ending September 30, 2006, and for like twelve (12) month periods thereafter upon the express written consent of the TOWN and WTT, given within ninety (90) days prior to October 1st each succeeding year.

#### SECTION 4

##### USE AND OCCUPANCY BY WTT

(a) *Office Areas.* During the term of this agreement, WTT has the use of the defined office space, as set out in Section 1(b) above and attached.

(b) *Schedule of Uses.* Attached hereto as Exhibit C are the proposed dates, times, and spaces requested by WTT in connection with shows or events to be produced by WTT during the term of this Agreement. The Manager shall review such dates, times, and spaces and confirm the same, in writing, to WTT. WTT is hereby advised that spaces in the Theatre Centre are available on a “first come” basis and are confirmed by notice in writing from the Manager and receipt by the TOWN of the payment for the required fees.

(c) *Box Office.* Box Office will be open and manned continuously during the following dates and times:

(i) During WTT Production/Presentation of Show Weeks:

Monday	Closed
Tuesday – Saturday	12:00 P.M. – 6:00 P.M.

Performance Days	One hour prior to each performance through the intermission of that performance
------------------	---

(ii) During WTT Non-Production/Presentation of Show Weeks:

Saturday/Sunday/Monday	Closed
Tuesday – Friday	12:00 P.M.-6:00 P.M.

When WTT is producing or presenting an event, WTT must provide members of its staff to oversee the event from start to finish. A WTT representative must be on the premises throughout the duration of the event. Without in any way limiting any provision of this Agreement, in the event an emergency or urgent situation arises at or about the Theatre Centre while WTT is producing or presenting an event, WTT shall take such steps as are prudent and necessary to immediately respond to the emergency, including, without limitation, causing patrons at the Theatre Centre to vacate the premises and contacting the emergency services of the Town of Addison.

No performances may take place in the facilities during Town Sponsored special events. Limited use of the facilities MAY be granted at the Managers discretion for rehearsals, builds and technical work. If permission is granted, a maximum of 15 parking passes will be issued to WTT allowing access to the Addison Airport parking area or other designated parking area at the TOWN's discretion.

During TOWN sponsored special events all dressing rooms will be available for use by the TOWN unless prior written authorization has been granted by the Manager.

Cancellation of scheduled spaces will be treated as follows: Cancellation more than forty-five (45) days before scheduled date, no penalty. Cancellation less than forty-five (45) days prior to the scheduled date, responsible for full rental payment.

It is expected that WTT will produce events, and, with the Town's express consent, present events.

Typically, "presenting" a show refers to an outside group bringing in a show or production to which WTT attaches its name. There is little risk involved but the return is often much lower and the presenter has little control over the product.

"Producing" a show implies that a theatre company takes the steps to create the show from the ground up. There is a larger amount of risk but the return and control of the product is much larger. [See Stephen Langley's *Theatre Management and Production in America* for general information.]

Presenting is subject to approval by the Town of Addison. A copy of the proposed contract will be sent to the Manager prior to being forwarded to the potential presenter.

(d) *Food and Beverage.* Food and beverages are prohibited within the main performance space at the Theatre Centre.

(e) *Use of Dressing Rooms.* When the main theatre space is rented, during a non-special event time, dressing rooms 1-4 will be included as part of that rental. If the rehearsal hall is rented to another group, dressing rooms 5 and 6 will be made available to the group in the rehearsal hall. If the rehearsal hall is not being rented by another group or not needed by the renting group dressing rooms 1-6 may be used by the renter of the main space.

## **SECTION 5**

### **USE AND OCCUPANCY BY THE TOWN**

(a) *Scheduling Other Events.* Other than the dates and times when WTT has scheduled an event in accordance with Section 4, the TOWN has the unrestricted right to schedule other events in the Theatre Centre and utilize the scenery in place on such dates and times. The TOWN and WTT agree to cooperate and assist the other in scheduling events in the Theatre Centre for dates not scheduled by WTT. However, such efforts by WTT are subject to the express terms of Section 20 of this Agreement, and WTT recognizes that only the TOWN has authority to book events. Any damage to the set resulting from an event booked into the

Addison Theatre Centre (“ATC”) main space by the TOWN will be repaired at the TOWN’s expense.

(b) *Concessions.*

(i) WTT may sell concessions only during WTT performances and must comply with all Town of Addison Environmental Health Regulations. Alcoholic beverages may only be dispensed in compliance the TABC rules and regulations. WTT shall have the right to use concession areas in connection with and at the time of WTT’s scheduled performances. WTT shall have no rights with respect to use of the concession areas or equipment, or other food and beverage service items belonging to or under the control of the TOWN at any other time. WTT will have access to the concession area for food and beverage storage and sale only on performance dates.

(ii) The TOWN shall not be liable to WTT, its employees, agent’s patrons, or invitees for damages or otherwise for the quality, failure, unavailability, or disruption of any food or beverage or service thereof.

(c) *Control of the Theatre Centre.* The TOWN retains the right to control the management of the Theatre Centre through its representatives, and to enforce all necessary rules for its management and operation, and the TOWN, through its police officers, fire fighters, and other designated representatives, reserves the right at any time to enter any portion of the Theatre Centre. For non-emergency purposes, the TOWN shall attempt to provide reasonable notice to WTT.

(d) *Shows Not Produced by WTT.* At the TOWN’s request, WTT shall provide certain box office services for shows not produced by WTT (for purposes of this subsection (d) of this Section 5, “Third Party Shows”), as follows:

(i) WTT shall sell tickets for Third Party Shows that take place within the ACTC venue. WTT shall be compensated by the TOWN for such sales as follows:

(1) Tickets Sold at the Box Office (in person or by telephone):

Computer Set-Up	\$75.00 for each Third Party Show
Ticket Sales Handling Fee (prior to the Third Party Show)	\$ 1.00 per Order (regardless of the number of tickets in an Order)

A reasonable credit card handling fee equal to three percent (3%) shall be charged for those tickets purchased with a credit card.

(2) Tickets Sold at the Box Office During Third Party Show:

First Performance	\$100.00 for the performance
Additional Performance	\$ 75.00 for each additional performance

- (ii) In connection with each Third Party Show:
  - (1) Blank ticket stock will be provided to WTT by the TOWN;
  - (2) Third Party Show information shall be provided to WTT at least two (2) weeks prior to the first performance (to allow for set-up and ticket sales);
  - (3) Ticket sales by WTT shall begin at least one (1) week prior to the first performance;
  - (4) WTT personnel will carry out industry standard box office responsibilities;
  - (5) The TOWN shall provide an employee or designated contract person to be present during a Third Party Show and to secure the Theatre Centre at the conclusion of a Third Party Show;
  - (6) The organizer of the Third Party Show will be responsible for (x) house manager/ushers, (y) concessions/concessionaires, and (z) cleaning following a Show;
  - (7) The TOWN shall seek to have the producer of the Third Party Show indemnify the Town and WTT for liability in connection with the Third Party Show.

## **SECTION 6**

### **RENTAL**

(a) WTT shall pay to the TOWN rent for its use of the office areas and other areas as reserved by WTT, according to the schedule of fees set forth in Exhibit B, attached hereto and made a part hereof. Payments for rent shall be made in twelve (12) equal installments, with each installment being due and payable on or before the 15<sup>th</sup> day of each month as payment for the immediately preceding month. The first such installment of rent is due and payable on or before November 15, 2005, and the last such installment is due and payable on or before October 15, 2006 (and the obligation of WTT to make the last installment shall survive the expiration of this Agreement). The rent paid by WTT may be adjusted from time to time to reflect a cancellation or addition of a show or event by WTT. The TOWN further reserves the right to adjust the rates of the fees set out on Exhibit B from time to time in accordance with changes in the costs associated with operating the facility. The TOWN shall invoice WTT for all dates, times and spaces reserved by WTT, including the fees for use of Office Spaces, as defined in Section 4(a).

(b) WTT will not be required to pay the fee for a date, or time, or space cancelled if the space is cancelled more than forty-five (45) days prior to the scheduled date or time.

(c) Cancellation less than forty-five (45) days prior to the scheduled date or time will require full payment for committed space.

(d) WTT agrees to pay the TOWN a monthly fee for telephone service. This fee will be charged for standard monthly service and long distance charges. In addition, any changes to the phone system requested by WTT will be charged back to WTT at the prevailing rate.

- (e) WTT will pay monthly to the TOWN a fee for the copy machine in accordance with the following:

Monthly rental charge for copy machine:	\$191.67
Per page monthly copy fees:	
For the first 6,000 copies:	\$ 0.01/copy
For copies 6,001-12,000:	\$ 0.015/copy
For each copy over 12,000:	\$ 0.02/copy

All such copier charges and fees are subject to changes based on the TOWN's agreement with the copier rental company.

## **SECTION 7**

### **USE OF EQUIPMENT**

The TOWN recognizes that there may be third party users of the Theatre Centre for the purposes of staging a theatrical performance and that they may request the use of TOWN-owned equipment. Any lease or other agreement with a third party user allowed to operate TOWN-owned equipment shall expressly provide that any damages to or loss of the equipment from a third party user shall be the responsibility of that third party, and deposits will be required in the discretion of the TOWN. Any damages to or loss of TOWN-owned equipment in the Theatre Centre during the conduct of WTT's performances, WTT Education Department programming or day-to-day use by WTT shall be the responsibility of WTT.

If WTT desires to use and operate TOWN-owned equipment including but not limited to lighting and sound systems, then WTT shall obtain approval on a per-show basis from the TOWN for the use by WTT's technicians. Use of automated lighting fixtures, Obsession II control console, and wireless microphones must have prior written approval by ACTC Manager. The cost of repair for any damage to the equipment from use of the equipment by WTT or replacement of any lost equipment shall be the sole responsibility of WTT and shall be subject to offset against any funding or grant obligations of the TOWN to WTT. The TOWN shall not be responsible for consequential damages resulting from inability to use the equipment. WTT agrees that each person employed by WTT to provide services in the Theatre Centre will be required to conduct himself/herself in a professional manner, and WTT will cooperate with the TOWN to assure professional conduct is maintained at all times.

All details of the production/event must be provided in writing to the Manager at least one month prior to the first day of occupancy of the space. No equipment owned by the TOWN may be contracted or committed by WTT without the manager's approval. No services provided by Town employees may be contracted or committed by WTT without the Manager's written approval. In the event WTT is working in conjunction with an outside company as co-presenter or producer, a written list of equipment needed must be submitted to the Manager one month prior to WTT signing a contract with the outside company.

## **SECTION 8**

## **TOWN OF ADDISON TECHNICAL COORDINATOR**

The TOWN employs an individual in the role of Technical Coordinator whose duties include protecting and maintaining the TOWN's investment in equipment and facilities at the Theatre Centre. In addition, the Technical Coordinator shall provide services relating to the technical nature of the facility and the presentation. Details of the services provided by the Technical Coordinator are available, in writing, from the Manager, upon request.

### **SECTION 9**

#### **UTILITIES**

The TOWN shall provide for all water, air conditioning, heat, and electricity incurred in the Theatre Centre. WTT shall reimburse the Town for all costs associated with its telephone service. The TOWN shall not be liable to WTT in damages or otherwise for the quality, quantity, failure, availability, or disruption of water, air conditioning, heat, electricity, and other utilities furnished by the TOWN.

### **SECTION 10**

#### **MAINTENANCE SERVICES**

(a) The TOWN shall provide:

(i) Routine janitorial service and maintain the interior of the Theatre Centre in a clean condition, by providing routine janitorial service one time per day as needed. WTT must leave the spaces in a reasonable condition following all productions/events, which includes but is not limited to: placing all lobby, green room and dressing room trash in garbage cans and walking the main space for playbills and trash left by patrons after every performance. The same definition of routine janitorial service applies to educational camps. Any services above routine will be billed to WTT at the prevailing rate.

(ii) Maintenance of the heating, ventilation and cooling system in the Theatre Centre.

(iii) Maintenance of the Theatre Centre grounds and structure in reasonably good condition and in compliance with applicable laws.

(b) The TOWN shall not be liable for repairs to any portion of the Theatre Centre until it receives written notice pursuant to the operating policies and procedures in Section 6(a), of the necessity for such repairs and, provided further, that such repairs are not necessitated by any act or omission of WTT, or any of WTT's agents, employees, contractors, invitees or patrons.

(c) WTT shall not cause or permit any waste, damage, or injury to the Theatre Centre. WTT shall, at its sole cost and expense, repair any damage or injury caused to the Theatre Centre by WTT, its employee's agents, invitees or patrons.

(d) WTT shall store its property and the personal property of the TOWN in a neat and orderly manner, and its operations in the Theatre Centre shall be carried out in accordance with the highest professional standards.

(e) WTT shall not store or maintain flammable or hazardous materials in the Theatre Centre in violation of the Fire Code or other applicable laws and codes.

(f) In the event the obligations of WTT set out in Sections (d) and (e), above, are not carried out in a timely manner, then the Town has the right, but not the obligation, to satisfy such requirements at the cost of WTT.

## **SECTION 11**

### **OWNERSHIP OF PROPERTY**

(a) The Theatre Centre and all improvements to the Theatre Centre are the property of the TOWN. All personal property owned by the TOWN and placed in the Theatre Centre remains the property of the TOWN.

(b) All personal property owned by WTT and placed in the Theatre Centre remains the property of WTT.

(c) All personal property owned by a sublease, contractor or concessionaire of the TOWN and placed in the Theatre Centre remains the property of the sublessee, contractor or concessionaire, respectively, unless otherwise provided in the sublease, concession contract, or contractor's contract.

(d) On or before July 1 of each year, during the existence or continuation of this agreement, WTT shall furnish to the TOWN a listing of all of the personal property of WTT located in the Theatre Centre.

(e) WTT shall not allow or permit any of the personal property of the TOWN to be loaned for use or operation by any third parties.

## **SECTION 12**

### **ACKNOWLEDGEMENTS IN PRINTED MATERIALS**

WTT agrees to prominently acknowledge the TOWN for its support of WTT in all appropriate printed materials. All public references to WTT will be characterized as "WTT at the Addison Theatre Centre" or some derivative of that indicating the WTT is at the ATC.

## SECTION 13

### INSURANCE

(a) WTT shall procure, pay for, and maintain the following insurance written by companies licensed in the State of Texas or meeting the surplus lines requirements of Texas law and acceptable to the City Manager. The insurance shall be evidenced by delivery of executed certificates of insurance and certified copies of the policies to the Manager. The insurance requirements shall remain in effect throughout the term of this Agreement. The City Manager reserves the right to modify the kinds of coverage and deductibles required and increase minimum limits of liability of the coverage whenever, in his discretion, it becomes necessary.

(i) *Workers' Compensation* as required by law; *Employers Liability Insurance* of not less than \$100,000 for each accident.

(ii) *Comprehensive General Liability Insurance*, including Personal Injury Liability, Independent Contractor's Liability, Premises Operation Liability, and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, with limits of liability for bodily injury, death, and property damage of not less than \$1,000,000. Coverage must be on an "occurrence" basis, and the policy must include Broad Form Property Damage Coverage, with Fire and Extended Coverage Liability of not less than \$1,000,000 per occurrence.

(iii) *Comprehensive Automobile and Truck Liability Insurance* covering owned, hired and non-owned vehicles, with minimum limits of \$1,000,000, each occurrence, for bodily injury, death, and property damage, such insurance to include coverage for loading and unloading hazards.

(iv) \$2,000,000 combined single limits bodily injury and property damage liability insurance, including death, as an excess of all the primary coverages required above.

(b) Each liability insurance policy must include the following conditions by endorsement to the policy:

(i) The TOWN must be named as an additional insured.

(ii) Each policy must require that 60 days before the cancellation, nonrenewal, or any material change in coverage, a notice thereof shall be given to the TOWN by certified mail to: City Manager, Town of Addison, Box 9010, Addison, TX 75001-9010.

(iii) Companies issuing the insurance policies shall have no recourse against the TOWN for payment of any premiums, assessments, or any deductibles, all of which are at the sole risk of WTT.

(iv) The Term "Town" or "Town of Addison" includes all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices of the TOWN and the individual members, employees and agents of the TOWN including the TOWN's Manager, while acting in their official capacities on behalf of the TOWN.

(v) The policy clause “Other Insurance” shall not apply to the TOWN where the TOWN is an additional named insured on the policy.

(c) Each party hereto hereby waives each and every claim which arises or may arise in its favor and against the other party hereto during the term of this lease or any extension or renewal thereof for any and all injuries (including death) and loss of, or damage to, any of its property which claim, loss or damage is covered by valid and collectible fire and extended coverage insurance policies, liability insurance policies, workers’ compensation policies, and any other insurance policies which may be in place from time to time, to the extent that such claim, loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Agreement with respect to any loss, damage or injury (including death) to persons or to property. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto hereby agrees immediately to give each insurance company which has issued to its policies of fire and extended coverage insurance, liability insurance, workers’ compensation insurance, or such other insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary to prevent the invalidation of said insurance coverages by reason of said waivers.

(d) WTT shall use best efforts for security precautions necessary for the protection of its property. The TOWN shall be liable for any damage to or loss of WTT property used or stored on, in, or about the Theatre Centre, arising solely from negligence of the TOWN or its agents. However, the TOWN shall not be responsible for any damage or loss which shall not arise solely from the negligence of the TOWN or its agents.

(e) Insurance required under this section must be furnished annually for the duration of this Agreement. Executed certificates of insurance must also be delivered annually.

(f) To the extent reasonably obtainable, the TOWN will secure fire and extended coverage insurance on the Theatre Centre with coverages and limits to be determined by the TOWN to insure the Theatre Centre with coverages and limits to be determined by the TOWN. In the event all or any portion of the Theatre Centre is damaged or destroyed by fire or other casualty, the TOWN shall, at its cost and expense, limited to a maximum expenditure of the amount of insurance proceeds, if any, available to the TOWN by reason of such fire or other casualty, restore, repair, replace and rebuild the Theatre Centre as nearly as possible to its value, condition and character immediately prior to such damage or destruction. Coverage provided in this subsection shall be for the benefit of the TOWN and shall not protect WTT for loss or damage of property owned by WTT.

## **SECTION 14**

### **ABATEMENT OF NUISANCES**

WTT shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by WTT, its officers, agents, or employees, or invitees in or upon or connected with the Theatre Centre, and shall pay for the

costs of compliance. The TOWN and WTT agree to cooperate with each other in the abatement of nuisances caused by noise associated with events scheduled in either the Conference or Theatre Centre. WTT hereby recognizes that the Town produces Special Events on scheduled dates through the year, which scheduled Special Events shall take priority over any other use.

## **SECTION 15**

### **ALTERATIONS, ADDITIONS, AND IMPROVEMENTS**

(a) To the extent reasonably necessary or desirable for WTT to use and occupy the Theatre Centre, upon prior written approval of the Manager, WTT may erect or install within the performance space any temporary alterations, additions, or equipment needed for a production which do not alter the structural integrity or basic configuration of the performance space. WTT must comply with all applicable governmental laws, statutes, ordinances, codes, and regulations regarding structures.

(b) All installations, alterations, additions and improvements made in, on, or to the Theatre Centre by WTT or the TOWN shall be deemed to be property of the TOWN and unless the TOWN directs otherwise, shall remain upon and be surrendered with the Theatre Centre as a part thereof in good order, condition and repair, ordinary wear and tear excepted, upon WTT's vacating or abandonment of the Theatre Centre. If the TOWN directs, WTT shall remove all or any portion of the improvements and WTT's property, on or immediately prior to the termination of WTT's right to possession. The Town may choose to reconfigure the theatre space at any time not reserved by WTT. The Town will return the seating to the previous configuration if requested by WTT.

## **SECTION 16**

### **INDEMNIFICATION**

(a) WTT agrees to assume and does hereby assume all responsibility and liability for damages or injuries sustained by persons or property, whether real or asserted, by or from the performance of services performed and to be performed hereunder by WTT, or by its officials, officers, employees, owners, members, agents, servants, invitees, guests, volunteers, contractors, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable (together, "WTT Parties").

(b) In consideration of the granting of this CONTRACT, WTT agrees to defend, indemnify and hold harmless the town of Addison, Texas, its, officials, officers, agents and employees (each an "Indemnitee"), in both their public and private capacities, from and against any and all suits, actions, claims, judgments, liabilities, penalties, fines, expenses, fees and costs (including reasonable attorney's fees and other costs of defense), and damages (together, "Damages") arising out of or in connection with WTT's performance of this Contract Agreement (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF WTT OR OF ANY OF THE WTT PARTIES), including Damages caused by the Indemnitee's own negligence, ~~OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE~~

~~TO STRICT LIABILITY UNDER ANY LEGAL THEORY, except as specifically limited herein.~~

(c) With respect to WTT's indemnity obligation set forth in subsection (b) of this Section, WTT shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee, ~~OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.~~

~~(e) — If an Indemnitee suffers Damages arising out of or in connection with the performance of this Agreement that are caused by the concurrent negligence, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, of both WTT and the Indemnitee, WTT's indemnity obligation set forth in subsection (B) OF THIS SECTION will be limited to a fraction of the total Damages equivalent to WTT's own percentage of responsibility.~~

(d) With respect to WTT's duty to defend set forth herein in subsection (b) of this Section, WTT shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Contract Agreement; provided however, that the City Town shall have the right to approve the selection of counsel by WTT and to reject the WTT's selection of counsel and to select counsel of the City's Town's own choosing, in which instance, WTT shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City Town agrees that it will not unreasonably withhold approval of counsel selected by WTT, and further, the City Town agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that WTT fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract Agreement, the City Town shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of WTT, and WTT shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City Town in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF WTT SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## SECTION 17

### BONDS

Unless waived in writing by the City Manager, WTT agrees to cause its contractors to provide, before commencing any work or construction in its designated areas, a performance bond and labor and material payment bond for any improvements the construction of which

could result in a third party filing or seeking to file a lien against the Theatre Centre, which is undertaken by WTT during the term of this Agreement in a sum equal to the full amount of the construction contract award, with the TOWN and WTT named as joint obligees.

## **SECTION 18**

### **NON-DISCRIMINATION**

During the term of this agreement, WTT shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap. Should WTT violate the provisions of this section, or fail to comply with the requirements of the Americans with Disabilities Act, the TOWN may terminate this Agreement if WTT fails to correct the violations within 60 days of written notice of the violation by the TOWN.

## **SECTION 19**

### **AUDITS**

WTT shall have its financial statements audited on an annual basis by an independent auditing firm of certified public accountants and shall submit a copy of the auditor's report for the preceding fiscal year with its proposed annual operating budget to the City Manager. The TOWN reserves the right to require a special audit of WTT's books and records at any time either by the City Manager or by an outside independent auditor if such action is determined necessary by the Town Council. The TOWN shall pay all expense of the independent auditor related to the special audit. WTT shall make available to the TOWN or its agents all necessary books, records and other documents necessary to perform such audit.

## **SECTION 20**

### **ASSIGNMENT; NO THIRD-PARTY BENEFIT**

WTT shall not assign this Agreement, in whole or in part, without the prior written consent of the TOWN, which consent is in the sole and unrestricted discretion of the TOWN. Assignment of this Agreement shall not relieve WTT of its obligations under this Agreement. Approval of the TOWN to one assignment shall not constitute approval to any other or further assignment of this Agreement. WTT shall not sublease or sublet or permit the Theatre Centre, or any part thereof to be used by others.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

## **SECTION 21**

### **NOTICES**

Any notice, payment, statement, or demand required or permitted to be given by either party to the other may be effected by personal delivery, actual receipt via regular mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section.

If intended for the TOWN, to:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
P.O. Box 9010  
Addison, TX 75001-9010

If intended for WTT, to:

Terry Martin  
Producing Artistic Director  
WaterTower Theatre, Inc.  
15650 Addison Road  
Addison, TX 75001

## **SECTION 22**

### **APPROVALS**

(a) Whenever in this Agreement the approval of the TOWN is required for any purpose, WTT shall file the appropriate documents with the Addison Conference and Theatre Centre (“ACTC”) Manager with notice of action proposed to be taken, and the ACTC Manager agrees to notify WTT of the TOWN’s approval or disapproval within 60 days of the filing thereof.

(b) Approval shall be by the City Council of the TOWN where required by the Charter of the Town. The City Manager may delegate approval authority to the facilities manager or his authorized representatives where permitted by the Charter of the Town or ordinances, and notify WTT of such delegation.

## **SECTION 23**

### **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the TOWN and WTT and their respective successors and permitted assigns.

## **SECTION 24**

### **APPLICABLE LAWS**

This Agreement is made subject to the charter and ordinances of the TOWN, as amended, and all applicable laws and regulations of the State of Texas and the United States.

## **SECTION 25**

### **INTELLECTUAL PROPERTY AND COPYRIGHT INDEMNIFICATION**

WTT assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in WTT's performances, transmissions or broadcasts, and WTT agrees to defend, indemnify, and hold harmless the TOWN, its officers, employees, and agents, for any claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of WTT's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

## **SECTION 26**

### **NO PARTNERSHIP OR JOINT VENTURE**

Nothing contained in this agreement shall be deemed to constitute the TOWN and WTT partners or joint venturers with each other.

## **SECTION 27**

### **NO WAIVER**

No waiver by the TOWN of any default or breach of any term, covenant, or condition of this Agreement by WTT shall be treated as a waiver of any subsequent default or breach of the same or any other term, covenant, or condition of this Agreement.

## **SECTION 28**

### **FORCE MAJEURE**

If the Theatre Centre or any portion of it shall be destroyed or damaged by fire or any other calamity so as to prevent the use of the premises for the purposes and during the periods specified in this Agreement, or the use of the Theatre Centre by WTT is prevented by act of God, strike or lockout against the TOWN, WTT or any third party, material or labor restrictions by any governmental authority, civil riot, flood or other cause beyond the control of the TOWN, then, depending on the extent of damage to the Theatre Centre, the TOWN shall notify WTT as soon as reasonably practical, that the parties shall be excused from performance of the Agreement for such period of time as is reasonably necessary to remedy the effects of the occurrence and, at the option of the TOWN, this Agreement shall terminate and the TOWN shall not be liable for any claim by WTT for damage or loss by reason of termination. If the performance of this agreement for the reasons identified above is prohibited for a period of 180 days or longer, then WTT shall have the right to terminate.

## **SECTION 29**

### **VENUE**

The obligations of the parties under this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce them, exclusive venue shall lie in Dallas County, Texas.

**SECTION 30**

**LEGAL CONSTRUCTION**

In the case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, it shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

**SECTION 31**

**SIGNAGE**

WTT shall not place or permit to be placed on the exterior of the Theatre Centre, or the door, window or roof thereof, or on any display window space, or within five feet behind the storefront of the Theatre Centre, if visible from the common area, any sign, plaque, decoration, lettering, advertising matter or descriptive material without the TOWN's prior written approval. WTT may submit a written request for approval to project images and text onto the water tower. All signs, decorations, lettering, advertising matter or other items used by WTT and approved by the TOWN as aforesaid shall conform with the standards of design, motif, and decor from time to time established by the TOWN for the Theatre Centre. WTT shall furnish to the Manager of the Conference and Theatre Centre a written proposal describing any signage to be placed in the Theatre Centre. The Manager agrees to respond within fourteen (14) days in writing to the proposal.

**SECTION 32**

**USE OF THE ROOF**

WTT shall not attach to or construct on or penetrate the roof of the Theatre Centre without the prior written consent of the City Manager.

**EXECUTED** \_\_\_\_\_, but effective as of October 1, 2005 as approved by the parties hereto.

**TOWN OF ADDISON, TEXAS**

**WATERTOWER THEATRE, INC.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Terry Martin, Producing Artistic Director

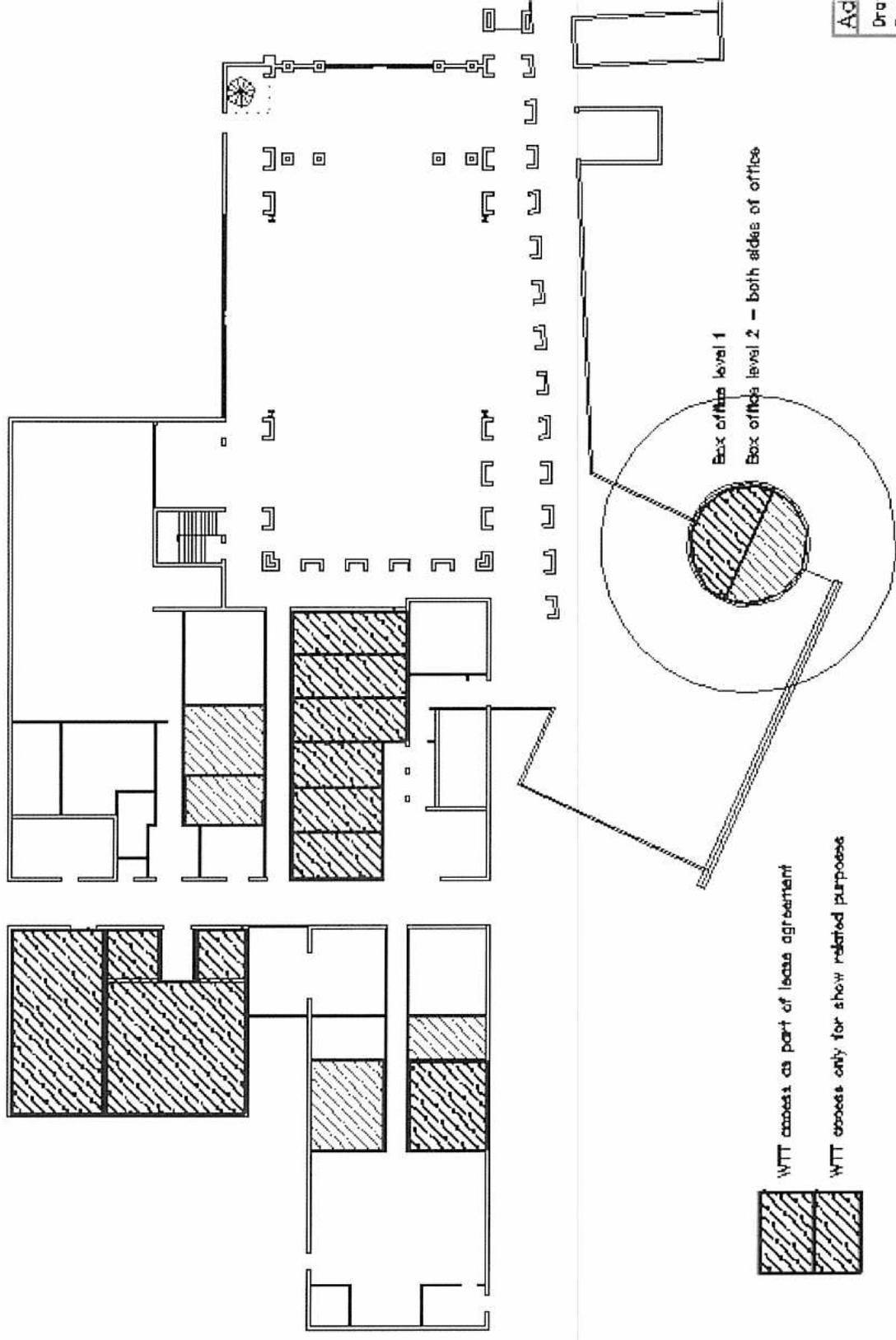
ATTEST:

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, Town Secretary

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

EXHIBIT A  
ADDISON THEATRE CENTRE



Ac  
Dra  
Sec

WTT access as part of lease agreement  
WTT access only for show related purposes

STATE OF TEXAS

§  
§  
§

**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October 2005 by and between the Town of Addison, Texas (the "Town") and the WaterTower Theatre Incorporated ("WTT"), a Texas non-profit corporation with its principal place of business in Addison, Dallas County, Texas.

**WHEREAS**, WTT is a Texas non-profit corporation which exists for the purpose of the development and advancement of theatre and drama in the Town as well as to promote theatrical activities through numerous productions throughout the year; and

**WHEREAS**, WTT's productions and work attract tourists to and encourages tourism in the Town, and the Town has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

**WHEREAS**, it is the Town's desire to encourage and promote the arts, including, without limitation, theatre; and

**WHEREAS**, the Town is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, theatre, and desires to encourage and promote the arts (including theatre) through the execution of this Contract for Services.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town and WaterTower Theatre Incorporated do hereby contract, covenant and agree as follows:

**I. TERM**

The term of this Contract shall be for a period of one year from the 1st day of October, 2005 through the 30th day of September, 2006, except as otherwise provided for herein.

**II. SERVICES**

WTT shall provide the following services:

(a) Presentation of a minimum of five (5) main stage productions, two (2) holiday productions, and The Out of the Loop Festival.

(b) Recognition of the Town in all playbills printed in connection with the productions.

(c) Work with all hotels located in the Town to generate awareness regarding the theatre.

(d) Submit detailed quarterly financial statements and program results to the Town within thirty (30) days after the end of the preceding quarter listing the expenditures made by WTT with the revenues received pursuant to this Contract.

### **III. COMPENSATION**

The Town agrees to pay WTT as base consideration the sum of Two Hundred Thirty Thousand and No/100 Dollars (\$230,000.00) "Base Consideration" from its revenue derived from the Town's hotel occupancy tax, provided that the minimum number of shows are actually presented and performed as set forth in this Contract. Payment of the Base Consideration to WTT will be made by the Town on or before December 30, 2005. In addition to the Base Consideration as provided above, the Town agrees to pay to WTT "Matching Funds" in an amount up to One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). A description of what constitutes Matching Funds and the process for the payment of such Funds is set forth in Exhibit A attached hereto and incorporated herein.

In the event the Town terminates this Contract as provided for in Section V, the Town shall not be liable to WTT for the payment of any portion of the unpaid funds. The Town also reserves the right to pursue all legal remedies against WTT for funds previously paid to WTT in the event WTT defaults on any term of this Contract.

### **IV. INDEMNIFICATION**

(a) WTT AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY WTT OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (TOGETHER, "WTT PARTIES").

(b) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, WTT AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE"), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH WTT'S PERFORMANCE OF THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF WTT OR OF ANY OF THE WTT PARTIES), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

(c) With respect to WTT's indemnity obligation set forth in subsection (b) of this Section, WTT shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee.

(d) With respect to WTT's duty to defend set forth herein in subsection (b) of this Section, WTT shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Agreement; provided however, that the City shall have the right to approve the selection of counsel by WTT and to reject the WTT's selection of counsel and to select counsel of the City's own choosing, in which instance, WTT shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by WTT, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that WTT fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of WTT, and WTT shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF WTT SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT

## V. TERMINATION

(a) The Town may terminate this Contract at any time if;

(1) WTT defaults on any provision of this Contract and fails to correct such default after thirty (30) days written notice of default from the Town; or

(2) WTT fails to make any payment required under the Agreement For The Use of The Addison Theatre Centre within thirty (30) days after written notification of delinquency of payment by the Town; or

(3) The Town gives WTT at least sixty (60) days prior written notice; or

(4) WTT has offered, conferred, or agreed to confer any benefit upon a Town employee or official that the Town employee or official is prohibited by law from accepting; or

(5) If WTT should violate the provision in Section XII, Non-Discrimination and fails to correct the violations within thirty (30) days of written notice of the violation by the Town.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the Town shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by Town officials in the conduct of WTT's business.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, WTT shall submit for the Town's review a budget showing the use of the Town's funds provided pursuant to this Contract, and WTT shall make such periodic reports to the Town, as provided for herein, listing the expenditures made by WTT from the funds provided by the Town. The approval of WTT's annual budget creates a fiduciary duty in WTT with respect to the funds provided by the Town under this Contract.

The funds paid to WTT pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the Town may be spent for day-to-day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

WTT shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December 31, 2005, with the last quarter ending September 30, 2006), WTT shall provide the Town the following: (a) a detailed financial report for the previous quarter listing the expenditures made by WTT of the funds paid to WTT under this Contract; and (b) a year-to-date report of the expenditures made by WTT of the funds paid to WTT under this Contract (and if this Contract is terminated prior to its expiration, WTT shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the Town at any time, WTT shall make its records available for inspection and review by the Town or its designated representative(s). Within ninety (90) days of the end of WTT's fiscal year, WTT shall provide the Town with a financial statement signed by the Chairman of WTT's Board of Directors (or other person acceptable to the Town) and audited by an independent Certified Public Accountant, setting forth WTT's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

## **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the Town and WTT is that of independent contractor, and the Town and WTT by the execution of this Contract do not change the independent status of WTT. No term or provision of this Contract or action by WTT in the performance of this Contract is intended nor shall be construed as making WTT the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

#### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

WTT may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the Town, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the Town.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

#### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the Town and WTT are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

#### **XI. COPYRIGHT**

WTT assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in WTT's performances, transmissions or broadcasts, and WTT, without limiting any other indemnity given by WTT as set forth herein, agrees to defend, indemnify, and hold harmless the Town, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of WTT's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

#### **XII. NON-DISCRIMINATION**

During the term of this Contract, WTT agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

#### **XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

WTT shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the Town) laws, rules, regulations, and policies (including, without

limitation, the Charter and Ordinances of the Town), as the same currently exist or as they may be hereafter amended.

#### **XIV. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

#### **XV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

#### **XVI. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

#### **XVII. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The Town and WTT agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The Town's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

WTT's address:

Terry Martin  
Artistic Director  
WaterTower Theatre Incorporated  
15650 Addison Road  
Addison, Texas 75001

#### **XVIII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

**XIX. AUTHORITY TO EXECUTE CONTRACT**

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

**XX. ENTIRE AGREEMENT**

This Contract represents the entire and integrated contract and agreement between the Town and WTT and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the Town and WTT.

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**WATERTOWER THEATRE  
INCORPORATED**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Terry Martin, Artistic Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

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

EXHIBIT "A"  
TO  
2005-2006 CONTRACT FOR SERVICES  
BETWEEN THE TOWN OF ADDISON  
AND WATERTOWER THEATRE INCORPORATED

DESCRIPTION OF "MATCHING FUNDS" AND PROCESS FOR  
DISTRIBUTION OF MATCHING FUNDS  
FOR WATERTOWER THEATRE INCORPORATED  
FROM HOTEL/MOTEL TAX FUNDS

For each One Dollar of Theatre Funds (as defined herein) actually received by WTT, the Town shall pay to WTT an equal amount ("Matching Funds") up to but not exceeding One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00). In order to receive Matching Funds, WTT shall provide to the Town such proof of its receipt of Theatre Funds as the Town shall reasonably require. WTT shall make application on or before the 15<sup>th</sup> day of each month for distribution of Matching Funds (beginning January 16, 2006) and the Town shall pay such Matching Funds provided the Town has received adequate proof, in the Town's sole opinion, of the actual receipt of Theatre Funds by WTT as set forth in each application.

For purposes of this Agreement, the term "Theatre Funds" shall mean and include: (i) cash funds actually received by WTT during the term hereof from any gifts, grants, donations, or other cash contributions from any person or business entity (whether for-profit or non-profit), and (ii) that amount of funds determined by multiplying (a) the number of 2005-2006 WTT season tickets sold by WTT on or before November 15, 2005, times (b) the average cost of a single season ticket, times (c) 25%. For purposes of this Agreement, the average cost of a single season ticket shall be \$100.00.

STATE OF TEXAS  
COUNTY OF DALLAS

§  
§  
§

**CONTRACT FOR SERVICES**

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2005 by and between the Town of Addison, Texas (the "City") and the Dance Council (the "Dance Council").

**WITNESSETH:**

**WHEREAS**, the Dance Council is a private, non-profit organization established under the laws of the State of Texas for the purpose of promoting and supporting dance in North Texas, including the Town of Addison, and providing artistic, educational, and cultural opportunities to people of all ages, races and abilities; and

**WHEREAS**, the Dance Council's productions and work attract tourists to and encourages tourism in the City, and the City has an interest in attracting such tourists and promoting tourism to the area in order to receive the economic benefits associated therewith; and

**WHEREAS**, it is the City's desire to encourage and promote the arts, including dance; and

**WHEREAS**, the City is authorized to expend revenues from its hotel occupancy tax for the encouragement, promotion, improvement, and application of the arts, including, without limitation, dance, and desires to encourage and promote the arts (including dance) through the execution of this Contract for Services.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Dance Council do hereby contract, covenant and agree as follows:

**I. TERM**

The term of this contract and agreement shall be for a period of one year from the 1st day of October, 2005 through the 30th day of September, 2006, except as otherwise provided for herein.

**II. SERVICES**

The Dance Council shall provide the following services to the City:

- (a) Provide a program entitled "Taste Dance: Addison Style". This program shall be a four part series of lecture/demonstrations on dance to be presented at the Conference and Theatre Centre for two consecutive weekends in June 2006, on dates and at times to be decided. Dance themes addressed in the lecture/demonstrations shall include the following or items like the following:

***TASTE DANCE: POLYNESIAN***

Led by Isis, Artistic Director Isis and the Star Dancers, Colleyville. Emphasis is on the style and history of Middle Eastern dance.

***TASTE DANCE: SALSA***

Led by Artistic Director and Founder Daniel de Cordoba of *Daniel de Cordoba Bailes Espanoles*.

***TASTE DANCE: NATIVE AMERICAN***

Hibernia School of Irish Dance led by Erin Maureen Reid, TCRG (certified step dance and ceili dance instructor by the Commission of Irish Dance in Dublin Ireland).

***TASTE DANCE: TAP DANCING***

An interactive event led by the Dallas Swing Dance Society.

(b) The inclusion of the “Taste Dance: Addison Style” program on a series of postcards and the “Taste Dance: Addison Style” brochure. The Dance Council shall contact the City regarding the details of those postcards.

(c) The inclusion of the Addison logo on the Dance Council web site ([www.thedancecouncil.org](http://www.thedancecouncil.org)) or any other web site of the Dance Council. The Dance Council shall contact the City regarding the details of including the Addison logo on the web site.

(d) Provide a banner sign of the City at each Dance Council event which takes place in the City (with a banner sign to be provided by the City).

(e) Provide recognition from the stage at all Dance Council events (including Dance for the Planet, National Tap Dance Celebration, The Dallas Morning News Dance Festival, The Legacy Awards, and Taste Dance: Addison Style).

(f) Submit detailed quarterly financial statements and program results to the City within thirty (30) days after the end of the preceding quarter listing the expenditures made by the Dance Council with the revenues received pursuant to this Contract.

### **III. COMPENSATION**

For the operation and provision of the services, projects and programs of the Dance Council as described herein, the City shall pay the Dance Council the sum of Six Thousand Six Hundred and No/100 Dollars (\$6,600.00). Such sum shall be paid on or before April 9, 2005, provided Dance Council is not then in default of this Contract.

### **IV. INDEMNIFICATION**

(a) DANCE COUNCIL AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER BY DANCE COUNCIL OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS,

CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (TOGETHER, "DANCE COUNCIL PARTIES").

(b) IN CONSIDERATION OF THE GRANTING OF THIS CONTRACT, DANCE COUNCIL AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS, ITS, OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE"), IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH DANCE COUNCIL'S PERFORMANCE OF THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, ANY ACT OR OMISSION OF THE DANCE COUNCIL OR OF ANY OF THE DANCE COUNCIL PARTIES), INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE.

(c) With respect to Dance Council's indemnity obligation set forth in subsection (b) of this Section, Dance Council shall have no duty to indemnify an Indemnitee for any Damages caused by the sole negligence of the Indemnitee.

(d) With respect to Dance Council's duty to defend set forth herein in subsection (b) of this Section, Dance Council shall have the duty, at its sole cost and expense, through counsel of its choice, to litigate, defend, settle or otherwise attempt to resolve any claim, lawsuit, cause of action, or judgment arising out of or in connection with this Contract; provided however, that the City shall have the right to approve the selection of counsel by Dance Council and to reject the Dance Council's selection of counsel and to select counsel of the City's own choosing, in which instance, Dance Council shall be obligated to pay reasonable attorney fees and the expenses associated thereto. The City agrees that it will not unreasonably withhold approval of counsel selected by Dance Council, and further, the City agrees to act reasonably in the selection of counsel of its own choosing.

(e) In the event that Dance Council fails or refuses to provide a defense to any claim, lawsuit, judgment, or cause of action arising out of or in connection with this Contract, the City shall have the right to undertake the defense, compromise, or settlement of any such claim, lawsuit, judgment, or cause of action, through counsel of its own choice, on behalf of and for the account of, and at the risk of Dance Council, and Dance Council shall be obligated to pay the reasonable and necessary costs, expenses and attorneys' fees incurred by the City in connection with handling the prosecution or defense and any appeal(s) related to such claim, lawsuit, judgment, or cause of action.

(f) THE INDEMNITY, HOLD HARMLESS, AND DEFENSE OBLIGATIONS OF DANCE COUNCIL SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT.

## **V. TERMINATION**

This Contract may be canceled and terminated by either party at any time and for any reason upon giving at least thirty (30) days written notice of such cancellation and termination to the other party hereto. Such notice shall be sent certified mail, return receipt requested, and to the most recent address shown on the records of the party terminating the Contract. The thirty (30) day period shall commence upon deposit of the said notice in the United States mail and shall conclude at midnight of the 30th day thereafter. In the event of such cancellation and termination and if Dance Council has failed at the time of such cancellation and termination to provide all of the services set forth herein, Dance Council shall refund to the City that portion of funds paid to Dance Council under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Dance Council shall be determined by dividing the amount paid by the City under this Contract by 365 (the "daily rate"), and then multiplying the daily rate by the number of days which would have remained in the term hereof but for the cancellation or termination. Upon payment or tender of such amount, all of the obligations of Dance Council and the City under this Contract shall be discharged and terminated (except as otherwise provided herein) and no action shall lie or accrue for additional benefit, consideration or value for or based upon the services performed under or pursuant to this Contract.

## **VI. CONFLICT OF INTEREST**

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, in this Contract or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

## **VII. ACCOUNTING**

Prior to adopting its annual budget, Dance Council shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Dance Council shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Dance Council from the funds provided by the City. The approval of Dance Council's annual budget creates a fiduciary duty in Dance Council with respect to the funds provided by the City under this Contract.

The funds paid to Dance Council pursuant to this Contract shall be maintained in a separate account established for that purpose and may not be commingled with any other money. Funds received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs provided that such costs are necessary for the promotion and encouragement of the purposes for which the funds may be used as described herein.

Dance Council shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of revenue received pursuant to this Contract. By the thirtieth (30<sup>th</sup>) day after the close of each quarter (beginning with the quarter ending December

31, 2004, with the last quarter ending September 30, 2005), Dance Council shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Dance Council of the funds paid to Dance Council under this Contract; and (b) a year-to-date report of the expenditures made by Dance Council of the funds paid to Dance Council under this Contract (and if this Contract is terminated prior to its expiration, Dance Council shall provide such reports as set forth above for the period prior to the expiration for which reports have not been provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Contract shall survive the expiration of this Contract). On request of the City at any time, Dance Council shall make its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of Dance Council's fiscal year, Dance Council shall provide the City with a financial statement signed by the Chairman of Dance Council's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Dance Council's income, expenses, assets and liabilities, and such obligation shall survive the termination or expiration of this Contract.

### **VIII. INDEPENDENT CONTRACTOR**

In performing services under this Contract, the relationship between the City and Dance Council is that of independent contractor, and the City and Dance Council by the execution of this Contract do not change the independent status of Dance Council. No term or provision of this Contract or action by Dance Council in the performance of this Contract is intended nor shall be construed as making Dance Council the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.

### **IX. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT**

Dance Council may not and shall have no authority to assign, transfer, or otherwise convey by any means whatsoever this Contract or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City, and any attempted assignment, transfer, or other conveyance of this Contract without such approval shall be null and void and be cause for immediate termination of this Contract by the City.

This Contract is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

### **X. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE**

Nothing contained in this Contract shall be deemed to constitute that the City and Dance Council are partners or joint venturers with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Contract creates, a joint enterprise.

### **XI. COPYRIGHT**

Dance Council assumes full responsibility for complying with all United States laws and treaty terms pertaining to intellectual property issues and any applicable regulations, including but not limited to the assumption of all responsibilities for paying all royalties which are due for the use of domestic or foreign copyrighted works in Dance Council's performances, transmissions or

broadcasts, and Dance Council, without limiting any other indemnity given by Dance Council as set forth herein, agrees to defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents, for any liability, claims or damages (including but not limited to court costs and reasonable attorney's fees) growing out of Dance Council's infringement or violation of any statute, treaty term or regulation applicable to intellectual property rights, including but not limited to copyrights.

## **XII. NON-DISCRIMINATION**

During the term of this Contract, Dance Council agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex or religion, ancestry, national origin, place of birth, or handicap.

## **XIII. LEGAL COMPLIANCE; CONTRACT SUBJECT TO LAWS**

Dance Council shall observe and abide by, and this Contract is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended.

## **XIV. VENUE; GOVERNING LAW**

In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Contract; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

## **XV. COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

## **XVI. NO WAIVER; RIGHTS CUMULATIVE**

The failure by either party to exercise any right or power, or option given to it by this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Contract are cumulative to any other rights or remedies, which may be granted by law.

## **XVII. NOTICES**

All notices, communications and reports, required or permitted under this Contract shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and Dance Council agree to provide the

other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City's address:

Mario Canizares  
Assistant to the City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Dance Council's address:

Kay Armstrong  
Executive Director  
3530 Harry Hines Blvd.  
Dallas, Texas 75219

**XVIII. SEVERABILITY**

The terms of this Contract are severable, and if any section, paragraph, clause, or other portion of this Contract shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Contract shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Contract initially.

**XIX. AUTHORITY TO EXECUTE CONTRACT**

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

**XX. ENTIRE AGREEMENT**

This Contract represents the entire and integrated contract and agreement between the City and Dance Council and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the City and Dance Council.

**IN WITNESS THEREOF**, the parties hereto have caused this Contract to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

**TOWN OF ADDISON, TEXAS**

**DANCE COUNCIL**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_  
Chairman of the Board

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

ATTEST:

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

**Council Agenda Item: #R6****SUMMARY:**

Consideration and approval of the City Managers recommended incentive compensation reward to Washington Staubach Addison Airport Venture for 2005 in the amount of \$71,013.

**FINANCIAL IMPACT:**

Cost: \$71,013

Funds are available in the Airport Fund.

**BACKGROUND:**

In accordance with the Third Amendment and Exhibit 3 of the Operating Agreement between the Town of Addison and Washington Staubach Addison Airport Venture, WSAAV has the ability to earn incentive compensation each year of the agreement for performance that exceeds the Town's expectations. There are two components of the incentive compensation; financial incentive and management incentive. The finance incentive portion includes certain financial performance based incentives, including an incentive based on the annual growth in Gross Revenue and an incentive based on revenue from through the fence operations.

The management incentive is based upon certain non-financial performance incentives, and may be awarded to the Operator based upon the City's assessment of the Operator's performance and achievements during the applicable contract year. To aide the City in its assessment of the Operator's performance and achievements, the Operator submitted to the City an annual management report which is intended to be limited in scope but sufficient enough to summarize the Operator's accomplishments and performance over the applicable contract year.

**RECOMMENDATION:**

Staff met on several occasions to consider our evaluation and is in concurrence with the following recommendation of \$1,013 finance incentive and \$70,000 management incentive for a total \$71,013 for WSAAV incentive compensation for calendar year 2005.

**Attachments:**

- Mark Acevedo – Recommendation Memorandum
- 2005 Annual Report – Addison Airport
- Lisa Pyles – WSAAV Financial Incentive Memorandum
- Third Amendment to the Operating Agreement
- “Exhibit 3” from Operating Agreement

---

---

**INTEROFFICE MEMO**

---

---

**DATE:** 11/07/05  
**TO:** RON WHITEHEAD, CITY MANAGER  
**CC:** CHRIS TERRY, ASSISTANT CITY MANAGER  
RANDY MORAVEC, FINANCE DIRECTOR  
**FROM:** MARK ACEVEDO, DIRECTOR OF GENERAL SERVICES  
**RE:** WASHINGTON STAUBACH INCENTIVE COMPENSATION  
RECOMMENDATION

---

**BACKGROUND:**

In accordance with the Operating Agreement between the Town of Addison and Washington Staubach Addison Airport Venture, WSAAV has the ability to earn incentive compensation each year of the agreement for performance that exceeds the Town's expectations. The Operator will be rewarded with incentive compensation commensurate with financial performance of the Airport based on the annual increase in Airport Gross Revenue. Financial Performance is divided into two sub-categories: a) Gross Revenue Increase and b) Other Financial Incentives. As airport revenue increases, the percentage for incentive amounts increase as well. Likewise, any decrease in revenue will result in a lesser percentage for incentive. Per the Exhibit 3 of the Operating agreement, if gross revenue is 3.5% or greater than the previous year, the Operator will earn a financial incentive. Gross revenue was 1.53% greater in 2005 therefore; the Operator does not earn a financial incentive in category a) Gross Revenue Increase, but did earn a financial incentive in category b) Other Financial Incentives in the amount of **\$1,013**. For the management incentive, staff met on several occasions to consider our evaluation and is in concurrence with recommending **\$70,000** for the management portion of the incentive program for a total of **\$71,013**. In 2004 WSAAV did earn the "category a" financial incentive. They were awarded \$120,380 for the financial incentive and \$65,000 for the management incentive, a total incentive compensation of \$185,380.

In making this recommendation, staff utilized the methodology as identified in "Exhibit 3" of the operating agreement. This methodology of incentive compensation as outlined in the Third Amendment to the Operating Agreement is comprised of two components; the finance incentive and the management incentive. The Finance Incentive portion includes certain financial performance based measures, including an incentive based on the annual growth in Gross Revenue and an incentive based on revenue from through the fence operations. The Management Incentive portion is based upon certain non-financial performance incentives, and may be awarded to the Operator based upon the City's assessment of the Operator's performance and achievements during the applicable contract year. To aide the City in its assessment of the Operator's performance and achievements, the Operator submitted to the City an annual management report which is intended to be limited in scope but sufficient enough to summarize the Operator's accomplishments and performance over the applicable contract year. Staff also met with WSAAV to share our assessment of their performance and discuss operational activities for the operating team to focus their attention on in the coming year.

Staff's philosophical approach to this performance incentive process was two-fold. One, we attempted to recognize work or accomplishments that went beyond expectations. Merely performing at expected levels does not merit a bonus; rather, the accomplishment should exceed the normal expected performance both in task and in quality. In fact, "Exhibit 3" of the operating contract states:

*"While the City expects a high level of performance from the Operator, the provision of increasingly challenging levels of performance with commensurate financial rewards is intended to stimulate the Operator to higher levels of excellence for the Airport and the City."*

Second, this process should identify for the operating team those areas of concern that need additional attention in the coming year. Identifying areas for improvement is an important means to providing adequate feedback for future performance and rewarding exceptional future performance.

The recommended monetary amounts are identified with each category in this memorandum.

## **RECOMMENDATIONS:**

### **Financial Incentive**

**Earned Amount \$1,013**

The amount for this category is commensurate with the financial performance of the Airport based on Category B – Other Financial Incentives. In this category, the Operator shall receive a Finance Incentive for either the improvement in revenues associated with securing City approved Through-the-Fence (TTF) agreements with existing Through-the-Fence users or securing new Through-the-Fence agreements with businesses wanting access to the Airport. The amount of the TTF Incentive shall be equal to 25% of the first year Annual Permit Fee revenue improvement relating to existing Through-the-Fence agreements with businesses and 25% of the first year Annual Permit Fee set forth in each new Addison Airport Access Permit Agreement. During fiscal year 2005, WSAAV facilitated two (2) new Through-the-Fence Agreements. Total sum of the first year access fees collected for these two agreements was \$4,052. Therefore WSAAV does earn a financial incentive bonus for 2005.

### **Management Incentive**

**Recommended Amount \$70,000**

The recommended amount for this category relates to the Operators performance in the areas outlined below from the Annual Report and staff's own assessment. These are areas which staff has determined to have been accomplished with a higher degree of quality and at a level that exceeds the routine daily expectations of managing an airport facility.

- **Safety & Security** - Although an airport security plan is not required by FAA for General Aviation Airports, the Operator felt a plan as such would enhance the preparedness of the airport's law enforcement community resulting in a benefit to the tenants, users and the Town. The Operator developed a security plan that provides for the safety of those that use the airport, as well as the community against criminal behavior involving aircraft. With respect to safety, the Operator constructed a service road at the North end of the field to enable them to safely transport heavy off-road airport equipment to the Service Center for maintenance and repairs, without having to drive them on Addison Road and Westgrove Drive. This safety enhanced project was done in-house at a cost-savings of \$4,000.
- **Noise Abatement** – The Operator continues to host the monthly noise committee meetings. This has continued to be a proactive measure that has resulted in an 88.2% decrease in the number of complaints received. There were 46 noise complaints in 2005 compared to 390 complaints in 2004.

- **Communications and Tenant Relations** – The Operator continues to be very successful in building strong tenant relationships. This has been accomplished through good communication and accessibility with the tenants. The Operator continues to successfully host tenant appreciation luncheons twice a year where the tenants have an opportunity to visit with other tenants and ask airport management questions about what is going on at the airport. This is an unusual practice at most general aviation airports, but has become a tradition at Addison Airport that has opened the lines of communication and trust between the tenants and the Operator. Additionally, the Operator’s *weekly* tenant emails to every tenant and sub-tenant providing on-going updates on maintenance work, FAA and Customs regulations, temporary flight restriction areas, and general airport news, has been very well received by the tenants who appreciate this weekly information and communication. The Operations and Real Estate management team continue to be focused on taking care of and providing our tenants “one tenant at a time” customer care.
- **Special Events** – The Operator hosted the American Association of Airport Executives – South Central Chapters’ Annual Conference at the Marriott Quorum Hotel, in Addison. The four-day aviation conference brought over 175 people to Addison and was noted as one of the most successful Chapter conferences. In April the Operator hosted the 2005 Aviation & Business Journal’s “Business Jet Preview”. The event brought over 750 prospective and current aircraft owners to Addison to preview the latest in aircraft technology. In September, the American Bonanza Society and their annual convention and trade show. Over 150 Bonanza planes flew into Addison Airport for this event with more than 650 people attending. It was held at the Hotel Intercontinental and accounted for over 1,200 room nights for the hotel. The Town will look to the Operator to continue to identify even more events of this nature in 2006 as these events compliment the efforts of the Town’s Visitor Services Department’s mission to increase hotel revenue.
- **Marketing - Advertising** – The Operator initiated a Strategic Marketing Plan this past year, and engaged the services of Blanchard Schaefer, a local advertising firm to assist with the development of the plan. The goals of the plan are to emphasize the airport’s superior location, increase awareness with the aviation community, better inform those with vested interest in the airport, and to identify Addison Airport as the destination of choice while creating a “Brand Identity” for the airport. Last year the Operator initiated a targeted advertising campaign to highlight and promote the charter companies operating out of Addison Airport with a new web-portal [www.addisoncharter.com](http://www.addisoncharter.com) linking visitors to the charter companies’ respective websites. Although recognized in last years’ incentive for creating this initiative, this year the results of the initiative have proven worthy of recognition. Since the implementation of this program, the charter companies have reported increased bookings for their businesses and have expressed their compliments of the management team for the valued support.
- **Property Management** – In the previous year incentive compensation, staff expressed a high satisfaction with the daily operations, and the level of customer service that is provided by the Operator with respect to property management. This excellent level of customer service continues to be the way the Operator performs property management today. At that same time last year, staff expressed a concern that a “Strategic Development Plan” for Addison Airport had yet to be completed and submitted to the Town as originally required by the Operating Agreement. It is staff’s desire that the management team utilizes all resources available to them and develop a “Strategic Development Plan” for Addison Airport in the coming year. On February 8, airport management presented to Council an overview of its long-term “Strategic Development Plan for Real Estate Management and Landside Operations for Addison Airport.” In addition to completing a very comprehensive phase I of their plan, the Operator engaged the services of the Leland Group to assist them with phase

It will require a keen understanding of the goals and aspirations of the community, the realities of the marketplace, the peculiarities of the political landscape and the constraints of local public / private resources. This partnership will provide for the forming and advancing of this development plan.

Attachments: 2005 Annual Report – Addison Airport  
Lisa Pyles – WSAAV Financial Incentive Compensation Memorandum  
Third Amendment to the Operating Agreement  
“Exhibit 3” from Operating Agreement



William M. Dyer  
Real Estate Manager  
16051 Addison Road,  
Suite 220  
Addison, Texas 75001

Main: 972-392-4650  
Direct: 972-392-4856  
Fax: 972-788-9334  
[bill.dyer@staubach.com](mailto:bill.dyer@staubach.com)

## Memorandum

To: Mark Acevedo

From: Lisa, A. Pyles, A. A. E.

Date: November 4, 2005

CC: WSAAV Board of Directors

Re: **WSAAV Financial Incentive Compensation Award**

---

Please find attached WSAAV's calculation of its financial incentive award for fiscal year 2005.

Based upon the attached calculation summary and supporting exhibits, WSAAV has earned a financial incentive award of \$1,013 in accordance with Section 6.C of the Operating Agreement, as amended.

Under the Agreement, WSAAV's financial incentives are based upon actual collections, not revenue billed. WSAAV did not qualify for gross revenue increase this year largely due to the atypical collections recognized last year, which was attributed to the successful resolution of several prolonged collection disputes that Airport Management was instrumental in their outcome. The percentage of change in collections for fiscal year 2004 compared to 2005 is 1.53%, compared to the 10% increase reported between fiscal year 2003 and 2004. Conversely, billed revenue for 2004 to 2005 actually increased by 3.68% compared to only 1.29% for the comparison periods 2003-2004. Barring any unforeseen activity during the upcoming year, WSAAV anticipates collections will fall back in line with management's projections.

We greatly appreciate all your support and guidance through out the year. We look forward to an even more prosperous and successful year for 2006. Should you have any questions or require additional information, please let me know.

**Calculation of WSAAV 2004  
Financial Incentive Compensation**  
*(In accordance with the 3<sup>rd</sup> Amendment to the Operating Agreement)*

Section 6.C of the Agreement for the Operation and Management of Addison Airport, as amended, (“Operating Agreement”) outlines the parameters of incentive compensation, as a supplement to the management fee, to be paid the Airport Operator for achieving desired financial, operational and management objectives.

Exhibit 3 to the Operating Agreement (see 3<sup>rd</sup> Amendment) defines the purpose of the Finance Incentive is to encourage the creative and aggressive marketing and promotion of Addison Airport. The Operator will be rewarded with incentive compensation commensurate with financial performance of the Airport based on the increase in Airport Gross Revenue. Financial Performance is divided into two sub-categories: a) Gross Revenue Increase and b) Other Financial Incentives.

**A – Gross Revenue Increase**

When the annual Gross Revenue for the Contract Year exceeds the actual Prior Year Gross Revenue by 3.5% or more, Operator will be rewarded with an increasingly higher percentage of the revenue increase as given in Table 1 below.

**Table 1**  
**Finance Incentive Bonus – Gross Revenue Increase**

Growth Percentage from Prior Year	Finance Incentive Bonus %
< 0	0%
> 0% and <=3.5%	0%
>3.5% and <=5%	20%
> 5.0% and <=6.5%	24%
> 6.5% and <=8%	28%
> 8%	32%

The Yearly Calculation of Fees for **Fiscal Year Ending 2005** (attached hereto as Exhibit “A”) shows revenue collected for the period a total of \$4,201,203. The Yearly Calculation of Fees for **Fiscal Year Ending 2004** (attached hereto as Exhibit “B”) shows revenue collected for the period a total of \$4,138,056. The percentage of Gross Revenue Growth for fiscal year 2005 is 1.53%. Based upon the above table WSAAV does not

qualify for a financial incentive based upon Gross Revenue Increase under Section 6.C (as amended) of the Operating Agreement for fiscal year 2005.

**Table 2**  
**Calculation of Gross Revenue Increase Incentive**

	<b>Prior Yr. 2004</b>	<b>2005</b>
Adjusted Airport Revenues	4,138,056	4,201,203.
% Increase Over Prior Year		1.53%
Change In Revenue From Prior Year		63,147
Eligible Bonus Percent age		0.0%
<b>Financial Growth Incentive Bonus</b>		<b>\$0</b>

**B – Other Financial Incentives**

**Through the Fence Operations** – The Operator shall receive a Finance Incentive for either the improvement in revenues associated with securing City approved Through-the-Fence agreements with existing Through-the-Fence users or securing new Through-the-Fence agreements with businesses wanting access to the Airport (“TTF Incentive”). The amount of the TTF Incentive shall be equal to 25% of the first year Annual Permit Fee revenue improvement relating to existing Through-the-Fence agreements with businesses and 25% of the first year Annual Permit Fee set forth in each new Addison Airport Access Permit Agreement (“Access Agreement”). This TTF Incentive award shall be deemed earned, due and payable in a lump sum to Operator immediately upon the City’s acceptance of the Annual Permit Fee related to the increase or new Access Agreement.

During fiscal year 2005, WSAAV facilitated two (2) new Through-the-Fence Agreements: 7500-0029 Kevin Gardner (Exhibit “C”), and 7500-0028 15510, LLC (Audiotel) (Exhibit “D”). Total sum of the first year access fees collected for these two agreements is \$4,052. WSAAV’s other financial incentives under this heading are calculated in the following table.

**Table 3:  
Through-the-Fence Incentive Award Calculation**

No. of New TTF Agreements	2
1 <sup>st</sup> Year Annual Fee Total	\$4,052.00
No. of Existing Agreements Improved	0
Annual Fee Improvement Value	\$0.00
Total TTF Fee Enhancement Value	\$4,052.00
Percent multiplier	.25%
<b>2005 TTF Incentive Award</b>	<b>\$1,013.00</b>

# Exhibit A

## Addison Airport YEARLY Calculation of Fees 9/30/2005 YTD

**Gross Billed Revenues:**

Ground Lease	1,647,341.81
T Hangar	573,894.09
Jet Hangar	463,037.69
Patio Hangar	104,202.77
Tie Down	74,241.85
Access Fees	76,147.07
Fuel Farm	99,320.72
Fuel Flowage Fees	1,064,775.36
Customs Fees	38,517.47
USDA Fees	5,265.00
Miscellaneous	15,308.23

**Total Billed Revenues:** 4,162,052.06

Adjustment for Collected:

1300 SEPT 30 2004 Balance w/o mgd	186,683.12
1300 SEPT 30 2005 Balance w/o mgd	195,760.94
Net Change:	<u><u>(9,077.82)</u></u>

**Gross Billed Managed Hangar Revenues:** 183,364.53

Adjustment for Collected:

1300 SEPT 30 2004 Balance	(5,815.00)
1300 SEPT 30 2005 Balance	(2,905.00)
Net Change:	<u><u>(2,910.00)</u></u>
Subtotal:	<u>180,454.53</u>
30% Retainage:	<u><u>54,136.36</u></u>

**Less Bank Interest Earned** **(5,907.73)**

<b>Total Collected Revenues:</b>	<u><u>4,201,202.87</u></u>	854,606.87	3,346,596.00
		0.18	0.22 <small>EFFECTIVE RATE</small>
<b>Less W/S Management Fee</b>	873,829.29	153,829.24	720,000.05
<b>Less Operations &amp; Maintenance Expenses:</b>	1,160,749.96		

**Net Addison Airport Revenues:** 2,166,623.62

**Security Deposits to be Forwarded:**

Adjustment for Collected:

2020 Sept 30 2004 Balance	(165,792.34)
2020 Sept 30 2005 Balance	(176,266.66)
Net Change:	<u><u>10,474.32</u></u>

**Total Collected for Security Deposits:** 10,474.32

**Add Back Interest Earned** **5,907.73**

<b>Total YTD Due to Town of Addison:</b>	<b>2,183,005.67</b>
<b>Total Previously Paid to Town of Addison:</b>	<b>(1,971,976.09)</b>
<b>Total Due to Town of Addison:</b>	<u><u>211,029.58</u></u>

Addison Airport  
 YEARLY Calculation of Fees  
9/30/2005 YTD

TOTAL COLLECTED YTD                    4,201,202.87

ANNL BASE 2001	3,346,596.00	0.22	720,000.00
ADDITIONAL REVENUES COLLECTED	<u>854,606.87</u>	0.18	<u>153,829.24</u>
TOTAL FEE FY 2005:	4,201,202.87		873,829.24
TOTAL FEES PAID THRU 08/31/05:			<u>827,537.92</u>
TOTAL DUE THROUGH 9/30/2005:			<u>46,291.32</u>

**Addison Airport  
Combined  
Budget Variance Report  
For the Month Ended September 30, 2005**

	<u>ACTUAL</u>	<u>BUDGET</u>	<u>VARIANCE</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>YTD VARIANCE</u>	
<b>REVENUES</b>							
<u>Rental Income</u>							
4010	Ground Lease Income	138,390.85	133,938.00	4,452.85	1,647,341.81	1,604,290.00	43,051.81
4110	T Hangar Income	48,107.18	47,491.00	616.18	573,894.09	540,452.00	33,442.09
4112	Commercial Property Income	38,154.51	38,633.00	(478.49)	463,037.69	461,706.00	1,331.69
4114	Patio Hangar Income	9,165.00	8,890.09	274.91	104,202.77	106,681.00	(2,478.23)
4115	Tie Down Income	5,772.50	4,897.50	875.00	74,241.85	58,770.00	15,471.85
4210	30% Hangars	15,380.00	14,483.59	896.41	183,364.53	173,803.00	9,561.53
4215	Access Fees	7,031.57	7,000.00	31.57	76,147.07	86,000.00	(9,852.93)
4220	Fuel Farm Income	8,160.80	8,344.84	(184.04)	99,320.72	100,138.00	(817.28)
6210	30% Hangar Expense	(11,602.50)	(10,573.00)	(1,029.50)	(126,518.51)	(126,876.00)	357.49
	Total Rental Income	258,559.91	253,105.02	5,454.89	3,095,032.02	3,004,964.00	90,068.02
<u>Other Income</u>							
4230	Fuel Flowage Fees	107,826.00	85,692.00	22,134.00	1,064,775.36	1,005,501.00	59,274.36
4240	Customs Fees	1,582.93	1,750.00	(167.07)	38,517.47	21,000.00	17,517.47
4250	USDA Regulated Waste	325.00	0	325.00	5,265.00	0	5,265.00
4260	Interest Income	783.47	0	783.47	5,907.72	0	5,907.72
4300	Miscellaneous Income	1,635.76	765.00	870.76	9,400.51	9,180.00	220.51
	Total Other Income	112,153.16	88,207.00	23,946.16	1,123,866.06	1,035,681.00	88,185.06
	<b>Total Revenues</b>	<b>370,713.07</b>	<b>341,312.02</b>	<b>29,401.05</b>	<b>4,218,898.08</b>	<b>4,040,645.00</b>	<b>178,253.08</b>
<b>OPERATING EXPENSES</b>							
<u>Structures, Facilities &amp; Grounds</u>							
5010	Grounds Maintenance	0	2,555.56	2,555.56	15,734.77	20,000.00	4,265.23
5020	Gates & Fencing	2,194.33	1,666.66	(527.67)	12,399.29	20,000.00	7,600.71
5040	Building Maintenance	338.56	1,000.00	661.44	4,094.69	12,000.00	7,905.31
5060	Lights & Markings	855.40	9,250.00	8,394.60	60,226.27	70,500.00	10,273.73
5070	Other Pavements	0	8,333.33	8,333.33	81,613.06	75,000.00	(6,613.06)
5080	Hangar Maintenance	5,264.60	4,166.66	(1,097.94)	88,309.12	50,000.00	(18,309.12)
5090	Insurance - Liability	0	0	0	55,605.00	65,000.00	9,395.00
	Total Structures, Facilities & Grds	8,652.89	26,972.21	18,319.32	297,982.20	312,500.00	14,517.80
<u>Equipment Maintenance &amp; Materials</u>							
5200	Equipment & Tool Maintenance	9,658.64	3,833.33	(5,825.31)	36,126.85	35,000.00	(1,126.85)
5220	Communication Equipment	0	250.00	250.00	2,586.58	3,000.00	413.42
5245	Small Tools	425.35	181.81	(243.54)	2,033.65	3,000.00	966.35
5250	Uniforms	0	0	0	3,904.18	4,000.00	95.82
	Total Equip Maint & Materials	10,083.99	4,265.14	(5,818.85)	44,651.26	45,000.00	348.74
<u>Personnel Services</u>							
5300	Salaries	39,153.77	39,166.66	12.89	439,569.02	470,000.00	30,430.98
5310	Taxes & Benefits	14,803.76	10,583.34	(4,220.42)	158,654.40	127,000.00	(31,654.40)
	Total Personnel Services	53,957.53	49,750.00	(4,207.53)	598,223.42	597,000.00	(1,223.42)
<u>Contract Services</u>							
5400	Professional Services	1,261.32	1,515.00	253.68	22,891.56	17,500.00	(5,311.56)
	Total Contract Services	1,261.32	1,515.00	253.68	22,891.56	17,500.00	(5,311.56)

Addison Airport  
Combined  
Budget Variance Report  
For the Month Ended September 30, 2005

	<u>ACTUAL</u>	<u>BUDGET</u>	<u>VARIANCE</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>YTD VARIANCE</u>	
<u>Utilities</u>							
5510	Electricity	0	4,500.00	4,500.00	13,896.47	54,000.00	40,103.53
5520	Gas	44.96	60.00	15.04	5,780.60	4,000.00	(1,780.60)
5530	Water & Sewer	295.56	450.00	154.44	4,230.53	5,400.00	1,169.47
	Total Utilities	340.52	5,010.00	4,669.48	23,907.60	63,400.00	39,492.40
<u>General &amp; Administration</u>							
6240	Customs Expense	2,643.19	3,500.00	856.81	39,843.59	42,000.00	2,156.41
7010	Office Supplies & Printing	243.47	1,000.00	756.53	14,086.98	12,000.00	(2,086.98)
7015	Admin Rentals & Leases	.373.46	385.00	11.54	5,379.12	4,940.00	(439.12)
7020	Telephone	2,121.21	2,500.00	378.79	25,062.30	30,000.00	4,937.70
7040	Professional Fees	5,382.00	500.00	(4,882.00)	14,182.79	22,500.00	8,317.21
7050	Dues, Subscriptions & Publications	329.00	0	(329.00)	6,645.90	5,270.00	(1,375.90)
7060	Entertainment & Meals	145.71	100.00	(45.71)	1,854.33	1,200.00	(654.33)
7070	Travel	883.93	900.00	16.07	13,007.73	13,330.00	322.27
7100	General & Miscellaneous	1,172.08	850.00	(322.08)	15,456.69	10,200.00	(5,256.69)
7110	Postage & Shipping	175.82	300.00	124.18	2,006.41	3,600.00	1,593.59
7120	Printing	12.00	167.00	155.00	1,108.73	5,004.00	3,895.27
7130	Information Tech	228.97	560.00	331.03	7,677.64	9,120.00	1,442.36
7140	Meetings & Presentations	1,700.00	4,600.00	2,900.00	5,993.32	10,600.00	4,606.68
7145	Marketing & Promotional	7,701.00	0	(7,701.00)	20,788.39	43,500.00	22,711.61
	Total General & Administration	23,111.84	15,362.00	(7,749.84)	173,093.92	213,264.00	40,170.08
	<b>Total Operating Expenses</b>	<b>97,408.09</b>	<b>102,874.35</b>	<b>5,466.26</b>	<b>1,160,749.95</b>	<b>1,248,744.00</b>	<b>87,994.04</b>
8010	Management Fee Expense	46,291.32	43,420.00	(2,871.32)	873,829.24	797,659.00	(76,170.24)
	<b>Total Operating Income (Loss)</b>	<b>227,013.66</b>	<b>195,017.67</b>	<b>31,995.99</b>	<b>2,184,318.88</b>	<b>1,994,242.00</b>	<b>190,076.88</b>

# Exhibit B

## Addison Airport YEARLY Calculation of Fees 9/30/2004 YTD

**Gross Billed Revenues:**

Ground Lease	\$	1,599,682
T Hangar		518,717
Jet Hangar		457,636
Patio Hangar		92,304
Tie Down		64,183
Access Fees		125,855
Fuel Farm		70,978
Fuel Flowage Fees		1,030,378
Customs Fees		41,980
Miscellaneous		12,437

**Total Billed Revenues:** 4,014,150

Adjustment for Collected:

1300	SEPT 30 2003 Balance	258,040
1300	SEPT 30 2004 Balance	186,683
	Net Change:	<u>71,357</u>

**Gross Billed Managed Hangar Revenues:** 180,170

Adjustment for Collected:

1300	SEPT 30 2003 Balance	(10,820)
1300	SEPT 30 2004 Balance	(5,815)
	Net Change:	<u>(5,005)</u>
	Subtotal:	<u>175,165</u>
	30% Retainage:	<u>52,550</u>

**Total Collected Revenues:** 4,138,056

791,460	3,346,596	
18%	21.5144%	EFFECTIVE RATE

**Less W/S Management Fee** 862,463

**Less Operations & Maintenance Expenses:** 1,439,511

**Net Addison Airport Revenues:** \$ 1,836,082

**Security Deposits to be Forwarded:**

Adjustment for Collected:

2020	Sept 30 2003 Balance	(168,106)
2020	Sept 30 2004 Balance	(165,792)
	Net Change:	<u>(2,314)</u>

**Total Collected for Security Deposits:** \$ (2,314)

**Total YTD Due to Town of Addison:** \$ 1,833,769

**Total Previously Paid to Town of Addison:** \$(1,758,933)

**Total Due to Town of Addison:** \$ 74,836

Addison Airport  
 YEARLY Calculation of Fees  
9/30/2004 YTD

TOTAL COLLECTED YTD                      4,138,056

ANNL BASE 2001	3,346,596	21.51440%	\$	720,000
ADDITIONAL REVENUES COLLECTED	791,460	18.00000%	\$	142,463
TOTAL FEE FY 2004:	4,138,056		\$	862,463
TOTAL FEES PAID THRU 08/31/04:				\$ 805,704
TOTAL DUE THROUGH 9/30/2004:				\$ 56,759

**Addison Airport  
Combined  
Budget Variance Report  
For the Month Ended September 30, 2004**

	<u>ACTUAL</u>	<u>BUDGET</u>	<u>VARIANCE</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>YTD VARIANCE</u>	
<b>REVENUES</b>							
<u>Rental Income</u>							
4010	Ground Lease Income	137,895	133,384	4,511	1,599,682	1,578,427	21,255
4110	T Hangar Income	45,462	48,439	(2,977)	518,717	581,267	(62,550)
4112	Commercial Property Income	37,260	42,805	(5,545)	457,636	496,452	(38,816)
4114	Patio Hangar Income	8,504	8,890	(386)	92,304	106,681	(14,377)
4115	Tie Down Income	5,400	3,653	1,747	64,183	43,833	20,350
4210	30% Hangars	14,880	14,575	306	180,170	174,898	5,272
4215	Access Fees	0	0	0	125,855	130,000	(4,145)
4220	Fuel Farm Income	8,335	8,344	(11)	70,978	100,138	(29,160)
6210	30% Hangar Expense	(7,406)	(10,639)	3,234	(120,964)	(127,676)	6,712
	<b>Total Rental Income</b>	<b>250,330</b>	<b>249,451</b>	<b>879</b>	<b>2,988,561</b>	<b>3,084,020</b>	<b>(95,459)</b>
<u>Other Income</u>							
4230	Fuel Flowage Fees	95,713	91,667	4,046	1,030,378	1,100,000	(69,622)
4240	Customs Fees	358	2,500	(2,141)	41,980	30,000	11,980
4250	USDA Regulated Waste	390	0	390	4,095	0	4,095
4300	Miscellaneous Income	465	300	165	8,342	3,600	4,742
	<b>Total Other Income</b>	<b>96,926</b>	<b>94,467</b>	<b>2,460</b>	<b>1,084,795</b>	<b>1,133,600</b>	<b>(48,805)</b>
	<b>Total Revenues</b>	<b>347,256</b>	<b>343,918</b>	<b>3,339</b>	<b>4,073,356</b>	<b>4,217,620</b>	<b>(144,264)</b>
<b>OPERATING EXPENSES</b>							
<u>Structures, Facilities &amp; Grounds</u>							
5010	Grounds Maintenance	5,400	1,042	(4,358)	10,830	20,000	9,170
5020	Gates & Fencing	6,688	1,458	(5,230)	22,528	32,500	9,972
5040	Building Maintenance	3,161	1,458	(1,702)	8,197	17,500	9,303
5045	Jet Port Maintenance	(1)	0	0	0	0	0
5050	Runways & Taxiways	1	0	0	0	0	0
5060	Lights & Markings	833	1,667	833	58,902	64,000	5,098
5070	Other Pavements	72,728	3,333	(69,395)	388,866	531,000	142,134
5080	Hangar Maintenance	6,349	10,000	3,652	51,928	138,000	86,072
5085	Tie Down Maintenance	0	0	0	0	0	0
5090	Insurance - Liability	0	5,417	5,416	55,605	65,000	9,395
	<b>Total Structures, Facilities &amp; Grds</b>	<b>95,159</b>	<b>24,375</b>	<b>(70,784)</b>	<b>596,856</b>	<b>868,000</b>	<b>271,144</b>
<u>Equipment Maintenance &amp; Materials</u>							
5200	Equipment & Tool Maintenance	4,132	500	(3,632)	18,571	6,000	(12,571)
5210	Vehicle Maintenance	0	0	0	0	0	0
5220	Communication Equipment	2,958	167	(2,791)	3,608	7,000	3,392
5230	Lubricants	0	83	84	19	1,000	981
5240	Shop Supplies	18	167	148	884	2,000	1,116
5245	Small Tools	255	250	(5)	640	3,000	2,360
5250	Uniforms	100	500	400	3,853	6,000	2,147
5260	Capital Equipment & Tools	0	0	0	0	0	0
5290	Insurance - Vehicles & Equipment	0	0	0	0	0	0
5295	Fuels	0	0	0	0	0	0
	<b>Total Equip Maint &amp; Materials</b>	<b>7,463</b>	<b>1,667</b>	<b>(5,796)</b>	<b>27,575</b>	<b>25,000</b>	<b>(2,575)</b>
<u>Personnel Services</u>							
5300	Salaries	40,262	37,583	(2,679)	419,236	451,000	31,764
5310	Taxes & Benefits	14,355	10,167	(4,188)	157,806	122,000	(35,806)
	<b>Total Personnel Services</b>	<b>54,617</b>	<b>47,750</b>	<b>(6,867)</b>	<b>577,042</b>	<b>573,000</b>	<b>(4,042)</b>
<u>Contract Services</u>							
5400	Professional Services	619	1,870	1,251	14,475	22,440	7,965
5410	HVAC	0	0	0	0	0	0
5420	Plumbing	0	0	0	0	0	0
5430	Electrical	0	0	0	0	0	0
	<b>Total Contract Services</b>	<b>619</b>	<b>1,870</b>	<b>1,251</b>	<b>14,475</b>	<b>22,440</b>	<b>7,965</b>

Addison Airport  
Combined  
Budget Variance Report  
For the Month Ended September 30, 2004

	<u>ACTUAL</u>	<u>BUDGET</u>	<u>VARIANCE</u>	<u>YTD</u> <u>ACTUAL</u>	<u>YTD</u> <u>BUDGET</u>	<u>YTD</u> <u>VARIANCE</u>	
	<u>Utilities</u>						
5510	Electricity	3,229	3,000	(229)	39,549	36,000	(3,549)
5520	Gas	36	30	(6)	1,308	4,230	2,922
5530	Water & Sewer	635	320	(315)	4,786	3,840	(946)
	Total Utilities	3,900	3,350	(550)	45,643	44,070	(1,573)
	<u>General &amp; Administration</u>						
6240	Customs Expense	2,981	2,917	(65)	43,645	35,000	(8,645)
7010	Office Supplies & Printing	548	1,000	452	8,133	12,000	3,867
7015	Admin Rentals & Leases	374	685	312	5,273	5,220	(53)
7020	Telephone	1,819	2,500	681	23,104	30,000	6,896
7040	Professional Fees	0	0	0	26,179	41,000	14,821
7050	Dues, Subscriptions & Publications	0	0	0	5,459	3,283	(2,176)
7060	Entertainment & Meals	2,599	1,650	(949)	7,586	7,200	(386)
7070	Travel	2,102	1,100	(1,002)	10,139	15,270	5,131
7075	Auto/Mileage	0	0	0	0	0	0
7100	General & Miscellaneous	1,169	1,200	31	11,407	5,500	(5,907)
7110	Postage & Shipping	156	275	119	2,075	3,600	1,525
7120	Printing	8	166	158	1,238	2,000	762
7130	Information Tech	228	560	332	6,379	6,720	341
7140	Meetings & Presentations	0	0	0	0	0	0
7145	Marketing & Promotional	2,699	0	(2,698)	27,303	30,000	2,697
7150	AAAE SSC CONFERENCE @ AD	6,836	0	(6,837)	0	0	0
	Total General & Administration	21,519	12,053	(9,466)	177,920	196,793	18,873
	<b>Total Operating Expenses</b>	<b>183,277</b>	<b>91,065</b>	<b>(92,212)</b>	<b>1,439,511</b>	<b>1,729,303</b>	<b>289,792</b>
8010	Management Fee Expense	58,759	41,244	(15,515)	862,463	809,050	(53,413)
	<b>Total Operating Income (Loss)</b>	<b>197,220</b>	<b>211,609</b>	<b>(104,388)</b>	<b>1,771,382</b>	<b>1,679,267</b>	<b>82,115</b>

# Exhibit C

(First Page of Agreement)

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**ADDISON AIRPORT ACCESS PERMIT AGREEMENT**  
**(Permit No. 7500-029)**

THIS Addison Airport Access Permit Agreement (the "Agreement") made and entered into effective as of May 15, 2005 (the "Effective Date") by and between the Town of Addison, Texas (the "City") and Kevin Gardner ("Permittee").

Name of Permittee: Kevin Gardner  
Permittee's Mailing Address:  
4300 Wiley Post  
Addison, TX 75001

E-Mail Address: kevin@stingrayworldwide.com

Telephone Number: 972-816-5098  
Fax Number: 972-818-2994

**Salient Terms**

Access Area: 8,168 sq. ft. Access Area Address: 4300 Wiley Post  Hangar Area: 5,080 sq. ft.  Initial Annual Permit Fee: \$1,856.59 Permit Term: 20 years  Payment Method: 4 quarterly installment(s) after first-year lump sum payment.
---

**WITNESSETH:**

**WHEREAS**, the City is the owner of the Addison Airport (the "Airport"); and

**WHEREAS**, the Airport is operated and managed for the City by Washington Staubach Addison Airport Venture, a Texas joint venture ("Airport Manager"), pursuant to that Agreement for the Operation and Management of Addison Airport dated August 8, 2000 between the City and Manager; and

**WHEREAS**, Permittee has heretofore submitted or will submit to the City a Survey Plat (as hereinafter defined and described) of certain real property located adjacent to the Airport (referred to herein as the "Access Area"), and which is a part of certain real property owned by Permittee and described in Exhibit B attached hereto and incorporated herein (the "Off-Airport Parcel"), and which has a common boundary with the boundary of the Airport or with an Access Taxiway (as defined in the Airport Access Ordinance); and

**WHEREAS**, Permittee is the sole owner of the Access Area and of the Off-Airport Parcel; and

**WHEREAS**, Permittee has applied for an access permit agreement in order to access the Airport from the Access Area in accordance with Chapter 14, Article III, Division 3 of the City's Code of Ordinances (the "Airport Access Ordinance"), and desires to use the public facilities maintained on the Airport, so long as such use originates solely from the Access Area.

**NOW, THEREFORE**, for and in consideration of the premises and mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties hereto agree as follows:

# Exhibit D

(First Page of Agreement)

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

## ADDISON AIRPORT ACCESS PERMIT AGREEMENT (Permit No. 7500-2601)

THIS Addison Airport Access Permit Agreement (the "Agreement") made and entered into effective as of January 1, 2005 (the "Effective Date") by and between the Town of Addison, Texas (the "City") and 15510, LLC ("Permittee").

Name of Permittee: 15510, LLC  
Permittee's Mailing Address:  
15510 Wright Brothers Drive  
Addison, TX 75001  
E-Mail Address: scott@audiotel.com  
Telephone Number: 972-239-4486  
Fax Number: 972-239-4415

### Salient Terms

Access Area: 9,040 sq. ft.
Access Area Address: 15510 Wright Brothers Drive
Hungar Area: 4,000 sq. ft.
Annual Permit Fee: \$2,194.91
Permit Term: 15 years
Payment Method: four (4) equal installment(s) after first-year lump sum payment.

### WITNESSETH:

WHEREAS, the City is the owner of the Addison Airport (the "Airport"); and

WHEREAS, the Airport is operated and managed for the City by Washington Staubach Addison Airport Venture, a Texas joint venture ("Airport Manager"), pursuant to that Agreement for the Operation and Management of Addison Airport dated August 8, 2000 between the City and Manager; and

WHEREAS, Permittee has heretofore submitted or will submit to the City a Survey Plat (as hereinafter defined and described) of certain real property located adjacent to the Airport (referred to herein as the "Access Area"), and which is a part of certain real property owned by Permittee and described in Exhibit B attached hereto and incorporated herein (the "Off-Airport Parcel"), and which has a common boundary with the boundary of the Airport or with an Access Taxiway (as defined in the Airport Access Ordinance); and

WHEREAS, Permittee is the sole owner of the Access Area and of the Off-Airport Parcel; and

WHEREAS, Permittee has applied for an access permit agreement in order to access the Airport from the Access Area in accordance with Chapter 14, Article III, Division 3 of the City's Code of Ordinances (the "Airport Access Ordinance"), and desires to use the public facilities maintained on the Airport, so long as such use originates solely from the Access Area.

NOW, THEREFORE, for and in consideration of the premises and mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the parties hereto agree as follows:

## **EXHIBIT 3 – INCENTIVE COMPENSATION AIRPORT OPERATING AGREEMENT**

### **I. OVERVIEW:**

Section 6.C. of the Agreement for the Operation and Management of Addison Airport (“Operating Agreement”) outlines the parameters of incentive compensation, as a supplement to the Management Fee, to be paid the Airport Operator for achieving desired financial, operational and management objectives. This Exhibit 3 establishes guidelines for implementing and administering the Finance Incentive portion of Incentive Compensation.

While the City expects a high level of performance from the Operator, the provision of increasingly challenging levels of performance with commensurate financial rewards is intended to stimulate the Operator to higher levels of excellence for the Airport and the City.

### **II. DEFINITIONS (for Financial Performance Incentive Compensation Issues)**

Base Management Fee – The Base Management Fee is an amount equal to 10% of the actual Gross Revenue received in a contract year.

Gross Revenue – Gross Revenue is as defined in Section 2 of the Operating Agreement.

Prior Year Gross Revenue – The Prior Year Gross Revenue shall mean the amount of Gross Revenue for the Fiscal Year immediately preceding the then applicable Contract Year under the Operating Agreement.

Illustration / Example Tables Used in Exhibit 3 – The illustrative tables used in this Exhibit 3 are intended to serve as examples only. The initial and projected financial calculations are illustrative of the manner in which the Finance Incentive provision is to be applied, but are not intended to be indicative of the actual amount of Finance Incentive for any specific year. Amounts shown are hypothetical projections.

### **III. FINANCE INCENTIVE**

The purpose of the Finance Incentive is to encourage the creative and aggressive marketing, operation, and promotion of Addison Airport. The Operator will be rewarded with incentive compensation commensurate with financial performance of the Airport based on the annual increase in Airport Gross Revenue. Financial Performance is divided into two sub-categories: A) Gross Revenue Increase and B) Other Financial Incentives.

#### ***A. Gross Revenue Increase***

When the annual Gross Revenue for the then applicable Contract Year (the "Current Year Gross Revenue") exceeds the Prior Year Gross Revenue by 3.5% or more, Operator will be rewarded with a percentage of such excess in accordance with Table 1, below. Table 2, below, illustrates an example of the calculation of the Management Fee (as defined in Section 6.B.1. of the Operating Agreement) and the Gross Revenue Increase portion of the Finance Incentive over a five-year period. In actuality, the incentive may be lower or higher than illustrated in Table 2. This table merely serves as an illustration of the calculation of the Gross Revenue Increase portion of the Finance Incentive and how it will be determined.

**Table 1**  
**Finance Incentive Bonus –**  
**Gross Revenue Increase**

<b>Growth Percentage between Current Year Gross Revenue and Prior Year Gross Revenue</b>	<b>Finance Incentive Bonus (% of the difference (excess) between Current Year Gross Revenue and Prior Year Gross Revenue)</b>
< 0	0%
> 0% and <=3.5%	0%
>3.5% and <=5%	20%
> 5.0% and <=6.5%	24%
> 6.5% and <=8%	28%
> 8%	32%

**Table 2**  
**Management Fee & Finance Incentive**  
**Gross Revenue Increase Calculation**

**Example Showing Growth Over Five Years**

	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Adjusted Airport Revenues	4,002,268	3,761,868	4,007,000	4,159,266	4,379,707
% Increase Over Prior Year	NA	0.0%	6.52%	3.80%	5.03%
Change In Revenue From Prior Year	NA	-0-	245,132	152,266	220,441
Eligible Bonus Percentage	NA	0.0%	28.0%	20.0%	24.0%
Mgmt. Fee- @ 21.5144% of the first \$3,346,596 of Gross	720,000	720,000	720,000	720,000	720,000

Revenue					
Mgmt. Fee- @ 18.0000% of Gross Revenue in excess of \$3,346,596	118,021	74,749	118,872	146,280	185,960
Total Management Fee	838,021	794,749	838,872	866,280	905,960
Finance Gross Revenue Increase Incentive Bonus	-0-	-0-	68,637	30,453	52,906
Total – Mgmt. Fee + Finance Gross Revenue Increase Incentive Bonus	838,021	794,749	907,509	896,733	958,866

Note: All years are based in the City’s Fiscal year – October 1 to September 30

***B – Other Financial Incentives***

This category is reserved for other Finance Incentives relating to goals or objectives, which may arise as a result of new or revised City priorities and whereby the Operator shall be eligible for certain one-time incentives that benefit either the City or the Airport on a recurring basis. Each goal or objective is to be clearly stated and the means by which the particular Finance Incentive is to be determined. An example of the award calculation should be given where possible.

***Through the Fence Operations*** – The Operator shall receive a Finance Incentive for either the improvement in revenues associated with securing City approved Through-the-Fence agreements with existing Through-the-Fence users or securing new Through-the-Fence agreements with businesses wanting access to the Airport (“TTF Incentive”). The amount of the TTF Incentive shall be equal to 25% of the first year Annual Permit Fee revenue improvement relating to existing Through-the-Fence agreements with businesses and 25% of the first year Annual Permit Fee set forth in each new Addison Airport Access Permit Agreement (“Access Agreement”). This TTF Incentive award shall be deemed earned, due and payable in a lump sum to Operator immediately upon the City’s acceptance of the Annual Permit Fee related to the increase or new Access Agreement. For purposes of this Exhibit 3, new Access Agreements shall include Access Agreements entered into, assigned, transferred or otherwise conveyed to a user and consented to by the City. Table 3 below illustrates an example of the calculation of the TTF Incentive and is for illustrative purposes only.

**Table 3  
Incentive Compensation  
Financial - Other Revenue**

		2002	2003	2004	2005	2006
Through the Fence						
No. of New Access Agreement		2	1	1	0	3
1 <sup>st</sup> Yr. Annual Permit Fee Total		\$5,000	\$3,500	\$1,300	\$0	\$7,400
Incentive - 25%		\$1,250	\$875	\$325	\$0	\$1,850

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

**THIRD AMENDMENT TO AGREEMENT  
FOR THE OPERATION AND MANAGEMENT OF ADDISON AIRPORT**

THIS THIRD AMENDMENT to Agreement for the Operation and Management of Addison Airport (“Third Amendment”) between the Town of Addison, Texas (“City”) and Washington Staubach Addison Airport Venture (“Operator”) is made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Recitals:

1. The City is the owner of Addison Airport (the “Airport”). On or about August 8, 2000 the City and Operator, together with the entities which formed the Operator as a joint venture, Raytheon Infrastructure, Inc. (a wholly owned subsidiary of Washington Group International, Inc.) and Staubach Airport Management, Inc. (a subsidiary of The Staubach Company), entered into an agreement for the operation and management of the Airport entitled “Agreement for the Operation and Management of Addison Airport,” which was amended by that (a) First Amendment to Agreement for the Operation and Management of Addison Airport made and entered into on September 27, 2000, and by that (b) Second Amendment to Agreement for the Operation and Management of Addison Airport made and entered into on February \_ , 2002 (the said Agreement for the Operation and Management of Addison Airport, as amended, being referred to herein as the “Airport Management Agreement” or “Agreement”). The Airport Management Agreement has an effective or commencement date of January 1, 2001 (“Commencement Date”).

2. The Airport Management Agreement provides in Section 4.B.2(c) thereof that the Operator shall at all times provide security for the Airport in cooperation with the City’s Police and Fire Departments. The City acting through its Police and Fire Departments has provided public safety for the Airport at all times since the Commencement Date of the Agreement and acknowledges that the City has not looked to the Operator to provide the same at the Airport since the Commencement Date.

3. The Airport Management Agreement provides in Section 6.C. thereof that the Operator has the ability to earn incentive compensation as described therein and in Exhibit 3 to the Agreement.

4. The City and the Operator desire to amend the Airport Management Agreement to reflect accurately the operations of the City and Operator in regards to the above referenced items and to clarify and amend other provisions of the Agreement.

**NOW, THEREFORE,** for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and Washington Staubach Addison Airport Venture do hereby agree as follows:

**Section 1. Incorporation of Premises.** The above and foregoing premises are true and correct and are incorporated herein and made a part of this Third Amendment for all purposes.

**Section 2. Amendments.** The Airport Management Agreement is amended as follows:

**A.** Section 4.B.2(b) is amended so that the last sentence of such Section shall hereafter read in its entirety as follows:

“The City shall perform background checks or require background checks to be performed on personnel hired to the positions of the Airport Director and Assistant Airport Director, and the Operator shall have the right to review such background checks. Operator shall perform background checks or require background checks to be performed on all personnel assigned to the Airport by the Operator, and the City shall have the right to review such background checks.”

**B.** Section 4.B.2(c) is amended so that it shall hereafter read in its entirety as follows:

“(c) Public Safety. The City shall provide Airport public safety at all times, and shall utilize the City’s Police Department and Fire Department in providing such public safety. The City’s public safety personnel shall patrol the Airport at times as determined by the City. Any unauthorized use of structures, equipment, or property, or unauthorized entry upon Airport premises, or unlawful activity at the Airport, shall be promptly reported by the Operator to the City police or such other authority designated in writing by the City. The City will notify the Operator of any specific public safety issues or concerns of which the City has actual knowledge which may be necessary for the performance of its duties as Operator.”

**C.** Section 4.E.2. is amended so that it shall hereafter read in its entirety as follows:

“2. Capital Improvement Plan. In connection with the City budget process each year during the term of this Agreement, Operator shall submit in writing to the City proposed amendments to the 10-year Capital Improvement Plan, a component of the Airport Master Plan. The proposed amendments shall be consistent with the continuing development of the Airport in accordance with federal and state funding.”

**D.** Section 4.E.3. is amended so that it shall hereafter read in its entirety as follows:

- “3. Operating Budget. In connection with the City budget process each year during the term of this Agreement, Operator shall submit in writing to the City, for the City’s review and consideration of approval, an Operating Budget (“Operating Budget”) for the Airport for the Fiscal Year following the date of the submission. The Operating Budget shall include, but not be limited to: (i) projected costs necessary for the upkeep of the Airport, to maintain safety standards and to keep the airport in compliance with applicable federal, state, and local laws and regulations for the Fiscal Year following submission; (ii) a schedule of proposed fees; and (iii) an estimate of Airport revenues for the Fiscal Year following submission.

Operator shall also provide to the City, upon request: (i) a schedule of all leases, concessions, contracts and agreements to be negotiated or renegotiated; (ii) recommendations, if any, for non-capital improvements of Airport facilities and acquisition of equipment; (iii) a three (3) year projection of anticipated revenues and expenses; and (iv) a schedule of proposed staffing levels of full, part-time, and seasonal employees. Appropriate modification of the Airport Operating Budget shall be made as required to conform to the Approved Operating Budget (as defined in Section 4.G.2.) as adopted or amended. Operator shall manage and operate the Airport in accordance with the Operating Budget approved by the City.”

- E. Section 4.E.4. is amended so that it shall hereafter read in its entirety as follows:

- “4. Lease Plan. Operator shall, in connection with the City budget process each year during the term of this Agreement, provide to the City for its review and consideration of approval an Airport lease renewal and extension plan for the Fiscal Year following the date of the submission.”

- F. Section 4.E.5. is amended so that it shall hereafter read in its entirety as follows:

- “5. Marketing Plan. Operator shall, in connection with the City budget process each year during the term of this Agreement, provide to the City for its review and consideration of approval an Airport marketing plan (“Marketing Plan”) for the Fiscal Year following the date of the submission. Operator shall market and promote the Airport in accordance with the Marketing Plan approved by the City.”

- G. Section 4.E.6. is amended so that it shall hereafter read in its entirety as follows:

- “6. Airport Emergency Plan. Operator shall, in connection with the City budget process each year during the term of this Agreement, recommend to the City for its review and consideration of approval, amendments to the City’s Emergency Preparedness Plan, if any (the “City’s Emergency Preparedness Plan”). Additionally, Operator shall prepare and implement its own emergency plan for the Airport which shall be submitted to the City for its review and consideration

at the time the Operating Budget is submitted each year (the 'Operator's Emergency Plan').”

**H.** Section 4.E.8. is amended so that it shall hereafter read in its entirety as follows:

“8. Property Development and Management Plan. Operator shall, together with the City, coordinate the development and preparation (and updating, as may be deemed necessary by the City) of a comprehensive plan which addresses the future development and redevelopment of the Airport, taking proper consideration for the vicinity surrounding the Airport (including, without limitation, commercial development along Addison Road, City facilities and property adjacent to the Airport, the Addison Circle area, and the area adjacent to and west of the Airport), for a period of 10 years (the “Property Development and Management Plan”). The Property Development and Management Plan shall be consistent with the Airport Master Plan and FAA and TxDOT rules and regulations, and shall be submitted to the City in connection with its budget process each year during the term of this Agreement, for its review and consideration of approval.”

**I.** The Agreement is hereby amended such that all references in the Agreement to the delivery of budgets and/or plans by the Operator in connection with the City budget process shall be deemed to be due following the written notification of the budget delivery deadline by the City each Contract Year.

**J.** Section 4.G.1(b) is amended so that it shall hereafter read in its entirety as follows:

“(b) *Contract Years.* In connection with the City budget process each year during the term of this Agreement, Operator shall submit to the City a proposed operating budget for the operation, repair, maintenance, and development of the Airport for the Fiscal Year following the date of the submittal. The said budgets shall be submitted in conformance with the City Charter and any applicable rules, regulations, policies, or practices of the City. In the proposed operating budget, Operator shall show all Operating Costs (including, without limitation, all such costs which, in Operators’ judgment, are (i) mandated as a result of safety considerations, and (2) are mandated by applicable federal certifications, standards and grant agreement requirements), and may, but shall not be required, to show Real Estate Costs, Marketing Costs, or General Administrative Costs.”

**K.** Section 4.K.1.b. is amended so that it shall hereafter read in its entirety as follows:

“(b) Leasing Activity. A leasing activity report including the following:

- (i) Leasing activity (including new leases, lease renewals, lease extensions, new prospects, vacated tenants, and lease expirations);
- (ii) Tenant retention;

(iii) Information regarding the use of the Airport by aviation trade groups; and  
(iv) Such other information as the City (by and through the City Manager) may reasonably request.”

L. Section 4.K.1.c. is amended so that it shall hereafter read in its entirety as follows:

“(c) Rent Roll. A report showing with respect to each lease or through-the-fence agreement the name of each tenant or user, as the case may be, the space occupied, the rent (or other fee) payable, the date rent (or other fee) is paid through, the commencement date, the term, the termination date, the amount of security deposit held, and any other information reasonably requested by the City (including a statement identifying changes from previous rent roll if requested by the City and not appearing in the activity report). Commencing August, 2004, the rent roll report shall not be required to be submitted monthly by the Operator, but shall be delivered within ten (10) days following the City’s request for same.”

M. Section 4.P.3. is amended so that it shall hereafter read in its entirety as follows:

3. Emergency Preparedness. Operator shall have available personnel to respond to emergencies, such as fires, aircraft incidents, or disasters. Operator shall implement the Operator’s Emergency Plan and the City’s Emergency Preparedness Plan as may be prudent and necessary and respond to all emergencies at the Airport in a manner consistent with such Plans.

N. Section 5.C.4. is amended to add the following to the end of such section:

“Notwithstanding the foregoing, commencing August 1, 2004, the City shall have no obligation to purchase or replace computer equipment for use by the Operator.”

O. Section 6.B.1. is amended so that it shall hereafter read in its entirety as follows:

“1. In addition to the payment for Operating Costs, Operator shall retain a management fee (“Management Fee”) in an amount equal to 21.5144% of the first \$3,346,596 of Gross Revenue each Contract Year plus 18% of all Gross Revenue in excess of \$3,346,596 each Contract Year, which Fee is intended to compensate Operator for, among other things, Real Estate Costs, Marketing Costs, and General Administrative Costs incurred by Operator in the management, operation, and development of the Airport. The total Management Fee represents several components which aggregate to the full percentage fee level which include: 1) “Base Management Fee” equaling 10% of Gross Revenue; Real Estate Costs equaling 2% of Gross Revenue; Marketing Costs equaling 2% of Gross Revenue; and General Administrative Costs equaling 4% of Gross Revenue. In the event the City has not made sufficient funds available

to allow Operator to retain the Management Fee, the City shall pay same to the Operator no later than the 15<sup>th</sup> day of the applicable month.

The parties acknowledge and agree that, with respect to the Management Fee, the rate of 18% of all Gross Revenue was established based on the assumption that annual Gross Revenues would be a minimum of \$4,000,000.00 for the Fiscal Year commencing October 1, 2000 and ending September 30, 2001. However, if annual Gross Revenues did not equal or exceed \$4,000,000.00, it was determined that the percentage of Gross Revenues received by the Operator as the Management Fee would be adjusted, such that the percentage applied to such actual Gross Revenue would be the percentage resulting from dividing \$720,000.00 by such actual Gross Revenue. The parties agree that this adjusted percentage is 21.544% of the first \$3,346,596 of Gross Revenue, as set forth above."

**Example:**

Fiscal Year	Gross Revenue	Management Fee
2002	\$4,002,268	$(3,346,596 \times .215144) + (655,672 \times .18) = 720,000.05 + 118,020.96 = 838,021.01$
2003	\$3,761,868	$(3,346,596 \times .215144) + (415,272 \times .18) = 720,000.05 + 74,748.96 = 794,749.01$

In addition, if a delay in performance is caused by reasons described in Section 15. Force Majeure, and such delay causes the anticipated Gross Revenues collected in the applicable fiscal year to be less than \$2,000,000.00, the Management Fee shall be suspended and deferred until such time that such anticipated Gross Revenues equal or exceed \$2,000,000.00.

**P.** Section 6.C. is amended so that it shall hereafter read in its entirety as follows:

“C. Incentive Compensation. It is contemplated by the City and Operator that the Operator will be awarded incentive compensation ("Incentive Compensation") each year during the Term of this Agreement. The amount of potential Incentive Compensation that may be earned shall be established following the end of each Contract Year. Incentive Compensation has two components, the finance incentive ("Finance Incentive") and the management incentive ("Management Incentive") portion. The Finance Incentive portion includes certain financial performance based incentives, including an incentive based on the annual growth in Gross Revenue and an incentive based on revenue from through the fence operations; the Finance Incentive portion of the Incentive Compensation is more specifically set forth in Exhibit 3 attached hereto and fully incorporated herein. The Management Incentive portion of Incentive Compensation is based upon certain non-financial performance incentives, and may be awarded to

Operator based upon the City's assessment of the Operator's performance and achievements during the applicable Contract Year. To aide the City in its assessment of the Operator's performance and achievements, Operator shall submit to the City on or before October 31 of each year, an annual management report (the "Annual Management Report") which is intended to be limited in scope but sufficient enough to summarize the Operator's accomplishments and performance over the applicable Contract Year. The City shall timely evaluate the Annual Management Report and determine, based on its review of the Operator's performance, the appropriate Management Incentive to be awarded to the Operator for such Contract Year. The amount of the Management Incentive determined by the City to be payable shall be paid to Operator within ten (10) days following such determination, but in no event later than December 15 of such year."

- Q.** Section 14 is amended to change the notice address previously reflected as Raytheon Infrastructure, Inc. as follows:

"Washington Group International, Inc.  
510 Carnegie Center  
Princeton, NJ 08540  
Attn: President  
Telecopy: 609-720-2050"

**R.** Exhibit 3 to the Agreement shall be amended to read in its entirety as attached hereto and Attachment 1 and Attachment 2 to the Second Amendment to the Agreement are hereby deleted.

**Section 3. No Other Amendment.** Except as set forth in Section 2 above, nothing in this Third Amendment is intended to nor shall be construed to modify, alter, or change the Airport Management Agreement, and all other terms, conditions and obligations of the Airport Management Agreement shall remain unchanged and in full force and effect.

**Section 4. No Benefit to Third Parties.** The provisions of this Third Amendment are solely for the benefit of the City and Operator and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

**Section 5. Authority to Execute; Effective Date; Counterparts.** The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Third Amendment on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect. This Third Amendment shall be effective as of the date first set forth above. This Third Amendment may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature by a party hereto shall be treated as an original signature for purposes of this Third Amendment.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date first set forth above.

**TOWN OF ADDISON, TEXAS**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

**WASHINGTON STAUBACH ADDISON  
AIRPORT VENTURE**

By: **WASHINGTON GROUP  
INTERNATIONAL, INC.**

By: \_\_\_\_\_  
Kurt Goddard, Vice President

By: **STAUBACH AIRPORT  
MANAGEMENT, INC.**

By: \_\_\_\_\_  
Larry B. Kimbler, President

**Council Agenda Item: #R7****SUMMARY:**

This item is for the award of contracts for employee medical, dental and life insurance and long term disability for the year beginning January 1, 2006 and ending December 31, 2006.

**FINANCIAL IMPACT:**

Budgeted Amount: \$2,190,552

Cost: \$2,182,429

**BACKGROUND:**

The Town currently contracts with Blue Cross/Blue Shield of Texas for employee medical insurance, with Delta Dental for employee dental insurance, with Hartford Life Insurance for life insurance and accidental death/dismemberment and with Unumprovident for long term disability and an Employee Assistance Program. We wish to renew these contracts for plan year 2006. The rate of increase with Blue Cross/Blue Shield of Texas will be 13.8% and with Delta Dental the increase will be 6.4%. The other contracts can be renewed at the same rates as those paid in the current year.

**RECOMMENDATION:**

Staff recommends approval of contract amendments with Blue Cross/Blue Shield of Texas, Delta Dental Insurance Company, Hartford Life Insurance Company and Unumprovident, pending review and final approval by the City Attorney.



## Human Resources

**Date:** November 16, 2005

**To:** Mayor and Members of Council

**From:** Judy Stafford

**RE:** Contract Renewal with Blue Cross/Blue Shield of Texas

---

The Town currently contacts with Blue Cross/Blue Shield of Texas for employee medical insurance with two plan options, an HMO and a PPO. Our experience with BCBS during the past two years has proved to be one of high customer satisfaction and ease of administration.

Because the Town suffered several large claims in 2005, the proposed rate of premium increase to continue the same schedule of benefits in 2006 was approximately 23.8%. An employee focus group was assigned to assist us in recommending benefit plan changes that would keep proposed costs in focus with budget. Members of the group are identified by department in an attachment.

The objectives of the focus group were as follows:

- To discuss the Town's philosophy concerning employee benefit programs.
- To review the Town's competitiveness for attracting quality employees through its employee benefits.
- To review claims history and utilization trends of the current year to assist in understanding use of the plans and the reasons for an increase in costs.
- To discuss how to better manage our insurance benefits and recognize their true costs.
- To determine the health needs and expectations of employees.
- To consider the plan features valued most by employees and determine how to retain those features with a minimal increase in premium.

The group met with Human Resources staff and Benefits Consultant Gary Daigle a total of four times. On one occasion we were joined by Pete Cotting, Service Representative from BCBS. The recommendations from the focus group were HMO and PPO plans with increased costs to the employee in copay, maximum out-of-pocket expenses and prescription drugs. In the PPO plan there will also be increases in deductibles. These benefit plans have a rate increase for 2006 of 13.8%. Please see the table attached for additional comparison of the current plan and recommended plan.

**Health Insurance  
Focus Group  
2005**

City Manager	Mario Canizares
Development Services	Neil Gayden
Finance	Brian Hogan
Fire	Clyde Sanders Rick Johnson
General Services	Mark Acevedo
Human Resources	Joy Kees
Information Tech	Sheryl Donihoo
Parks/Recreation	Ricky Smith Justin Pollard
Police	Jack Burns Jeff Peterson Robert Mahoney Levi Larkin
Public Works	Jenny Nicewander Phil Kagarice
Visitor Services	Rob Bourestom

2006 Recommended Insurance Coverage

		Coverage	2005 Current Plan Biweekly Costs to Employee / Town	Renewal Costs for Same Benefits Biweekly Costs to Employee / Town	Recommended Plan Biweekly Costs to Employee / Town
<b>HMO</b>	<b>BIWEEKLY PREMIUMS</b>	HMO Employee Only	\$0 / \$152.87	\$0 / \$193.21	0 / \$178.54
		HMO Employee + Child(Children)	\$77.97 / 230.84	\$98.54 / \$291.75	\$91.06 / \$269.60
		HMO Employee + Spouse	\$126.9 / 279.77	\$160.38 / \$353.59	\$148.2 / \$326.74
		HMO Employee + Family	\$177.33 / \$330.20	\$224.13 / \$417.34	\$207.11 / \$385.65
<b>BENEFITS</b>	Lifetime Max Insurance Pays	Unlimited	Unlimited	Unlimited	
	Well Child Care & Immunizations	Insurance Pays 100%	Insurance Pays 100%	Insurance Pays 100%	
	Hospital Inpatient Copay Per Admission	\$275	\$275	\$500	
	PCP or Specialist Copay	\$15 both PCP & Spec.	\$15 both PCP & Spec.	\$20 both PCP & Spec.	
	ER Copay	\$75	\$75	\$75	
	RX Copay	\$10 - \$25 - \$40	\$10 - \$25 - \$40	\$15 - \$30 - \$45	
	Vision Copay	\$10 every 12 months	\$10 every 12 months	\$10 every 12 months	
	Max Copays You Could Pay Per Year	\$1000 Ind / \$2000 Fam	\$1000 Ind / \$2000 Fam	\$1500 Ind / \$3000 Fam	

		Coverage	2005 Current Plan Biweekly Costs to Employee / Town	Renewal Costs for Same Benefits Biweekly Costs to Employee / Town	Recommended Plan Biweekly Costs to Employee / Town
<b>PPO</b>	<b>BIWEEKLY PREMIUMS</b>	PPO Employee Only	\$0 / \$194.64	\$0 / \$229.80	0 / \$212.35
		PPO Employee + Child(Children)	\$102.02 / 296.66	\$120.44 / \$350.24	\$111.30 / \$323.64
		PPO Employee + Spouse	\$165.18 / \$359.82	\$195.00 / \$424.81	\$180.20 / \$392.55
		PPO Employee + Family	\$230.3 / \$424.95	\$271.90 / \$501.70	\$251.2 / \$463.31
<b>BENEFITS</b>	Lifetime Max Insurance Pays	\$2 Million	\$2 Million	\$2 Million	
	Well Child Care & Immunizations	Insurance Pays 100%	Insurance Pays 100%	Insurance Pays 100%	
	Calendar Year Deductible (Does not apply)	\$500 In-network / \$1000 Out	\$500 In-network / \$1000	\$500 In-network / \$1000	
	Physician Office Visit Copay (Non-surgical - Includes certain lab & x-rays)	\$15	\$15	\$20	
	Co-insurance (% Insurance Pays after any applicable deductible or copay)	90% In-network / 70% Out-of-Network	90% In-network / 70% Out-of-Network	80% In-network / 60% Out-of-Network	
	ER - Hospital Charges- You pay \$50 Copay per admittance, then insurance pays at co-insurance %	90% In-network / 70% Out-of-Network	90% In-network / 70% Out-of-Network	80% In-network / 60% Out-of-Network	
	ER Physicans Charges- Calendar Year Deductible applied, then insurance pays at co-insurance %.	90% In-network / 70% Out-of-Network	90% In-network / 70% Out-of-Network	80% In-network / 60% Out-of-Network	
	RX Copay	\$10 - \$25 - \$40	\$10 - \$25 - \$40	\$15 - \$30 - \$45	
	Vision Copay	\$15 every 12 months	\$15 every 12 months	\$15 every 12 months	
	Max In-Network Coinsurance You Could Pay Per Year (Does not include deductiblesand copays)	\$1000 Ind / \$3000 Fam	\$1000 Ind / \$3000 Fam	\$1500 Ind / \$4500 Fam	

Projected Total Monthly Cost Based on Current Enrollments

\$209,084.28

Projected Total Annual Cost Based on Current Enrollments

\$2,509,011.36

		Coverage	2005 Current Dental Plan Costs to Employee / Town	Renewal Costs for Same Benefits Biweekly Costs to Employee / Town	Recommended -Renewal for Same Benefits for 2006 Biweekly Costs to Employee / Town
<b>DENTAL</b>	<b>BIWEEKLY PREMIUMS</b>	Delta Dental Employee Only	\$0 / \$14.98		\$0 / \$15.94
		Delta Dental Employee + Child(Children)	\$8.58 / \$23.57		\$9.13 / \$25.08
		Delta Dental Employee + Spouse	\$7.05 / \$22.04		\$7.51 / \$23.45
		Delta Dental Employee + Family	\$18.46 / \$33.44		\$19.64 / \$35.58

Projected Total Monthly Cost Based on Current Enrollments

\$18,419.50

Projected Total Annual Cost Based on Current Enrollments

\$221,034.00