



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

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**REGULAR MEETING OF THE CITY COUNCIL**

**7:30 P.M.**

**NOVEMBER 11, 2008**

**TOWN HALL**

**5300 BELT LINE ROAD**

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**REGULAR SESSION**

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Item #R1 - Consideration of Old Business.

Presentation of Special Proclamation for Addison Veterans of the Armed Forces.

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Item #R2 - Consent Agenda.

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#2a - Approval of the Minutes for:

October 28, 2008, Regular City Council Meeting  
November 1, 2008, Special Meeting and Work Session

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#2b - Approval of a Contract for Services with the non-profit: Communities in Schools – Dallas.

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#2c - Approval of a Contract for Services with the non-profit: Senior Adult Services.

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#2d - Approval of a Contract for Services with the non-profit: Metrocrest Social Services.

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#2e - Approval of a Contract for Services with the non-profit: Metrocrest Family Medical Clinic.

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#2f - Approval of a Contract for Services with the non-profit: Metrocrest Chamber of Commerce.

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#2g - Approval of a Contract for Services with the non-profit: The Family Place.

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#2h - Approval of a Contract for Services with the non-profit: Special Care and Career Services.

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#2i - Approval of a Contract for Services with the non-profit: The Dance Council.

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#2j - Approval of a Contract for Services with the non-profit: Richardson Symphony Orchestra.

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#2k - Approval of a Contract for Services with the non-profit: WaterTower Theatre, Inc.

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#2l - Approval of an Agreement for Use of Addison Theatre Centre with WaterTower Theatre, Inc.

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Item #R3 - Discussion and consideration of approval to enter into a Professional Services Agreement with Freese & Nichols, Inc., in an amount not to exceed \$550,000.00, for engineering services of the proposed 1.5 Million Gallon Elevated Storage Tank.

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Attachments:

1. Council Agenda Item Overview
2. Picture of Elevated Storage Tank

Administrative Recommendation:

Administration recommends approval.

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Item #R4 - Discussion and consideration of approval of a request by SNK Realty Group at 15750 Spectrum Drive and 15800 Spectrum Drive, for an ordinance for a meritorious exception to Chapter 62, Signs, Sec. 62-285, Luminescent gaseous tubing.

Attachments:

1. Staff Report
2. Application
3. Plat w/picture
4. Staff Response to Councilmember Meier's Questions

Administrative Recommendation:

Administration recommends approval.

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Item #R5 - Discussion and consideration of approval of a request by Holiday Inn at 4355 Beltway Drive, for an ordinance for a meritorious exception to Chapter 62, Signs, Sec. 62-186, Monument signs.

Attachments:

1. Staff Report
2. Application
3. Plat w/picture

Administrative Recommendation:

Administration recommends denial.

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Item #R6 - Discussion and consideration of approval of a request by Holiday Inn at 4355 Beltway Drive, for an ordinance for a meritorious exception to Chapter 62, Signs, Sec 62-163, Area.

Attachments:

1. Staff Report
2. Application
3. Plat w/picture

Administrative Recommendation:

Administration recommends approval.

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Item #R7 - FINAL PLAT/7920-3939 Belt Line Addition, Lot 1, Block A. Discussion and consideration of approval of a final plat for one lot of .93 acres, located at the northeast corner of Belt Line Road and Commercial Drive, on application from Mr. Sepehr Parnian.

Attachments:

1. Docket Map
2. Staff report
3. Plat

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2008, voted to recommend approval of the final plat for 7920-3939 Belt Line Addition, subject to the following conditions:

1. Add a four foot (4') right-of-way dedication along Commercial Drive.
2. Add a detention area easement around the limits of the detention area with dimensions and include the detention area easement statement.
3. Abandon the 25' Building Setback along Commercial Drive by this plat.
4. Show the abstract lines.
5. Add a "Certificate of Approval" to be approved by the City Council and signed by the Mayor and City Secretary.
6. The name of the addition shown in the dedication statement does not match the name in the title block. Please revise as required.



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7. Change all references of the “City of Addison” to the “Town of Addison.”
  8. Provide a closure sheet.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay,  
Voting Nay: None  
Absent: Jandura, Wood

Administrative Recommendation:

Administration recommends approval.

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Item #R8 - **PUBLIC HEARING** Case 1563-Z/Town of Addison. Public hearing on and discussion and consideration of approval of an ordinance amending Article XIX, UC (Urban Center) District, Appendix A, Streetscape Cross-sections, in order to add two new streetscape cross sections, on application from the Town of Addison.

Attachments:

1. Public Hearing Notice
2. Staff report

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2008, voted to recommend approval of the request for an amendment to Article XIX, UC (Urban Center), Appendix A, in order to add the cross section for Airport Parkway and the cross section for Meridian Way as approved streetscape cross sections.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay  
Voting Nay: None  
Absent: Jandura, Wood

Administrative Recommendation:

Administration recommends approval.

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Item #R9 - **PUBLIC HEARING** Case 1562-Z-1/Meridian Square. Public hearing on and discussion and consideration of approval of an ordinance approving a final development plan for 48 townhomes and approximately 90 condominium units, located in the UC (Urban Center) district, Residential Subdistrict, located on 3.98 acres at the southeast corner of Airport Parkway and Quorum Drive, on application from Addison Urban Development partners, LLC, represented by Mr. Matt Alexander of Dowdey, Anderson & Associates.

Attachments:

1. Docket Map
2. Staff report
3. Plans

COMMISSION FINDINGS

The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2008, voted to recommend approval of the request for final development plan approval, subject to the following waivers and conditions for approval:

David Weekley waivers for townhomes:

Waiver of design standards in order to allow lot widths to be 16 feet as opposed to the 25 feet required by the ordinance

Waiver to design standards in order to allow depths of 45 feet as opposed to the 55 feet required by the ordinance.

Waiver to design standards in order to allow lot coverage of 100% of the lot as opposed to the 65% of the lot required by the ordinance

Waiver to design standards in order to allow a minimum three-foot setback against the Category C, (Residential) Streets (Calloway), as opposed to the five-foot setback required by the ordinance, and a waiver to design standards in order to allow a seven-foot setback against the Category D (Quorum, Spectrum, Airport Parkway) streets, as opposed to the ten-foot setback required by the ordinance.

Waiver to design standards in order to use hardi-plank siding as a siding material on an exterior façade.

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Waiver to design standards in order to use composition shingles as a roofing material.

Savannah Homes waivers for condominiums:

Waiver to the design standard for minimum width and minimum depth for a lot.

Waiver to design standards in order to allow a minimum seven-foot setback against a Category D street (Spectrum Drive), as opposed to the ten-foot setback required by the ordinance.

Waiver to design standards in order to allow for not less than 70 percent of the exterior cladding of all exterior walls fronting or visible from public streets (including above grade parking structures) be brick or stone construction.

Conditions for approval:

-Units in Block C, units 9-16, (as shown on the approved final development plan) shall be constructed using noise mitigation methods so that outside noise levels, measured within the habitable space of the dwelling unit, do not exceed 45 DNL. A certified acoustical engineer shall approve the construction plans for units 9-16 to assure they will provide a 45 DNL noise level, and a certified acoustical engineer shall inspect the units, once they are constructed, and verify that the required noise level has been attained. The applicant shall bear all costs for hiring the certified acoustical engineer.

-The tree wells on all public streets be designed to match the Fairfield Development tree wells, which include a concrete curb edge separating the pavers from the planting bed.

-The dead-end alleys shall have appropriate signage.

-A 5-foot sidewalk easement shall be added along the Spectrum Drive frontage.

-Any encroachments into the public right-of-way shall comply with Chapter 32 of the 2006 IBC and must be approved by the Public Works Department.

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-The townhomes shall comply with the requirements of the 2006 IRC. These homes are to be constructed on separate lots and the developer should be aware that Table R302.1 of the 2006 IRC limits openings and projections such as soffits and balconies in proximity to the property line. The Town does have an exception to this section if a unity agreement has been executed.

Fire hydrants shall be placed at 300-foot intervals along streets and fire lanes serving the property.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay

Voting Nay: None

Absent: Jandura, Wood

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Item #R10 - **PUBLIC HEARING** Case 1569-Z/Dallas Spine Hospital. Public hearing on and discussion and consideration of approval of an ordinance approving a Special Use Permit for a hospital in a Planned Development District, and approving development plans for a hospital in a Planned Development District, located on 11.6 acres at the southwest corner of Dallas Parkway and Excel Parkway, on application from Dallas Spine Hospital, represented by Mr. Michael Krach of Nueterra Real Estate Companies, LLC.

Attachments:

1. Docket Map
2. Staff report
3. Plans

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2008, voted to recommend approval of the Special Use Permit for a hospital in a Planned Development District, and approval of development plans for a hospital in a Planned Development District, subject to the following conditions:

-The setbacks for this property shall be as follows:

-a minimum of twenty-five (25) feet from all public rights-of-way for all hospital buildings, medical office buildings, and parking structures,

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-a minimum of twenty-five (25) feet from all interior property lines for all hospital buildings and medical office buildings,

-a minimum of twelve (12) feet from all interior property lines for all parking structures, with a 12-foot landscape buffer to be provided at all interior property lines.

-Maximum height allowed for all structures on the property shall not exceed the maximum height allowed by the Federal Aviation Administration for buildings at this location.

-The developer shall submit a checklist showing the “green” elements to be included in the building design and operation that will reduce energy consumption.

-The property shall be replatted, and the plat shall reflect an eleven (11) foot right-of-way dedication along Addison Road.

-A traffic impact analysis shall be required prior to the construction of future phases of the project.

-A deceleration lane shall be provided for the drive opening along Dallas Parkway, unless the developer provides a traffic impact analysis (approved by the City of Dallas) which indicates that the turning movements into the site do not justify a deceleration lane. All connections to Dallas Parkway shall be in accordance with the City of Dallas requirements.

-The project shall be designed so that the existing peak discharge is not increased.

-This site must be designed to handle off-site stormwater that is presently flowing across the site.

A twelve inch (12”) water line is required to be installed along Dallas Parkway with this development.

Fire hydrants must be installed at 300-foot intervals along fire lanes in approved locations.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay

Voting Nay: None

Absent: Jandura, Wood

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Administrative Recommendation:

Administration recommends approval.

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Item #R11 - Discussion and consideration of approval of an Assignment and Construction Services Agreement between the Town of Addison and UDR, Inc., for and regarding the management of the construction of Vitruvian Park Public Infrastructure – Phase I (water and sanitary sewer) within that area of the Town known generally as Vitruvian Park, in the amount of \$29,593.36.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

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Item #R12 - Discussion and consideration of approval for the award of bid to BMW Motorcycles of North Dallas in the amount of \$43,029.34, for the purchase of two (2) 2009 BMW Police Motorcycles.

Attachment:

1. Council Agenda Item Overview w/Bid Tab

Administrative Recommendation:

Administration recommends approval.

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Item #R13 - Discussion and consideration of approval to enter into an agreement with The Margulies Communication Group to assist the Town with media communications in the amount of \$42,000.00.

Attachments:

1. Council Agenda Item Overview
2. Agreement

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Administrative Recommendation:

Administration recommends approval.

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Item #R14 - Discussion and consideration of approval of an Identity Theft Prevention Program in connection with the Town of Addison's utility services.

Attachments:

1. Council Agenda Item Overview
2. Identity Theft Program
3. FTC Business Alert

Administrative Recommendation:

Administration recommends approval.

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Adjourn Meeting

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Posted:

November 7, 2008 at 5:00 P.M.

Mario Canizares - 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  
REGULAR SESSION**

October 28, 2008  
7:30 P.M. – Town Hall  
5300 Belt Line Road  
Council Chambers

Present: Mayor Chow, Councilmembers Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Absent: None

Regular Session

Item #R1 - Consideration of Old Business.

The following employees were introduced to the Council: Seth Day with the Fire Department, Lynn Chandler with the Development Services Department and Allen Schieck with the Police Department.

Item #R2 - Consent Agenda.

#2a - Approval of the Minutes for:

October 13, 2008, Special Meeting and Work Session  
October 14, 2008, Regular City Council Meeting

The Minutes for October 13, 2008, Special Meeting and Work Session were approved as written.

The Minutes for October 14, 2008, Regular City Council Meeting, were approved with the following correction for Item #2a: Change the wording “Dennis Braun” to “Tom Braun.”

Councilmember Niemann moved to duly approve Item #2a with the foregoing change.

Councilmember Mellow seconded. Motion carried.

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



Item #R3 - Presentation by Texas Department of Transportation (TxDOT) of the new LBJ Managed Lanes Project by Bob Brown, P.E., Assistant District Engineer, TxDOT, John Hudspeth, P.E., IH 635 Project Manager, TxDOT and Jack Antebi, P.E., Mobility Coordinator, Texas Transportation Institute.

Bob Brown and John Hudspeth with the Texas Department of Transportation led the presentation by Texas Department of Transportation (TxDOT) of the new LBJ Managed Lanes Project.

There was no action taken.

Item #R4 - Discussion and update regarding the establishment of an Addison Community Foundation.

Mario Canizares led the discussion and update regarding the establishment of an Addison Community Foundation.

No action was taken.

Item #R5 - Discussion and consideration of approval of an agreement with Rodney Hand & Associates Marketing Communications, LP, to advertise in the November 2008, February 2009, May 2009 and August 2009 editions of the Addison/North Dallas Corridor Guide publication.

Councilmember Mellow moved to approve an agreement with Rodney Hand & Associates Marketing Communications, LP, to advertise in the November 2008, February 2009, May 2009 and August 2009 editions of the Addison/North Dallas Corridor Guide publication, subject to the City Attorney's approval.

Councilmember Hirsch seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Voting Nay: None

Absent: None

Item #R6 - Discussion and consideration of approval of a contract with Harris Computer Systems, for the purchase and installation of a Code Enforcement, Permits & Inspections, and Business License System, in the amount of \$138,748.00, subject to the City Attorney's final approval.

Councilmember Kraft moved to duly approve a contract with Harris Computer Systems, for the purchase and installation of a Code Enforcement, Permits & Inspections, and Business License System, in the amount of \$138,748.00, subject to the City Attorney's final approval.

Councilmember Mellow seconded. Motion carried.

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

Councilmember Niemann recused himself for Item #R7 and left Council Chambers.

Item #R7- Discussion and consideration of approval of a request by SNK Realty Group for an ordinance for a meritorious exception to Chapter 62, Signs, Sec. 62-285, Luminescent gaseous tubing.

Councilmember Meier moved to table the discussion and consideration of approval of a request by SNK Realty Group for an ordinance for a meritorious exception to Chapter 62, Signs, Sec. 62-285, Luminescent gaseous tubing and bring this Item back to a later Council Meeting as a Public Hearing.

Councilmember Braun seconded. Motion carried.

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

Item failed due to a tie vote.

Councilmember Mellow moved to approve a request by SNK Realty Group for an ordinance for a meritorious exception to Chapter 62, Signs, Sec. 62-285, Luminescent gaseous tubing, subject to approval of Staff in regard to muting and coloration.

Councilmember Kraft seconded. Motion carried.

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

Item failed due to a tie vote.

Councilmember Braun moved to table the discussion and consideration of approval of a request by SNK Realty Group for an ordinance for a meritorious exception to Chapter 62, Signs, Sec. 62-285, Luminescent gaseous tubing and bring this item back to the next Council Meeting for further review, without a Public Hearing, and the applicant does not need to reapply.

Councilmember Kraft seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier and Mellow  
Voting Nay: None  
Absent: None  
Abstained: Niemann

Item passed.

Councilmember Niemann returned to Council Chambers.

Councilmember Kraft left Council Chambers.

Item #R8 - Discussion and consideration of approval of the annual contract for FY 2008 with the Trinity River Authority, in an amount not to exceed \$3,500 nor be less than \$1,500, per annum, to provide inspection, sampling and laboratory analysis on certain industries in Addison to comply with wastewater pretreatment laws as required by the EPA.

Councilmember Braun moved to duly approve the annual contract for FY 2008 with the Trinity River Authority, in an amount not to exceed \$3,500 nor be less than \$1,500, per annum, to provide inspection, sampling and laboratory analysis on certain industries in Addison to comply with wastewater pretreatment laws as required by the EPA.

Councilmember Niemann seconded. Motion carried.

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

Item #R9 - Discussion and consideration of approval of the annual contract, in the amount of \$5,751 with Dallas County Health and Human Services (DCHHS) for the Town of Addison to participate in the cost of providing selected public health services at reduced prices to Addison residents.

Councilmember Niemann moved to duly approve the annual contract, in the amount of \$5,751 with Dallas County Health and Human Services (DCHHS) for the Town of Addison to participate in the cost of providing selected public health services at reduced prices to Addison residents.

Councilmember Mellow seconded. Motion carried.

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

Councilmember Kraft returned to Council Chambers.

Item #R10 - Discussion and consideration of approval of the First Amendment to Rooftop Telecommunications License Agreement between GPI Spectrum, LLC and the Town of Addison providing for a five year extension of a license agreement for rooftop space at Spectrum Center located at 5080 Spectrum Drive for installation and operation of infrastructure equipment to support the public safety radio simulcast system, with an annual license fee of \$17,389.20.

Councilmember Kraft moved to approve the First Amendment to Rooftop Telecommunications License Agreement between GPI Spectrum, LLC and the Town of Addison providing for a five year extension of a license agreement for rooftop space at Spectrum Center located at 5080 Spectrum Drive for installation and operation of infrastructure equipment to support the public safety radio simulcast system, with an annual license fee of \$17,389.20.

Councilmember Niemann seconded. Motion carried.

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

Item # R11 - Discussion and consideration of approval of a professional service agreement between the Town of Addison and Halff Associates, Inc., in an amount not to exceed \$87,000.00, for preparation of Phase I of a Stormwater Masterplan for the Town of Addison.

Councilmember Niemann moved to duly approve a professional service agreement between the Town of Addison and Halff Associates, Inc., in an amount not to exceed \$87,000.00, for preparation of Phase I of a Stormwater Masterplan for the Town of Addison, subject to the City Manager's approval.

Councilmember Mellow seconded. Motion carried.

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

Item #R12 - Discussion and consideration of approval to enter into an agreement with Kleinfelder in the amount of \$755,000.00 for Construction Inspection and Materials Testing service for the Vitruvian Park Infrastructure in accordance with the Master Facilities Agreement for Vitruvian Park.

Councilmember Braun moved to duly approve an agreement with Kleinfelder in the amount of \$755,000.00 for Construction Inspection and Materials Testing service for the Vitruvian Park Infrastructure in accordance with the Master Facilities Agreement for Vitruvian Park, subject to the City Attorney's approval.

Councilmember Kraft seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Voting Nay: None

Absent: None

Item #R13 - Discussion and consideration of approval of (i) a Contract for Services with each of the following non-profit entities: Communities in Schools–Dallas, Senior Adult Services, Metrocrest Social Services, Metrocrest Family Medical Clinic, Metrocrest Chamber of Commerce, The Family Place, Special Care and Career Services, The Dance Council, Richardson Symphony Orchestra, and WaterTower Theatre, Inc., and (ii) an Agreement for Use of the Addison Theatre Centre with WaterTower Theatre, Inc.

This Item was tabled until a future City Council Meeting.

Item #R14 - Discussion and consideration of approval of a resolution of the Town of Addison, Texas, authorizing the Cities Aggregation Power Project, Inc. (CAPP), to negotiate an electric supply agreement for deliveries of electricity and necessary, related services effective January 1, 2009; approving CAPP contracting with FPL Energy and Direct Energy for the supply of electric power and related, necessary services for the City for a term to begin January 1, 2009 and extending up to December 31, 2013, and providing for other matters related thereto.

Councilmember Niemann moved to duly approve a resolution of the Town of Addison, Texas, authorizing the Cities Aggregation Power Project, Inc. (CAPP), to negotiate an electric supply agreement for deliveries of electricity and necessary, related services effective January 1, 2009; approving CAPP contracting with FPL Energy and Direct Energy for the supply of electric power and related, necessary services for the City for a term to begin January 1, 2009 and extending up to December 31, 2013, and providing for other matters related thereto.

Councilmember Mellow seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Meier, Mellow and Niemann

Voting Nay: None

Absent: None

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

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Mayor-Joe Chow

Attest:

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City Secretary-Mario Canizares

**OFFICIAL ACTIONS OF SPECIAL MEETING AND WORKSESSION  
OF THE CITY COUNCIL**

November 1, 2008  
9:00 A.M.  
Addison Service Center  
16801 Addison Road

Present: Mayor Chow, Councilmembers Braun, Meier, Mellow and Niemann

Absent: Councilmembers Hirsch and Kraft

Other Attendees:

Bob Brewster  
Tom Hunse  
Albert Jandura  
Kimberly Lay  
Cole Snadon  
Darrell Snadon  
Mark Sommers  
Lynn Stofer  
Alan Wood

#S1 -Discussion regarding How Addison Will Structure and Pursue Its Economic Development Efforts.

Todd Meier led the discussion regarding How Addison Will Structure and Pursue Its Economic Development Efforts.

No action was taken.

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

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Mayor-Joe Chow

Attest:

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City Secretary-Mario Canizares

STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2008 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 2008 through the 30th day of September 2009, 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 and Montgomery Primary School in the Carrollton-Farmers Branch I.S.D. aimed at providing students with supportive guidance and counseling, educational enhancement opportunities, cultural 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 and two (2) professional staff to the Montgomery Primary School 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) continue mobilization of the 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 1, 2009, 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.

(b) ***INDEMNITY OWED BY COMMUNITIES IN SCHOOLS.*** Communities in Schools covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (1) the Services as described in Section II of this Contract; (2) representations or warranties by Communities



in Schools under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Communities in Schools, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Communities in Schools, or any other person or entity for whom Communities in Schools is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Communities in Schools shall promptly advise the City in writing of any claim or demand against any Addison Person or Communities in Schools related to or arising out of Communities in Schools' activities under this Contract and shall see to the investigation and defense of such claim or demand at Communities in Schools' sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Communities in Schools of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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, 2008, with the last quarter ending September 30, 2009), 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 Communities in Schools 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. Communities In Schools is an independent contractor, and 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, or to allow the City to exercise discretion or control over the manner in which Communities in Schools performs the services which are described in this Contract.

#### **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; RECITALS**

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. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

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

In the event of any action under this Contract, exclusive 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 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: *[Signature]* 11-4-08  
Sandra Chavarria, President & CEO

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, City Secretary

By: *Margaret R. Sankus* 11-4-08  
MARGARET R. SANKUS  
(printed name)  
Its: *Executive Assistant*

Document comparison by Workshare Professional on Monday, October 27, 2008  
8:13:21 AM

Input:	
Document 1 ID	PowerDocs://CTDALLAS/1356145/4
Description	CTDALLAS-#1356145-v4- Communities_in_Schools_Agreemement_-_2008_/_2009
Document 2 ID	PowerDocs://CTDALLAS/1357037/1
Description	CTDALLAS-#1357037-v1- communities_in_schools_revised_(from_communities)_- _for_comparison_only
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	7
Deletions	7
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	14

STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2008 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, 2008 through September 30, 2009, 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 Seventeen Thousand and No/100 Dollars (\$17,000.00). Such sum shall be paid on or before January 1, 2009, 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.

(b) ***INDEMNITY OWED BY SENIOR ADULT SERVICES.*** Senior Adult Services covenants and agrees to **FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS** the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an **“Addison Person”** and collectively the **“Addison Persons”**), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the **“Claims”**), that arise out of, result from, or relate to: (1) the Services as described in Section II of this Contract; (2) representations or warranties by Senior Adult Services under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Senior Adult Services, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Senior Adult Services, or any other person or entity for whom Senior Adult Services is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. **SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

Senior Adult Services shall promptly advise the City in writing of any claim or demand against any Addison Person or Senior Adult Services related to or arising out of Senior Adult Services' activities under this Contract and shall see to the investigation and defense of such claim or demand at Senior Adult Services' sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Senior Adult Services of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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, 2008, with the last quarter ending September 30, 2009), 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. Senior Adult Services is an independent contractor, and 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, or to allow the City to exercise discretion or control over the manner in which Senior Adult Services performs the services which are described in this Contract.

#### **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; RECITALS**

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. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

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

In the event of any action under this Contract, exclusive 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 City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Senior Adult Services' address:

Gregory Gerendas  
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**

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

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

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, City Secretary

By: \_\_\_\_\_  
Gregory Gerendas, Executive Director

ATTEST:

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

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

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2008 by and between the Town of Addison, Texas (the "City") and Metrocrest Social Services ("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, 2008 through the 30th day of September, 2009, 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 Services.
  
- (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 Twenty-five Thousand and No/100 Dollars (\$25,000.00). Such sum shall be paid on or before January 1, 2009, provided Metrocrest is not then in default of this Contract.

### IV. INDEMNIFICATION

(a) METEROCREST 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.

(b) ***INDEMNITY OWED BY METROCREST SOCIAL SERVICES.*** Metrocrest Social Services covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (1) the Services as described in Section II of this



**Contract; (2) representations or warranties by Metrocrest Social Services under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Metrocrest Social Services, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Metrocrest Social Services, or any other person or entity for whom Metrocrest Social Services is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

Metrocrest Social Services shall promptly advise the City in writing of any claim or demand against any Addison Person or Metrocrest Social Services related to or arising out of Metrocrest Social Services' activities under this Contract and shall see to the investigation and defense of such claim or demand at Metrocrest Social Services' sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Metrocrest Social Services of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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.0

## **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's 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, 2008, with the last quarter ending September 30, 2009), 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 Metrocrest 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. Metrocrest is an independent contractor, and 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, or to allow the City to exercise discretion or control over the manner in which Communities in Schools performs the services which are described in this Contract.

#### **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; RECITALS**

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. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

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

In the event of any action under this Contract, exclusive 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 City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Metrocrest's address:

Bunny Summerlin  
Executive Director  
Metrocrest Social Services  
1111 W. Beltline 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 SERVICES**

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

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

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, City Secretary

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

STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2008 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, 2008 through the 30th day of September, 2009, 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) Provision of evening medical clinics, staffed by volunteer personnel, which provide medical attention to the residents of our service area who would otherwise not be able to receive treatment of episodic medical attention;

(c) Address orientation of each individual client with sudden loss of medical insurance benefits to resources to meet their often complex medical needs;

(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 Three Thousand and No/100 Dollars (\$3,000.00). Such sum shall be paid on or before January 1, 2009, 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.

(b) ***INDEMNITY OWED BY METROCREST FAMILY MEDICAL CLINIC.*** Metrocrest Family Medical Clinic covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (1) the Services as described in Section II of this Contract; (2) representations or warranties by Metrocrest Family Medical Clinic under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Metrocrest Family Medical Clinic, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Metrocrest Family Medical Clinic, or any other person or entity for whom Metrocrest Family Medical Clinic is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY

**ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

Metrocrest Family Medical Clinic shall promptly advise the City in writing of any claim or demand against any Addison Person or Metrocrest Family Medical Clinic related to or arising out of Metrocrest Family Medical Clinic' activities under this Contract and shall see to the investigation and defense of such claim or demand at Metrocrest Family Medical Clinic' sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Metrocrest Family Medical Clinic of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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, 2008, with the last quarter ending September 30, 2009), 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 Metrocrest Family Medical Clinic 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. Metrocrest Family Medical Clinic is an independent contractor, and 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, or to allow the City to exercise discretion or control over the manner in which Metrocrest Family Medical Clinic performs the services which are described in this Contract.

#### **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; RECITALS**

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. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

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

In the event of any action under this Contract, exclusive 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 City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Metrocrest Family Medical Clinic's  
address:

Jane Wood Hawkins  
Executive Director  
Metrocrest Family Medical Clinic  
Plaza 1, Suite 140, One Medical Center  
Farmers Branch, Texas 75234

#### **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: \_\_\_\_\_  
Jane Wood Hawkins, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, 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, 2008 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 2008 through the 30th day of September 2009, 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 for companies seeking expansion or relocation assistance.
2. Economic Development convention participation.
3. Existing business retention support through established Chamber programs.
4. Import/Export assistance to Metrocrest businesses in foreign markets.
5. Resource materials - publishing of new (updated) Economic Development resource materials.
6. Engagement in legislative affairs including:
  - (a) identification and publication of key legislative priorities

- (b) collaboration with city and school district lobbying efforts
  - (c) participation in area events in Austin
  - (d) ongoing legislative “alerts” and other communications
7. Continuation of a recent strategic planning program, which identified pursuit of Transit Oriented Development. This seeks a meaningful role to help expedite the extension of DART rail to the City, as well as to help the Cities of Farmers Branch and Carrollton capitalize on business development opportunities created by the extension of the DART light rail through those communities.

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 1, 2009, 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.

(b) ***INDEMNITY OWED BY THE CHAMBER.*** The Chamber covenants and agrees to **FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS** the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an **“Addison Person”** and collectively the **“Addison Persons”**), from and against any and all

**costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (1) the Services as described in Section II of this Contract; (2) representations or warranties by the Chamber under this Contract; and/or (3) any other act or omission under or in performance of this Contract by the Chamber, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for the Chamber, or any other person or entity for whom the Chamber is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

The Chamber shall promptly advise the City in writing of any claim or demand against any Addison Person or the Chamber related to or arising out of the Chamber's activities under this Contract and shall see to the investigation and defense of such claim or demand at the Chamber's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving the Chamber of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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, 2008, with the last quarter ending September 30, 2009), 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 Chamber 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. The Chamber is an independent contractor, and 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, or to allow the City to exercise discretion or control over the manner in which the Chamber performs the services which are described in this Contract.

#### **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; RECITALS**

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. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

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

In the event of any action under this Contract, exclusive 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 City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Chamber's address:

Greg Vaughn  
President  
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: \_\_\_\_\_  
Greg Vaughn, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, City Secretary

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

STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2008 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, 2008 through the 30th day of September, 2009, 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 1, 2009, 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.

(b) ***INDEMNITY OWED BY THE FAMILY PLACE.*** The Family Place covenants and agrees to **FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS** the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an **“Addison Person”** and collectively the **“Addison Persons”**), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the **“Claims”**), that arise out of, result from, or relate to: (1) the Services as described in Section II of this Contract; (2) representations or warranties by The Family Place under this Contract; and/or (3) any other act or omission under or in performance of this Contract by The Family Place, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for The Family Place, or any other person or entity for whom The Family Place is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. **SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

The Family Place shall promptly advise the City in writing of any claim or demand against any Addison Person or The Family Place related to or arising out of The Family Place's activities under this Contract and shall see to the investigation and defense of such claim or demand at The Family Place's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving The Family Place of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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, 2008, with the last quarter ending September 30, 2009), 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 The Family Place 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. The Family Place is an independent contractor, and 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, or to allow the City to exercise discretion or control over the manner in which The Family Place performs the services which are described in this Contract.

### **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; RECITALS**

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. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

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



In the event of any action under this Contract, exclusive 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 City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

The Family Place's address:

Paige 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: \_\_\_\_\_  
Paige Flink, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, City Secretary

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

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2008 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, 2008 through the 30th day of September, 2009, 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) Use the funds paid to Special Care and Career Services pursuant to this Contract for services provided to children and adults who receive services in Addison only; and

(d) 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

(e) Continuation of the Early Childhood Intervention program (ECI), which help babies and toddlers, birth to age three, with autism, spina bifida, Down syndrome, cerebral palsy, and other disabilities and developmental potential and improve their ability to be successful in school; and

(f) Provide services for clients that include career assessment; placement in jobs that match up their skills to the needs of the employers; on the job training; and ongoing support to ensure our clients' success; and

(g) 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 1, 2009, 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.

(b) ***INDEMNITY OWED BY SPECIAL CARE AND CAREER SERVICES.*** Special Care and Career Services covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an “Addison Person” and collectively the “Addison Persons”), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the “Claims”), that arise out of, result from, or relate to: (1) the Services as described in Section II of this Contract; (2) representations or warranties by Special Care and Career Services under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Special Care and Career Services, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Special Care and Career Services, or any other person or entity for whom Special Care and Career Services is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Special Care and Career Services shall promptly advise the City in writing of any claim or demand against any Addison Person or Special Care and Career Services related to or arising out of Special Care and Career Services' activities under this Contract and shall see to the investigation and defense of such claim or demand at Special Care and Career Services' sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Special Care and Career Services of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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's 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, 2008, with the last quarter ending September 30, 2009), 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 Provider 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. Provider is an independent contractor, and 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, or to allow the City to exercise discretion or control over the manner in which Provider performs the services which are described in this Contract.

### **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; RECITALS**

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. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

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

In the event of any action under this Contract, exclusive 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 City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Provider' address:

Cathy Packard  
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: \_\_\_\_\_  
Cathy Packard, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, 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, 2008 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, 2008 through the 30th day of September, 2009, except as otherwise provided for herein.

**II. SERVICES**

The Dance Council shall provide the following services to the City:

(a) Provide participation in Addison Urbanato: A Kaleidoscope of Art, Music, Culture, and Fun in October 2009, with participation details to be determined with the Town of Addison during the City's 2008-2009 fiscal year.

(b) 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 a Sunday afternoon festival in August 2009, on dates and at times to be decided. Dance

themes addressed in the lecture/demonstrations shall include the following or items like the following:

**-Elledanceworks - Modern Dance**

Elledanceworks Dance Company: visceral, gritty, moving - a non-profit 501(c)(3) organization bringing quality modern dance and choreography to the metroplex and beyond for the last ten years.

**-Contemporary Ballet Dallas – Contemporary Ballet**

CBD was founded by SMU alumni looking to revitalize dance in Dallas. Our progressive, diverse style combines ballet with modern movement and music to bring dance to audiences like they've never seen it before.

**-Legacy Tap Project - Tap**

Legacy Tap Project was established for the purpose of preserving historical tap choreography through education, documentation, and performance.

**-North Texas Middle Eastern Dance Association - Bellydance**

The NTMEDA, a nonprofit organization, is a collective of Middle Eastern, performing troupes, independent artists, teachers, students, choreographers, dance enthusiasts, musicians, and businesses.

(c) 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.

(d) 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.

(e) 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).

(f) 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).

(g) 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 Seven Thousand and No/100 Dollars (\$7,000.00). Such sum shall be paid on or before April 9, 2009, 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.

(b) ***INDEMNITY OWED BY DANCE COUNCIL.*** Dance Council covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an “Addison Person” and collectively the “Addison Persons”), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the “Claims”), that arise out of, result from, or relate to: (1) the Services as defined in Section II of this Contract; (2) representations or warranties by Dance Council under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Dance Council, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Dance Council, or any other person or entity for whom Dance Council is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

Dance Council shall promptly advise the City in writing of any claim or demand against any Addison Person or Dance Council related to or arising out of Dance Council's activities under this Contract and shall see to the investigation and defense of such claim or demand at Dance Council's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Dance Council of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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, 2008, with the last quarter ending September 30, 2009), 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. The Dance Council In Schools is an independent contractor, and 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, or to allow the City to exercise discretion or control over the manner in which the Dance Council performs the services which are described in this Contract.

#### **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, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY LIABILITY, CLAIMS, OR DAMAGES (INCLUDING BUT NOT LIMITED TO COURT COSTS AND 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; RECITALS**

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. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

## **XIV. VENUE; GOVERNING LAW**

In the event of any action under this Contract, exclusive 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 City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Dance Council's address:

Ralph Blackburn  
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: \_\_\_\_\_  
Ralph Blackburn, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, City Secretary

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

STATE OF TEXAS

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CONTRACT FOR SERVICES

COUNTY OF DALLAS

This Contract for Services ("Contract")\_ is made and entered into as of the 1st day of October, 2008 by and between the Town of Addison, Texas (the "City"), and the Richardson Symphony Orchestra (the "Orchestra").

**WITNESSETH:**

**WHEREAS**, the Orchestra is a private, non-profit organization established under the laws of the State of Texas for the purpose of providing concerts of great music and educational opportunities for adults and children within the Dallas region; and

**WHEREAS**, the Orchestra'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, without limitation, music; 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, music, and desires to encourage and promote the arts (including music) 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 Richardson Symphony Orchestra 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, 2008 through the 30th day of September, 2009, except as otherwise provided for herein.

**II. SERVICES**

The Orchestra shall provide the following services:

(a) Provide participation in Addison Urbanato: A Kaleidoscope of Art, Music, Culture, and Fun in October 2009, with participation details to be determined with the Town of Addison during the City's 2008-2009 fiscal year.

(b) Provide free chamber music concerts featuring ensembles made up of the principal players in the Richardson Symphony for a variety of businesses and retail locations around the Town;



(c) Continuation of RSO players to perform at multiple times at venues ranging from the Spectrum and Colonnade office buildings to Town Hall to the Crowne Plaza and Marriott Quorum hotels, to Dunn Brothers Coffee House and restaurants such as Chamberlain's and Truluck's;

(d) Performance of the string and brass players from the orchestra in June at Symphonic Saturdays at Esplanade Park;

(e) Provide effective follow-up reporting to the City through quarterly financial and service reports to indicate the numbers served;

(f) Provide an annual audit of financial condition to the City; and

(g) 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 Orchestra as described herein, the City shall pay the Orchestra the sum of Thirty Thousand and No/100 Dollars (\$30,000.00). Such sum shall be paid on a per service basis with each payment due on or before the performance date for each service, provided Orchestra is not then in default of this Contract.

### IV. RESPONSIBILITY; INDEMNIFICATION

(a) ORCHESTRA 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 ORCHESTRA 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.

(b) ***INDEMNITY OWED BY RICHARDSON SYMPHONY ORCHESTRA.*** Richardson Symphony Orchestra covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an "Addison Person" and collectively the "Addison Persons"), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the "Claims"), that arise out of, result from, or relate to: (1) the Services as described in Section II of this Contract; (2) representations or warranties by Richardson



**Symphony Orchestra under this Contract; and/or (3) any other act or omission under or in performance of this Contract by Richardson Symphony Orchestra, or any owner, officer, director, manager, employee, agent, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, customer, or concessionaire of or for Richardson Symphony Orchestra, or any other person or entity for whom Richardson Symphony Orchestra is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

Richardson Symphony Orchestra shall promptly advise the City in writing of any claim or demand against any Addison Person or Richardson Symphony Orchestra related to or arising out of Richardson Symphony Orchestra' activities under this Contract and shall see to the investigation and defense of such claim or demand at Richardson Symphony Orchestra' sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving Richardson Symphony Orchestra of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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 Orchestra has failed at the time of such cancellation and termination to provide all of the services set forth herein, Orchestra shall refund to the City that portion of funds paid to the Orchestra under the terms of this Contract in accordance with the following: Prorata funding returned to the City by Orchestra 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 Orchestra 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, Orchestra shall submit for the City's review a budget showing the use of the City's funds provided pursuant to this Contract, and Orchestra shall make such periodic reports to the City, as provided for herein, listing the expenditures made by Orchestra from the funds provided by the City. The approval of Orchestra's annual budget creates a fiduciary duty in Orchestra with respect to the funds provided by the City under this Contract.

The funds paid to Orchestra 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.

Orchestra 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, 2008, with the last quarter ending September 30, 2009), Orchestra shall provide the City the following: (a) a detailed financial report for the previous quarter listing the expenditures made by Orchestra of the funds paid to Orchestra under this Contract; and (b) a year-to-date report of the expenditures made by Orchestra of the funds paid to Orchestra under this Contract (and if this Contract is terminated prior to its expiration, Orchestra 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, Orchestra 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 Orchestra's fiscal year, Orchestra shall provide the City with a financial statement signed by the Chairman of Orchestra's Board of Directors (or other person acceptable to the City) and audited by an independent Certified Public Accountant, setting forth Orchestra'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 Orchestra is that of independent contractor, and the City and Orchestra by the execution of this Contract do not change the independent status of Orchestra. Orchestra is an independent contractor, and no term or provision of this Contract or action by Orchestra in the performance of this Contract is intended nor shall be construed as making Orchestra the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to



allow the City to exercise discretion or control over the manner in which Orchestra performs the services which are described in this Contract.

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

Orchestra 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 Orchestra 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**

Orchestra 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 Orchestra's performances, transmissions or broadcasts, and ORCHESTRA, without limiting any other indemnity given by Orchestra as set forth herein, AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY LIABILITY, CLAIMS, OR DAMAGES (INCLUDING BUT NOT LIMITED TO COURT COSTS AND ATTORNEY'S FEES) GROWING OUT OF DANCE ORCHESTRA'S 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, Orchestra 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; RECITALS**

Orchestra 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. The above and foregoing recitals to this Contract are true and correct and are incorporated herein and made a part hereof.



#### **XIV. VENUE; GOVERNING LAW**

In the event of any action under this Contract, exclusive 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 Orchestra 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 City Manager  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

Orchestra's address:

George Landis  
President/Executive Director  
Richardson Symphony Orchestra  
2100 North Collins Boulevard, Suite 310  
Richardson, TX 75081

#### **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 Orchestra 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 Orchestra.



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**

**RICHARDSON SYMPHONY  
ORCHESTRA**

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

By:   
George Landis, Executive Director

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, City Secretary

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

STATE OF TEXAS

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**CONTRACT FOR SERVICES**

COUNTY OF DALLAS

This Contract for Services ("Contract") is made and entered into as of the 1st day of October, 2008 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, 2008 through the 30th day of September, 2009, except as otherwise provided for herein.

**II. SERVICES**

WTT shall provide the following services:

(a) Provide participation in Addison Urbanato: A Kaleidoscope of Art, Music, Culture, and Fun in October 2009, with participation details to be determined with the Town of Addison during the City's 2008-2009 fiscal year.

(b) Presentation of five (5) main stage productions, two (2) holiday productions, and The Out of the Loop Festival, or such other productions as the Town may agree is appropriate following consultation with WTT.

(c) Recognition of the Town in all playbills printed in connection with the productions.

(d) Work with all hotels located in the Town to generate awareness regarding the theatre.

(e) 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 Forty Thousand and No/100 Dollars (\$240,000.00) "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 January 1, 2009. 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 ANY OF ITS OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, MEMBERS, AGENTS, SERVANTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, VOLUNTEERS, CUSTOMERS, AND CONCESSIONAIRES (IN THE CAPACITY AS OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, MEMBER, AGENT, SERVANT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, VOLUNTEER, CUSTOMER, OR CONCESSIONAIRE OF OR FOR WTT), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(b) ***INDEMNITY OWED BY WTT.*** WTT covenants and agrees to **FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS** the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of

Addison, Texas, individually or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas each being an “Addison Person” and collectively the “Addison Persons”), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the “Claims”), that arise out of, result from, or relate to: (1) the Services as described in Section II of this Contract; (2) representations or warranties by WTT under this Contract; and/or (3) any other act or omission under or in performance of this Contract by WTT, or any owner, officer, director, manager, employee, member, agent, servant, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, volunteer, customer, or concessionaire of or for WTT (in the capacity as owner, officer, director, manager, employee, member, agent, servant, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, volunteer, customer, or concessionaire of or for WTT), or any other person or entity for whom WTT is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, , invitees, patrons, guests, customers, and concessionaires. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However when damages arise out of the sole or co-negligence of an Addison Person or Persons, WTT’s liability under this clause shall be reduced by that portion of the total amount of the damages (excluding defense fees and costs) equal to the Addison Person or Persons’ proportionate share of the negligence that caused the loss. Likewise, WTT’s liability for Addison Person’s defense costs and attorneys’ fees shall be reduced by that portion of the defense costs and attorneys’ fees equal to Addison Person or Persons’ proportionate share of the negligence that caused the loss.

WTT shall promptly advise the City in writing of any claim or demand against any Addison Person or WTT related to or arising out of WTT's activities under this Contract and shall see to the investigation and defense of such claim or demand at WTT's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons’ option and at own expense, to participate in such defense without relieving WTT of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Contract, shall survive the termination or expiration 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, 2008, with the last quarter ending September 30, 2009), 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. WTT is an independent contractor, and 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, or to allow the City to exercise discretion or control over the manner in which WTT performs the services which are described in this Contract.

### **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 CITY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY LIABILITY, CLAIMS, OR DAMAGES (INCLUDING BUT NOT LIMITED TO COURT COSTS AND 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; RECITALS**

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. The above and foregoing recitals to this Contract are true and correct and incorporated herein and made a part hereof.

## **XIV. VENUE; GOVERNING LAW**

In the event of any action under this Contract, exclusive 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:

WTT’s address:

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

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: \_\_\_\_\_  
Mario Canizares, City Secretary

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

EXHIBIT "A"  
TO  
2008-2009 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, 2009) 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 2008-2009 WTT season tickets sold by WTT on or before November 15, 2008, 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 \$109.00.

**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 WTT’s administrative activities, and set out on the plans, as attached Exhibit A denoted in red, as such space may be increased on the reasonable request of WTT and with the reasonable approval of the TOWN.

(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, which schedules may be updated from time to time upon prior written notice from WTT to the TOWN and the Town's approval of such updated schedules. 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 2008, and continuing until September 30, 2009, unless the term is extended or 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 business 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 2008-2009 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, 2009, and ending September 30, 2010, 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
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(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. The sole exception will be during non-performance times when bottled water with a lid may be brought into the main performance space. However, no liquid may be stored or consumed in the vicinity of any electronic equipment.

(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 with the TABC (Texas Alcoholic Beverage Commission) 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 in connection with WTT performances.

(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, 2008, and the last such installment is due and payable on or before October 15, 2009 (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, by providing WTT at least 45 days prior written notice of the change. 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 shall pay a rental fee on a monthly basis for the use of furniture and furnishings owned by the TOWN. This rental amount shall be included within the office rental fee described in subsection (a) of this Section. Exhibit D attached to this Agreement and incorporated herein lists all office furniture and decorative items owned by the TOWN and rented to WTT. This list may be amended from time to time, and such amendment may result in a change in the rental fee. All items used by WTT will continue to be the sole property of the TOWN and, with at least 60 days notice from the TOWN to WTT, shall be returned to the TOWN in the condition rented, with normal wear and tear.

## 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, sound and lighting 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; provided that if WTT reasonably cancels any performance solely for and as the direct result of the TOWN's failure to provide any of the foregoing resources, and provided evidence of such cancellation by WTT and failure to provide such resources by the TOWN (which evidence shall be in form and content reasonably satisfactory to the TOWN) is promptly provided to the TOWN following such cancellation, WTT will have no obligation to pay the performance space rental fee amounts to the TOWN required pursuant to this Agreement in connection with the cancelled performance.

## **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. Should such a modification be made by the TOWN, the TOWN will provide WTT written notice and 30 days to make the necessary modifications (or such longer period of time as WTT may require to make the necessary modifications, provided WTT shall at all times pursue such modifications with all due diligence and continuity).

(i) *Workers’ Compensation* as required by law; *Employers Liability Insurance* of not less than \$100,000 for each accident.

(ii) *Commercial 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 from 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; TOWN SPECIAL EVENTS**

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, and notice of such Special Events will be made available to WTT (which notice may be made available by means or methods other than as set forth in Section 21 of this Agreement) at the earliest reasonable opportunity as determined by the TOWN.

#### **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**

##### **ASSUMPTION OF RESPONSIBILITY; 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 (I) THE PERFORMANCE OF SERVICES PERFORMED AND TO BE PERFORMED HEREUNDER, OR (II) THE OCCUPATION AND USE OF THE THEATRE CENTRE PURSUANT TO THIS AGREEMENT, BY WTT OR BY ANY OF ITS OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, MEMBERS, AGENTS, SERVANTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, VOLUNTEERS, CUSTOMERS, AND CONCESSIONAIRES (IN THE CAPACITY AS OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, MEMBER, AGENT, SERVANT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, VOLUNTEER, CUSTOMER, OR CONCESSIONAIRE OF OR FOR WTT), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

**(b) INDEMNITY OWED BY WTT.** WTT covenants and agrees to FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, individually and/or collectively, in both their official and private capacities (the Town of Addison, Texas and the elected officials, the officers, employees, representatives, and volunteers of the Town of Addison, Texas, each being an “Addison Person” and collectively the “Addison Persons”), from and against any and all costs, claims, liens, harm, damages, losses, expenses, fees, fines, penalties, proceedings, judgments, actions, demands, causes of action, liability, and suits, of any kind and nature whatsoever made upon any Addison Person, whether directly or indirectly, (the “Claims”), that arise out of, result from, or relate to: (1) the use and occupancy of the Theatre Centre by WTT or by any owner, officer, director, manager, employee, member, agent, servant, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, volunteer, customer, or concessionaire of or for WTT (in the capacity as owner, officer, director, manager, employee, member, agent, servant, representative, consultant, contractor, subcontractor, licensee, invitee, patron, guest, volunteer, customer, or concessionaire of or for WTT), or any other person or entity for whom WTT is legally responsible, and their respective owners, officers, directors, managers, employees, agents, representatives, consultants, contractors, subcontractors, licensees, and concessionaires (collectively, “WTT Persons”), (2) representations or warranties by WTT under this Agreement; and/or (3) any other act or omission under, in performance of, or in connection with this Agreement by WTT or by any of the WTT Persons. SUCH INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS FOUND TO HAVE BEEN CAUSED IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However when damages arise out of the sole or co-negligence of an Addison Person or Persons, WTT’s liability under this clause shall be reduced by that portion of the total amount of the damages (excluding defense fees and costs) equal to the Addison Person or Persons’ proportionate share of the negligence that caused the loss. Likewise, WTT’s liability for Addison Person’s defense costs and attorneys’ fees shall be reduced by that portion of the defense costs and attorneys’ fees

**equal to Addison Person or Persons' proportionate share of the negligence that caused the loss.**

WTT shall promptly advise the TOWN in writing of any claim or demand against any Addison Person or WTT related to or arising out of WTT's activities under this Agreement and shall see to the investigation and defense of such claim or demand at WTT's sole cost and expense. The Addison Persons shall have the right, at the Addison Persons' option and at own expense, to participate in such defense without relieving WTT of any of its obligations hereunder.

The provisions of this defense, indemnity, and hold harmless obligation, and any other defense, indemnity, and hold harmless obligation set forth in this Agreement, shall survive the termination or expiration of this Agreement.

## **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 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. 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.

## **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, 2008 as approved by the parties hereto.

**TOWN OF ADDISON, TEXAS**

**WATERTOWER THEATRE, INC.**

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

By: \_\_\_\_\_  
Terry Martin, Producing Artistic Director

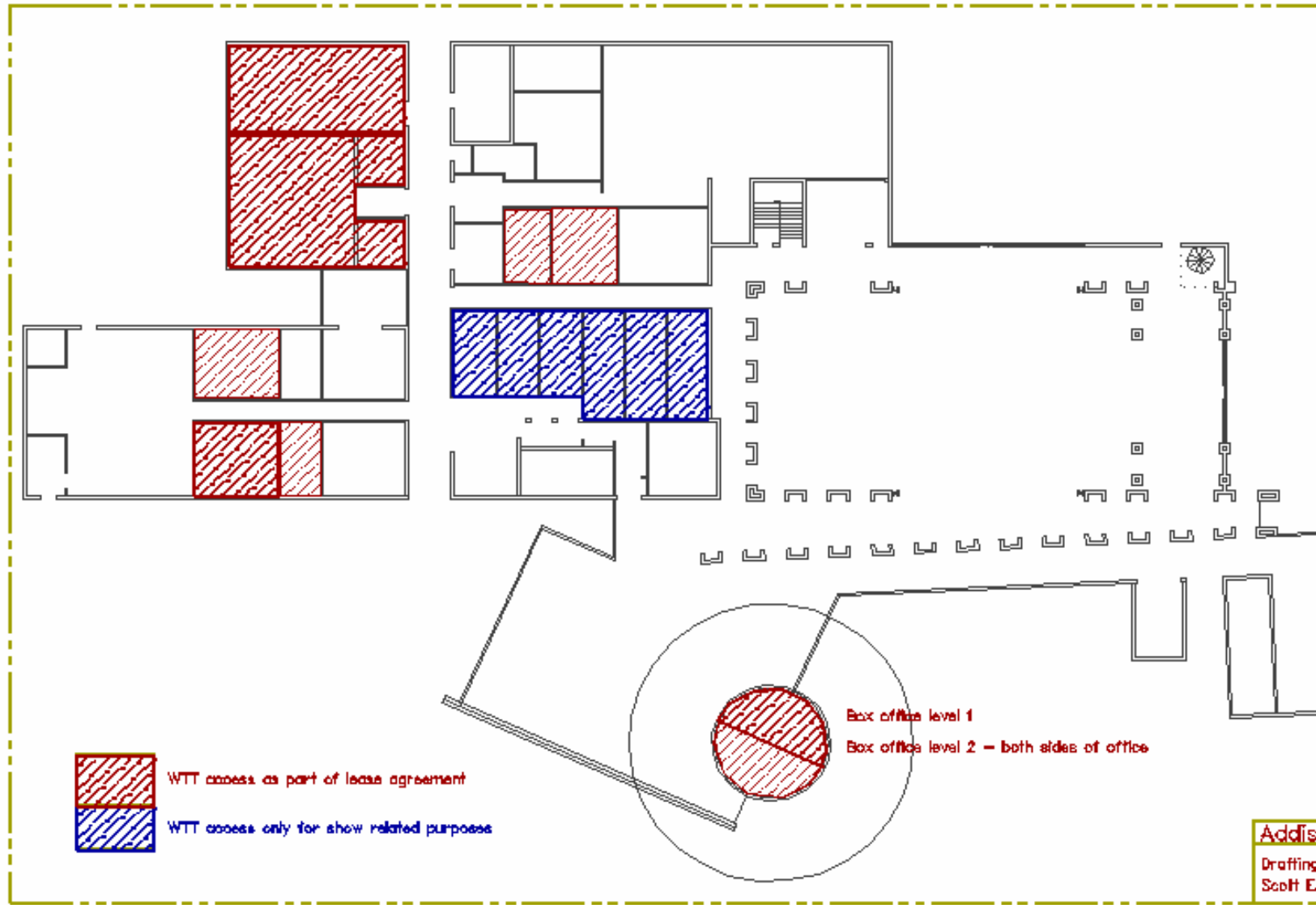
ATTEST:

ATTEST:

By: \_\_\_\_\_  
Mario Canizares, Town Secretary

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

# EXHIBIT A ADDISON THEATRE CENTRE



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

### **SUMMARY:**

This item is for the consideration and approval authorizing the City Manager to enter into a Professional Services Agreement with Freese & Nichols Inc. in the amount not to exceed \$550,000.00 for engineering design and general construction representation services of the proposed 1.5 Million Gallon Elevated Storage Tank.

### **FINANCIAL IMPACT:**

Cost: \$550,000.00

Funds are available in the Utility Fund from 2008 sale of certificates of obligation.

Project Manager: Nancy S. Cline, P.E.

### **BACKGROUND:**

The Texas Commission in Environmental Quality (TCEQ) has recommended that the Town pursue construction of additional elevated storage in order to provide 100 gallons of elevated storage per connection. A letter to the Town of Addison from TCEQ, dated January 7, 2006, indicated that the Town had reached 94.5% of its elevated storage capacity. Freese and Nichols, Inc. was retained in 2006 by the Town of Addison to perform a Water Distribution Study. The 2006 study determined that additional elevated storage was needed. While the Town currently meets the elevated storage requirements, construction of additional elevated storage is recommended as it will be required once the Town exceeds 100% of its elevated storage capacity.

At the November 27, 2007 Council meeting, Council approved a contract with Freese & Nichols, Inc. to perform preliminary engineering for the elevated storage tank (EST). With the high visibility of the proposed location of the new tower (Surveyor and Belt Line) and its proximity to the planned Arapaho Rd. trail extension to the utility easement, the new water tower offers and opportunity to provide an iconic statement for the community. Staff met with Brad Goldberg, an artist whose work is centered on developing a fusion between sculpture, landscape, urban design, place, culture, and community. Subsequently, staff presented a contract with Brad Goldberg, Inc. at the April 22, 2008 to assist Freese & Nichols in developing the preliminary design.

The design concepts that were developed were presented to Council on September 9, 2008 and staff requested Freese & Nichols to provide a proposal to design Option B as shown in Exhibit A. It includes a hemisphere painted carbon steel bowl on a 46 ft diameter concrete pedestal, a stainless steel veneer at bottom of pedestal, 15 solar wind turbines mounted on top of the tank bowl, and a ground floor storage with roll-up door. The proposed contract also includes assistance from Freese & Nichols in designing and placing a demonstration wind turbine on the ground level near the EST that would allow the Town to evaluate the advantages of including additional solar wind turbines at the top of the EST. It is anticipated that the completed turbine at the ground level could be used as an educational tool to explain the benefits to the public. Exhibit B includes a summary of the various

elements of the scope of services. The scope also includes the services of a certified tank inspector to inspect the construction of the elevated storage tank including concrete foundation, concrete pedestal walls, steel erection and welding, protective coatings, and electrical.

**RECOMMENDATION:**

Staff recommends approval authorizing the City Manager to enter into a Professional Services Agreement with Freese & Nichols Inc. in the amount not to exceed \$550,000.00 for engineering design and general construction representation services for the proposed 1.5 Million Gallon Elevated Storage Tank.

**ATTACHMENTS:**

Exhibit A – Option B from September 2008 presentation  
Exhibit B

## Exhibit B

1. Task A (Preliminary Wind Turbine Analysis, Design, Specs, Bid Documents):	\$80,600.00
2. Task B (Preliminary Design):	\$50,200.00
3. Task C (Final Design):	\$205,800.00
4. Task D & E (Construction General Rep.):	\$90,000.00
5. Geotech:	\$5,100.00
6. Surveying:	\$13,900.00
7. Tank Inspection:	\$50,000.00
8. Brad Goldberg (Artist)	\$30,000.00
9. 10% Markup on Subconsultants	\$9,900.00
10. Other expenses	<u>\$14,500.00</u>
Total Fee Proposal:	\$550,000.00



## Option 2

- Hemisphere Painted Carbon Steel Bowl
- 46' Diameter Concrete Pedestal
- Stainless Steel Veneer at Bottom of Pedestal
- 15 Solar Wind Turbines Mounted on top of Tank Bowl
- Bowl
- Ground Floor Storage with Roll-up Door
- \$5.4 Million



elements of the scope of services. The scope also includes the services of a certified tank inspector to inspect the construction of the elevated storage tank including concrete foundation, concrete pedestal walls, steel erection and welding, protective coatings, and electrical.

**RECOMMENDATION:**

Staff recommends approval authorizing the City Manager to enter into a Professional Services Agreement with Freese & Nichols Inc. in the amount not to exceed \$550,000.00 for engineering design and general construction representation services for the proposed 1.5 Million Gallon Elevated Storage Tank.

**ATTACHMENTS:**

Exhibit A – Option B from September 2008 presentation  
Exhibit B

## Exhibit B

1. Task A (Preliminary Wind Turbine Analysis, Design, Specs, Bid Documents):	\$80,600.00
2. Task B (Preliminary Design):	\$50,200.00
3. Task C (Final Design):	\$205,800.00
4. Task D & E (Construction General Rep.):	\$90,000.00
5. Geotech:	\$5,100.00
6. Surveying:	\$13,900.00
7. Tank Inspection:	\$50,000.00
8. Brad Goldberg (Artist)	\$30,000.00
9. 10% Markup on Subconsultants	\$9,900.00
10. Other expenses	<u>\$14,500.00</u>
Total Fee Proposal:	\$550,000.00

**MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE  
STAFF REPORT  
ME 2008-7**

Date: October 22, 2008  
Address: 15750 & 15800 Spectrum Dr  
Business: Allegro

<u>Ordinance Requirement</u>	<u>Request</u>	<u>Variance</u>
<p>(1) Sec. 62-285. Luminescent gaseous tubing.</p> <p>The use of exposed tubes which contain luminescent inert gases, including but not limited to, neon, argon and krypton, and which are visible from the exterior of structures, is specifically prohibited except as an attached sign which shall conform to this chapter.</p>	<p>The applicant is requesting attached LED skeleton type accent lighting along and or on the edges of building elements.</p>	<p>The ordinance only allows tube type lighting on an attached sign complying with the sign ordinance.</p>

**STAFF RECOMMENDATION:** The staff believes this type of LED lighting done in soft tones and in limited areas as shown on the plans is not offensive and adds a little character to the structures. Therefore we recommend approval.

**STAFF:**   
Lynn Chandler, Building Official

Addison!

BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

Application for Meritorious Exception to the Town of Addison

ACCENT LIGHTING Sign Ordinance

Application Date: 10/17/08

Filing Fee: \$200.00

Applicant: SNK

Address: 15750 SPECTRUM DR. Suite#:

ADDISON TX 75001 Phone#: 214.536.7104  
City State Zip

Fax#:

Status of Applicant: Owner  Tenant  Agent

Location where exception is requested:

ON BUILDINGS

Reasons for Meritorious Exception:

WE THINK THE ACCENT LIGHTS ON THE BUILDINGS WILL ENHANCE THE AMBIANCE OF THE ADDISON CIRCLE AREA AND CONTRIBUTE TO THE VIBRANCE AND FEEL OF AN URBAN AREA. THE LIGHTS WILL BE LED LIGHTS

YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

- 1. Lot Lines
- 2. Names of Adjacent Streets
- 3. Location of Existing Buildings
- 4. Existing Signs
- 5. Proposed Signs
- 6. Sketch of Sign with Scale and Dimensions Indicated (8.5 x 11 PLEASE)

Date Fees Paid 10-17-08 Check # 3396 Receipt #

**From:** Mario Canizares  
**Sent:** Thursday, November 06, 2008 9:47 AM  
**To:** Sue Ellen Fairley  
**Subject:** SNK Questions asked by Councilmember Meier

Sue Ellen,

Councilmember Meier had some questions of staff regarding the SNK item from the last Council meeting (10/28/08). The item was tabled until the 11/11 meeting. I would like to have the questions and staff's answers included in the Council packet. Thanks, Mario

#R7 (Lynn) Can we have the background as to why the ordinance is written the way it is?

This request is for an exception to Section 62.285, which states: "The use of exposed tubes which contain luminescent inert gases, including, but not limited to, neon, argon and krypton, and which are visible from the exterior of structures, is specifically prohibited except as an attached sign which shall conform to this chapter.

This particular section was added to the ordinance after a couple of restaurants used neon lighting to outline parts of their buildings. Judge Beans (now the Blue Goose) was the most notable of those. It outlined its roof in green neon, and there were two separate instances of the neon causing minor fires on the roof. Additionally Pizzeria Uno and Pasta Oggi (both closed now) outlined the windows on their lease space with red and green neon. The Council felt that the neon outlining was garish and did not portray the image it wanted for Addison. For many years, neon was totally prohibited in Addison, but after a while, the ordinance was amended to allow neon in attached signs only.

were there and are there still concerns about the noise associated with these lights, their brightness, their general lack of acceptance as an upscale form of lighting,,,,,what were the concerns originally and how or have those changed?

While the neon lights emitted a light "hum" and were very bright, the applicant in this request is proposing LED (light emitting diode) lights. The ordinance does not specifically cover LEDs, but when used in this application, we believe they fall under this section, which includes, but is not limited to, neon, argon, and krypton. The applicant has indicated that the lights will not be bright. We don't have a definition of "bright", but we can require a mock-up in the field before we allow all the lighting to be installed.

When we prohibited neon outlining, we did so because the Council felt that it was garish and did not reflect an upscale community. However, at the same time we prohibited it, architects in downtown Dallas outlined the tallest building in the city with it (the big green building that we think is now Bank of America). We don't know who was upscale and who wasn't. It seems to be a matter of personal taste.

,,,,if the council were to grant this exception what impact would it have on changing the feel of the area?

When considering this application, our thought was that Addison Circle needed a little more "energy" at night. We hear constantly from our retailers that there is not enough activity there, and we thought this might make it look a little livelier, particularly since the Tollway side would have the sign that says "Allegro – Addison – 15750." Our thought was that it might cause the whole development to get more attention from the Tollway side.

What impact might this have on future councils and on other businesses' expectations as to what they could reasonably expect with respect to sign code enforcement?

Section 62-33, Meritorious Exception, Paragraph 2, states:

It is not the intention of these criteria to discourage innovation. It is entirely conceivable that



signage proposals could be made that, while clearly not conforming to this chapter and thus not allowable under these criteria, have obvious merit in not only being appropriate to the particular site or location, but also in making a positive contribution to the visual environment.

We make all our applicants aware that while they have the right, under the ordinance, to apply for a Meritorious Exception, the decision on any exception is up to the Council, and the Council has full discretion on each decision. We stress to them that Meritorious Exception decisions are made on a case-by-case basis, and that case-by-case means just that, and that every decision is an “independent variable.” Just because a previous request that might be similar to their request was approved, it does not mean that their request will be approved.

„I note the application is for a meritorious exception, yet it list as the merit, "the accent lights will enhance the ambiance of the Addison circle area..." How do we know that? have the other businesses in the area been surveyed to determine they agree with this? what about the homeowners that would have these lights in their front yard?

We thought the lighting shown in this request was “appropriate to the particular site or location, and that it made a positive contribution to the visual environment” of Spectrum and the Tollway. We did not survey the other businesses or homeowners in Addison Circle. There will be one retail space on the Spectrum side of the project, and it will be in the ground floor of the north building. That retailer will have a right to a sign which may be brighter than the LED lighting proposed here. The existing businesses in Addison Circle have signs, and some have neon signs, and we have never received a complaint about them (although I realize that this will be a little different in that it will be across from townhomes as opposed to multi-family). We have had calls from the CityHomes owners wanting more retailers in the area. When we held the zoning hearings for this property, some of the residents from both the CityHomes project and the Aventura seemed disappointed that there was not more retail in the SNK project. While I don’t claim to speak for them, they have seemed to want a little more “activity” in their immediate area. We did consider the impact of the LED lights on the homes across the street, and we felt that low levels of light would not be objectionable.

We stated that we are supporting the request because “the accent lights will enhance the ambiance of the Addison Circle area”, but we don’t know whether they will or not. Lynn Chandler and I consider all these requests carefully before we make a recommendation, but unlike zoning or building code issues, we don’t have traffic, parking, or life safety issues to use as a basis for our decision. We have the Chandler Scale to go by on requests for additional letter height. It was developed by Lynn to give us some objective basis for a recommendation on additional letter height. However, on requests such as this one, we have no objective criteria, only an opinion. We believe that sign appearance and taste in signs is very subjective, and we honestly feel that any person who can see a sign can have an opinion that is just as valid and just as educated as ours.

For many years, the staff recommended denial on every request for exceptions to the sign ordinance. The Council at that time felt that we were the “keepers of the flame” with regard to the rules, it did not make sense for us to ever recommend an exception. However, several years ago, the Council asked us to make a recommendation on requests for exceptions, which we do. While we make a recommendation, it is just our subjective opinion. We feel it is totally appropriate that the Council, as elected representatives for the community, have the right to determine which signs do or do not make a positive contribution to the visual environment.

MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE

STAFF REPORT

ME 2008-8

Date: October 30, 2008  
 Address: 4355 Beltway Dr

Business Name: Holiday Inn

Ordinance Requirement

Sec. 62-186. Monument signs.

Monument signs shall be built on a monument base as opposed to a pole base with no separation between the base of the sign and natural grade. A monument sign contains only the name, logo, address and product or service of the establishment. No advertising or promotional information is permitted thereon. Such sign may be single or double-faced. Plastic faces may be used on monument signs provided only the letters, numbers or logo element emit light. The monument sign shall be located on site and a minimum of 20 feet from the back of the curb. Such signs shall be constructed as follows:

- (1) The sign with base shall not exceed six feet in overall height above the natural or average grade and the actual sign face shall not exceed 48 square feet in area per side.
- (2) For property abutting Dallas Parkway: The sign with base shall not exceed eight feet in overall height above the natural grade and the actual sign face shall not exceed 72 square feet in area per side, and the signs shall be located within 50 feet of Dallas Parkway.

Request

The applicant is requesting:

A monument sign that is approximately 51 Sq. Ft. in area and an overall height of 10'.

Variance

The ordinance requires the sign face not to exceed 48 Sq. Ft. in area and the overall height, including the base, not to exceed 6' in height.

STAFF RECOMMENDATION: Staff recommends denial.

STAFF:   
 Lynn Chandler, Building Official





BUILDING INSPECTION DEPARTMENT 16801 Westgrove Dr Addison Texas 75001 972/450-2881 fax: 972/450-2837

### Application for Meritorious Exception to the Town of Addison Sign Ordinance

Application Date: 10-30-08

Filing Fee: \$200.00

Applicant: Holiday Inn & Horizon Sign Co

Address: 4355 Beltway Drive Suite#: \_\_\_\_\_

Addison Tx 75001 Phone#: 972-842-3532  
City State Zip

Fax#: 972-544-3801

Status of Applicant: Owner \_\_\_\_\_ Tenant \_\_\_\_\_ Agent \_\_\_\_\_

Location where exception is requested:

Monument Sign Sign 2<sup>#</sup> on Site Plan

Reasons for Meritorious Exception:

Want 10' OAH Monument Code allows  
6' OAH so sign could more visible  
from Midway Road, since sign is set  
back so far from Midway

#### YOU MUST SUBMIT THE FOLLOWING:

12 COPIES OF THE PROPOSED SIGN SHOWING:

- |                                   |   |
|-----------------------------------|---|
| 1. Lot Lines                      | 5. Proposed Signs   |
| 2. Names of Adjacent Streets      | 6. Sketch of Sign with Scale and Dimensions Indicated (8.5 x 11 PLEASE) |
| 3. Location of Existing Buildings |   |
| 4. Existing Signs                 |   |

Date Fees Paid 10-30-08 Check # 5725 Receipt # 4231



4355  
BELWAY DRIVE  
ADDISON, TX  
75001

PROJECT NUMBER:  
REVISION: DATE  
REVISION: DATE

DATE: 10/20/08  
DRAWN BY: [Name]  
CHECKED BY: [Name]  
DESIGNED BY: [Name]  
PROJECT MANAGER: [Name]

U.S. & P.A. - ALL SIGNS  
CONFORM TO 24-42119  
& RELATED REGULATIONS  
ALL SIGNS SHALL BE  
CANTON - ALL SIGNS MUST  
BE CANOPY  
ALL SIGNS MUST BE  
REMOVABLE  
This sign is intended for use  
in conjunction with the  
signage on the site. It is  
not to be used as a  
standalone sign. It is to  
be used in conjunction  
with the other signs on  
the site. It is to be  
used in conjunction with  
the other signs on the  
site. It is to be used in  
conjunction with the  
other signs on the site.

**Existing Signs**

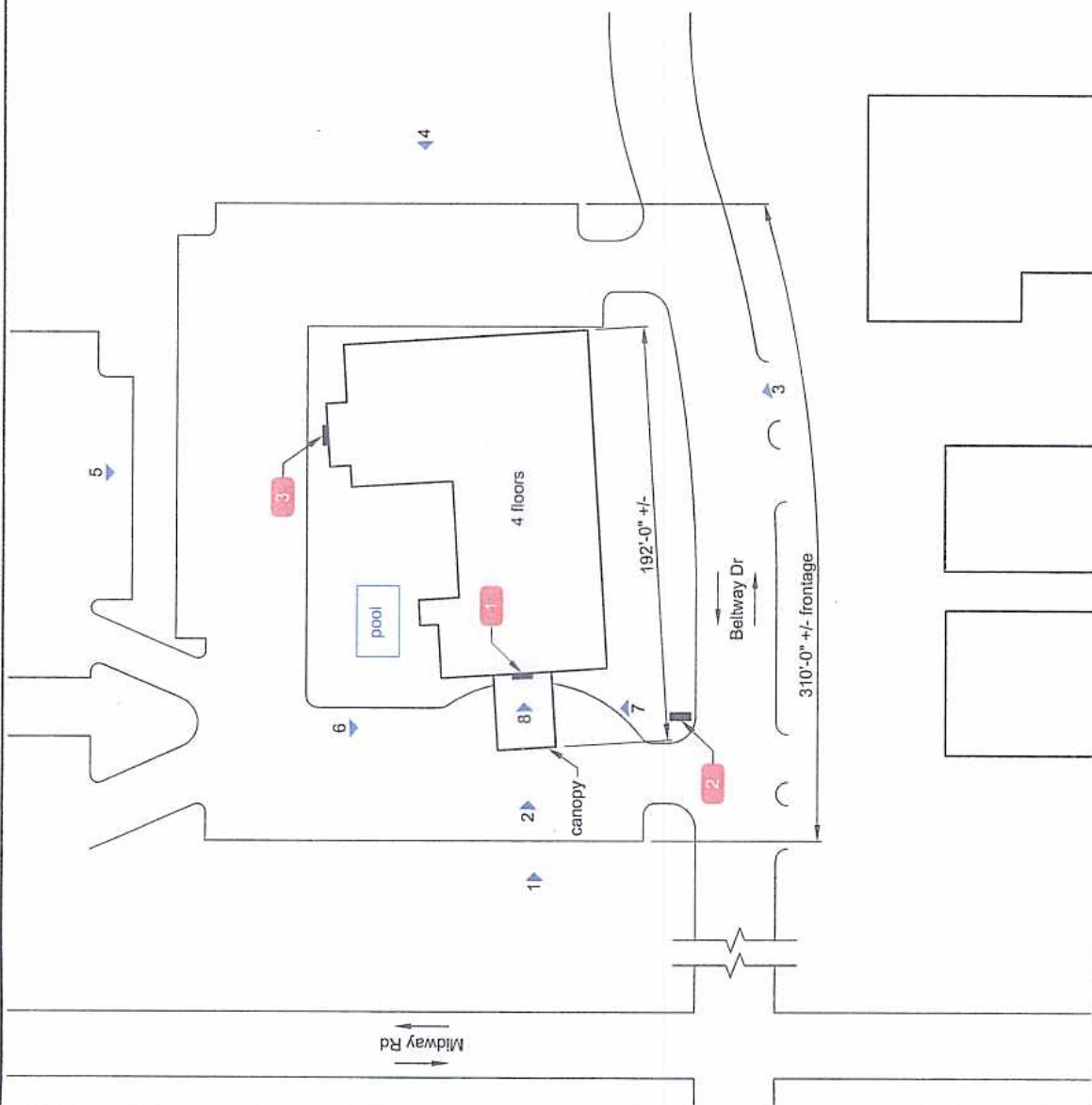
- 1. 2'-0" Script, Stacked, w/Hotel & Suites\*
- 2. EX9 Monument Sign
- 3. 2'-0" Script, Stacked, w/Hotel & Suites\*

**Recommendations - Option 1 (Conforming)**

- 1. Remove and Replace with New XLS-SM-4D Building Letters, w/4'-1" Monogram, Dark Faces
- 2. Remove and Replace with New XPS-2D-6 Pylon
- 3. Remove and Replace with New XLS-SLM-3D Building Letters, w/3'-1" Monogram, Dark Faces

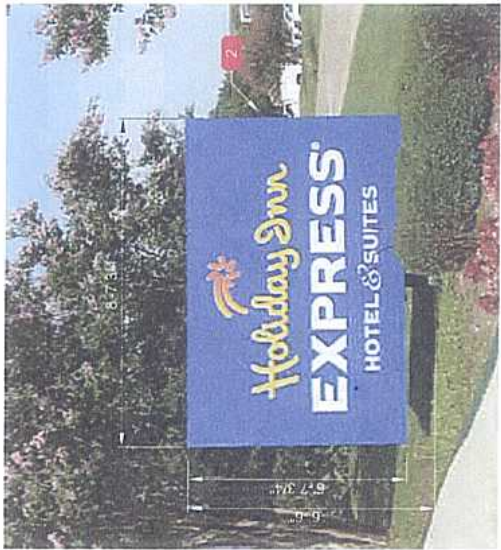
**Recommendations - Option 2 (Non-Conforming, Variance Requested)**

- 1. Remove and Replace with New XLS-SM-4D Building Letters, w/5'-1" Monogram, Dark Faces
- 2. Remove and Replace with New XPS-52-10 Pylon
- 3. Remove and Replace with New XLS-SLM-5D Building Letters, w/3'-1" Monogram, Dark Faces

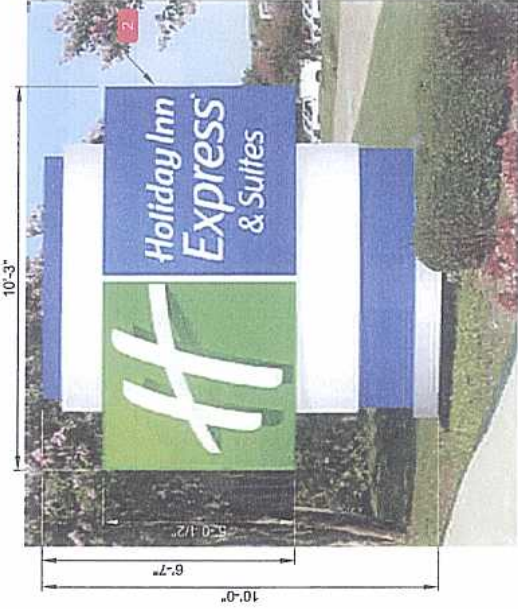


**SITE PLAN**  
SCALE: 1" = 50'-0"

- Legend:**
- Camera Position
  - 1 Photograph Number
  - 2 Sign Number



Existing Double-Faced Internally Illuminated EX9 Monument Sign  
(50 sq. ft.)



Proposed Double-Faced Illuminated XPS-52 Monument Sign  
(62 sq. ft.)

CUSTOM MONUMENT SIGN  
OPAQUE SIGN FACES WITH ILLUMINATED COPY & "H" ONLY  
TOP AND SIDES OF PEDESTAL DO NOT ILLUMINATE

SIGN RECOMMENDATIONS: NON-CONFORMING, VARIANCE REQUESTED  
OPTION 2

<p>Image National, Inc. The Signage Authority</p>		<p>GENERAL OFFICES: 14505 Shadybrook Houston, Texas 77060-8115 TELEPHONE: (281) 551-8866 / (714) 344-4333 FAX: (281) 335-1881</p>		<p>INTERNATIONAL REPRESENTATIVES: A SIGNAGE AUTHORITY</p>		<p>WE ARE THE LEADER IN THE SIGNAGE INDUSTRY. WE ARE COMMITTED TO EXCELLENCE IN ALL ASPECTS OF OUR BUSINESS. WE ARE COMMITTED TO CUSTOMER SATISFACTION. WE ARE COMMITTED TO EXCELLENCE IN ALL ASPECTS OF OUR BUSINESS. WE ARE COMMITTED TO CUSTOMER SATISFACTION.</p>		<p>DATE: 10/28/08</p>		<p>PROJECT NO: 1078/08</p>		<p>PROJECT NAME: 4355 BELTWAY DRIVE ADDITION, TX 75001</p>		<p>PROJECT LOCATION: 4355 BELTWAY DRIVE ADDITION, TX 75001</p>		<p>PROJECT TITLE: Holiday Inn &amp; Suites</p>		<p>P-7</p>			
DESIGNED BY:	D.F.	DATE:	10/28/08	CHECKED BY:	D.M.C.	DATE:	10/28/08	APPROVED BY:		DATE:		PROJECT NO:	1078/08	PROJECT NAME:	4355 BELTWAY DRIVE ADDITION, TX 75001	PROJECT LOCATION:	4355 BELTWAY DRIVE ADDITION, TX 75001	PROJECT TITLE:	Holiday Inn & Suites	PAGE:	P-7





The Electric Sign Company  
 10000 West 10th Street  
 Suite 100  
 Overland Park, KS 66211  
 Phone: (913) 241-4400  
 Fax: (913) 241-4401

**CENTRAL OFFICES:**  
 11355 SW 11th  
 Overland Park, KS 66211  
 Phone: (913) 241-4400  
 Fax: (913) 241-4401



U.S. & P.R. - ALL SIGNS  
 CONFORM TO UL-402241  
 UL LISTED FOR ALL SIGNS  
 & LIGHT FIXTURES WITH ALL  
 UL LISTED COMPONENTS

4-1.1 INSTALLATION PROCEDURES  
 CAPACITY - ALL SIGNS MUST  
 BE INSTALLED TO WITHSTAND  
 WINDSPEEDS OF 120 MPH  
 OR AS SPECIFIED IN #120181-001

This sign is intended to be used  
 as a permanent sign. It is not  
 intended to be used as a temporary  
 sign. All signs must be installed  
 according to the manufacturer's  
 instructions. This sign is  
 intended for use in the United  
 States and its territories.

DATE: 10/28/08

PROJECT: BELMONT  
 D.F. BELMONT  
 C.D. BELMONT  
 D.A.C. BELMONT  
 PERMIT: BELMONT  
 COUNTY: BELMONT  
 AUTHORITY: BELMONT  
 CITY: BELMONT  
 DISTRICT: BELMONT

PROJECT TITLE:  
 SHEET NO.:

DATE: 10/28/08

PROJECT NO.:

PROJECT TITLE:

PROJECT NO.:

PROJECT TITLE:

PROJECT NO.:

PROJECT TITLE:

PROJECT NO.:

PROJECT TITLE:

PROJECT NO.:

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PROJECT TITLE:

PROJECT NO.:

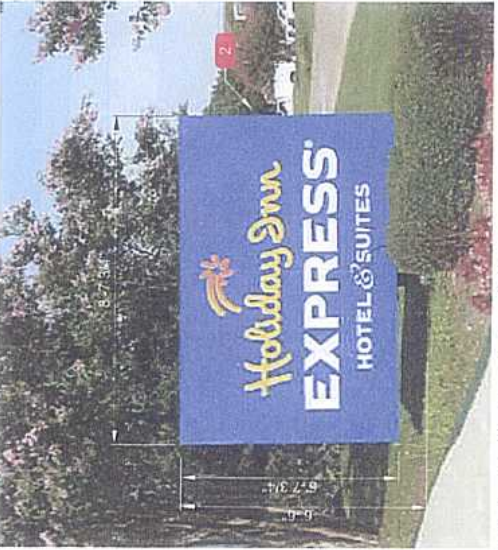
PROJECT TITLE:

PROJECT NO.:



Proposed Double-Faced Illuminated XPS-20 Monument Sign  
 (62 sq. ft.)

CUSTOM MONUMENT SIGN  
 OPAQUE SIGN FACES WITH ILLUMINATED COPY & "H" ONLY  
 TOP AND SIDES OF PEDESTAL DO NOT ILLUMINATE



Existing Double-Faced Internally Illuminated EX9 Monument Sign  
 (50 sq. ft.)

SIGN RECOMMENDATIONS: CONFORMING  
 OPTION 1

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 a) reproduce this design in copies, in graphic form or as a sign; b) prepare derivative works based upon the design; c) distribute copies of the design by sale or other transfer of ownership; and d) display the design publicly.

**MERITORIOUS EXCEPTION TO THE ADDISON SIGN ORDINANCE  
STAFF REPORT  
ME 2008-9**

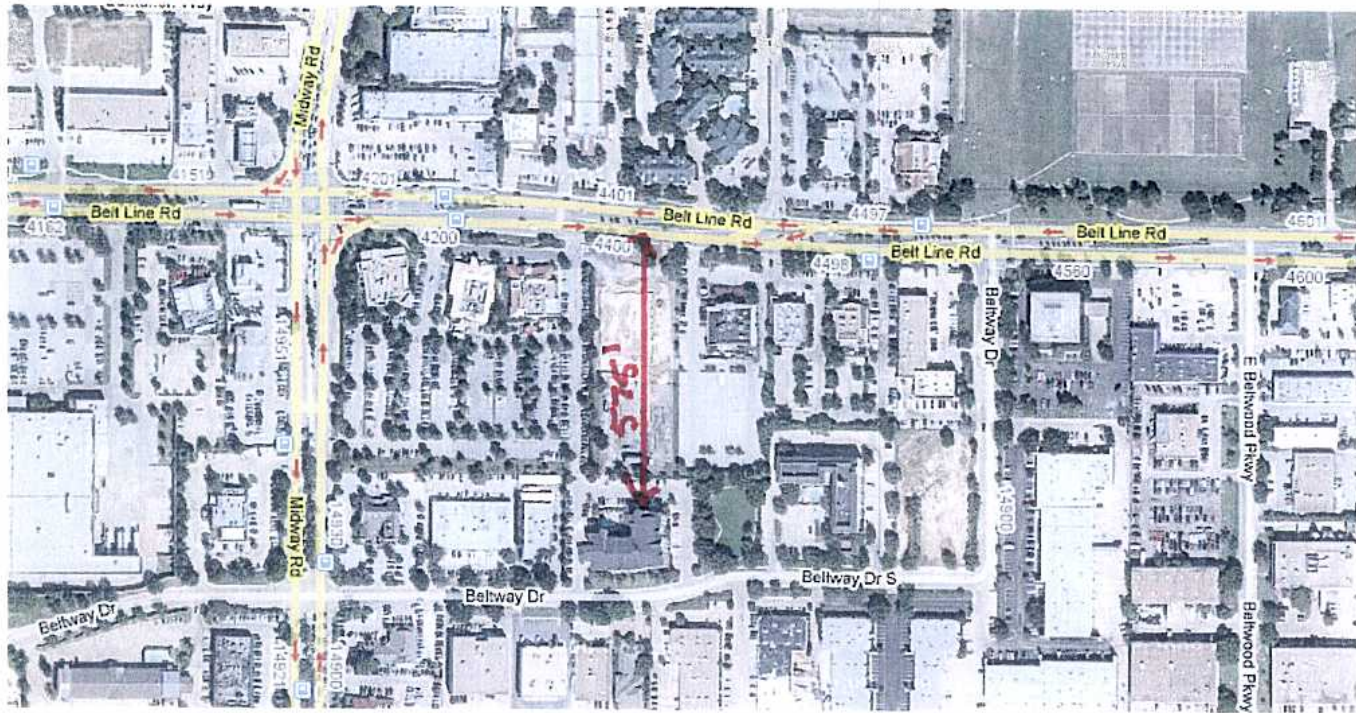
Date: October 30, 2008  
Address: 4355 Beltway Dr  
Business: Holiday Inn

<u>Ordinance Requirement</u>	<u>Request</u>	<u>Variance</u>												
<p>Sec. 62-163. Area. Total effective area of attached signs shall not exceed the following schedules: (1) On an attached sign located at a height of up to 36 ft, the effective area is limited to 1 sq ft of sign area for each linear foot of building frontage not to exceed 100 sq ft (2) An attached sign located at or exceeding a height of 36 ft shall be permitted an increase in maximum effective area. Such increases shall not exceed 4 sq ft in effective area for each additional 1 ft of height above 36 ft measured from the base of the sign to the building grade. (3) Attached signs may be located on each façade; however, the sum of the effective area of all attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. (4) Building with 4 or more stories in height may have not more than 2 attached signs per façade provided that: a. Each sign is designated for a separate tenant. b. One sign must be located on or near the uppermost story of the building while the 2<sup>nd</sup> sign is to be located on the 1<sup>st</sup> or ground level floor. c. Signs may be no closer than 30 ft apart. d. The combined effective sq footage of both signs may not exceed twice the allowed effective sq footage as specified in subsections (1) and (2) of this section. (5) Maximum letter/logo height of attached signs shall not exceed twice the allowable effective area as specified in subsections (1) and (2) of this section. Maximum letter/logo height of attached signs shall be determined by the following schedule: <table border="1" data-bbox="844 1092 1055 1365"> <thead> <tr> <th>Sign Height (feet)</th> <th>Letter/Logo Height (inches)</th> </tr> </thead> <tbody> <tr><td>0 - 36</td><td>16</td></tr> <tr><td>37 - 48</td><td>36</td></tr> <tr><td>49 - 100</td><td>48</td></tr> <tr><td>101 - 150</td><td>60</td></tr> <tr><td>151 and up</td><td>7</td></tr> </tbody> </table> a. Letter heights in excess of 72 inches must be approved by the city council. b. Not more than 50% of the letters in each individual sign height category may be 25% taller than the specified maximum letter/logo height. (6) Copy on awnings is allowed in accordance with the above regulations for area and letter height. For back-lit awnings, the area of the sign shall be based on the area of the awning that is back-lit or illuminated.</p>	Sign Height (feet)	Letter/Logo Height (inches)	0 - 36	16	37 - 48	36	49 - 100	48	101 - 150	60	151 and up	7	<p>The applicant is requesting: A sign on the north façade located approximately 40' above grade with a letter approximately 53" in height.</p>	<p>The ordinance allows a maximum letter height of 45" for 50% of the letters with the remaining letters to be 36" or less in height.</p>
Sign Height (feet)	Letter/Logo Height (inches)													
0 - 36	16													
37 - 48	36													
49 - 100	48													
101 - 150	60													
151 and up	7													

**STAFF RECOMMENDATION:** The sign will be located approximately 575' from Belt Line Rd. Therefore staff recommends approval.

**STAFF:**   
Lynn Chandler, Building Official











**Image National, Inc.**  
The Electric Sign Company  
A Division of Image Sign Company

**GENERAL OFFICES:**  
1435 21st Street  
Houston, Texas 77002-3415  
TELEPHONE: 281.462.1111  
FAX: 281.462.1111

**HOUSTON OFFICE:**  
3006 South Loop West  
Houston, Texas 77058  
TELEPHONE: 281.462.1111  
FAX: 281.462.1111

**HOUSTON OFFICE:**  
3006 South Loop West  
Houston, Texas 77058  
TELEPHONE: 281.462.1111  
FAX: 281.462.1111

**INSTALLATION PROCEDURES:**  
1. ALL INSTALLATION PROCEDURES SHALL BE AS SHOWN ON THE SIGN DESIGN AND SHALL BE THE RESPONSIBILITY OF THE SIGN CONTRACTOR.  
2. THE SIGN CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.  
3. THE SIGN CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND STRUCTURES ON THE SITE.  
4. THE SIGN CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES AND NEIGHBORS.  
5. THE SIGN CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL PUBLIC UTILITIES AND STRUCTURES ON THE SITE.  
6. THE SIGN CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES AND NEIGHBORS.  
7. THE SIGN CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL PUBLIC UTILITIES AND STRUCTURES ON THE SITE.  
8. THE SIGN CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES AND NEIGHBORS.  
9. THE SIGN CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL PUBLIC UTILITIES AND STRUCTURES ON THE SITE.  
10. THE SIGN CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES AND NEIGHBORS.

**DATE:** 10/28/08

DESIGNED BY:	DATE:
DRAWN BY:	DATE:
CHECKED BY:	DATE:
APPROVED BY:	DATE:
PROJECT NO.:	DATE:
CUSTOMER:	DATE:
ADDRESS:	DATE:
CITY:	DATE:
STATE:	DATE:
COUNTY:	DATE:
ZIP:	DATE:
PROJECT LOCATION:	DATE:
PROJECT NO.:	DATE:
PROJECT NAME:	DATE:
PROJECT ADDRESS:	DATE:

**PROJECT LOCATION:**  
4355 BELTWAY DRIVE  
ADDISON, TX 75001

**PROJECT NO.:** 10/28/08

**PROJECT NAME:** Holiday Inn Express & Suites

**PROJECT ADDRESS:** 4355 BELTWAY DRIVE, ADDISON, TX 75001

**PROJECT LOCATION:** BELTWAY DRIVE, ADDISON, TX 75001

**PROJECT NO.:** 10/28/08

**PROJECT NAME:** Holiday Inn Express & Suites

**PROJECT ADDRESS:** 4355 BELTWAY DRIVE, ADDISON, TX 75001

**PROJECT LOCATION:** BELTWAY DRIVE, ADDISON, TX 75001

**PROJECT NO.:** 10/28/08

**PROJECT NAME:** Holiday Inn Express & Suites

**PROJECT ADDRESS:** 4355 BELTWAY DRIVE, ADDISON, TX 75001

**PROJECT LOCATION:** BELTWAY DRIVE, ADDISON, TX 75001

**PROJECT NO.:** 10/28/08



**NORTH BUILDING ELEVATION - EXISTING**  
1/16" = 1'-0"



**NORTH BUILDING ELEVATION - PROPOSED**  
1/16" = 1'-0"

INSTALL NEW SET  
XLS-SLIM-3D ILLUMINATED  
CHANNEL LETTERS  
WITH MONOGRAM

157'-2"

2'-0 1/2"

4'-5"

23'-2"

9'-2"

40'-0" FROM GRADE

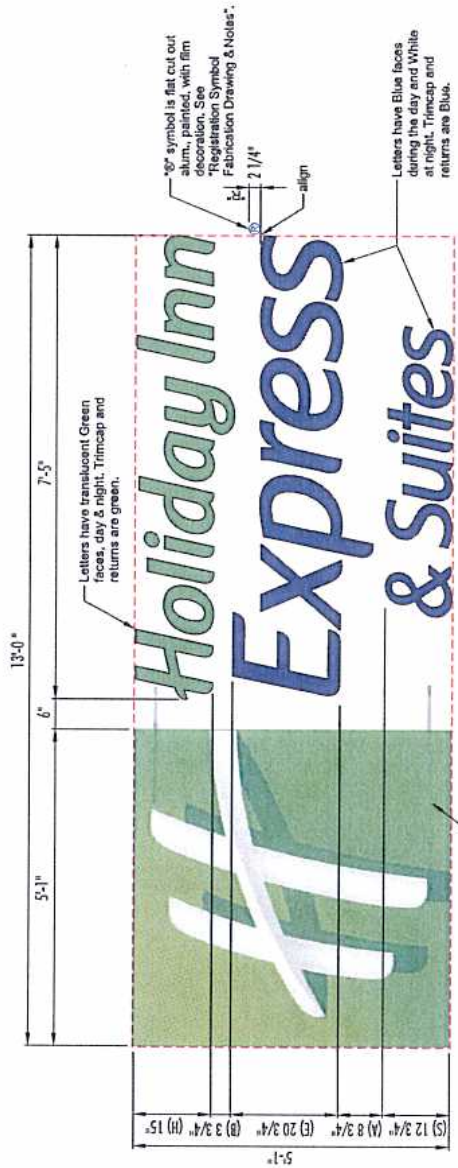
**SIGN RECOMMENDATIONS: CONFORMING  
OPTION 1**

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# FOR LIGHT COLORED WALL APPLICATIONS



61" HIE&S Stacked Linear Layout w/ Monogram - Lt Colored Wall Application

SCALE: 1/2"=1'-0"

**NOTE:**  
Registration symbol is not required for letters sets above the fifth floor.

"H" symbol is flat cut out aluminum, painted, with firm decoration. See "Registration Symbol Fabrication Drawing & Notes".

Letters have Blue faces during the day and White at night. Trims and returns are Blue.

Letters have translucent Green faces, day & night. Trims and returns are green.

Monogram face is printed in 300 Paragraphics flexible face

**GENERAL OFFICES:**  
1335 Spruce Road  
Amesbury, MA 01821-4115  
**TELEPHONE:**  
(978) 352-2693 • (707) 315-4279  
(408) 718-8688

**U.S. & P.R. - ALL STATES**  
CONFIRM TO BE ABLE TO  
A LICENSED ACCREDITED  
INTERNATIONAL FRANCHISE  
ASSOCIATION MEMBER  
CANADA - ALL STATES ABERT  
BE CASE COMPLAINT

DATE: 06/25/08

OWNER:	DATE:
S/N:	DATE:
C/N:	DATE:
DAC:	DATE:
FRANCHISE:	DATE:
OWNER:	DATE:
ADDRESS:	DATE:
ZIP:	DATE:
REG. STATE:	DATE:

DATE: 06/25/08

REG. STATE:	DATE:
REG. STATE:	DATE:

PROJECT NUMBER:  
VARIOUS

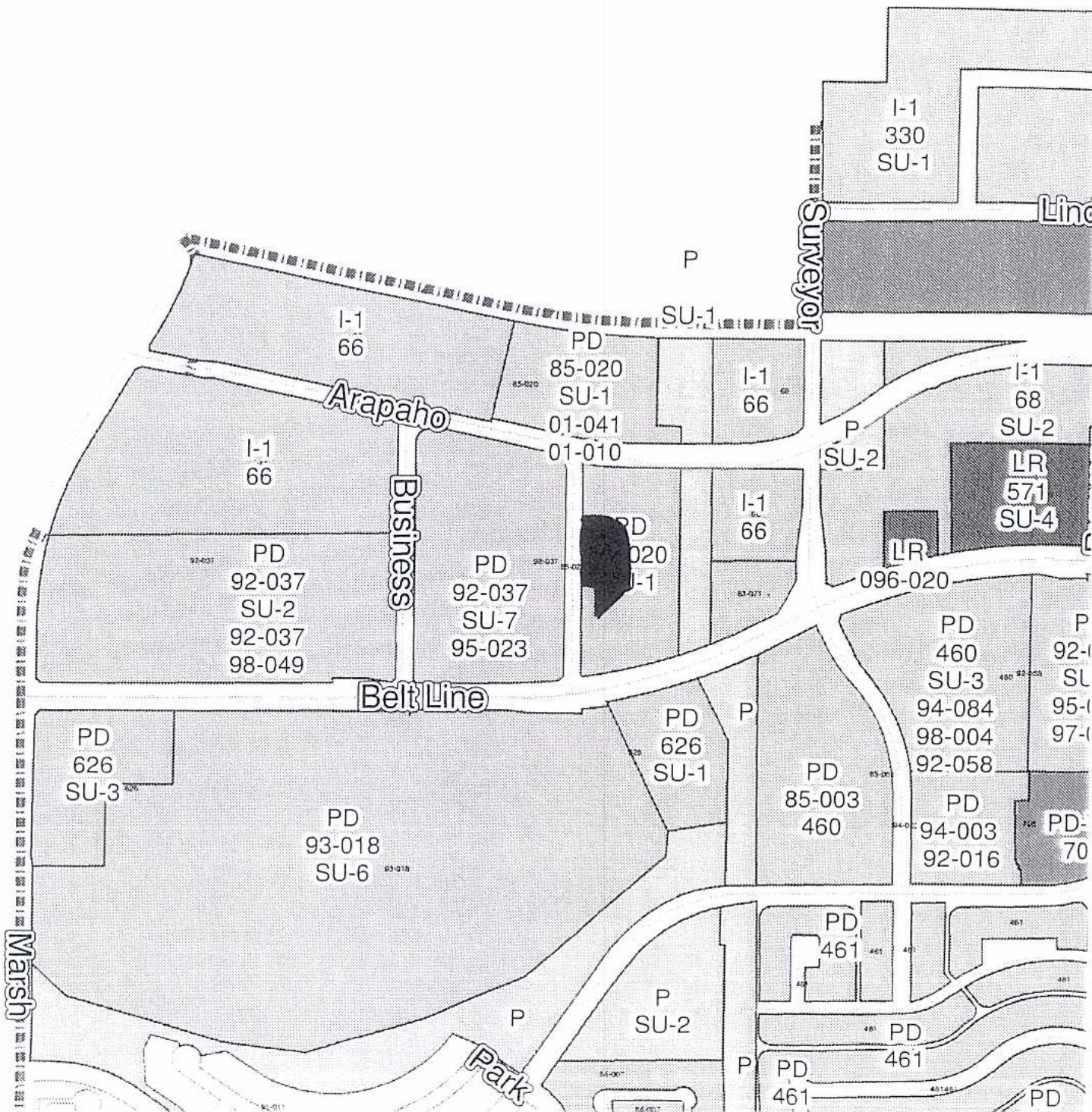
PROJECT TITLE:  
VARIOUS

PRODUCT NO. XLS-SUM-5D

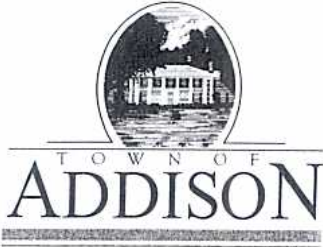


# FINAL PLAT/7920-3939 Belt Line Addition, Lot 1, Block A

FINAL PLAT/7920-3939 Belt Line Addition, Lot 1, Block A. Requesting approval of a final plat for one lot of .93 acres, located at the northeast corner of Belt Line Road and Commercial Drive, on application from Mr. Sepehr Parnian.







October 14, 2008

STAFF REPORT

RE: FINAL PLAT/7920-3939 Belt Line Road

LOCATION: One lot of .93 acres, located at the northeast corner of Belt Line Road and Commercial Drive,

REQUEST: Approval of a final plat

APPLICANT: Mr. Sepehr Parnian.

DISCUSSION:

Background. The owner of this tract is planning to develop a surface parking lot on this site which will support the Wells Fargo Bank located at 3939 Belt Line Road.

Public Works Review. Public Works reviewed the proposed plat and recommends the following revisions:

1. Add a four foot (4') right-of-way dedication along Commercial Drive.
2. Add a detention area easement around the limits of the detention area with dimensions and include the detention area easement statement.
3. Abandon the 25' Building Setback along Commercial Drive by this plat.
4. Show the abstract lines.
5. Add a "Certificate of Approval" to be approved by the City Council and signed by the Mayor and City Secretary.
6. The name of the addition shown in the dedication statement does not match the name in the title block. Please revise as required.
7. Change all references of the "City of Addison" to the "Town of Addison."
8. Provide a closure sheet.

FINAL PLAT/7920-3939 Belt Line Addition  
Lot 1, Block A  
October 14, 2008

Page 2

RECOMMENDATION:

Staff recommends approval of the final plat for 7920-3939 Belt Line Road subject to the conditions listed by the Public Works Department.

Respectfully submitted,

A handwritten signature in black ink that reads "C MORAN". The "C" is a large, stylized loop, and "MORAN" is written in a more standard, slightly slanted font.

Carmen Moran  
Director of Development Services

COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2008, voted to recommend approval of the final plat for 7920-3939 Belt Line Addition, subject to the following conditions:

1. Add a four foot (4') right-of-way dedication along Commercial Drive.
2. Add a detention area easement around the limits of the detention area with dimensions and include the detention area easement statement.
3. Abandon the 25' Building Setback along Commercial Drive by this plat.
4. Show the abstract lines.
5. Add a "Certificate of Approval" to be approved by the City Council and signed by the Mayor and City Secretary.
6. The name of the addition shown in the dedication statement does not match the name in the title block. Please revise as required.
7. Change all references of the "City of Addison" to the "Town of Addison."
8. Provide a closure sheet.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay,  
Voting Nay: None  
Absent: Jandura, Wood

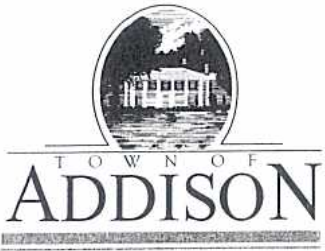


# Memorandum

**To:** Carmen Moran  
**CC:** Nancy Cline  
**From:** Clay Barnett  
**Date:** 10/14/2008  
**Re:** 7920-3939 Belt Line Addition, Lot 1, Block A

- 
1. Add a four foot (4') right-of-way dedication along Commercial Drive.
  2. Add a detention area easement around the limits of the detention area with dimensions and include the detention area easement statement.
  3. Abandon the 25' Building Setback along Commercial Drive by this plat.
  4. Show the abstract lines.
  5. Add a "Certificate of Approval" to be approved by the City Council and signed by the Mayor and City Secretary.
  6. The name of the addition shown in the dedication statement does not match the name in the title block. Please revise as required.
  7. Change all references of the "City of Addison" to the "Town of Addison."
  8. Provide a closure sheet.





**DEVELOPMENT SERVICES**  
(972) 450-2880 Fax: (972) 450-2837

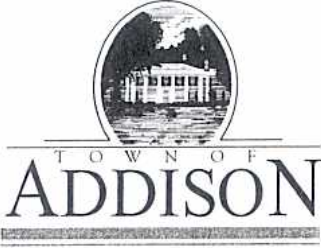
16801 Westgrove  
Post Office Box 9010 Addison, Texas 75001-9010

**A PUBLIC HEARING BEFORE THE ADDISON  
PLANNING AND ZONING COMMISSION  
OCTOBER 23, 2008  
6:00 P.M.  
ADDISON TOWN HALL  
5300 BELT LINE ROAD  
COUNCIL CHAMBERS**

1. **PUBLIC HEARING** Case 1563-Z/Town of Addison. Requesting approval of an ordinance amending Article XIX, UC (Urban Center) District, Appendix A, Streetscape Cross-sections, in order to add two new streetscape cross sections, on application from the Town of Addison.

**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.**





September 17, 2008

STAFF REPORT

RE: Case 1563-Z/Town of Addison

LOCATION: Amendment to Appendix A, the Addison Zoning Ordinance, Article XIX, UC (Urban Center) District, Appendix A, Streetscape Cross-sections

REQUEST: An amendment to the streetscape Cross-sections in order to add an Approved cross-section for Airport Parkway and Meridian Lane

APPLICANT: Town of Addison, represented by Carmen Moran

DISCUSSION:

Background. The Addison Circle standards were adopted through Ordinance 095-019 on May 3, 1995. Streetscape cross sections for all streets in the proposed district were designed by the staff and included as Appendix A to the ordinance. The UC standards require that all streets developed in the district be done in accordance with the cross-sections contained in Appendix A. The Meridian Square request (1562-Z-1) proposes two streets, Airport Parkway and Meridian Lane, that are not approved streetscape cross sections. In order for those two streets to be "legal" for use in the development, they first need to be added to Appendix A.

Proposed Sections. When the Addison Circle district was created, it did not extend to Airport Parkway. The 3.9-acre tract at the southeast corner of Quorum Drive and Airport Parkway, and the 1.4 acre tract at the southwest corner of the same intersections, were purchased by Post Properties and added to the district later. When those two tracts were added, there was not a cross section

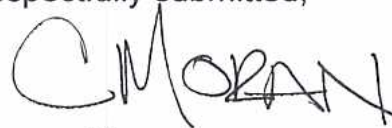
developed for Airport Parkway. The staff and the applicant have worked together on the Airport Parkway cross section that is reflected in the attached drawing. Staff recommends approval of the cross section for Airport Parkway and recommends it be added to Appendix A.

The Meridian Lane section is being proposed as a new section by the applicant. The staff has reviewed it, and feels it will be a workable street section for this development. The section is very similar to the Category C, (Residential) street section that has been used throughout the district, but it has parallel parking on only one side.

RECOMMENDATION:

Staff recommends that the streetscape cross section for Airport Parkway and the cross section for Meridian Lane be added to Article XIX, UC (Urban Center), Appendix A, as approved streetscape cross sections.

Respectfully submitted,

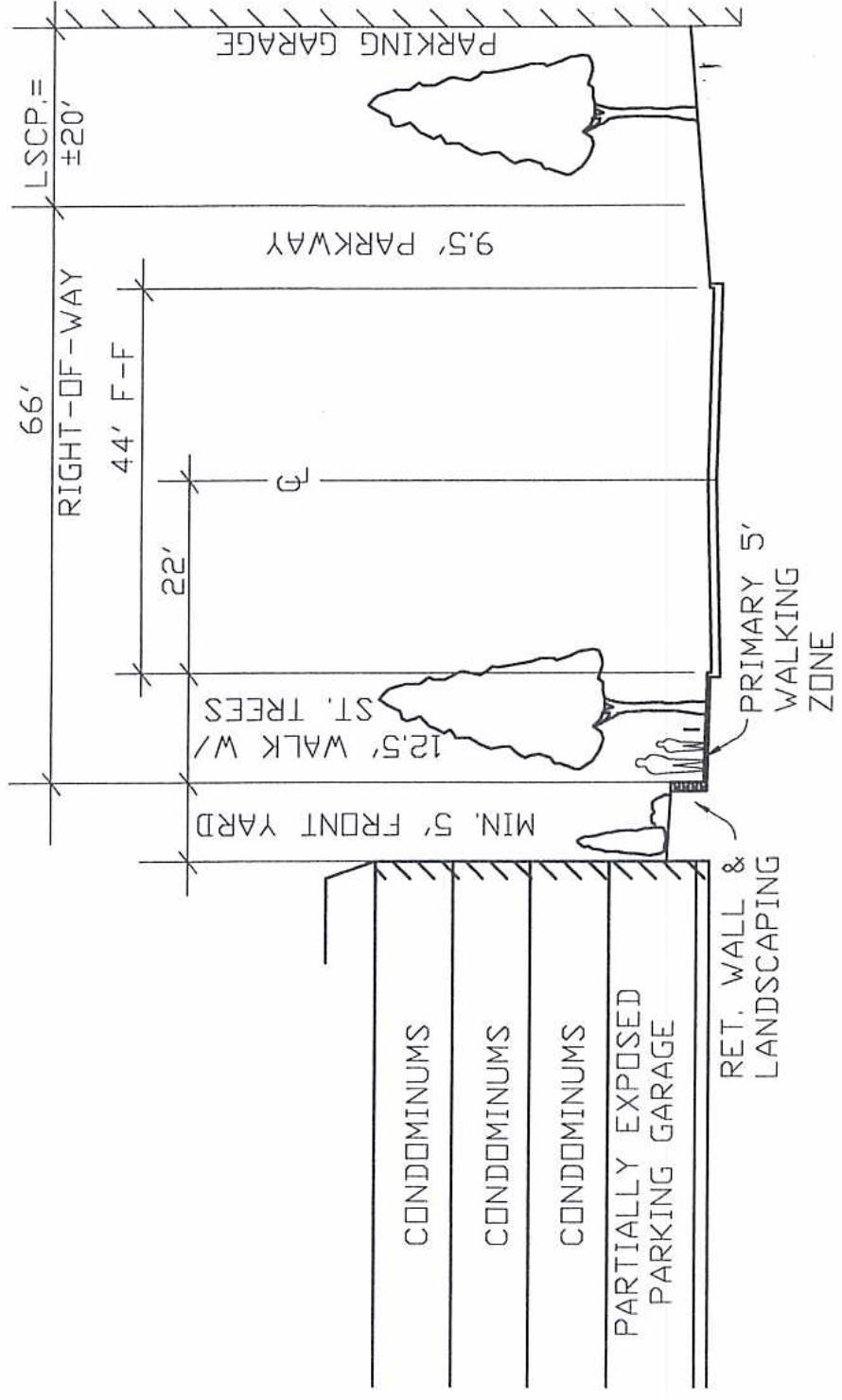
A handwritten signature in black ink that reads "CMORAN". The letters are stylized and connected, with a large "C" and "M" at the beginning.

Carmen Moran  
Director of Development Services

COMMISSION FINDINGS:

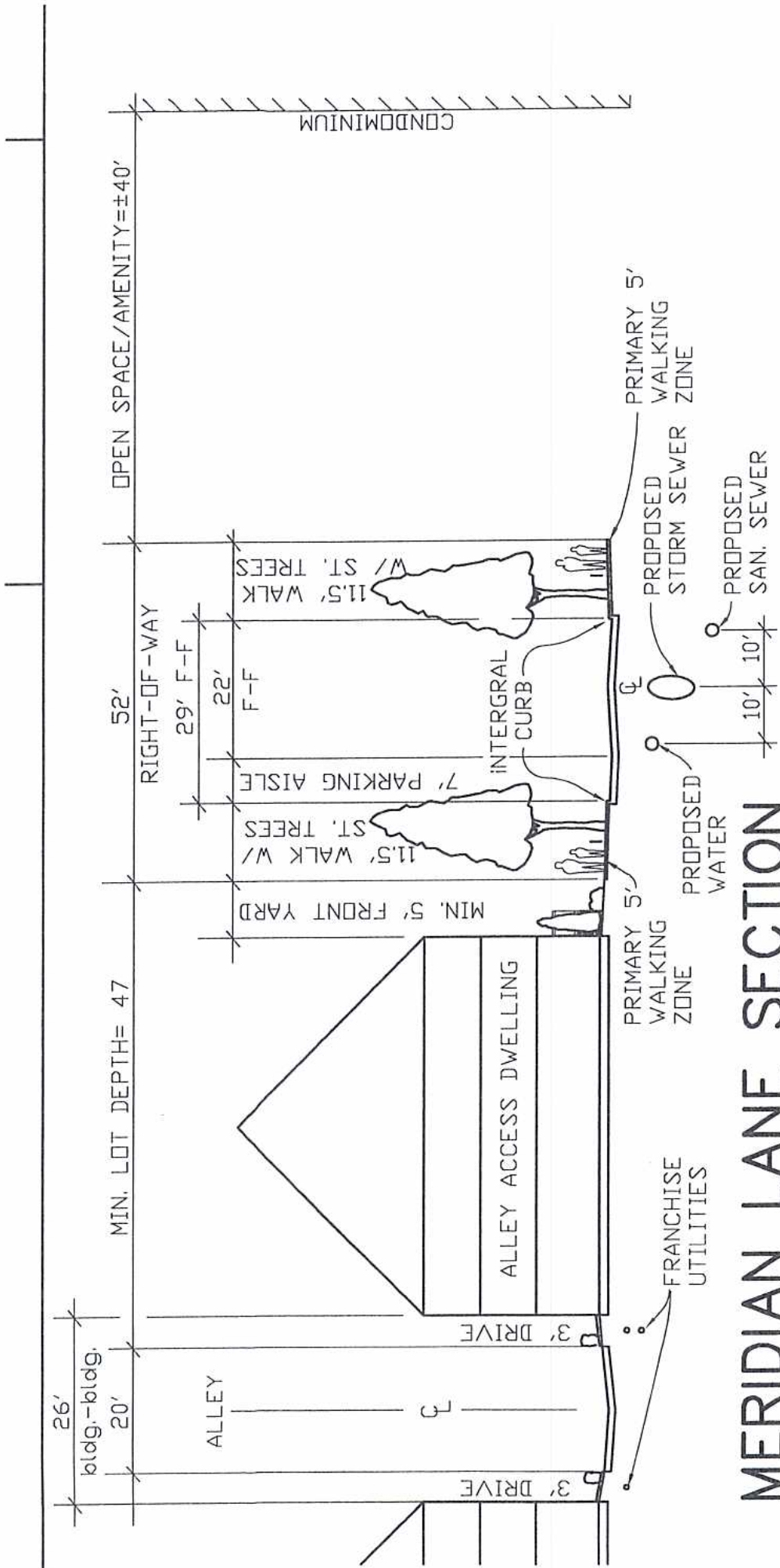
The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2008, voted to recommend approval of the request for an amendment to Article XIX, UC (Urban Center), Appendix A, in order to add the cross section for Airport Parkway and the cross section for Meridian Way as approved streetscape cross sections.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay  
Voting Nay: None  
Absent: Jandura, Wood



# AIRPORT PKWY. SECTION



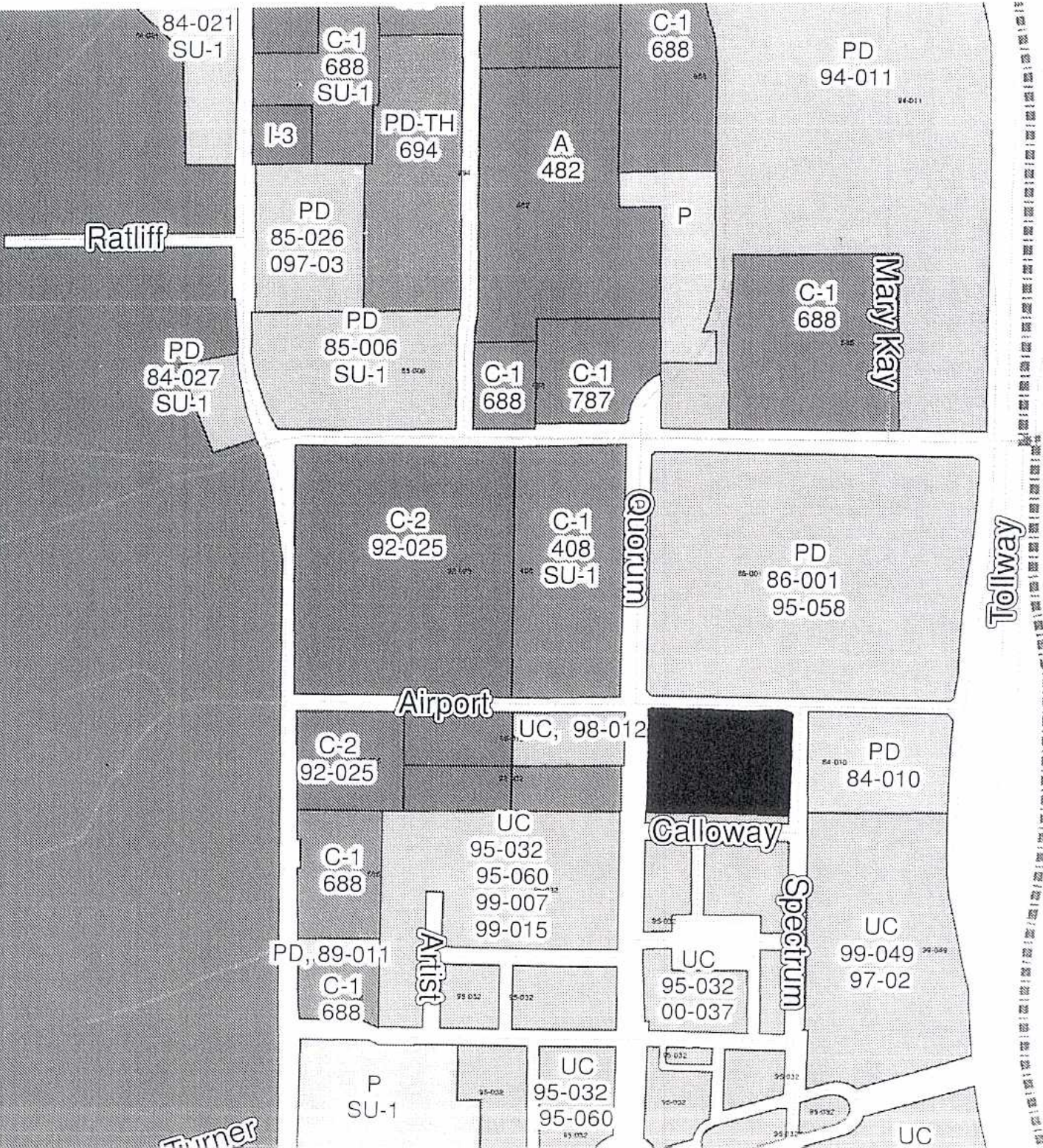


# MERIDIAN LANE SECTION



# 1562-Z-1

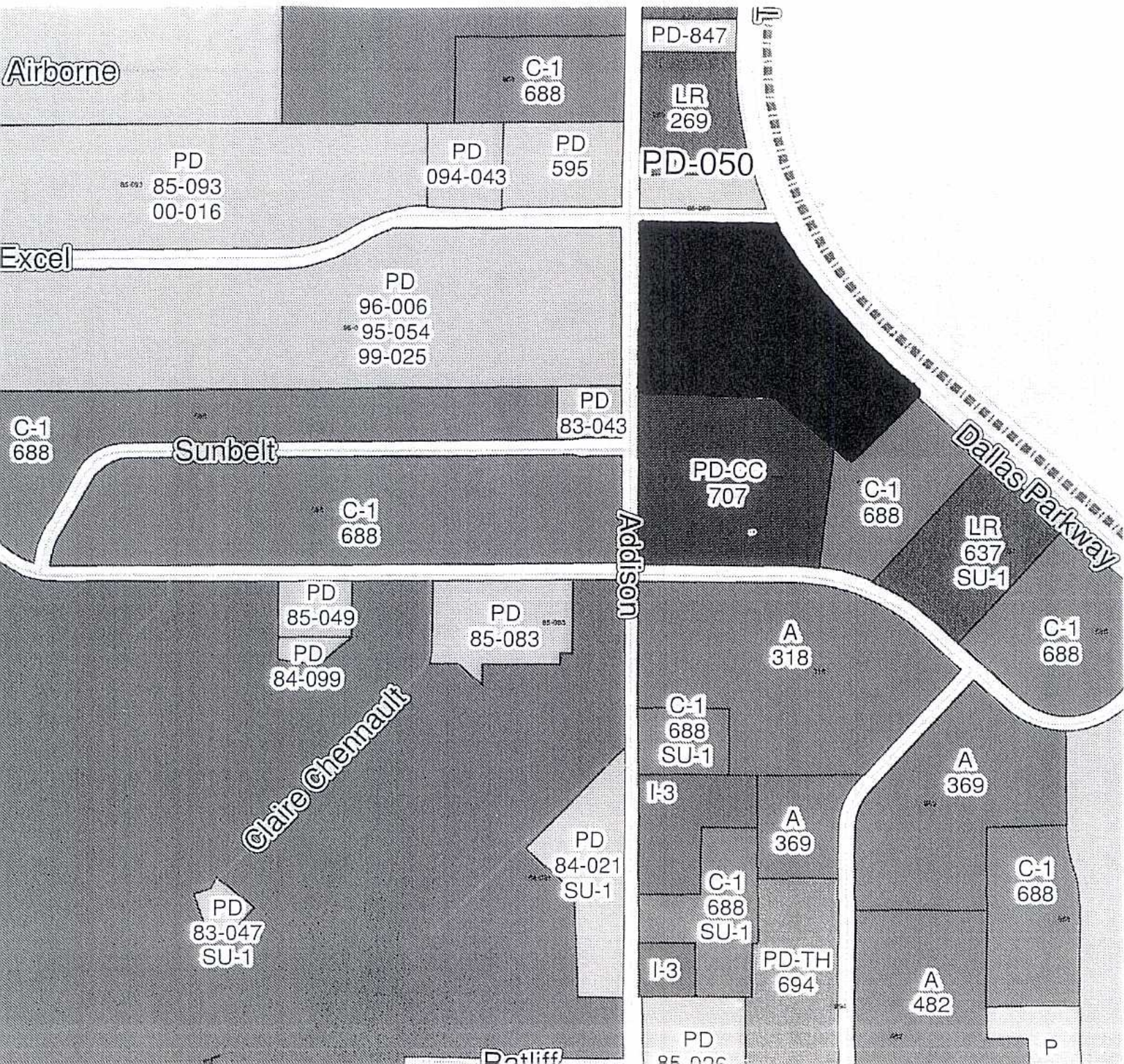
**PUBLIC HEARING** Case 1562-Z-1/Meridian Square. Requesting approval of a final development plan for 48 townhomes and approximately 90 condominium units, located in the UC (Urban Center) district, Residential Subdistrict, located on 3.98 acres at the southeast corner of Airport Parkway and Quorum Drive, on application from Addison Urban Development partners, LLC, represented by Mr. Matt Alexander of Dowdey, Anderson & Associates.



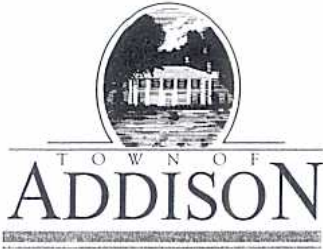


# 1569-Z

**PUBLIC HEARING** Case 1569-Z/Dallas Spine Hospital. Requesting approval of an ordinance approving a Special Use Permit for a hospital in a Planned Development District, and approving development plans for a hospital in a Planned Development District, located on 11.6 acres at the southwest corner of Dallas Parkway and Excel Parkway, on application from Dallas Spine Hospital, represented by Mr. Michael Krach of Nueterra Real Estate Companies, LLC.







**DEVELOPMENT SERVICES**

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

October 17, 2008

**STAFF REPORT**

**RE:** Case 1569-Z/Dallas Spine Hospital

**LOCATION:** 11.6 acres at the southwest corner of Dallas Parkway and Excel Parkway

**REQUEST:** Approval of an ordinance approving a Special Use Permit for a hospital in a Planned Development District, and Approving development plans for a Hospital in a Planned Development District (097-013)

**APPLICANT:** Dallas Spine Hospital, represented By Mr. Michael Krach of Nueterra Real Estate Companies, LLC

**DISCUSSION:**

Background. This 11.6-acre tract was originally part of a larger tract known as the Bent Tree Office Park. The original zoning for the Bent Tree Office Park was approved through Ordinance 083-017. The Office Park covered the land between Bent Tree Plaza Parkway (which is now Excel Parkway) south to Westgrove and between the Dallas Parkway and Addison Road. The Bent Tree I and Bent Tree II office buildings were the first two phases of the Office Park, and this tract was scheduled to hold a third and fourth multi-story office building.

In 1985 the Planned Development district was amended through Ordinance 085-056 to provide for a landmark building at the corner of Dallas Parkway and Bent Tree Plaza Parkway. The building was to be the Bent Tree Bank Tower. The drive-thru facility to

support the bank was constructed at the northwest corner of the intersection, and there was a plan to construct a 13-story bank tower on this property. Construction was started on the project, and the underground parking garage was completed. During that time, the economy turned, and the developer decided to stop construction on the building. The underground garage remained a large concrete hole in the ground (nicknamed Lake Addison) from 1985 to 1997. After construction stopped on the building, the property, which had been owned by the same owner as the two Bent Tree office buildings, was sold off.

In 1997, the new owners of the property developed a new plan for the site and re-named it Hanover Park. The Planned Development District was again amended, this time to provide for two office towers and two free-standing restaurants. The first office building was built on the south part of the site. However, the construction of the other building and the two restaurants was shelved, and the property was sold again.

Proposed Plan. At this point, Nueterra Real Estate Companies is looking to partner with 20 spine surgeons to develop this site with a specialty hospital for spine surgery. In Addison, a hospital requires a Special Use Permit in any zoning district. In addition, the site is in a Planned Development district. Therefore, there are two zoning actions that must take place. First, a Special Use Permit must be approved for the hospital, and second, the development plans associated with the Planned Development zoning on this site (which still reflect the 1997 plan) have to be changed to reflect the plans for the hospital.

The initial building will be a small surgery hospital with a small emergency room. However, the developers are working very carefully to masterplan the site so that it can be developed over several phases, and the long range plan envisions not only a 200-300-bed hospital, but up to three Medical Office Buildings and two multi-story parking structures. The staff has been working with the architects and engineers to make sure the layout of the driveway openings and fire lanes for the first phase will accommodate eventual development of the entire site. The applicant has submitted plans for both the first phase and the eventual total build-out. Our goal at this point is to amend the Planned Development Zoning District to incorporate plans for the fully-developed hospital, but we know the development will occur in phases, and we also know that there cannot be a definite time schedule applied to when the phases will develop.

Phase I Plan. Nueterra and the doctors are still in discussion as to what will be the first phase of the project. The base proposal is for a 3-story hospital. The first floor would contain the lobby, offices, emergency room, and support facilities. The second floor would contain five operating rooms, and the third floor would contain 36 patient rooms.

Option 2 for Phase I would contain the same basic hospital, but would add two floors of medical offices above the three-floor hospital. Both Option 1 and Option 2 would fit within the same building footprint, with the only difference being the height of the building.



The site provides sufficient room for either option. If Option 1 is selected, the developers will build only the parking lot at the corner of Addison Road and Excel Parkway (shown as Parking Zone 1 on the site plan). If Option 2 is selected, the developers will add a surface lot for medical office building parking to the south of the hospital lot (shown as Parking Zone 2 on the site plan).

Facades. The facades will be a combination of stone, concrete panels, and glass. The building will be commercial, steel and concrete construction.

Setbacks. In a Planned Development District, the applicant can propose any distance as a setback. This development intends to adhere to the standard setback requirement contained in the Commercial-1 zoning district. The standard Commercial-1 setback is 25-feet from the front property line for the first six stories of height, with increased height allowed at a 1:2 ratio (one foot of additional setback gains 2 feet of additional height). Under those requirements, the first building in Phase I will be set back 59.5 feet from Dallas Parkway in order to allow for an ultimate height of 9 stories. The 6-story hospital expansion will be set back 37 feet, and an additional 10-story expansion would be set back 68 feet. The buildings will be set back from the rear property line a minimum of 68 feet. The two, seven-story medical office buildings are set back 38 feet from Excel Parkway and Addison Road. The parking garages will ultimately be 9 levels, so they are setback 37.5 feet from Addison Road, Dallas Parkway, and adjacent property lines.

Parking. The Town does not have a parking requirement for a hospital. Various types of hospitals require different amounts of parking; therefore, the staff asked Nuetera and Boka Powell (the project architect) to propose a parking requirement for the hospital that they had found workable in other similar developments. The Town does have a parking requirement for a medical office building, and that ratio is one space per 200 square feet. A medical office building of over 50,000 square feet can figure the parking requirement on the net usable square footage as opposed to the gross square footage. Since it has yet to be determined whether this will be a 3 or 5 story project, the staff cannot accurately determine the parking requirement. However, there is sufficient room on the site to construct whatever amount of parking is ultimately required.

Engineering. The Public Works Department has reviewed the plans, and has several comments. The staff discussion of the comments is shown in *italics*.

1. An eleven (11) foot right-of-way dedication is required along Addison Road.

*This dedication can be reflected on the plat for the site, which must be completed before the beginning of construction.*

2. The Town of Addison intends to improve Addison Road to a median-divided section in the future. The driveways shown along Addison Road on the Development Plans for Dallas Spine Hospital do not meet the minimum



separation required to receive a median opening. Additionally, the driveways do not line up with the existing drive openings located across Addison Road. A traffic impact analysis is required in order to determine the best access locations from Addison Road and to determine the best location for future median openings.

*Public Works is comfortable with the development of the initial phase of this long-range project. However, it will require that a traffic impact analysis be completed prior to the construction of any future phases in order to determine where median openings should be provided along Addison Road.*

3. The south driveway along Addison Road does not meet the minimum requirements of the Transportation Plan.

*The site plan has been revised to get better spacing between the two driveways on the Addison Road side of the site, and the staff has agreed to the spacing and alignment. However, the driveway spacing and location of the south driveway on the Addison Road frontage do not meet the criteria recommended in the Town's Thoroughfare Plan. The driveways can be approved through a Planned Development District, which is what is being proposed in this case.*

4. A decel lane shall be provided for the drive opening along Dallas Parkway. All connections to Dallas Parkway shall be in accordance with the City of Dallas requirements.

*Since the Dallas Parkway frontage is within the City of Dallas, and access is controlled by the City of Dallas, the applicant will have to get approval from Dallas for the driveways. In addition, the applicant will be expected to construct a deceleration lane into the driveway shown on the Phase I plan. If the driveway is later moved to the south as the site is developed, the applicant will have to construct a new deceleration lane into that new driveway.*

5. A preliminary analysis of the downstream storm sewer systems indicate that the existing system is not capable of conveying additional storm water runoff from this area. Therefore, the Dallas Spine Hospital shall be designed so that the existing peak discharge is not increased.

*This means the site will have to provide on-site detention for stormwater runoff. That can either be provided above ground in a detention pond, or underground in stormwater detention holding tanks.*

6. Currently, a curb opening in Addison Road drains across this site within an existing easement. Drainage from this curb opening shall be accounted for in the future construction documents.

*This site must be designed to handle stormwater that is presently flowing across*



*the site.*

7. According to the water master plan, a twelve inch (12") water line is required to be installed along Dallas Parkway with this development.

*The installation and cost of the water line shall be provided by the developer.*

8. According to the 1996 Wastewater Collection System Report, the downstream sanitary sewer is currently over capacity. The addition of this development plan will place an additional burden on the existing over capacity sanitary sewer main. An upgrade of the sanitary sewer main is recommended.

*The upgrade of the sanitary sewer main would be funded and constructed by the Town, not the developer.*

Landscaping. The Parks Department has reviewed the proposed landscaping plan, and while it is a concept plan at this point, it complies with the Landscape Regulations.

Fire. The Fire Department worked with the applicant to revise the fire lanes from the original proposal. The current plan shows emergency access that appears to comply with the 2006 Fire Code. Fire hydrants are not shown on the submittal, but hydrants will be required at 300-foot intervals along fire lanes in approved locations.

Sustainability. The Town is currently looking at a sustainability program for new development. Although there are no requirements in place at this time, the staff talked to the project architects about what level of LEED certification the building might be able to achieve. The architects indicated they did not expect to go through the LEED certification process because of the expense involved. However, because of the stringent construction standards required for a hospital, the architects expect the building to be LEED "certifiable."

## **RECOMMENDATION**

The Town does not currently have a hospital within its boundaries, and it is very excited about the possibility that it will add a land use that is currently not found in the Town, as well as an emergency room in the hospital that can be used by our EMS and Police Departments. At present, our EMS ambulances transport accident victims to either RHD Hospital in Farmers Branch, Baylor Plano or Presbyterian Plano. Sometimes our ambulances must incur delays in their emergency runs because of heavy traffic, and having an emergency room in Addison will be of great help to those in need of emergency services. While the emergency room will not be a Trauma I unit, it will have sufficient capacity to handle the minor emergencies that we often encounter with traffic accidents.

The staff understands that this is a long-range plan, and that many of the details have yet to be worked out. However, the staff is comfortable that the Phase I plan (either



option 1 or option 2) can be accommodated on the site with surface parking. The future phases shown can be accommodated on the site with the access roads shown and parking garages provided. However, the staff believes there will likely be some revisions to the plan before all additional phases are added. Those revisions would have to return to the Town for approval as amendments to the approved development plans.

The staff believes a hospital, with possible medical office buildings, is an excellent use for this property. The staff also hopes that as this new land use develops, it acts as a "catalyst" to encourage other medical uses and facilities to move into the area. The three office buildings south of this site could easily be remodeled to accommodate doctor's offices and other support facilities. The technical office space to the west of this site and on the north and south sides of Excel Parkway, could easily accommodate testing and imaging labs, and other technical support businesses. In addition, the staff would hope that some of the land around the site would redevelop with new medical support facilities. Lastly, the Town knows that a hospital will require a lot of employees at all levels of salary and expertise, and the Town is eager to provide housing, retail stores, and restaurants to those new employees.

Staff recommends approval of the Special Use Permit for a hospital in a Planned Development District, and approval of development plans for a hospital in a Planned Development District, subject to the following conditions:

- An eleven (11) foot right-of-way dedication is required along Addison Road.
  - Prior to the development of Phase II, a traffic impact analysis shall be required in order to determine the best access locations from Addison Road and to determine the best location for future median openings.
  - A decel lane shall be provided for the drive opening along Dallas Parkway. All connections to Dallas Parkway shall be in accordance with the City of Dallas requirements.
  - The project shall be designed so that the existing peak discharge is not increased.
  - This site must be designed to handle off-site stormwater that is presently flowing across the site.
- A twelve inch (12") water line is required to be installed along Dallas Parkway with this development.
- Fire hydrants must be installed at 300-foot intervals along fire lanes in approved locations.

Respectfully submitted,

A handwritten signature in black ink that reads "C. MORAN". The "C" is large and loops around the start of the name. The "MORAN" is written in a slightly slanted, cursive style.

Carmen Moran  
Director of Development Services

### **COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2008, voted to recommend approval of the Special Use Permit for a hospital in a Planned Development District, and approval of development plans for a hospital in a Planned Development District, subject to the following conditions:

-The setbacks for this property shall be as follows:

-a minimum of twenty-five (25) feet from all public rights-of-way for all hospital buildings, medical office buildings, and parking structures,

-a minimum of twenty-five (25) feet from all interior property lines for all hospital buildings and medical office buildings,

-a minimum of twelve (12) feet from all interior property lines for all parking structures, with a 12-foot landscape buffer to be provided at all interior property lines.

-Maximum height allowed for all structures on the property shall not exceed the maximum height allowed by the Federal Aviation Administration for buildings at this location.

-The developer shall submit a checklist showing the "green" elements to be included in the building design and operation that will reduce energy consumption.

-The property shall be replatted, and the plat shall reflect an eleven (11) foot right-of-way dedication along Addison Road.

-A traffic impact analysis shall be required prior to the construction of future phases of the project.

-A deceleration lane shall be provided for the drive opening along Dallas Parkway, unless the developer provides a traffic impact analysis (approved by the City of Dallas) which indicates that the turning movements into the site do not justify a deceleration lane. All connections to Dallas Parkway shall be in accordance with the City of Dallas requirements.

-The project shall be designed so that the existing peak discharge is not increased.

-This site must be designed to handle off-site stormwater that is presently flowing across the site.

A twelve inch (12") water line is required to be installed along Dallas Parkway with this development.

Fire hydrants must be installed at 300-foot intervals along fire lanes in approved locations.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay

Voting Nay: None

Absent: Jandura, Wood



# Dallas Spine Hospital Parking Summary

17-Oct-08

## Initial Phase - Option One

Hospital	Phase 1 - three story		
	Number of beds		
Required Parking	36 beds	36	
total staff	3.5 staff x 36   126	89	
	70 % of staff at peak time	125	
	Subtotal		
<b>Total parks</b>			<b>125</b>
Proposed Supplemental Parks		28	
<b>Total Provided Parks</b>			<b>153</b>
(not including Zones 2 and 3)			



# Dallas Spine Hospital Parking Summary

17-Oct-08

## Initial Phase - Option Two

Medical Office Building Phase 1 - two stories of Medical Office on top of Hospital

floor plan	Number of stories	Total Area	Req'd parking 1 sp per 200 sf
MOB part of Hospital	2	53144 sf	266
<b>MOB Subtotal</b>			<b>266</b>

## Hospital Phase 1 - five story Three Story Hospital

Number of beds	Required Parking	total staff	Subtotal
36 beds	36	3.5 staff x 36 l	126
70 % of staff at peak time			89
			125
<b>Total parks</b>			<b>125</b>
Proposed Supplemental Parks			15
<b>Total Provided Parks</b>			<b>406</b>



# Memorandum

**To:** Carmen Moran  
**CC:** Nancy Cline  
**From:** Clay Barnett  
**Date:** 10/15/2008  
**Re:** Development Plan Review for Dallas Spine Hospital

- 
1. An eleven (11) foot right-of-way dedication is required along Addison Road.
  2. The Town of Addison intends to improve Addison Road to a divided section in the future. The driveways shown along Addison Road on the Development Plans for Dallas Spine Hospital do not meet the minimum separation required to receive a median opening. Additionally, the driveways do not line up with the existing drive openings located across Addison Road. A traffic impact analysis is required in order to determine the best access locations from Addison Road and to determine the best location for future median openings.
  3. The south driveway along Addison Road does not meet the minimum requirements of the Transportation Plan.
  4. A decel lane shall be provided for the drive opening along Dallas Parkway. All connections to Dallas Parkway shall be in accordance with the City of Dallas requirements.
  5. A preliminary analysis of the downstream storm sewer systems indicate that the existing system is not capable of conveying additional storm water runoff from this area. Therefore, the Dallas Spine Hospital shall be designed so that the existing peak discharge is not increased.
  6. Currently, a curb opening in Addison Road drains across this site within an existing easement. Drainage from this curb opening shall be accounted for in the future construction documents.
  7. According to the water master plan, a twelve inch (12") water line is required to be installed along Dallas Parkway with this development.
  8. According to the 1996 Wastewater Collection System Report, the downstream sanitary sewer is currently over capacity. The addition of this development plan will place an additional burden on the existing over capacity sanitary sewer main. An upgrade of the sanitary sewer main is recommended.

## Memorandum

Date: October 13, 2008  
To: Carmen Moran, Director of Development Services  
From: Slade Strickland, Director of Parks and Recreation  
Subject: **Case 1564-Z/Dallas Spine Hospital**

The landscape plan submitted by the applicant complies with the Landscape Regulations.

# Memorandum

**To:** Carmen Moran, Director of Development Services  
**From:** Gordon C. Robbins, Deputy Fire Chief  
**Date:** Friday, October 17, 2008  
**Re:** Dallas Spine Hospital



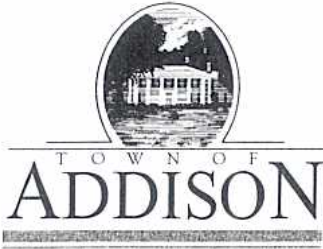
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Emergency access as shown on the submittal appears to comply with 2006 Fire Code.

Fire hydrants are not shown on the submittal. Hydrants will be required at 300-foot intervals along fire lanes in approved locations.

Thank you.





DEVELOPMENT SERVICES

(972) 450-2880 Fax: (972) 450-2837

16801 Westgrove

Post Office Box 9010 Addison, Texas 75001-9010

October 15, 2008

STAFF REPORT

RE: Case 1562-Z-1/Meridian Square

LOCATION: 3.98 acres in the UC – Urban Center district, Residential subdistrict, at the southeast corner of Quorum Drive and Airport Parkway

REQUEST: Approval of a final development plan for 48 townhomes and 90 condominiums

APPLICANT: Addison Urban Development Partners, LLC, represented by Mr. Matt Alexander of Dowdey, Anderson & Associates

DISCUSSION:

Background. In August of this year, the Commission reviewed a concept plan for this project. That concept plan was approved by the City Council on September 9, 2008. The applicant is now returning to the Commission and Council for approval of the final development plan. The final development plan matches the approved concept plan for the project, but provides additional detail on the building facades and landscaping.

As was noted in the concept plan staff report, Savannah Homes and David Weekley Homes are proposing a “hybrid” plan for the tract that will contain 48 of the original David Weekley townhomes, and approximately 90 flat condominium units. In the interest of clarity, the staff will discuss each section of the hybrid plan separately.

DAVID WEEKLEY TOWNHOMES:

Site lay-out. David Weekley is proposing to construct 48 townhomes in approximately the same lay out that was approved when David Weekley filed its original plan to develop the site in November of 2007. The product floor plans and elevations are the same as David Weekley proposed in the concept plan.



The staff wanted to be sure that the revised layout would still relate, in mass and feel, to the existing townhomes across Calloway Drive (the CityHomes product). In this plan, there will be 11 units that front onto Calloway Drive and three units that side to Calloway. The staff believes that the revised plan still provides a reasonable relationship between this product and the CityHomes product. The Weekly units that "side" to Calloway are directly across the street from CitiHomes units that "side" to Calloway, and the Weekly units that "face" Calloway are directly across the street from CityHomes units that "face" Calloway. Staff feels that this arrangement should provide reasonable views to residents on both sides of the street.

In addition, the views down the alleys of the Weekly product have been improved. In the original plan, the residents on the south side would see alleys that ran the length of the project (much like the alleys that CityHomes has on the south side). In this revised plan, the alley on the west end of the project is shorter and is capped with a screening hedge at the north end. The alley on the east end is capped with a screening hedge at the Calloway end. Staff believes the shortening and capping of the alleys is an improvement to the plan.

Unit Heights. Weekly is proposing to build 48, owner-occupied townhomes on individually-platted lots. The plan proposes 8 separate buildings with an approximate height of 42'-3" to the top of the gabled roof. For comparison, City Homes measures 35 feet to the top of the building, with some gable elements going to 40 feet. In the UC district, the maximum height for a townhome is 40 feet. The Building Code measures height of a building to the center of the gable, so by our measurements, the buildings are 36.5 feet tall, which falls within the allowed height.

Unit Area. The units range from 2,160 square feet (the 16'-width lots) to 2,970 (the 25'-width lots). Most units have an option for a fireplace. In addition, some units show fourth floor lofts with roof-top decks, which staff believes will be a popular feature. In the UC district, the minimum area per dwelling unit for a townhome is 1,600 square feet, so the units will exceed the minimum size requirement for a dwelling unit.

Facades. David Weekly is proposing to use the same facades that were approved in the November 2007 request, which include brick and stone on the front and sides and hardi-plank siding on the backs. The units will have composition shingle roofs. The elevations shown were approved for Weekly's previous zoning application and in the concept plan.

Parking. Weekly is proposing to provide 2 parking spaces per unit in the garages, even for the 16-foot-wide units. In addition, the site provides 41 public parking spaces along the public streets.

Waivers. It appears that the waivers requested from David Weekly in the original application are all still being requested. Those waivers are as follows and are shown in **bold type**:



**Waiver of design standards in order to allow lot widths to be 16 feet as opposed to the 25 feet required by the ordinance.** This is a change from the original approved plan. David Weekley is now proposing a 16-foot wide, tandem garage unit. The unit is designed for the single buyer who does not own two cars. The "C" units are the 16-foot wide units, and they are always built side-by-side in twos. Twenty-two of the 48 townhome units proposed are the 16-foot wide units. The staff would have a concern about the narrower units if the proposed facades were like the CityHomes facades and were different for each unit. However, David Weekley is proposing the same brick and stone façade for all units in a building. Therefore, the staff does not believe there will be a noticeable difference in the width of the units.

**Waiver to design standards in order to allow depths of 45 feet as opposed to the 55 feet required by the ordinance.**

**Waiver to design standards in order to allow lot coverage of 100% of the lot as opposed to the 65% of the lot required by the ordinance.**

**Waiver to design standards in order to allow a minimum three-foot setback against the Category C, (Residential) Streets (Calloway), as opposed to the five-foot setback required by the ordinance, and a waiver to design standards in order to allow a seven-foot setback against the Category D (Quorum, Spectrum, Airport Parkway) streets, as opposed to the ten-foot setback required by the ordinance.**

**Waiver to design standards in order to use hardi-plank siding as a siding material on an exterior façade.**

**Waiver to design standards in order to use composition shingles as a roofing material.**

The waivers to lot width, depth, and coverage have been approved for all previous townhomes in the district. A waiver for hardi-plank siding was approved for CityHomes. The waiver for composition roof materials is unique to the David Weekley product, but was approved for the original Weekley plan and was also shown in the concept plan.

Noise issue. In the original approval, there was a concern about the impact the noise from the chiller unit at the Madison office building would have on the units that were close to it. There was a condition placed on the original approval that read:

-Units in Block C, units 9-16, (as shown on the approved final development plan) shall be constructed using noise mitigation methods so that outside noise levels, measured within the habitable space of the dwelling unit, do not exceed 45 DNL. A certified acoustical engineer shall approve the construction plans for units 9-16 to assure they will provide a 45 DNL noise level, and a certified acoustical engineer shall inspect the units, once they are constructed, and verify that the



required noise level has been attained. The applicant shall bear all costs for hiring the certified acoustical engineer.

Staff is still recommending this condition for approval.

## SAVANNAH HOMES CONDOMINIUMS

Site Lay-out. Savannah Homes is proposing to construct 90, owner-occupied condominium units in three separate buildings. The buildings will provide required parking underneath. They are a “stacked flat” product in that each condominium is a flat unit on with no interior stairs. The four-story units are all served by elevators.

Savannah Homes is proposing the buildings be constructed on three separate lots that are approximately 171.60 x 144.15, 174.53 x 162.59, and 129.04 x 121.75. Staff realizes that we are down to the last tract in Addison Circle, and it is getting to difficult to fit product on a confined site. Staff also realizes that while the condominiums along Airport Parkway will be three separate lots, it will “read” visually as one lot.

Condominium Units. The condominium units will range in size from 897 square feet to 1,453 square feet. All unit sizes are above the minimum required size for the UC district of 700 square feet. The breakdown for unit size has changed a little from the concept plan. Savannah Homes probably adjusted unit mix and sizes in order to be able to provide sufficient parking inside the buildings. However, the total number of units is still 90. The breakdown is as follows:

1 bedroom 1 bath	1 bedroom, den, 1 bath	2 bedrooms 2 baths	2 bedrooms, 2 baths	2 bedrooms den, 2 baths
18 units	18 units	18 units	30 units	6 units
897 square feet	897 square feet	1,161 square feet	1,265 square feet	1,453 square feet

Facades. Savannah Homes did not submit elevations for all sides of the buildings for the concept plan approval. During that process, the staff noted that the facades did not appear to be 90% brick on the exterior, and Savannah Homes indicated it would make the elevations 90% brick. For the final development plan request, Savannah Homes only submitted elevations for Building II, which the staff assumes to be typical of all three buildings. These plans have the materials called out, and they are approximately 54% brick/stone and 46% stucco. In addition, there are two facades (the recessed portion of the left elevation and recessed portion of the rear elevation) that are shown on the drawings, but no materials are specified. Staff cannot tell if these elevations are finished like the rest of the building, or are 100% stucco. The standards provide for 100% stucco on facades that are not visible from a public right-of-way, but these are visible from Meridian Lane. Therefore, they cannot be 100% stucco. In addition, the facades show some wood trellis elements. The Town has found that wood exterior elements, which were used for some balconies in the Post multi-family project and



some trellis elements in the CityHomes project, have not held up over time and need replacing more quickly than metal trellises or awnings.

Staff believes that the facades are nicely detailed, but they should be at least 70% brick or stone. Staff believes 70% brick/stone could be accomplished with some minor adjustments to the flat-roofed portions of the buildings. Staff also believes that all elevations should be at least 70% brick/stone and there should not be less than 70% brick/stone allowed on the recessed portions of the buildings. In addition, staff recommends that the wood trellis elements be changed to metal.

Roofs. Savannah Homes is proposing a flat-roofed product with some mansard portions that are metal. Metal is an allowed roof material in the UC district. The roofs shown comply with the standards.

Parking. Under the Urban Center regulations, one parking space must be provided for each bedroom. According to the staff's calculations, the project requires 144 parking spaces. The plans indicate there will be 146 parking spaces in the garage, which exceeds the requirement by 2 spaces. In addition, there are 41 public parking spaces on the public streets around and within the site.

Parking Garage. Staff expressed a concern during the concept plan discussion about the parking beneath the building. Staff has seen many instances where "podium garages" provide dark holes at the street level. Due to the topography of the site, the applicant is able to hide a portion of the garage on the Quorum Drive side, but the garage will be partially exposed on the Airport Parkway side, and completely exposed on Spectrum Drive. There are parking garages across the street on both the Airport Parkway and Spectrum Drive side, so the staff is not as concerned as it might be if the garages were against Calloway Drive. In addition, the entrances to the garage (which are large gaping holes in the street frontage), are all hidden on interior streets. The staff requested detailed landscaping plans showing the treatment of the space between the garage and the street. The Parks Department has reviewed the plans and finds that they are acceptable. The staff believes the landscaping proposed will provide an acceptable level of screening of the street-level garage.

Setbacks. In the UC district, the minimum setback is defined as a "build-to" line. The build-to line for Category D streets, which include Spectrum Drive and Quorum Drive, is ten (10) feet. These condo buildings are proposed with a 10-foot setback on Quorum Drive and a 7-foot setback on Spectrum. The staff is comfortable with the setbacks proposed.

Savannah Homes is requesting the following waivers to design standards (shown in **bold type**).

**Waiver to the design standard for minimum width and minimum depth for a lot.**



The minimum width and minimum depth for a lot for a stacked/flat condominium use is the same as the width/depth for multifamily, which is 200 feet. Staff would support a waiver for minimum lot width and depth.

**Waiver to design standards in order to allow a minimum seven-foot setback against a Category D street (Spectrum Drive), as opposed to the ten-foot setback required by the ordinance.**

Staff supports a waiver to this standard. The applicant will meet the ten-foot setback against Quorum Drive.

**Waiver to design standards in order to allow for less than 90 percent of the exterior cladding of all exterior walls fronting or visible from public streets (including above grade parking structures) be brick or stone construction.**

As staff noted earlier in the report, the facades, while nicely detailed, have large sections that are stucco. Staff would support a waiver to allow for at least 70 percent of the facades to be brick or stone and up to 30 percent to be stucco. In addition, since all facades of this project are visible from a public street, all facades must meet the requirement.

#### DEPARTMENT REVIEW OF ENTIRE PLAN

Parks Department Review. The Parks Department has reviewed the landscaping of the street sections proposed, and finds that it generally meets the standards for tree spacing, etc. of the UC district. However, the staff recommends that the tree wells be designed to match the Fairfield Development tree wells, which include a concrete curb edge separating the pavers from the planting bed. The Parks Department also finds that the interior landscaping against the parking garage will provide sufficient screening of the garage.

Public Works Review. The Public Works Department has reviewed the proposed site plan, and notes the following:

1. The dead-end alleys need to have appropriate signage.
2. Add a 5-foot sidewalk easement along the Spectrum Drive frontage.

Building Inspection Review. The Building Official notes the following Code requirements:

1. Any encroachments into the public right-of-way shall comply with Chapter 32 of the 2006 IBC and must be approved by the Public Works Department.

The staff cannot determine from the plans if balconies on upper floors or exterior stairways will encroach into the public right-of-way. Any encroachments into the right-



of-way will have to be approved by Public Works, and the staff is not inclined to allow encroachments at grade level, such as exterior stairways.

2. The townhomes shall comply with the requirements of the 2006 IRC. These homes are to be constructed on separate lots and the developer should be aware that Table R302.1 of the 2006 IRC limits openings and projections such as soffits and balconies in proximity to the property line. The Town does have an exception to this section if a unity agreement has been executed.

Fire Department Review. The Fire Department has worked with the applicant on the layout and is satisfied that the fire lane turn radii are sufficient. There must be fire hydrants placed at 300-foot intervals along streets and fire lanes serving the property. The Fire Department also notes that the alleys may be capped as they are not intended for emergency access use.

#### RECOMMENDATION:

As the staff noted in the report on the concept plan, there are several things about this plan that have merit. The staff had some concerns with the Intervest, and then the David Weekley plan that are remedied in this plan. The staff felt that Airport Parkway and Spectrum Drive were less-than- wonderful edges for a townhome product because they both contained parking garages. This plan takes some of the townhomes off of Spectrum Drive and takes all of the townhomes off of Airport Parkway. The staff feels that the condominium product is a better fit against Airport Parkway because it will not require the front doors or side walls of any townhome units to face Airport Parkway. The taller buildings will serve to "buffer" the townhomes from Airport Parkway. The plan also maintains a townhome edge against Calloway Drive, which makes it compatible with the existing CityHomes townhomes to the south. Staff also feels that a taller, higher-density product at the north edge of the district provides a better "end-cap" for the district.

The staff also believes the condominiums provide a product niche that is missing in Addison Circle. The staff has heard time and again from our residents that aging baby boomers (which are an ideal market for a condominium product in an urban district like Addison Circle), don't like the stairs of a townhome unit. Savannah Homes believes that its flat condominium unit is ideal for the aging baby-boomer market because it's more efficient floor plan that "lives larger" because it does not have to sacrifice floor space for stairwells. In addition, the buildings have been laid out to provide as many units as possible with windows on two sides. These "two exposures" allow more light and air to the interior of the unit than an interior lot townhome. The staff also likes the fact that this condominium product provides a pool and amenity area for its residents that can also be shared by the townhome residents.

Staff recommends approval of the final development plan for 48 townhomes and 90 condominium units, subject to the following waivers of design standards:



David Weekley waivers for townhomes

**Waiver of design standards in order to allow lot widths to be 16 feet as opposed to the 25 feet required by the ordinance.** Staff recommends approval

**Waiver to design standards in order to allow depths of 45 feet as opposed to the 55 feet required by the ordinance.** Staff recommends approval.

**Waiver to design standards in order to allow lot coverage of 100% of the lot as opposed to the 65% of the lot required by the ordinance.** Staff recommends approval.

**Waiver to design standards in order to allow a minimum three-foot setback against the Category C, (Residential) Streets (Calloway), as opposed to the five-foot setback required by the ordinance, and a waiver to design standards in order to allow a seven-foot setback against the Category D (Quorum, Spectrum, Airport Parkway) streets, as opposed to the ten-foot setback required by the ordinance.** Staff recommends approval.

**Waiver to design standards in order to use hardi-plank siding as a siding material on an exterior façade.** Staff recommends approval.

**Waiver to design standards in order to use composition shingles as a roofing material.** Staff recommends approval.

Savannah Homes waivers for condominiums:

**Waiver to the design standard for minimum width and minimum depth for a lot.** Staff recommends approval.

**Waiver to design standards in order to allow a minimum seven-foot setback against a Category D street (Spectrum Drive), as opposed to the ten-foot setback required by the ordinance.** Staff recommends approval.

**Wavier to design standards in order to allow for less than 90 percent of the exterior cladding of all exterior walls fronting or visible from public streets (including above grade parking structures) be brick or stone construction.** Staff does not recommend approval of this waiver for the elevations shown in the current plan, but would support a waiver for facades that are at least 70 percent brick/stone.

Staff also recommends approval subject to the following conditions:

-Units in Block C, units 9-16, (as shown on the approved final development plan) shall be constructed using noise mitigation methods so that outside noise levels,

measured within the habitable space of the dwelling unit, do not exceed 45 DNL. A certified acoustical engineer shall approve the construction plans for units 9-16 to assure they will provide a 45 DNL noise level, and a certified acoustical engineer shall inspect the units, once they are constructed, and verify that the required noise level has been attained. The applicant shall bear all costs for hiring the certified acoustical engineer.

-The tree wells on all public streets be designed to match the Fairfield Development tree wells, which include a concrete curb edge separating the pavers from the planting bed.

-The dead-end alleys shall have appropriate signage.

-A 5-foot sidewalk easement shall be added along the Spectrum Drive frontage.

-Any encroachments into the public right-of-way shall comply with Chapter 32 of the 2006 IBC and must be approved by the Public Works Department.

-The townhomes shall comply with the requirements of the 2006 IRC. These homes are to be constructed on separate lots and the developer should be aware that Table R302.1 of the 2006 IRC limits openings and projections such as soffits and balconies in proximity to the property line. The Town does have an exception to this section if a unity agreement has been executed.

Fire hydrants shall be placed at 300-foot intervals along streets and fire lanes serving the property.

Respectfully submitted,

A handwritten signature in black ink that reads "C MORAN". The "C" is large and loops around the "M". The "O" is a simple circle, and "RAN" is written in a slightly slanted, cursive style.

Carmen Moran  
Director of Development Services

## Memorandum

Date: October 13, 2008  
To: Carmen Moran, Director of Development Services  
From: Slade Strickland, Director of Parks and Recreation  
Subject: **Case 1562-Z-1/Meridian Square**

The landscape/streetscape plans submitted by the applicant comply with the Urban District standards. Staff recommends that the tree wells be designed to match the Fairfield Development tree wells, which includes a concrete curb edge separating the pavers from the planting bed.



## COMMISSION FINDINGS

The Addison Planning and Zoning Commission, meeting in regular session on October 23, 2008, voted to recommend approval of the request for final development plan approval, subject to the following waivers and conditions for approval:

David Weekley waivers for townhomes:

**Waiver of design standards in order to allow lot widths to be 16 feet as opposed to the 25 feet required by the ordinance**

**Waiver to design standards in order to allow depths of 45 feet as opposed to the 55 feet required by the ordinance.**

**Waiver to design standards in order to allow lot coverage of 100% of the lot as opposed to the 65% of the lot required by the ordinance**

**Waiver to design standards in order to allow a minimum three-foot setback against the Category C, (Residential) Streets (Calloway), as opposed to the five-foot setback required by the ordinance, and a waiver to design standards in order to allow a seven-foot setback against the Category D (Quorum, Spectrum, Airport Parkway) streets, as opposed to the ten-foot setback required by the ordinance.**

**Waiver to design standards in order to use hardi-plank siding as a siding material on an exterior façade.**

**Waiver to design standards in order to use composition shingles as a roofing material.**

Savannah Homes waivers for condominiums:

**Waiver to the design standard for minimum width and minimum depth for a lot.**

**Waiver to design standards in order to allow a minimum seven-foot setback against a Category D street (Spectrum Drive), as opposed to the ten-foot setback required by the ordinance.**

**Wavier to design standards in order to allow for not less than 70 percent of the exterior cladding of all exterior walls fronting or visible from public streets (including above grade parking structures) be brick or stone construction.**

Conditions for approval:



-Units in Block C, units 9-16, (as shown on the approved final development plan) shall be constructed using noise mitigation methods so that outside noise levels, measured within the habitable space of the dwelling unit, do not exceed 45 DNL. A certified acoustical engineer shall approve the construction plans for units 9-16 to assure they will provide a 45 DNL noise level, and a certified acoustical engineer shall inspect the units, once they are constructed, and verify that the required noise level has been attained. The applicant shall bear all costs for hiring the certified acoustical engineer.

-The tree wells on all public streets be designed to match the Fairfield Development tree wells, which include a concrete curb edge separating the pavers from the planting bed.

-The dead-end alleys shall have appropriate signage.

-A 5-foot sidewalk easement shall be added along the Spectrum Drive frontage.

-Any encroachments into the public right-of-way shall comply with Chapter 32 of the 2006 IBC and must be approved by the Public Works Department.

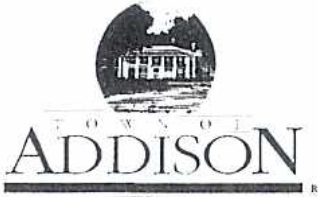
-The townhomes shall comply with the requirements of the 2006 IRC. These homes are to be constructed on separate lots and the developer should be aware that Table R302.1 of the 2006 IRC limits openings and projections such as soffits and balconies in proximity to the property line. The Town does have an exception to this section if a unity agreement has been executed.

Fire hydrants shall be placed at 300-foot intervals along streets and fire lanes serving the property.

Voting Aye: Bernstein, Daseke, Gaines, Hewitt, Lay

Voting Nay: None

Absent; Jandura, Wood



**PUBLIC WORKS DEPARTMENT**  
Post Office Box 9010 Addison, Texas 75001-9010

(972) 450-2871 FAX (972) 450-2837  
16801 Westgrove

# Memorandum

**To:** Carmen Moran  
**CC:** Nancy Cline, Aaron Russell  
**From:** Clay Barnett  
**Date:** 10/14/2008  
**Re:** Meridian Square

- 
1. Add a 5' Sidewalk Easement along the Spectrum Drive frontage.
  2. The dead end alleys will need to have the appropriate signage.

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: October 7, 2008

Subject: Meridian Square

1. Any encroachments into the public right of way shall comply with Chapter 32 of the 2006 IBC and be approved by the Public Works Department.
2. The townhomes shall comply with the requirements of the 2006 IRC. These homes are to be constructed on separate lots and the developer should be aware that Table R302.1 of the 2006 IRC limits openings and projections such as soffits and balconies in proximity to the property line. The Town does have an exception to this section if a unity agreement has been executed.

## **Council Agenda Item #R11**

### **SUMMARY:**

Staff requests Council authorize the approval of an Assignment and Construction Services Agreement between the Town of Addison and UDR, Inc. in the amount of \$29,593.36 for and regarding the management of the construction of Vitruvian Park Public Infrastructure –Phase I (water and sanitary sewer) within that area of the Town known generally as Vitruvian Park.

### **FINANCIAL IMPACT:**

Project Management Contract Amount:       \$29,593.36

Source of Funds:       Phase 1 of the Master Facilities Agreement for Vitruvian Park included \$18,865,224 from Certificates of Obligation. From this amount, 8% of the Construction Cost was established for Construction Management Services.

Project Manager:       Clay Barnett, P.E.

### **BACKGROUND:**

Included in the Master Facilities Agreement with UDR, Inc., which was approved by Council on October 9, 2007, was a provision to assign the construction management of the Vitruvian Park Infrastructure to UDR, Inc. This provision was added to insure proper coordination between the contractor for the public infrastructure and the private infrastructure, thus both parties will be responsible to UDR, Inc. for construction coordination. The objective was to insure that there are no delays to either party due to a lack of coordination and to insure that there is a single point of contact for all construction related activities.

### **RECOMMENDATION:**

It is recommended that the Council authorize the approval of an Assignment and Construction Services Agreement between the Town of Addison and UDR, Inc. in the amount of \$29,593.36 for and regarding the management of the construction of Vitruvian Park Public Infrastructure –Phase I (water and sanitary sewer) within that area of the Town known generally as Vitruvian Park.

## **Council Agenda Item: #R12**

### **SUMMARY:**

Council approval is requested for the award of bid to BMW Motorcycles of North Dallas in the amount of \$43,029.34 for the purchase of (2) 2009 BMW Police Motorcycles.

### **FINANCIAL IMPACT:**

Funds Available: Capital Equipment Replacement Fund (CERF)

Cost: \$43,029.34

Budgeted Amount: \$40,000.00

Auction proceeds and interest income is available in the CERF to fund the cost difference.

### **BACKGROUND:**

The Town has five Police motorcycles that are assigned to the traffic division. Three (3) are 2005 Police BMW motorcycles and two (2) are 2002 models. These two new ones will replace the 2002 models which will be auctioned. Bids were received from:

- BMW of North Dallas: \$21,514.67
- Ft. Worth BMW: \$21,922.14
- Austin BMW: \$23,935.16

The BMW motorcycles have performed well, offer additional safety and performance features, and operate with minimal maintenance required.

### **RECOMMENDATION:**

Staff recommends the Council award the purchase to BMW Motorcycles of North Dallas.



## **Council Agenda Item: #R13**

### **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: \$42,000

Cost: \$42,000 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, 2008.

## **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 (non-crisis matters and other matters) given to MCG by Client. MCG 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 \$3,500 for each calendar month during the term hereof (the "Monthly Fee"). 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.

Margulies Communications Group, Inc



David S. Margulies, President

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

**Accepted and Approved:**

Town of Addison

By: \_\_\_\_\_ (name and title)

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

## **Council Agenda Item: #R14**

**SUMMARY:** Discussion and consideration of approval of an Identity Theft Prevention Program in connection with the Town's utility services

**BACKGROUND** Rules of the Federal Trade Commission require that financial institutions and creditors develop and implement written identity theft prevention programs (16 CFR Part 681, found in 72 Federal Register Page 63719 (November 9, 2007)). That requirement is in connection with the federal Fair and Accurate Credit Transactions Act of 2003. Attached is an FTC Business Alert describing the regulations.

The FTC Business Alert describes a "creditor" as any entity that regularly extends, renews, or continues credit, and provides that "[w]here non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors." The regulation provides that each financial institution or creditor must periodically determine whether it offers or maintains covered accounts. A "covered account" is defined as including (emphasis added):

- (i) an account that a financial institution or creditor offers or maintains, primarily for personal, family or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, *utility account*, checking account, or savings account; and
- (ii) any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identify theft, including financial, operational, compliance, reputation, or litigation risks.

An "account" is defined as a

continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes

and including "an extension of credit, such as the purchase of property or services involving a deferred payment." Since the Town defers payment of utility service until after the service has been provided, it can be considered a creditor for purposes of the regulation.

The regulation provides that “each financial institution or creditor that offers or maintains one or more covered accounts must develop and implement a written identity theft prevention program that is designed to detect, prevent, and mitigate identity theft in connection with the opening of a covered account or any existing covered account.” In accordance with that regulation, attached is a proposed Identity Theft Prevention Program for consideration by the City Council. City personnel who work with utility accounts will look for red flags on accounts that indicate the possibility of identity theft.

**RECOMMENDATION:** Staff recommends approval

**Town of Addison, Texas**

**Identity Theft Prevention Program**  
**(“ITP Program”)**

**Effective as of November 1, 2008**



## **ADOPTION OF ITP PROGRAM**

The Town Of Addison, Texas (the "Utility") developed this Identity Theft Prevention Program (this "ITP Program") pursuant to the Federal Trade Commission's Red Flags Rule (the "FTC Red Flags Rule"), which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003 (the "FACTA").

After consideration of the size and complexity of the Utility's operations and account systems, and the nature and scope of the Utility's activities, the Town of Addison, Texas determined that this ITP Program was appropriate for the Utility, and therefore adopted this ITP Program to be effective on November 1, 2008.

## **ITP PROGRAM ADMINISTRATION**

### **A. Oversight**

The Town of Addison Director of Finance shall serve as ITP Program Administrator for the Utility.

The ITP Program Administrator will be responsible for the ITP Program's administration, for ensuring appropriate training of Utility staff, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, for determining which steps of prevention and mitigation should be taken in particular circumstances, and for considering periodic changes to the ITP Program.

*Contact the ITP Program Administrator at:*

*Phone 972-450-7055*

*Email [radams@addisontx.gov](mailto:radams@addisontx.gov)*

### **B. Staff Training and Reports**

Utility staff responsible for implementing the ITP Program shall be trained either by or under the direction of the ITP Program Administrator in the detection of Red Flags and the responsive steps to be taken when a Red Flag is detected.

Staff should prepare a report at least annually for the ITP Program Administrator, including an evaluation of the effectiveness of the ITP Program with respect to opening accounts, existing Covered Accounts, service provider arrangements, significant incidents involving identity theft and responses, and recommendations for changes to the ITP Program.

### **C. Service Provider Arrangements**

In the event the Utility engages a service provider to perform an activity in connection with one or more Covered Accounts, the Utility will require, by contract, that service providers have such policies and procedures in place; and that service providers review the Utility's ITP Program and report any Red Flags to the ITP Program Administrator.

## **ITP PROGRAM OVERVIEW**

### **A. Requirements of the FTC Red Flags Rule**

Under the FTC Red Flags Rule, every financial institution and creditor is required to establish an “Identity Theft Prevention Program” tailored to the size, complexity and nature of its operation. Each program must contain reasonable policies and procedures to:

1. Identify relevant Red Flags for new and existing Covered Accounts and incorporate those Red Flags into the ITP Program;
2. Detect Red Flags that have been incorporated into the ITP Program;
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
4. Ensure the ITP Program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from Identity Theft.

The FTC Red Flags Rule defines creditors to include “finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. According to an FTC Business Alert dated June, 2008, where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors. Thus, according to the FTC Red Flags Rule, a municipal utility is a creditor subject to the FTC Red Flags Rule requirements.

### **B. FTC Red Flags Rule Definitions**

“Covered Account” refers to: (i) any account the Utility offers or maintains primarily for personal, family or household purposes, that involves or is designed to permit multiple payments or transactions; and (ii) any other account the Utility offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the Utility from Identity Theft.

*\*All of Utility’s accounts that are individual utility service accounts held by customers of the Utility (e.g., water & sewer service accounts), whether residential, commercial or industrial, are covered by the FTC Red Flags Rule.*

“Identifying Information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific

person, including: name, address, telephone number, social security number, date of birth, government-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer's Internet Protocol address, or routing code.

"Identity Theft" means fraud committed using the identifying information of another person.

"Red Flags" refer to a pattern, practice, or specific activity that indicates the possible existence of Identity Theft.

## **IDENTIFICATION OF RED FLAGS**

In order to identify relevant Red Flags, the Utility considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft.

The Utility staff shall be on the alert for these Red Flags as they are encountered in the ordinary course of Utility business:

### **A. Alerts, Notifications and Warnings From Credit Reporting Agencies**

1. Report of fraud accompanying a credit report;
2. Notice or report from a credit agency of a credit freeze on a customer or applicant;
3. Notice or report from a credit agency of an active duty alert for an applicant;
4. Notice or report from a credit agency of an address discrepancy; and
5. Indication from a credit report of activity that is inconsistent with a customer's usual pattern or activity, such as an unusual increase in the volume of credit inquiries, unusual increase in the number of established credit relationships, or a material change in the use of credit.

### **B. Suspicious Documents**

1. Identification document or card that appears to be forged, altered or inauthentic;
2. Identification document or card on which a person's photograph or physical description is not consistent with the person presenting the document;
3. Other information on identification document is not consistent with information provided by the person opening a new Covered Account, by the customer presenting the identification, or with existing customer information on file with the creditor (such as a signature card or recent check); and



4. Application for service that appears to have been altered or forged.

**C. Suspicious Personal Identifying Information**

1. Identifying Information presented that is inconsistent with other information the customer provides, for instance, where there is a lack of correlation between the social security number range and the date of birth;

2. Identifying Information presented that is inconsistent with external sources of information, for instance, an address does not match a consumer report or a social security number is listed in the Social Security Administration's Death Master File;

3. Identifying Information presented is associated with common types of fraudulent activity, such as use of a fictitious billing address or phone number;

4. Identifying Information presented that is consistent with known fraudulent activity, such as presentation of an invalid phone number or fictitious billing address used in previous fraudulent activity;

5. Social security number presented that is the same as one given by another customer;

6. An address or phone number presented that is the same as that of another person;

7. A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law, social security numbers must not be required); and

8. A person's identifying information is not consistent with the information that is on file for the customer.

**D. Suspicious Account Activity or Unusual Use of Account**

1. Change of address for an account followed by a request to change the account holder's name;

2. Payments stop on an otherwise consistently up-to-date account;

3. Account used in a way that is not consistent with prior use (example: very high activity);

4. Mail sent to the account holder is repeatedly returned as undeliverable;
5. Notice to the Utility that a customer is not receiving mail sent by the Utility;
6. Notice to the Utility that an account has unauthorized activity;
7. Breach in the Utility's computer system security; and
8. Unauthorized access to or use of customer account information.

**E. Alerts from Others**

1. Utility receives notice from a customer, identity theft victim, law enforcement or other person that it has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

## **PREVENTING AND MITIGATING IDENTITY THEFT**

***In the event Utility personnel detect any identified Red Flags, such personnel must IMMEDIATELY notify the ITP Program Administrator.***

The ITP Program Administrator will then decide which, if any, of the following steps should be taken:

1. Continue to monitor an account for evidence of Identity Theft;
2. Contact the customer;
3. Change any passwords or other security devices that permit access to accounts;
4. Not open a new account;
5. Close an existing account;
6. Reopen an account with a new number;
7. Notify law enforcement; or
8. Determine that no response is warranted under the particular circumstances.

## **ITP PROGRAM UPDATES**

The ITP Program Administrator will periodically review and update this ITP Program to reflect changes in risks to customers and the soundness of the Utility from Identity Theft. In doing so, the ITP Program Administrator will consider the Utility's experiences with Identity Theft situations, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, and changes in the Utility's business arrangements with other entities.

After considering these factors, the ITP Program Administrator will determine whether changes to the ITP Program, including the listing of Red Flags, are warranted. If warranted, the ITP Program Administrator will update the ITP Program or present the Town with his or her recommended changes and the Town Council will make a determination of whether to accept, modify or reject those changes to the ITP Program.

# FTC Business Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Division of Consumer & Business Education

## New 'Red Flag' Requirements for Financial Institutions and Creditors Will Help Fight Identity Theft

Identity thieves use people's personally identifying information to open new accounts and misuse existing accounts, creating havoc for consumers and businesses. Financial institutions and creditors soon will be required to implement a program to detect, prevent, and mitigate instances of identity theft.

The Federal Trade Commission (FTC), the federal bank regulatory agencies, and the National Credit Union Administration (NCUA) have issued regulations (the Red Flags Rules) requiring financial institutions and creditors to develop and implement written identity theft prevention programs, as part of the Fair and Accurate Credit Transactions (FACT) Act of 2003. The programs must be in place by November 1, 2008, and must provide for the identification, detection, and response to patterns, practices, or specific activities — known as “red flags” — that could indicate identity theft.

### WHO MUST COMPLY WITH THE RED FLAGS RULES?

The Red Flags Rules apply to “financial institutions” and “creditors” with “covered accounts.”

Under the Rules, a **financial institution** is defined as a state or national bank, a state or federal savings and loan association, a mutual savings bank, a state or federal credit union, or any other entity that holds a “transaction account” belonging to a consumer. Most of these institutions are regulated by the Federal bank regulatory agencies and the NCUA. Financial institutions under the FTC's jurisdiction include state-chartered credit unions and certain other entities that hold consumer transaction accounts.

A **transaction account** is a deposit or other account from which the owner makes payments or transfers. Transaction accounts include checking accounts, negotiable order of withdrawal accounts, savings deposits subject to automatic transfers, and share draft accounts.

A **creditor** is any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. Accepting credit cards as a form of payment does not in and of itself make an entity a creditor. Creditors include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too, are to be considered creditors. Most creditors, except for those regulated by the Federal bank regulatory agencies and the NCUA, come under the jurisdiction of the FTC.

A **covered account** is an account used mostly for personal, family, or household purposes, and that involves multiple payments or transactions. **Covered accounts** include credit card accounts, mortgage loans, automobile loans, margin accounts, cell phone accounts, utility accounts, checking accounts, and savings accounts. A covered account is also an account for which there is a foreseeable risk of identity theft – for example, small business or sole proprietorship accounts.



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## **COMPLYING WITH THE RED FLAGS RULES**

Under the Red Flags Rules, financial institutions and creditors must develop a written program that identifies and detects the relevant warning signs — or “red flags” — of identity theft. These may include, for example, unusual account activity, fraud alerts on a consumer report, or attempted use of suspicious account application documents. The program must also describe appropriate responses that would prevent and mitigate the crime and detail a plan to update the program. The program must be managed by the Board of Directors or senior employees of the financial institution or creditor, include appropriate staff training, and provide for oversight of any service providers.

## **HOW FLEXIBLE ARE THE RED FLAGS RULES?**

The Red Flags Rules provide all financial institutions and creditors the opportunity to design and implement a program that is appropriate to their size and complexity, as well as the nature of their operations. Guidelines issued by the FTC, the federal banking agencies, and the NCUA ([ftc.gov/opa/2007/10/redflag.shtm](http://ftc.gov/opa/2007/10/redflag.shtm)) should be helpful in assisting covered entities in designing their programs. A supplement to the Guidelines identifies 26 possible red flags. These red flags are not a checklist, but rather, are examples that financial institutions and creditors may want to use as a starting point. They fall into five categories:

- alerts, notifications, or warnings from a consumer reporting agency;
- suspicious documents;
- suspicious personally identifying information, such as a suspicious address;
- unusual use of — or suspicious activity relating to — a covered account; and
- notices from customers, victims of identity theft, law enforcement authorities, or other businesses about possible identity theft in connection with covered accounts.

More detailed compliance guidance on the Red Flags Rules will be forthcoming. For questions about compliance with the Rules, you may contact [RedFlags@ftc.gov](mailto:RedFlags@ftc.gov).

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The FTC, the nation’s consumer protection agency, works to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit [ftc.gov](http://ftc.gov) or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

## **YOUR OPPORTUNITY TO COMMENT**

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency’s responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).

FEDERAL TRADE COMMISSION	<a href="http://ftc.gov">ftc.gov</a>
1-877-FTC-HELP	FOR THE CONSUMER